

1 BEFORE THE NEW YORK STATE SENATE
2 STANDING COMMITTEE ON HEALTH

3 PUBLIC HEARING:

4 TO CONSIDER INCLUDING
5 ELECTRONIC CIGARETTES IN THE EXISTING
6 CLEAN INDOOR AIR ACT AND REGULATING LIQUID NICOTINE

7 Legislative Office Building
8 Van Buren Hearing Room A - 2nd Floor
9 172 State Street
10 Albany, New York 12247

11 May 12, 2014
12 11:00 a.m. to 1:00 p.m.

13 PRESIDING:

14 Senator Kemp Hannon
15 Chairman

16 PRESENT:

17 Senator Martin Golden
18 Senator Ruth Hassell-Thompson
19 Senator Brad Hoylman
20 Senator Gustavo Rivera (RM)
21 Senator Diane J. Savino
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1 SENATOR HANNON: Good morning.

2 This is a hearing of the Senate Health
3 Committee on e-cigarettes and e-liquids.

4 I'm joined with Gustavo Rivera, the ranking
5 Democrat on the Committee, and by Diane Savino, a
6 member of the Committee.

7 We will have testimony by several people, and
8 we've also received a large number of comments and
9 written statements, especially from people who sell
10 the vapor cigarettes.

11 All of those will be made part of the record,
12 and that will be held open, because we need to
13 consider all aspects of this legislation.

14 We actually reported, one of the bills about
15 the Clean Indoor Act last week from
16 Health Committee, but as Senator Rivera pointed out,
17 a technical problem with it, so that will be being
18 amended and we'll move forward.

19 Our first person to testify is
20 Dr. Harlan Juster, who's director of the Bureau of
21 Tobacco Control from the Department of Health in the
22 state, and he's here to give us a general overview
23 of cigarettes and other things.

24 He's not here, because that's not part of the
25 way this Administration works, to testify on

1 specific bills, so, I just have to caution my fellow
2 Senators that you just can't do it.

3 But, he brings tremendous background and
4 expertise to this area. It's obviously a very
5 extensive area for the state.

6 And, Dr. Juster, we'll let you start.

7 HARLAN JUSTER, Ph.D.: Okay, thank you very
8 much.

9 Good morning, Chairman Hannon and members of
10 the Committee.

11 My bureau administers the statewide
12 tobacco-control program as part of the
13 New York State Department of Health.

14 And thank you for this opportunity to present
15 today regarding the possible inclusion of
16 electric cigarettes in the existing Clean Indoor Air
17 Act and regulation of liquid nicotine.

18 The New York State Department of Health's
19 tobacco-control program has been a national leader
20 in promoting tobacco-control policy, health-systems
21 change, and developing innovative approaches to
22 address the negative consequences of tobacco use.

23 The program is evidence-based. It follows
24 guidance on best practices from federal Centers for
25 Disease Control, and relies on reports from the

1 U.S. Surgeon General, the Institute of Medicine, the
2 National Cancer Institute, and the peer-reviewed
3 scientific literature.

4 SENATOR HANNON: Could you pull your mics
5 forward to you?

6 HARLAN JUSTER, Ph.D.: Closer?

7 SENATOR HANNON: Maybe the audience can --
8 this -- under the new reconstructed hearing rooms,
9 we have difficulty hearing up here because the
10 speakers are in there.

11 HARLAN JUSTER, Ph.D.: I can't hear you very
12 well, either; so, we're even.

13 How's this?

14 SENATOR HANNON: Great.

15 HARLAN JUSTER, Ph.D.: The three pillars of
16 tobacco control are the high cost of tobacco,
17 comprehensive clean indoor air laws that are
18 strongly enforced, and an evidence-based,
19 population-oriented tobacco-control program.

20 This approach is working in New York.

21 From 2001 to 2012, the adult smoking rate in
22 New York declined by almost one-third, from a
23 prevalence of 23 percent, to just 16 percent.

24 Prevention activities have produced even more
25 impressive results among youth.

1 In 2000, 27 percent of high school-age youth
2 reported smoking in the last 30 days.

3 In 2012, just 12 percent of high school-age
4 youth smoked a cigarette.

5 That's a 56 percent decline.

6 Among middle-school ages, the decline was
7 70 percent.

8 Our surveillance data indicates that the
9 declines in New York are occurring at a rate that is
10 faster than in the rest of the nation.

11 The declines in youth initiation of cigarette
12 use have had a positive impact on the trajectory of
13 adult smoking; that is, youth who did not initiate
14 smoking in the first decade of this century are now
15 non-smoking young adults.

16 And in 2010, for the first time since we've
17 been monitoring these data, the 18-to-24-year-old
18 young-adult age group is no longer the age group
19 with the highest smoking rate.

20 This positive trend, attributed to nonsmokers
21 as they age, will continue as long as the tobacco
22 initiation rate among youth continues to decline.

23 There is great concern in the
24 tobacco-controlled community that new products, like
25 those being discussed today, could undermine and

1 potentially reverse the substantial gains that have
2 been made in New York in reducing tobacco use.

3 In order to effectively evaluate or regulate
4 electronic nicotine-delivery systems, which is how
5 we refer to them, or, "ENDS," E-N-D-S, it is
6 important to use a comprehensive definition that
7 covers all products.

8 Electric cigarettes, or e-cigarettes, are
9 just one of a number of similar personal-use
10 devices.

11 And you can see them up on the slides that
12 I have in front of you.

13 There's also e-hookah, vaping pens,
14 e-cigars, hookah pens, and this list will
15 undoubtedly grow.

16 And here's a few pictures of some of the
17 items.

18 (Slide show involved.)

19 HARLAN JUSTER, Ph.D.: That's a vaping pen.

20 That's a rechargeable device. That looks a
21 mini mag flashlight to me, but it's one of these
22 units that's a personal vaporizer.

23 They come in many forms, and to be sure,
24 surely more to come.

25 That's an electronic hookah.

1 They all do the same thing.

2 All of these devices are designed to heat a
3 liquid containing nicotine so it is hot enough to
4 create an emission, or vapor, which is then inhaled
5 by the user.

6 This inhaled emission is absorbed through the
7 lungs and other internal surfaces into the
8 bloodstream where nicotine travels to the brain and
9 binds with specific neurotransmitter sites.

10 No matter what we call them, all of these
11 devices are designed for and capable of delivering
12 nicotine which is a highly addictive component in
13 all tobacco products.

14 Many of the liquids used in these devices
15 contain flavorings designed to appeal to youth and
16 young adults.

17 There are flavors called "French vanilla,"
18 "cherry crush," "watermelon splash," "bubble gum,"
19 "gummy bear," "cola," "strawberry," "cherry," and
20 "cookies-and-cream milkshake."

21 Clearly, these flavors are meant to appeal to
22 a younger population.

23 And it is important to note that flavors like
24 these are prohibited by federal law from being used
25 in traditional cigarettes, because federal law

1 recognizes that the purpose of these flavorings is
2 to addict children to nicotine and create new
3 generations of tobacco users.

4 And here's some of what the containers look
5 like.

6 And there's "Rainbow Sherbet."

7 Now, these devices are different from
8 combusted or burned tobacco cigarettes.

9 There is generally no burning, no tobacco
10 leaf, and they may have fewer or different toxins
11 compared with tobacco cigarettes.

12 However, recent reports from the Food and
13 Drug Administration, and elsewhere, have found
14 contaminants and tobacco-specific compounds believed
15 to be among the more carcinogenic components of
16 tobacco smoke.

17 And another recent study showed that when
18 used in a particular way, levels of formaldehyde in
19 the emissions can reach levels equal to that of
20 combusted or burned cigarettes.

21 So even if there are fewer toxins than
22 cigarettes, that does not mean these are safer for
23 the individual or for the population as a whole.

24 Much of the analysis depends on how the
25 products are used by the public, and researchers and

1 public-health officials are really just beginning to
2 learn about attributes of products, consumer
3 behavior, patterns and methods of use, intended and
4 unintended consequences.

5 Today, the safety of these products is
6 unknown and their value as a cessation tool is
7 entirely unproven.

8 Research is scant, but what little has been
9 conducted is concerning.

10 We know that a great deal of marketing of
11 these products appeals to youth, and that youth are
12 responding to these marketing techniques.

13 The vast majority of teens and young adults
14 are aware of these products and are exposed to the
15 advertising.

16 As a result, youth use of these products has
17 dramatically increased, and we know that most youth
18 who use these products are also smoking cigarettes,
19 a combination that can lead to long-term nicotine
20 addiction and cigarette use.

21 For adults, we know that there have been no
22 spikes in cessation attempts, quitting attempts,
23 among adult cigarette smokers concomitant with the
24 spike in ENDS use.

25 We are certain that more research is needed,

1 but, to date, no study has shown that quitting is
2 enhanced by ENDS use -- ENDS use of these products,
3 and their use may make it even harder to quit
4 cigarette use.

5 Determining safety and assessing health
6 impacts requires much more research than currently
7 exists, and multiple issues must be considered.

8 The scientific community is only at the
9 beginning stages of determining the safety and
10 health impacts of these products.

11 As a public-health professional, I'm
12 concerned that nicotine-delivery devices will result
13 in one or more of the following negative health
14 outcomes:

15 Youth using ENDS, these nicotine-delivery
16 devices, will become addicted to nicotine, and many
17 will transition to the use of tobacco cigarettes.

18 Tobacco cigarettes deliver nicotine more
19 efficiently than nicotine-delivery devices, and the
20 transition seems to be a logical extension of ENDS
21 use.

22 Two, nicotine devices will re-glamorize the
23 active smoking. This is a battle fought by public
24 health for a long time, and continues to be a key
25 strategy to reducing initiating youth initiation.

1 Three, nicotine devices will be used to
2 maintain and strengthen nicotine addiction in
3 cigarette smokers, who then continue to also smoke
4 tobacco cigarettes, known as "dual use."

5 And, four, former smokers will return to
6 nicotine use and addiction through the use of these
7 devices, and then relapse to tobacco use.

8 Now, advocates for the use of these products
9 as cessation devices argue that because there are
10 likely fewer toxins in the emissions compared with
11 combusted cigarettes, or burned cigarettes, that
12 these products must be safe to use.

13 They're making a harm-reduction argument, but
14 that argument is incomplete and flawed.

15 Harm reduction works when there is a clear
16 benefit to the user that outweighs the costs to the
17 rest of society.

18 We already have harm-reduction products in
19 tobacco control.

20 The FDA has approved five nicotine-delivery
21 devices that have been shown in extensive research
22 to be safe and effective.

23 These are the nicotine-replacement therapies,
24 and include the patch, gum, lozenge, inhaler, and
25 nasal spray.

1 There are also two non-nicotine --
2 non-nicotine prescription medications, bupropion,
3 and varenicline, also shown to be safe and effective
4 at increasing smoking-cessation rates. They reduce
5 the harm of nicotine addiction by helping users of
6 combusted cigarettes to quit, but they do not
7 attract the new users who find these products
8 appealing. This is successful harm reduction.

9 While we await the availability of the
10 results of additional research, the department will
11 consider a variety of policy solutions, but recent
12 events in which reports to poison control centers
13 that young children have gained access to and drank
14 the liquid nicotine solutions indicate that
15 child-proof packaging must be one consideration.

16 On April 25th of this year, the FDA proposed
17 a new rule, known as the "deeming rule," to extend
18 its authority to include electronic
19 nicotine-delivery devices.

20 Proposed regulations include prohibiting the
21 sale and distribution of free samples to minors and
22 requiring the disclosure of ingredients.

23 However, the proposed regulations do not
24 address many issues of concern to the
25 tobacco-control community, including providing a

1 legal definition for e-cigarettes, prohibiting
2 characterizing flavors, prohibiting Internet sales,
3 prohibiting brand-name sponsorship, or marketing and
4 advertising restrictions.

5 The FDA's proposed timeline is already
6 lengthy. And just last week, the tobacco industry
7 requested that the formal comment period be doubled,
8 from 75 days, to 150 days.

9 This process could take years.

10 In the interim, these products are being sold
11 widely in shopping malls, in stores that are
12 otherwise unlicensed to sell tobacco products, and
13 on the Internet. Quality control is highly
14 variable, and the devices are being used by our
15 youth in creative but dangerous ways.

16 The companies are using all the old-time
17 marketing methods to sell these products to youth.

18 Dr. Thomas Frieden, director of the CDC,
19 recently said that, quote, Tobacco is really the
20 number one enemy of health in this country and
21 around the world, unquote.

22 Tobacco use causes 30 percent of all cancers,
23 including 85 percent of lung cancers.

24 Cigarette smokers are two to four times more
25 likely to develop coronary heart disease than

1 nonsmokers, and the U.S. Surgeon General has
2 concluded that tobacco use negatively affects every
3 organ system in the human body.

4 The single most effective intervention that
5 can improve the health of more people in New York
6 and around the world would be to reduce or eliminate
7 tobacco use.

8 In spite of the progress we've made,
9 24,000 New Yorkers still die each year from tobacco
10 use, and hundreds of thousands suffer from serious
11 illness.

12 The financial cost to the State is enormous.

13 We have the tools to end the tobacco problem
14 in New York State for the next generation, but the
15 unregulated market that is electronic
16 nicotine-delivery systems threatens the gains that
17 have been made in New York, and must not be allowed
18 to undermine the important progress made in
19 denormalizing tobacco use, especially among youth
20 and young adults.

21 We must continue to conduct well-designed
22 studies to better understand the impact of these
23 products on public health, but, the paucity of
24 research cannot be used as an excuse to refrain from
25 action.

1 Thank you for inviting me to speak with you
2 today, and I'd be happy to respond to any questions
3 you may have.

4 SENATOR HANNON: A very powerful set of
5 conclusions, and any number of different aspects of
6 this.

7 I was intrigued.

8 Senator Savino had to go do an interview, and
9 will be back. A media interview.

10 But I was intrigued by even when smoking
11 starts in the cohort of the population, because she
12 has a bill that would raise the age for everybody to
13 21.

14 And I hadn't ever focused on that aspect
15 before. And I see -- and you cited it, and it's
16 supported by federal --

17 HARLAN JUSTER, Ph.D.: It's a little hard for
18 me to hear you, but --

19 SENATOR HANNON: It's supported by a federal
20 study.

21 HARLAN JUSTER, Ph.D.: Yeah, 80 percent of
22 adult smokers start before the age of 18.

23 That's a key demographic for the tobacco
24 industry to target, because they are the future
25 smokers that are going to replace those who quit and

1 those who die.

2 SENATOR HANNON: How -- one of the things you
3 said during your testimony was the -- watching the
4 cessation rates.

5 How was that measured?

6 HARLAN JUSTER, Ph.D.: We conduct
7 surveillance of a whole host of indicators related
8 to tobacco use, and one of them is -- are the
9 cessation rates across the state.

10 We have surveys that we do by telephone, we
11 do them by mail, we do -- we use cell phones now to
12 get to the demographics that are hard to reach. And
13 we've been doing this since 2003.

14 We actually have data on a similar survey
15 back to 1985.

16 So we've been watching the cessation rates
17 for a long time.

18 Through the '80s, there was a significant
19 drop.

20 Through the '90s, things seemed to level off.

21 And through the 2000s, again, a big drop in
22 prevalence of smoking and increase in cessation
23 rates.

24 So we asked people, if they're smokers, have
25 they tried to quit in the past 12 months? Do they

1 intend to try and quit in the next 3 months?

2 We ask all these questions.

3 So for the last three or four years, those
4 numbers have been, essentially, flat.

5 In 2009, I believe 62 percent of smokers --
6 adult smokers said they tried to quit for at least
7 one day or more in the past year.

8 In 2012, it was 64 percent.

9 Essentially, no difference.

10 So, we know that the ENDS devices are being
11 used at a much higher rate, but the quit rate for
12 smoking isn't changing.

13 So what we're seeing is, I think, the
14 beginnings of that dual use.

15 We need to understand it better, but, there's
16 no indication that quit rates are going up.

17 SENATOR HANNON: And questions of addiction,
18 how -- one of the studies, like, that show you how
19 long it takes for someone to become addicted to
20 smoking tobacco; how long -- you know, how difficult
21 it is to get out of smoking; and, what methods of
22 cessation in terms of withdrawal?

23 HARLAN JUSTER, Ph.D.: Nicotine addiction is
24 one of the most difficult addictions there is. It's
25 probably more difficult to quit that than to quit

1 alcohol addiction.

2 Youth who have been smoking for just a month
3 or two begin to show the signs of addiction -- you
4 know, the early signs of addiction. You know,
5 smoking earlier and earlier, first thing in the
6 morning, difficulty quitting, feelings of craving,
7 and things like that.

8 So, that's the nicotine. Nicotine is
9 extraordinarily addictive.

10 And if you look at the rates of relapse
11 following cessation attempts, it's exactly the same
12 relapse rate that you see with all other kinds of
13 addiction: heroin addiction, alcohol addiction.

14 When you look at the relapse rates,
15 something, like, 50 percent relapse within 30 days,
16 and I believe 80 or 90 percent within 6 months.

17 And it's the same curve for every one of
18 those addictions.

19 And that's why there is the development of
20 the FDA nicotine -- approved nicotine-replacement
21 therapies, like the patches and the gums, that
22 provide nicotine to a person, which is a safer
23 alternative when provided in approved form, than
24 getting your nicotine through tobacco smoke, for
25 instance, which has all the other chemicals

1 associated with it.

2 The problem with these devices is, they're
3 not regulated, they're not approved, you don't know
4 what people are getting. You don't know how much
5 nicotine you're getting from them.

6 People use them all different ways.

7 Just saw a study in which youth are actually
8 disassembling the devices and pouring the liquid
9 nicotine directly onto the heater within the device,
10 which is not how it's supposed to be used, but it
11 produces a much higher level of nicotine emission
12 that they can inhale. But in the same time, they're
13 also getting formaldehyde and some other things that
14 are produced at high temperature, that aren't
15 produced if they use in the expected way.

16 Nicotine addiction is an extremely difficult
17 addiction to break, but people do it. And,
18 actually, most of them still do it without help,
19 without assistance.

20 It's a bit of a conundrum there to get people
21 to try these products.

22 They seem to want to quit on their own, is a
23 popular thing that we hear from people who are
24 trying to quit. They don't want help.

25 But help will increase the likelihood of them

1 quitting with these devices.

2 SENATOR HANNON: Thank you.

3 Senator Rivera.

4 SENATOR RIVERA: Thank you, Dr. Juster.

5 First of all, thank you, obviously, for being
6 here.

7 This is a brief, but I think very thorough
8 kind of outline of what are the concerns that we
9 have.

10 And I want you to -- and I wanted for you to
11 talk a little bit more about, in particular, the way
12 that these products are being marketed.

13 I think it was -- I was -- kind of, as I was
14 hearing, I was reading along, and I kind of jumped
15 ahead a little bit, and there was some sections that
16 really outlined the fact that, for the most part,
17 they are -- these companies are borrowing the
18 advertising strategies that were used by tobacco
19 companies before they were regulated or prohibited
20 from doing so.

21 And that if you take that model and you just
22 put it on to the -- on to what's happening now, that
23 we're just looking at exactly the same marketing
24 type of strategies.

25 So, I wanted you to talk a little bit more

1 about that.

2 HARLAN JUSTER, Ph.D.: Sure, sure.

3 The marketing of tobacco in the past was an
4 extraordinarily successful marketing technique.

5 It set the tone for the use of these
6 products.

7 It made them look glamorous to the public.

8 It provided status symbols.

9 Made people think they were going to be
10 healthier using these products.

11 They were amazingly successful.

12 And the strategies include things like,
13 endorsement from celebrities.

14 Long time ago, it used to be doctors doing
15 the endorsements.

16 They got rid of that, but, still, celebrity
17 endorsement is important.

18 The flavorings that make it easier -- well,
19 they taste better, but also makes it easier to use
20 the products, are very popular.

21 You saw some of the flavorings I showed you.
22 Clearly, those are meant to appeal to youth and
23 young people.

24 See, celebrity endorsements and flavorings
25 and -- and, I guess, as I said, it's the old

1 playbook all over again.

2 There's -- the themes of the ads are, I think
3 I said in my -- in the longer comments, you know,
4 rugged individuality, and also rebelliousness.

5 And these are the themes that young people,
6 especially adolescents, take to.

7 They are attracted very much by being -- by
8 wanting to appear more individual -- more of an
9 individual, and rugged, and tough, and sort of
10 rebellious, is a key to, you know, grabbing the
11 attention of young people.

12 And they do this very well.

13 SENATOR RIVERA: Okay, and as it relates to
14 cessation, there's two points that you mentioned,
15 that I want to underline, as well.

16 One of them is that there is -- in the
17 evidence that you've seen so far, even though the
18 use of these types of devices has spiked in the
19 population of smokers, you don't see, necessarily,
20 a -- an uptick in the type of -- in the amount of
21 people that want to actually quit.

22 HARLAN JUSTER, Ph.D.: Correct.

23 SENATOR RIVERA: So, therefore, that doesn't
24 necessarily -- it's not -- you know, it's not a
25 double-blind study, et cetera, but there's,

1 obviously, not --

2 HARLAN JUSTER, Ph.D.: There was one.

3 SENATOR RIVERA: There was one?

4 HARLAN JUSTER, Ph.D.: One double-blind --
5 or, I'm sorry, not double-blind.

6 But there was a random controlled trial.
7 People knew what they were getting.

8 One random controlled trial -- it's in the
9 longer comments -- that compared an e-cigarette with
10 nicotine to a patch -- nicotine patch, to nothing,
11 I think.

12 And the quit rates, quit rates are not high
13 for any of those products.

14 The quit rate for the patch was about
15 5.8 percent, and the quit rate for the e-cigarette
16 was 6.8 percent; slightly higher, but a
17 nonsignificant difference, as if they're -- the quit
18 rates were identical.

19 And, of course, it doesn't take into account
20 the quality-control issues and the marketing to
21 youth, and all that.

22 And, again, the harm-reduction argument says:
23 Will it help the individual?

24 Will it help the population as a whole?

25 And you have to balance both of those.

1 People who tend to look at these as cessation
2 devices aren't looking at the population as a whole.

3 They're looking at the individual user only
4 and saying this might help this user.

5 Well, but not if it gets 10 new kids to
6 smoke.

7 That's not worth it. That's not a
8 calculation I'm willing to make.

9 SENATOR RIVERA: And, ultimately, the -- as
10 your conclusion here, it seems to be that you're
11 saying, even though there might not be enough
12 research yet to be able to determine whether this --
13 you know, it might be a good cessation device, it
14 might be good for that purpose, to make the argument
15 that there's not enough evidence yet that it is or
16 it isn't; therefore, we shouldn't regulate it, is
17 not a smart public-safety or public-health decision.

18 HARLAN JUSTER, Ph.D.: Not given the history
19 of this industry, which, as we know, was convicted
20 of racketeering and marketing directly to kids.

21 Judge Kessler said they're marketing to kids,
22 even when they weren't supposed to, and they were
23 convicted for that.

24 This is the same industry that did that --
25 did those things.

1 And those -- the three big companies, you
2 know, Lorillard, R.J. Reynolds, and Altria, are now
3 in the e-cigarette business. All three of them have
4 a product.

5 Blu; Vuse, V-U-S-E, whatever that is; and
6 MarkTen, are now e-cigarette products. And when
7 they get in the business, then you start to worry.

8 We worried before.

9 SENATOR HANNON: I have a -- this is what
10 I got yesterday when I was buying a windshield wiper
11 at Pep Boys. Right at the counter was, M-I-S-T-I-C;
12 hence Mystic.

13 SENATOR RIVERA: It sounds -- it sounds
14 awesome.

15 HARLAN JUSTER, Ph.D.: It sounds awesome, and
16 it looks awesome.

17 And if you look at the products, they're very
18 cool.

19 I think some of them come with USB connectors
20 to recharge them in your computer, because they're
21 rechargeable units.

22 These are very cool, interesting products
23 that any of us would be interested in, as long -- if
24 you didn't know what they were.

25 SENATOR HANNON: Yeah.

1 Well, thank you very much. I deeply
2 appreciate it.

3 And I think there's a very solid foundation
4 you've helped lay for this whole thing.

5 HARLAN JUSTER, Ph.D.: Great.

6 Thank you.

7 SENATOR RIVERA: Thank you, Doctor.

8 SENATOR HANNON: I'd like to ask
9 Dr. Lawrence Eisenstein to join us.

10 Dr. Eisenstein is not only the health
11 commissioner of the county of Nassau, protecting my
12 health, he is also the president of the New York
13 State Association of County Health Officials,
14 NYSACHO, representing the whole state.

15 Thanks for joining us this morning.

16 DR. LAWRENCE EISENSTEIN: Thank you,
17 Senator Hannon. It's my pleasure to be here.

18 Good morning.

19 My name is Dr. Lawrence Eisenstein. I'm the
20 commissioner of health for Nassau County, and
21 I currently serve as the president of the
22 New York State Association of County Health
23 Officials, also known as "NYSACHO."

24 NYSACHO represents all 58 county health
25 officials, and they send their regards.

1 I want to thank the Senate Standing
2 Committee, and send greetings from all 58 county
3 health officials, Senator Rivera.

4 And, of course, a special thanks to Committee
5 Chairman Senator Kemp Hannon who represents my
6 county. He's been a great partner in health care.

7 Our association had a monthly meeting last
8 week and we discussed the pending legislation.

9 NYSACHO loudly applauds and supports the
10 efforts of regulating electronic tobacco-delivery
11 devices and related components, also known as
12 "e-cigarettes."

13 And for the purpose of this testimony, we'll
14 call them "e-cigarettes."

15 I do want to comment that a lot of what
16 you're going to hear from me was just said in what
17 I also thought was a very thorough, excellent
18 introduction.

19 And I'm very appreciative of Dr. Juster's
20 presentation, because when you hear the same theme
21 over again, independently reached upon by different
22 health officials, it really tends to lend
23 credibility.

24 And I -- it's not -- it was -- at first I was
25 thinking, Hey, this guy's stealing my thunder.

1 But, in fact, it's really important to hear
2 the same themes over and over again, and that we're
3 all looking at the same data and evidence.

4 As public-health officials, we're always
5 searching for new tools to help smokers to quit.

6 E-cigarettes are marketed as a
7 smoking-cessation tool or a safe alternative to
8 traditional tobacco products.

9 But, in fact, we have no solid evidence that
10 e-cigarettes really help people quit smoking.

11 In fact, there are new studies, numerous new
12 studies, suggesting that they serve as a gateway to,
13 especially our youth, smoking actual cigarettes
14 later on, and, there remains questions about their
15 safety.

16 We know that the nicotine in e-cigarettes is
17 addictive.

18 We do not know for certain what else is in
19 the vapor they produce.

20 Very often we hear it marketed as
21 "water vapor," but the fact is, it's hard to believe
22 it's just water vapor when we can all clearly smell
23 some kind of chemical odor when we're around people
24 using e-cigarettes.

25 Water vapor should not have a chemical-odor

1 smell. We want to know exactly, what is that?

2 What chemicals are coming out of the vapor of
3 e-cigarettes into the general air that everybody
4 else has to breathe?

5 Till we have clear evidence that e-cigarettes
6 are both safe and effective for smoking cessation,
7 NYSACHO believes and supports that our legislators
8 regulate their manufacture and quality control.

9 Unless we can assure their safety,
10 e-cigarette use and exposure should be limited, and
11 we're very excited to support the pending
12 legislation.

13 While we await federal regulation of this
14 industry and these devices, NYSACHO supports our
15 state's leaders, in particular, in taking action to
16 protect all of the residents of New York State.

17 We find the statewide legislation to be
18 vital.

19 We commend those localities that have already
20 taken action or are considering it, but, similar to
21 the New York State Clean Indoor Air Act, state
22 legislation would standardize safety measures to the
23 benefit of all New Yorkers.

24 The current package of proposed legislation
25 before your Committee is a crucial first step.

1 There's much we still need to learn about
2 e-cigarettes, and there are many studies ongoing,
3 but what we already know is troubling.

4 We know that they are aggressively marketed
5 to children and young adults, a theme you heard
6 earlier, but I think it's really important to
7 reemphasize.

8 A CDC study published, tells us that the rate
9 of e-cigarette use doubled, "doubled," for both
10 middle and high school students in just one year,
11 between 2011 and 2012.

12 Make no mistake, this is the result of direct
13 marketing to our youth.

14 An example of marketing to minors is the use
15 of flavors in e-cigarettes.

16 While the federal government has banned
17 flavoring of traditional cigarettes, e-cigarettes
18 are sold in cherry, vanilla, cola, bubble gum, and
19 chocolate flavors.

20 Ads for e-cigarettes make them look
21 glamorous, sexy, and rebellious, and as was just
22 stated, they look cool.

23 A recent University of California study
24 published in the Journal of the American Medical
25 Association Pediatrics version, just this month,

1 found that e-cigarettes can be concluded to be
2 gateways; that is, they encourage teenagers who use
3 e-cigarettes to progress to smoking traditional
4 cigarettes.

5 The data clearly showed that teens who use
6 e-cigarettes have a much higher rate of using
7 cigarettes -- actual cigarettes later on.

8 This was from, again, the Journal of the
9 American Medical Association Pediatrics Edition.

10 New York State's 2012 ban on the sale
11 e-cigarettes to minors has proven difficult to
12 enforce.

13 Unlike traditional tobacco sellers, vendors
14 are not required to register with the Department of
15 Tax and Finance, making it difficult to establish
16 where e-cigarette products are sold.

17 For this reason, county health officials
18 support Senate Bill 7139. It requires e-cigarette
19 retailers who are not registered with State Tax and
20 Finance to register with the State Health
21 Department.

22 Major public-health risk with e-cigarette
23 liquid is nicotine poisoning. One tablespoon of
24 this poisoning can be lethal to adults, and just a
25 small teaspoon is lethal to children.

1 Right now, these e-liquids can be sold in
2 large quantities -- barrels, gallons, whatever large
3 quantity you want -- with no protective packaging or
4 warnings.

5 Nicotine-poisoning calls, to further
6 emphasize this point, to poison-control centers
7 nationwide have risen, from 1 per month in 2010, to
8 215 calls per month by February 2014.

9 More than half of these calls related to
10 nicotine poisoning from the liquids in children
11 under the age of 5.

12 What an absolutely unacceptable risk to our
13 children's health.

14 County health officials strongly support
15 Senate Bill 7027, which requires labeling and
16 warnings to make adults aware that these
17 liquids are hazardous, and it prohibits the sale of
18 liquid nicotine to minors.

19 The financial burden of tobacco use for
20 New York State is estimated at about \$8.2 billion
21 annually. This includes more than \$3 billion every
22 year in Medicaid costs for tobacco-related
23 illnesses.

24 We need to keep making progress to rein in
25 these costs, not reverse it.

1 But a recent study by the CDC states that the
2 number of Americans who have ever used e-cigarettes
3 quadrupled between 2009 and 2010.

4 And as discussed earlier, as these are a
5 gateway to actual cigarette use, this could impact
6 the trend of decreasing the overall number of
7 smokers we have in our country.

8 County health officials want to see the
9 Clean Indoor Air Act apply to e-cigarettes.

10 First of all, e-cigarettes may lead to health
11 problems, particularly due to the inhalation of
12 toxic chemicals.

13 Nicotine itself represents health risks.

14 A 2009 FDA study found that some e-cigarette
15 liquids contained toxins and carcinogens, including
16 diethylene glycol. This chemical is found in
17 antifreeze.

18 Such toxins make exposures to the vapor risky
19 for both smokers and nonsmokers.

20 Secondly, the use of e-cigarettes makes it
21 difficult for local health departments to enforce
22 existing smoke-free-air laws. It can be tougher and
23 forces to distinguish between the e-cigarettes and
24 traditional cigarettes.

25 The industry promotes the use of e-cigarettes

1 where other tobacco products are prohibited.

2 We believe that by encouraging use of
3 e-cigarettes in public places, the industry seeks to
4 reestablish smoking as an acceptable, appealing
5 behavior.

6 This can undercut years of successful efforts
7 to reduce tobacco use. It can wipe out the progress
8 we've made in reducing tobacco-related illnesses and
9 all of their associated human and financial costs.

10 We cannot allow this to happen.

11 In closing, we should thank Senator Hannon,
12 Senator Rivera, the Standing Senate Committee on
13 Health, and the Assembly sponsors of legislation to
14 control e-cigarettes.

15 NYSACHO loudly appreciates your ongoing
16 efforts to reduce nicotine poisoning and tobacco
17 use, and to ensure cleaner, safer air for all
18 New Yorkers.

19 Thank you for allowing me to testify this
20 morning.

21 HARLAN JUSTER, Ph.D.: Well, thank you,
22 Dr. Eisenstein.

23 That -- you -- some, again, powerful facts
24 that are there, and the correlations, especially as
25 to where we may be going with this.

1 I should know the answer to this question.

2 Is it the health departments that do the age
3 verification for the sale, or is that the
4 Consumer Affairs Department?

5 DR. LAWRENCE EISENSTEIN: Yes.

6 SENATOR HANNON: You're "yes" --

7 DR. LAWRENCE EISENSTEIN: Yes -- sorry.

8 We have the tobacco-control program which
9 does that.

10 SENATOR HANNON: So you would be -- because
11 one of the bills that we have before us, is to have
12 registration when any sale is done, because it's not
13 necessarily a tobacco product.

14 So that -- it's really --

15 DR. LAWRENCE EISENSTEIN: Yes, and that's one
16 of our challenges.

17 We currently do a great job with our tobacco
18 stings for age verification, but, all of the vendors
19 of tobacco are registered, so we know, and can plan
20 how many visits we need to do, how many stings we
21 need to do.

22 In our county, it's one of the most effective
23 programs there is. We're up to, approximately,
24 97 percent compliance, which is much higher than
25 when the program began.

1 And -- but as you said, we don't go into
2 Pep Boys to see who they're -- and when you brought
3 that up, I said, What a wonderful example.

4 SENATOR HANNON: It was right in Hempstead,
5 and I didn't even go looking for it.

6 DR. LAWRENCE EISENSTEIN: That's right.

7 SENATOR HANNON: I just needed a windshield
8 wiper.

9 DR. LAWRENCE EISENSTEIN: And my inspector
10 might be there to collect the windshield wiper, but
11 other than that, we're not checking who they're
12 selling this product to.

13 SENATOR HANNON: And the other thing that
14 really caught my eye was the presence of other
15 things that are in the e-cigarettes.

16 I just wasn't really in the forefront of,
17 propylene glycol?

18 DR. LAWRENCE EISENSTEIN: The
19 diethylene glycol, yeah.

20 SENATOR HANNON: Diethylene glycol, is this
21 something that's in each of the e-cigarettes?

22 DR. LAWRENCE EISENSTEIN: We don't know, and
23 that's one of the challenges.

24 One of the challenges is, there's no
25 standardization.

1 And one of the points that I wanted to make
2 is, you know, before a therapy or a drug is
3 approved, the standard by the FDA, in general, is
4 that it has to be shown to be effective and do no
5 harm.

6 And in the case of e-cigarettes, the data
7 doesn't prove it to be effective, yet. In fact, the
8 data's very mixed.

9 And, certainly, as a gateway, it may be
10 causing more smokers.

11 And not only does it not meet that FDA
12 standard, but the "do no harm" standard, we don't
13 even know, fully, what's in the vapor.

14 The different vendors have different
15 chemicals and toxins, carcinogens.

16 But, again, what's marketed as "water vapor,"
17 it doesn't smell the way water vapor should smell.
18 We know something's in there.

19 And so that's an example of, we need to know
20 exactly what's in there before we can even think of
21 letting our children have access to it.

22 So we agree with the State Health
23 Department's stance, that more work and more studies
24 are being done, and need to be done, but, certainly,
25 we wouldn't want a treatment for cigarettes that

1 does harm, especially to our youth who are using it
2 in alarming numbers.

3 SENATOR HANNON: Thank you.

4 We have been joined by
5 Senator Hassell-Thompson.

6 SENATOR HASSELL-THOMPSON: Good morning.
7 Thank you.

8 SENATOR HANNON: Do you have --

9 SENATOR HASSELL-THOMPSON: [Shakes head.]

10 SENATOR HANNON: Dr. Eisenstein, thank you
11 very much.

12 DR. LAWRENCE EISENSTEIN: Thank you, Senator.

13 SENATOR HANNON: We really appreciate it, and
14 I appreciate NYSACHO devoting time to this, and it's
15 an important step.

16 DR. LAWRENCE EISENSTEIN: We've spent a lot
17 of time discussing it, and you have great support on
18 this.

19 And I think a lot of us, we're very excited
20 to see this legislation.

21 Thank you.

22 SENATOR HANNON: Thank you.

23 I'd like to ask Julianne Hart from the
24 American Heart Association, and Michael Burgess from
25 the American Cancer Society, to join us, together.

1 And as we're doing that, Senator Hoylman has
2 joined us.

3 Good morning, Senator.

4 MICHAEL BURGESS: Good morning,
5 Senator Hannon, and thank you for holding this
6 hearing, and members of the Committee.

7 I'm the director of state government
8 relations for the American Cancer Society Cancer
9 Action Network.

10 Other than in New York City which recently
11 passed regulations on e-cigarettes in public places,
12 the use and promotion of them is currently
13 unregulated for New York -- in New York State for
14 persons 18 and older, and poses a threat to the
15 decades-long battle against smoking.

16 They are not subject to the Clean Indoor Air
17 Act which permit -- permits -- prohibits smoking in
18 all public places and workplaces, including schools,
19 malls, playgrounds, hospitals, restaurants, and
20 bars.

21 And as Dr. Juster noted, it's one of the
22 three pillars of the antismoking policy that we have
23 in this state which has been successful in bringing
24 the smoking rate down.

25 E-cigarettes are not included in the

1 definition of "smoking," so people can use them, as
2 I said, anywhere at any time.

3 Their continued use and growing popularity
4 among middle and high school students, in
5 particular, undermines the public-health campaign to
6 prevent young people from starting with a deadly
7 nicotine addiction.

8 And manufacturers, as you've heard here
9 today, are also seeking to normalize smoking through
10 television ads and other well-funded marketing
11 strategies.

12 Let's be very clear about what you're talking
13 about with your legislation to include the
14 e-cigarette as products subject to the Clean Indoor
15 Air Act.

16 We are not taking away someone's right or
17 freedom to use e-cigarettes.

18 Those over 18 have that right, and your
19 legislation does not take it away.

20 Instead, it maintains the right of the
21 84 percent of nonsmokers, who are the overwhelming
22 majority in this country and state, to be in public
23 places without having clouds of unknown vapors being
24 emitted.

25 Let me say that again: Maintains the right

1 of the nonsmokers, the majority in this state and
2 country, to be in public places and not have to
3 worry about what these unknown vapors are.

4 According to the data from the Centers for
5 Disease Control and Prevention, nearly twice as many
6 middle and high school students experimented with
7 e-cigarettes in 2012 as in 2011, as you heard
8 before.

9 If e-cigarettes prove to be a gateway to
10 other products, leading to an increase in underaged
11 smoking, their usage would represent a serious
12 setback in the fight against tobacco-related
13 illnesses.

14 Also, new research made public this month by
15 the University of Colorado and Mississippi State
16 shows, quote, Electronic cigarette use has risen
17 quickly, with adult awareness doubling, from
18 16.4 percent in 2009, to 32.2 percent in 2010, and
19 ever use for adults, rising from 6/10ths of
20 1 percent in 2009, to 2.7 percent in 2010.

21 They concluded in this study that young
22 adults exclusively used flavored e-cigarettes. Many
23 young-adult users are current and former smokers,
24 suggesting e-cigarettes are used to maintain
25 nicotine addiction, and may reexpose former smokers

1 to nicotine.

2 Additionally, young adults are not using
3 e-cigarettes as a cessation alternative.

4 Continued research on patterns of use of
5 these products is needed; particularly, to
6 understand the age of initiation, flavoring, and
7 influence of marketing to inform public policy and
8 regulatory action.

9 That was a quote from that study.

10 While we have made great strides in the fight
11 to reduce e-smoking -- or, smoking rates, rather,
12 e-cigarettes are another gimmick to re-glamorize the
13 dangerous practice and get more people smoking.

14 They're offering e-cigarettes with
15 liquid-nicotine refills that come in the flavors
16 that were mentioned before.

17 I won't go through them all.

18 So I say, if e-cigarettes are all about
19 helping people to quit smoking, then why is the
20 advertising being done to re-glamorize it?

21 We've heard before, and I guess we're going
22 to hear from an expert on poison control, about
23 exposure to the liquid in these cartridges, so I'm
24 not going to go through that.

25 Let me just mention again, that they're being

1 proposed, and the idea is being sold, as a healthy
2 alternative, but you're going to hear later, but we
3 appreciate what Roswell Park has come up with in
4 terms of their study about what's in these
5 e-cigarettes. And you're going to hear directly
6 from them, so -- I assume, so I won't go through all
7 of that.

8 But it's very concerning to us what they've
9 come up with, that I think is, obviously, a threat.

10 I would also like to just stress that, you
11 know, we have other cessation methods, including
12 medications, and also counseling through the
13 tobacco-control program, which are recommended for
14 smokers, and which have been proven.

15 You know, the quit line, as I've said many
16 times in my work here, when we have the money for
17 that, and when those ads are on television, they're
18 very successful in driving up the number of calls to
19 the quit line.

20 Let me note again, that New York City just
21 passed a law that includes e-cigarettes. It just
22 went into effect under the Clean Indoor Air Act
23 provisions.

24 It's desirable, therefore, to have a uniform
25 statewide policy in all of the counties of the state

1 of New York.

2 That's important, not just because of what
3 we've said before about the usage in public places,
4 but, also, there's confusion about what is allowed.

5 Somebody goes into a restaurant or a bar and
6 they're wondering, you know, Why is that person
7 smoking, vaping, whatever it is? Are there two sets
8 of rules in public places now; one for cigarettes,
9 and one for e-cigarettes?

10 But, again, it comes down to the right of
11 persons who do not smoke to have the protection in a
12 public place, as I mentioned before.

13 That remains the standard on which
14 regulations and laws must be considered, and the
15 failure to protect the nonsmoking and non-vaping
16 public is not acceptable, and represents a very
17 clear erosion of the Clean Indoor Air Act.

18 Our organization is not taking a particular
19 position on your legislation regarding liquid
20 nicotine and the registration of e-cigarette
21 vendors, but we do think it's a good idea to
22 consider how to deal with a changing marketplace,
23 and what regulations are needed to protect health
24 and safety in light of the comments about poison
25 control.

1 Let me conclude by saying that tobacco usage,
2 as we have heard today, has caused millions of
3 deaths in this country and around the world.

4 And let me say personally, that my father was
5 a smoker, like most of the men of his generation,
6 over 50 percent of them, and he died of lung cancer.

7 He was almost 40 years old before the
8 surgeon general came out with his report in 1964.

9 And I'll speak, as having been involved,
10 obviously, in the Aging Services, and one of the
11 great statistics that I have worked with, is that
12 men are living longer.

13 It used to be we'd go out to places, senior
14 centers, and 1 out of every 3 people over 65 was a
15 man.

16 Today, because of reducing the rate of
17 smoking and improvements in heart-disease control,
18 that number is 42 percent.

19 So, we should not weaken the half-century
20 effort that's been successful in reducing smoking
21 rates and lung-cancer rates.

22 For those who wish to use e-cigarettes and
23 quit smoking, they will continue to have that right
24 in other places than those that are defined in this
25 law.

1 But for those who wish to open up a new
2 market and a new generation to addiction, I would
3 say that every legislator should be against that.

4 SENATOR HANNON: Thank you.

5 Ms. Hart.

6 JULIANNE HART: Hi. I'm --

7 Is this on?

8 Can you hear me okay?

9 SENATOR HANNON: Yes.

10 JULIANNE HART: Hi, I'm Julianne Hart with
11 the American Heart Association. We are the largest
12 volunteer organization dedicated to building
13 healthier lives free of heart disease and stroke.

14 On the first page of my written testimony,
15 you will see a graph which shows the numbers,
16 percentage, of heart-disease and stroke deaths.

17 Heart disease is the number one killer in
18 New York, and stroke is the number four killer.

19 In 2010, nearly 45,000 people in
20 New York State died of heart disease, and over
21 6,000 people passed of stroke in New York State in
22 2010.

23 As you know, smoking is a major risk factor
24 for cardiovascular disease.

25 Fortunately, New York State has made great

1 progress, and approximately 16 percent of New York
2 adults smoke, and about 12 percent of youth are
3 still smoking.

4 So we've made progress, but there's more to
5 be done.

6 Part of our -- the gains that we have made
7 have been a result -- as a result of the state's
8 Clean Indoor Air Act.

9 The Clean Indoor Air Act was enacted just
10 over 10 years ago, and I'm sure you'll recall at the
11 time that there was significant controversy over
12 this.

13 Everyone made claims that, you know, bottom
14 lines, that people weren't going to make ends meet.

15 But the bottom line is, as a result of your
16 actions, New Yorkers are healthier, thanks to the
17 Clean Indoor Air Act.

18 Specifically, there's been significant
19 reductions in the rate of hospitalizations for
20 heart attacks in the 3 1/2 years after the law
21 passed compared to the period prior to the law.

22 Hospitalizations were 15 percent lower than
23 expected had there been no change in the
24 Clean Indoor Air Act.

25 And it's estimated that in the first year

1 alone, there was approximately 3800 fewer hospital
2 admissions for heart attacks, with an estimated cost
3 savings of 56 million.

4 However, we know now there's a significant
5 loophole in the Clean Indoor Air Act, and that's
6 electronic cigarettes.

7 So we've seen in recent years the
8 proliferation of these products.

9 E-cigarettes were not available when the act
10 was implemented.

11 They are mostly unregulated, and their health
12 effects are not fully known, especially when
13 considering long-term use.

14 And while additional research is needed, we
15 are concerned that e-cigarette use and acceptance
16 has the potential to renormalize smoking behavior,
17 sustain dual use alongside cigarettes, and initiate
18 or maintain nicotine addiction.

19 As many of the speakers before me have noted,
20 e-cigarettes are not approved cessation devices.

21 The most effective way to help smokers quit
22 are the seven approved FDA therapies, along with
23 counseling.

24 So we would strongly encourage the State to
25 promote those therapies, versus any type of

1 electronic cigarette, at this point.

2 We applaud the actions you've taken to date,
3 particularly the law which bans the sale of
4 e-cigarettes to minors.

5 And we would encourage the State to go
6 further at this point.

7 We do believe that electronic cigarettes
8 should be included within the definition of
9 "tobacco products" in law, and that would include
10 banning the use of e-cigarettes in public places as
11 is currently done under the Clean Indoor Air Act.

12 We would also support prohibiting the sale
13 and marketing of tobacco to minors, which some of
14 that is done, and taxing at a tiered structure.

15 So, thank you.

16 SENATOR HANNON: Thank you very much.

17 I appreciate it.

18 I don't have any questions.

19 Senator Thompson?

20 Senator Hoylman?

21 Senator Martin Golden?

22 SENATOR GOLDEN: No questions.

23 SENATOR HOYLMAN: I have a question --

24 SENATOR HANNON: Please.

25 SENATOR HOYLMAN: -- for Mr. Burgess.

1 And I apologize for coming late.

2 And thank you, Senator Hannon, for your
3 leadership on this important issue.

4 Why hasn't the FDA, in your opinion, done any
5 initial data release on health impacts of
6 e-cigarettes?

7 I mean, they've been silent, because of,
8 I guess, data is forthcoming?

9 Do you have any expectation when they will be
10 sharing that information with the public?

11 MICHAEL BURGESS: Well, we just heard earlier
12 from the Health Department, that -- well, in April,
13 that Food and Drug Administration uttered its first
14 comments on this, and opened up the regulation that
15 now is in public comment period, as they were
16 talking about.

17 So, they've started the process.

18 I mean, obviously, people have been waiting
19 and waiting and waiting for them to take action, and
20 I would expect that we'll be seeing more from them.

21 But, I think there's a concern that it's
22 taken a long time, and it may continue to take a
23 while.

24 But, as far as the data, I'm not sure exactly
25 if they released any data that day when they came

1 out with this, or not.

2 But, we're all looking for them to lead and
3 to give as much information as they possibly can,
4 and to look at some of the areas that they didn't
5 even want to talk about in the initial round of
6 regulation, which is, like, the flavoring and other
7 things.

8 SENATOR HOYLMAN: Have you seen any -- from
9 your network of cancer-research advocates, any
10 health impacts?

11 Or is there any suggestion that -- at this
12 point, that there is a secondhand vapor concern, or
13 anything to that effect?

14 MICHAEL BURGESS: Well, I think that that is
15 exactly what's coming out now.

16 I think that, for quite a while, until the
17 last few months, we have heard a lot about, you
18 know, the marketing and the benefits, in terms of
19 trying to stop smoking.

20 But now we're hearing, and you're going to
21 hear today, I mean, I -- we -- I mentioned briefly
22 that Roswell Park has a memo in support of this
23 bill, and they're going to talk about that.

24 And, there was a major "New York Times" story
25 last week, talking about what you heard earlier,

1 about, when these are heated at a high level, what
2 the emissions are.

3 So there is concern about the emissions, and
4 that they might become toxic, or even
5 cancer-causing, at a high level of heat.

6 SENATOR HOYLMAN: Thank you.

7 SENATOR HANNON: Thank you very much.
8 Appreciate it.

9 I would ask Dr. Andrew Hyland, who is with
10 the Roswell Park Cancer Institute, and
11 Dr. Michael Holland, who's with the Upstate New York
12 Poison Control Center, to join us.

13 Now, obviously, there's only -- oh.

14 And you are...?

15 ANDREW HYLAND, Ph.d.: Dr. Hyland.

16 SENATOR HANNON: Dr. Hyland.

17 We've never met, so I don't know...

18 ANDREW HYLAND, Ph.d.: Let me get organized
19 here.

20 SENATOR HANNON: And Dr. Holland.

21 DR. MICHAEL G. HOLLAND: Yes, sir.

22 SENATOR HANNON: Maybe we'll call Dr. Hyland
23 first, and then -- unless you have another order
24 that you decided on?

25 Okay.

1 Thank you for joining us.

2 Thank you for coming to Albany, and
3 I appreciate both of you have a ways to go.

4 ANDREW HYLAND, Ph.d.: Lifelong New Yorkers.

5 This is an important issue, obviously. A lot
6 of interest and discussion.

7 Thank you, Chairman Hannon, and other members
8 of the Committee.

9 You know, I'm the chairman of the Department
10 of Health Behavior at Roswell Park Cancer Institute
11 in Buffalo, New York.

12 I have been doing tobacco control for
13 20 years. We've published over 200 papers, numerous
14 grants, contracts.

15 I'm the deputy editor for the "Journal of
16 Tobacco Control."

17 And, I'm the scientific principal
18 investigator for a big cohort study of tobacco
19 users, both -- that the FDA will be looking at as
20 the evidence begins to come out.

21 I also am the director of the New York State
22 smokers' quit line.

23 So that's a little bit of a background on me.

24 Thank you again for the invitation.

25 I'll start my remarks with a summary of some

1 of the problem that we face.

2 And some of what I've talked about,
3 obviously, has been raised by other panel members
4 previously.

5 I'm going to describe some facts about
6 e-cigarettes, some of which I think you've not heard
7 in previous testimony; describe some of our relevant
8 research at Roswell Park that we've been doing on
9 e-cigarettes; and conclude with some thoughts and
10 implications about some of the marketing, as well as
11 the Clean Indoor Air Act.

12 And, again, I'm not here to really advocate
13 on a position on any bill that you might have before
14 you, but, really, to help share some of our
15 scientific expertise that we have, so that when you
16 come to your decision-making, you'll have that at
17 your disposal.

18 You know, the problem, tobacco use, it's the
19 number one preventable cause of disease in our
20 country.

21 You know, 23,000 New Yorkers die each year.

22 The Surgeon General has put out a new
23 statistic, like, in New York State, of those that
24 are under 18 years of age, if you track them over
25 their lifetime, 270,000 of them will die from a

1 cigarette-attributable disease. You know, a quarter
2 million people.

3 Really looking at a huge, huge problem that
4 we still have, despite the advances that we've made
5 decreasing smoking prevalence.

6 With regard to e-cigarettes, let me state up
7 front what my position is on this, and let me finish
8 the whole thing. I don't want to be taken out of
9 context here.

10 It's my view that there's reason to be
11 hopeful about the potential of e-cigarettes to
12 reduce the disease-burden caused by tobacco.

13 The best thing that a smoker can do is to
14 quit altogether. Without question, that's the best
15 thing.

16 But short of that, if a smoker is able to
17 switch completely from those combusted cigarettes to
18 an e-cigarette, while the evidence is still
19 emerging, it's my belief that that's probably going
20 to be beneficial to that individual, without all the
21 toxic byproducts.

22 However, a big "however" here, is that
23 there's reason also to be very concerned about the
24 potential unintended consequences of electronic
25 cigarettes and their marketing, and this is where we

1 are, because this is an experiment that's happening
2 in real time, and we don't have all of the evidence
3 on which to make these decisions.

4 Some people may use cigarettes as a reason
5 not to quit smoking, but as a reason to continue
6 smoking, as sort of a psychological crutch to think,
7 Oh, if I reduce the amount that I'm smoking by a few
8 cigarettes per day, that that's okay. Or, I can go
9 out and use an e-cigarette while I'm in a social
10 venue, that that's -- that they're mitigating their
11 risk.

12 Youth that have never smoked may take up
13 e-cigarettes, and former smokers may come back into
14 the tobacco-using marketplace.

15 All of these things would be bad outcomes for
16 public health.

17 And how these products are marketed is a key
18 driver of these behaviors.

19 Research is underway to understand these
20 issues, but in the meantime, it's sensible to
21 discuss policies that address some basic
22 foundational issues.

23 And I understand that there are several bills
24 that are under consideration at the moment.

25 Looking at some facts about e-cigarettes,

1 I think you heard some testimony about how they
2 work.

3 There's a liquid, it's vaporized, the
4 nicotine comes off, and the user breathes that in.

5 And that's the vaping process.

6 Sometimes you'll hear people, the term
7 "vaper."

8 There's flavors, all kinds. You know,
9 chocolate, sex on the beach, mint...you name it,
10 it's out there.

11 And, nationally, e-cigarettes, gross sales
12 are about \$2 billion this year.

13 At least one stock analyst for Wells Fargo
14 has put a bold prediction out there that, within
15 10 years, the sales of e-cigarettes will surpass
16 that of conventional cigarettes.

17 So, in terms of fads or not, this looks like
18 it's here for a while.

19 In terms of patterns of use, you've heard the
20 Center for Disease Control's statistics, looking at
21 the doubling in youth uptake from 2011 to 2012.

22 We also see a similar pattern, an increasing
23 uptake in adults.

24 Most of the e-cigarette use that we do
25 observe, both in youth and adults, are among

1 cigarette smokers. And I think it's safe to say
2 that the evidence is not conclusive at all that
3 e-cigarettes help people quit smoking.

4 Dr. Juster referred to the one clinical trial
5 that's been done, which showed no difference in quit
6 rates, and, different people will use for different
7 reasons. And, again, the marketing will come into
8 play here.

9 So, I mean, a fundamental issue, when
10 thinking about this, is do e-cigarettes pose a risk?

11 And I think the answer is an unequivocal yes.

12 While, overall, e-cigarettes appear to be
13 less harmful in terms of the numbers and the amount
14 of toxic chemicals, they're not safe.

15 So, somebody comes out and says e-cigarettes
16 are a safe alternative, that's not correct.

17 And we know they make toxins that are
18 harmful.

19 And our group at Roswell Park has been at the
20 forefront of research, and here's just a couple -- a
21 couple highlights of some of our work.

22 As mentioned previously, e-cigarettes may
23 expose users to carcinogens.

24 And with these newer e-cigarette devices,
25 there's a voltage, and that can be variable.

1 The higher-voltage devices tend to emit more
2 toxins.

3 What are some of the toxins that are there?

4 In particular, formaldehyde was mentioned,
5 and formaldehyde is an embalming agent. And they're
6 emitted, and these things are -- and formaldehyde is
7 also carcinogenic, and can be emitted into the air
8 which can be breathed and can be harmful to
9 non-users.

10 Secondhand vapor is also a concern.

11 Work in our lab shows that e-cigarettes are
12 not emission-free.

13 They include nicotine; acrolein, which is a
14 weed killer; formaldehyde; and other chemicals.

15 So while the concentrations of these toxins
16 is less than what you see coming off of a burning
17 conventional cigarette, it's still -- it's a matter
18 of, you know, just a little bit of poison versus a
19 lot of poison.

20 And so, when it comes to looking at
21 smoke-free policies, again, the intent is really to
22 try to provide smoke-free and healthy air for
23 employees to breathe.

24 So there's health risks associated to the
25 users. Secondhand vapor or smoke issues to

1 non-users.

2 We've also done studies about thirdhand
3 exposure, which would be like the residue that you
4 would see. And, again, we see that kind of residue
5 coming off of e-cigarette vapors, again, sort of
6 complementing what we see from cigarette smoke.

7 I understand the Committee's also looking at
8 issues regarding e-liquid. And I think you've heard
9 about some of the poison-control statistics. And
10 there's the graphic over here from a previous
11 speaker on the right -- on my right.

12 Scientific research is ongoing, and in the
13 near future, we'll be used to more helply -- more
14 clearly delineate the health risks and net
15 public-health impact of these devices.

16 But while the content and emissions from
17 e-cigarettes are being analyzed, the behavioral
18 risks are also being assessed.

19 So it's not just the products themselves, but
20 it's how they're used, which is what confers risk.

21 As I mentioned earlier, there's reason to be
22 hopeful about e-cigarettes for improving public
23 health if they serve as a transition for people to
24 get off of conventional cigarettes completely, but
25 that's a big "if" that's there.

1 And there's also significant reason to be
2 concerned if we fall short of that goal.

3 And I mentioned the marketing for
4 e-cigarettes plays a role.

5 You know, since 1971, you can't advertise
6 tobacco products on television, but there's no
7 current restrictions on e-cigarettes. And,
8 unfortunately, the FDA deeming rule that was
9 published last month is silent on the issue of
10 e-cigarettes and marketing, perhaps to be taken up
11 at a later time for a later rule.

12 A recent report estimates about 59 million
13 was spent on e-cigarette advertising in 2013.

14 And I just wanted to show a couple of
15 examples of what we see when it comes to some of the
16 marketing here.

17 So, let me see if I can...

18 Many of you might recognize this character.

19 You know, the great Yankee catcher,
20 Yogi Berra, the great philosopher, one of his, you
21 know, sayings was, "Looks like deja vu all over
22 again."

23 And that's exactly how I feel when it comes
24 to this.

25 So, looking here on the panel, some examples

1 of both cigarette ads juxtaposed with cigarette ads.
2 It's really the same message: Switch but don't quit.

3 And on the top middle, this is a True
4 cigarette-brand ad. This is from, like, 1974, 1975.

5 Considering all I heard, it's about low tar.
6 Low-tar products.

7 "Either quit or smoke True."

8 "I smoke True."

9 Again, that message to say, you don't have to
10 quit. You know, we've got a safer alternative for
11 you.

12 And blu e-cigarettes, on the top left; again,
13 the same exact message.

14 We see rugged men and beautiful women.

15 Again, the e-cigarette ad, on the left.

16 The Marlboro cowboy on the right.

17 And, again, blu e-cigarette versus the
18 Virginia Slim model.

19 It's, you know, virtually, the same ads and
20 just scrubbed out the text.

21 Music festivals and sports sponsorships;
22 again, blu e-cigarette festival, a cool jazz
23 festival.

24 You know, and the two racing cars. Even the
25 angle, that might even to be same car. I think

1 that's just layered.

2 So, again, replaying a successful marketing
3 campaign.

4 Again, e-cigarette ad, FIN e-cigarette brand.

5 Pall Mall, this is an ad from, I think, the
6 '40s, looking at here.

7 Virtually the same.

8 And the flavors, we've heard about the
9 flavors.

10 Again, the blu e-cigarette ads versus the
11 Camel cigarette ad, on the right.

12 Celebrity spokes people, again, really
13 juxtaposed, using that same playbook.

14 And, of course, you know, sex always sells.

15 If you haven't checked out the Swimsuit Issue
16 this year, the e-cigarette ad, I didn't know that
17 the bikini bottom would be a billboard for
18 blu e-cigarettes.

19 And, apparently, the online version, young
20 teenage boys can go and zoom in, and just make sure
21 things are spelled correctly, I guess, on that.

22 So that's an example of how some of the
23 marketing.

24 Now, obviously, marketing is a difficult
25 issue to deal with, but I think definitely shapes

1 who this target audience is.

2 If we're looking at a 50-year-old cigarette
3 smoker, say, "Hey, use my product, my e-cigarettes,
4 so you can get off of those cigarettes completely,
5 and then maybe transition to get off of those
6 completely," that's a good outcome.

7 But that's not what we're seeing here.

8 I've heard some say that, in fact, these
9 companies are their own worst enemy on this because
10 they might find sympathy in those that are looking
11 for a public health -- a product that could benefit
12 public health.

13 But when it's marketed like this, there's
14 concern.

15 And just, briefly, to summarize here:

16 In 2003, New York State took a strong stand,
17 a leading national stance, with their Clean Indoor
18 Air Act, protecting health of both smokers and
19 nonsmokers.

20 And public forums like this provide an
21 opportunity to share information about the relevant
22 science needed.

23 In 2003 e-cigarettes didn't exist, so it's
24 very sensible to say, let's -- you know, we've got a
25 new issue, new concerns, and let's see if it makes

1 sense to try to incorporate that.

2 And, again, the science that our group and
3 other groups have performed; so, that there are
4 toxins in e-cigarette vapor, and that they can
5 provide exposure to non-users in public places.

6 So, a very complex issue, lots of layers
7 involved.

8 I appreciate the opportunity to speak briefly
9 before the group, and would be happy to answer any
10 questions after, from this panel.

11 SENATOR HANNON: Dr. Holland.

12 DR. MICHAEL G. HOLLAND: Thank you, sir.

13 Appreciate the chance to come talk to you.

14 I'm a physician toxicologist at the
15 Upstate New York Poison Control Center, and we're
16 housed at the SUNY Upstate Medical University in
17 Syracuse, New York.

18 I just wanted to echo some of the comments
19 that others have made, and I'm just going to briefly
20 make some comments, and I'm here to answer any
21 questions, basically.

22 We have seen an increase in calls related to
23 e-cigarette liquid nicotine.

24 In 2013, we had 27 total calls to the
25 Upstate New York Poison Center.

1 In 2014, just in the first 4 months, we've
2 already had 27.

3 So it's really, basically, a 300 percent
4 increase in calls related to this.

5 About half or -- about a third of these calls
6 have been for children under age 5 accidentally
7 stumbling all upon these liquid products.

8 And the danger with these is that, that
9 they're so concentrated. You know, the toxicity of
10 nicotine, we've known about, because kids, as
11 they -- toddlers especially, as they explore their
12 environment, they tend to put things -- they look at
13 something and then put it in their mouth.

14 Cigarettes don't taste very good so they
15 often never get, you know, any toxicity.

16 If they do, the toxicity involves, first of
17 all, vomiting. And they'll often self-decontaminate
18 because they vomit up many -- much of the stuff
19 they've ingested.

20 So the problem with the liquid nicotine is
21 they're so much more concentrated than a cigarette,
22 that just small amounts can be lethal.

23 The LD50, which is the lethal dose that will
24 kill 50 percent of a population, it's -- you know,
25 it's extrapolated from animal studies. But we also

1 know, in humans, that about 1 milligram per kilogram
2 of nicotine can kill you. So, 1 milligram ingested
3 per kilogram of body weight.

4 So a child that weighs, you know,
5 5, 10 kilograms, there's the small amounts that can
6 kill them.

7 And many of these products that are not in
8 child-proof packaging are liquids that contain
9 19 milligrams per ml.

10 So just a teaspoon would have over
11 100 milligrams, so it could easily be lethal.

12 And even -- and even the concentrated
13 formulas like that, could even be -- small amounts
14 could even be lethal to adults.

15 Nicotine is so toxic that it previously was
16 one of the best available pesticides.

17 People sprayed it on crops before there were
18 other more readily available chemical manufactured
19 pesticides. But it's still an effective pesticide,
20 so it's used to kill things, so it can be lethal in
21 high amounts.

22 We at the Upstate New York Poison Center
23 serve 7.4 million New Yorkers.

24 We cover all the counties north of Orange and
25 Westchester county.

1 And then the other poison-control center in
2 the New York poison system is the New York City
3 Poison Center that covers the rest of the counties
4 and Long Island and New York City.

5 And the other danger that you don't see with
6 other nicotine-replacement products, such as the gum
7 and the lozengers [sic], is that the nicotine is
8 well-absorbed through the skin. It's one of the
9 unique toxins. It doesn't just have to be ingested.

10 So you can absorb it by vaporizing it in the
11 e-cigarettes, but you can also absorb it by
12 accidental swallowing it.

13 But you can also get toxic from absorption
14 through to be skin.

15 There's a well-known occupational illness
16 called "green-tobacco illness," or "green-tobacco
17 sickness," where people that are picking tobacco, if
18 it's moist tobacco, or if they get sweaty and the
19 tobacco leaves get wet, and get on their skin, they
20 can actually absorb nicotine very readily and get
21 sick.

22 It's a known occupational illness.

23 So we know that nicotine is well-absorbed
24 through the skin.

25 And there have been -- of these calls that

1 we've received, there have been three calls already
2 this year of skin toxicity from exposure to these
3 concentrated nicotine liquids.

4 SENATOR HANNON: What would people -- people
5 arguing against this bill have said to me --

6 It would help, I guess, if I turned the mic
7 on.

8 People arguing against the bill have said,
9 Well, there's other dangerous substances in the
10 home. You know, Drano, or something like that.

11 What would you -- are you getting, you know,
12 similar types of calls about other poisons at the
13 home; just cleaning agents, or something like that?

14 DR. MICHAEL G. HOLLAND: Sure.

15 And many of those are -- have some protective
16 packaging on them. And they're also -- consumers
17 know that those are toxic products, and they're
18 kept -- through poison education, we try to make
19 sure people keep them, you know, in locked cabinets
20 where toddlers can't get at them.

21 Drano and those kind of things are very
22 toxic, understandably.

23 But, the consumers don't understand how toxic
24 these can be. And they're not sold in any kind of
25 protective packaging.

1 Many of them are just in colorful bottles
2 that have a lid you unscrew and you have
3 dropper-type things.

4 You can even buy them online. You can buy
5 these things in huge quantities. They even sell it
6 in a 55-gallon drum.

7 So, they can sell it by the liter, you know,
8 because it's very cheap to buy it in bulk, and then
9 use it in your refillable e-cigarette things.

10 So these are not in child-proof packaging,
11 and the consumers don't really realize how that
12 there's lethal doses in just small amounts of these
13 that's in their home.

14 SENATOR HANNON: What about the cartridges;
15 do you get any calls about use or misuse of that?

16 DR. MICHAEL G. HOLLAND: The ones that are
17 not -- that are like the blu, or the type that are
18 not, you know, refillable, that are just
19 single-use-type things, there haven't been very many
20 bad outcomes or calls regarding those.

21 Most of the calls, and the major increase, is
22 in the these liquids that are the refillable types,
23 the concentrated liquids.

24 SENATOR HANNON: Okay.

25 Does anybody have any question?

1 Senator Hoylman.

2 SENATOR HOYLMAN: I just wanted to point out
3 to Dr. Harlan, I think the reason why we're seeing a
4 repeat of marketing with e-cigarettes, harkening
5 back to the glory days of traditional cigarette
6 advertising, is that a lot of the major brands are
7 now owned by big tobacco, so they're just rolling
8 out, you know, old campaigns with new devices.

9 Altria, R.J. Reynolds, Lorillard, they own
10 the brands at this point, or major portions of the
11 big brands.

12 Also, I would want to point out, are
13 e-cigarette devices themselves, which I think have
14 an allure to young people.

15 Some of them are, you know, festooned with,
16 you know, fake gems. And I've seen one device that
17 is a Hello Kitty vapor device.

18 I would think those would be extremely
19 attractive to young people, as well as pose a danger
20 to children should they fall, you know, into their
21 hands.

22 I have a 3-year-old, and anything that has
23 Hello Kitty on it is fair game.

24 DR. MICHAEL G. HOLLAND: And I think it's
25 important to understand that nicotine is not -- most

1 of the source of the nicotine in these products is
2 from tobacco. That's where they get it.

3 So, it's a place to market the crops.

4 When you grow tobacco, you can produce
5 nicotine and put in it these products.

6 ANDREW HYLAND, Ph.d.: That's a very
7 perceptive comment.

8 SENATOR HANNON: Well, I thank you for coming
9 here and laying into the record exactly all of the
10 important knowledge and findings that you have, and
11 I appreciate it very much.

12 ANDREW HYLAND, Ph.d.: Thank you.

13 DR. MICHAEL G. HOLLAND: Thank you.

14 SENATOR HANNON: Thank you.

15 Next we want to ask Scott Wexler, who is
16 executive director of the Empire State Restaurant
17 and Tavern Association, and James Calvin, who's
18 president of the New York State Association of
19 Convenience Stores.

20 Mr. Wexler.

21 SCOTT WEXLER: Good afternoon,
22 Chairman Hannon, and members of the Senate Committee
23 on Health.

24 As you know, I'm Scott Wexler, and I'm here
25 today in my capacity as the executive director of

1 the Empire State Restaurant and Tavern Association.

2 I've been privileged to serve as the
3 executive director of the association since 1985.

4 The association represents thousands of
5 small, independent, on-premise alcohol-beverage
6 licensees who are located throughout the state, and
7 this includes restaurants, bars, taverns, hotels,
8 bowling centers, and other businesses that sell
9 alcohol for on-site consumption.

10 Thank you for the invitation to provide
11 testimony on behalf of our members to your hearing
12 today.

13 As the public discussion over the use of
14 e-cigarettes has been engaged, I've been struck by
15 how much the public-placed vaping bans are supported
16 by folks who base their position on the simple
17 argument that e-cigarettes are just like cigarettes
18 and, so, they should be treated the same.

19 According to the sponsors' memo, the bill is
20 advanced to further protect New Yorkers from these
21 dangers of these unregulated devices, particularly
22 given they have not been proven to be safe for use
23 at any age.

24 But our association doesn't see it this way.

25 Our fight over smoking in bars and

1 restaurants was principally over economic concerns.
2 Our members feared the business losses they would
3 suffer if smoking was banned.

4 Those fears were, for the most part,
5 unrealized.

6 There was a short-term dip in overall
7 restaurant and bar sales following the ban that was
8 disproportionately felt by a small segment of the
9 industry.

10 Unfortunately, they were our members, the
11 small bars and taverns, with the overwhelming
12 majority of businesses having no impact, or even
13 seeing an increase in sales after the smoking ban.

14 But even our members saw their businesses
15 stabilize and grow after a transition period.

16 So this history informs us not to be
17 concerned about any impact on business from a
18 public-placed vaping ban.

19 We object to this bill because of its assault
20 on our members' ability to run their businesses as
21 they please.

22 This is not about our concern about the loss
23 of business.

24 The association sees this as another attempt
25 by government to dictate how New Yorkers run their

1 businesses and live their lives, adding cost to the
2 bottom line and eroding their freedom to operate the
3 businesses as they desire, and we don't see any
4 evidence that justifies such an intrusive
5 imposition.

6 The Food and Drug Administration recently
7 proposed a federal regulatory framework for
8 e-cigarettes, and they issued a call for the
9 submission of scientific information on e-cigarettes
10 so they can assess the product more fully.

11 Some public-health advocates have taken note
12 of smokers using e-cigarettes to reduce or eliminate
13 their tobacco smoking.

14 They note that e-cigarettes have been
15 demonstrated to be as effective a smoke-cessation
16 devices as nicotine gum or the nicotine patch, but,
17 they may be more helpful for smokers, given the
18 similarities with smoking tobacco cigarettes, and
19 that any use of e-cigarettes, rather than tobacco
20 cigarettes, is positive, even if the smoker doesn't
21 quit smoking.

22 We believe the FDA is the appropriate agency
23 to review the science and make any determinations
24 about the safety or health risks associated with
25 using e-cigarettes, and to then let those findings

1 guide the regulation.

2 Once the FDA makes these findings,
3 New York State can consider a public-placed vaping
4 ban in the context of these expert findings.

5 If the FDA determines there is significant
6 harm to those who use e-cigarettes and/or those
7 around them, there will be a consensus to advance a
8 public-placed vaping ban, or something similar.

9 But there's no reason to prejudge the outcome
10 of the research and to jump to the conclusion that
11 e-cigarettes are an equivalent public-health risk as
12 tobacco smoke and enact this public-placed vaping
13 ban.

14 Don't take it from me.

15 The FDA's regulatory notice acknowledges that
16 emerging technologies, such as e-cigarettes, may
17 have the potential to reduce the death and disease
18 toll from overall tobacco-product use, depending on
19 who uses the products and how they are used.

20 According to the notice, if such products
21 result in minimal initiation by children and
22 adolescents while significant numbers of smokers
23 quit, then there is a potential for the net impact
24 at the population level to be positive.

25 We hope the New York State Senate has a high

1 bar for infringing on the rights of its citizens,
2 and that this imposition on the right to manage your
3 business with little evidence of public need falls
4 short.

5 Thank you again for permitting to us share
6 our association's comments.

7 I look forward to continuing to work with you
8 on this, and other subjects.

9 SENATOR HANNON: Senator Thompson wanted to
10 ask Mr. Wexler a question.

11 Senator Thompson.

12 SENATOR HASSELL-THOMPSON: Thank you.

13 Thank you, Mr. Wexler.

14 I had a meeting, but I stayed specifically
15 because I had read your testimony very quickly, and
16 I just wanted to direct a couple of questions and
17 concerns.

18 I notice that you first said that your
19 concern, initially, about smoking in public was an
20 economic one.

21 But now you've gone on beyond the economics
22 when you've seen that there are no negative economic
23 impacts to your businesses, to make a statement that
24 really is not in your purview.

25 And I say that because, one of the big

1 concerns, I remember having lunch in a restaurant in
2 New York City, and I was introduced to the manager.
3 And he recognized that I was one of the Senators who
4 had voted very positively yes to ban public smoking.
5 And he began to tell me, for close to an hour, about
6 the impact on his business.

7 And part of what I shared with him was, that
8 there might be some fall-off in the beginning, but
9 you will see an increase because many people don't
10 come to your restaurant because you do allow
11 smoking. And, very shortly, you will see an
12 increase.

13 As you have rightly said, that did happen.

14 That doesn't make me a prophet. It just
15 makes me understand a little bit about human nature.

16 And as someone is in the health field, my
17 concern, when we passed this bill, was not
18 necessarily to regulate what smokers do or don't do.

19 It is what your workers in your restaurants,
20 the impact on them.

21 One of the things that we're all aware of is
22 how long it takes the FDA to come up with a
23 determination and a decision and a finding.

24 And in many of the cases, we have found, that
25 in the process of waiting for the FDA's

1 deliberations, which is appropriate, perhaps, more
2 and more people are being impacted, and particularly
3 the public.

4 We have to be concerned about the public.

5 We have to be concerned about every aspect of
6 the public; the smokers and the nonsmokers.

7 As somebody who smoked for 25 years,
8 I believed all those ads.

9 I believed, when I moved from smoking --
10 I never smoked Marlboros, but I did smoke one of
11 the strongest cigarettes on the market. And when
12 they put a filter on it, I thought that I was being
13 safe.

14 Well, we found that, I was not only being
15 safe, it was more deleterious to my health than
16 smoking without the filter.

17 I mean, these are things that take all of us
18 a long time to get to.

19 I appreciate the fact that Senator Hannon has
20 been very proactive in saying we can't afford, with
21 the numbers of children and young people who are
22 being initiated into smoking, because it's now sexy
23 and presumably safe, while we wait for the FDA.

24 So I'm here to ask you: How do you see us as
25 interfering with the ability of businesses to run

1 their business as they do, without our concern
2 being, foremost, about your employers -- employees,
3 as we wait for the FDA?

4 SCOTT WEXLER: Senator, thank you.

5 I don't disagree with you that the concern
6 about the safety of any product that would be used
7 or people would be exposed to in a restaurant goes
8 well beyond the smokers and the nonsmokers.

9 And I certainly accept your premise that we
10 have to be concerned about the impact on our
11 employees, as well as others who might be in the
12 public place.

13 But the difference between the conversation
14 back then about secondhand smoke was, the evidence
15 was clear, and, in fact it had been clear for years,
16 that exposure to secondhand tobacco smoke was
17 dangerous.

18 We may disagree, but --

19 And Senator Hannon and I clearly disagree,
20 and we've had this disagreement politely and
21 professionally.

22 -- our association does not believe that
23 there's a similar predicate of information about
24 exposure to e-cigarettes being dangerous for our
25 employees or others who might be in our restaurants.

1 If the evidence were clear, then we would
2 agree with you that you shouldn't wait for the FDA.

3 But the FDA themselves have said they have
4 to -- the evidence isn't clear, and they want to
5 receive the information.

6 And we think that's a good position to take.

7 SENATOR HASSELL-THOMPSON: We don't disagree
8 with you in that aspect.

9 I think problematic for me, however, is that,
10 are you prepared for a lawsuit when the vapes
11 perhaps are -- if the FDA approves the fact that
12 these vapes have the same impact as secondhand
13 smoke?

14 SCOTT WEXLER: Senator, I'm not an attorney,
15 and I didn't come here this afternoon to theorize of
16 what the litigation strategies might be.

17 But I suppose that our members, like
18 everything else in their business, litigation is one
19 of those things that they might be exposed to.

20 If they thought about all the things that
21 could go wrong in their business, they probably
22 wouldn't put the key in the door every morning.

23 I do take your point. I think you make an
24 important point.

25 I believe our members disagree with your

1 position.

2 SENATOR HASSELL-THOMPSON: Okay.

3 Thank you, Mr. Wexler.

4 SCOTT WEXLER: Certainly.

5 SENATOR HANNON: Now, Mr. Calvin, we have
6 some questions of both of you afterwards, but
7 I thought I'd let you say that.

8 We're -- all Senators are trying to be
9 two places at once this morning.

10 JAMES CALVIN: I appreciate that.

11 SENATOR HANNON: Jim.

12 JAMES CALVIN: Mr. Chairman and honorable
13 members of the Committee --

14 SENATOR HANNON: By the way, your submitted
15 testimony says "Continued"?

16 [Laughter.]

17 JAMES CALVIN: Yes, I'm coming back tomorrow
18 with the other half.

19 [Laughter.]

20 SENATOR HANNON: As long as you have it.

21 JAMES CALVIN: Well, let me at least present
22 the first half.

23 Thank you, Mr. Chairman.

24 The New York Association of Convenience
25 Stores is a statewide trade organization

1 representing 8,000 neighborhood mini marts, bodegas,
2 and convenience stores, the majority of which are
3 licensed by the State of New York to responsibly
4 sell tobacco products to adult customers.

5 Many of them also sell electronic cigarettes.
6 A smaller number sell e-liquids.

7 NYACS was one of the first entities to be
8 approved by the New York State Department of Health
9 as a provider of certified tobacco-sales training
10 under legislation authored by Senator Hannon.

11 I have personally trained over 7,000 retail
12 clerks and cashiers in the proper procedures for
13 preventing underage sales in accordance with that
14 state law.

15 I'm proud to say that this type of training,
16 along with effective compliance enforcement by the
17 state and county health departments, and voluntary
18 good-faith efforts by responsible retailers, has
19 helped drive up New York's compliance rate, from
20 80 percent 15 years ago, to 95 percent today.

21 And every day, all of us, of course, are
22 striving to further improve that number.

23 We'd like to commend you, Senator Hannon, for
24 your principal leadership in the arena of
25 public-health policy, in general; and tobacco

1 policy, in particular.

2 We occasionally agree, obviously; we
3 occasionally disagree, obviously; but you've always
4 been thoughtful and forthcoming and respectful of
5 the retail industry's point of view.

6 New York State and New York City were among
7 the first jurisdictions in the nation to forbid
8 smoking in bars, restaurants, places of employment,
9 and other indoor areas.

10 They did so because the public-health
11 advocates insisted that exposure to secondhand
12 cigarette smoke could kill nonsmokers.

13 Well, private industry responded by inventing
14 a battery-operated nicotine-delivery system that
15 smokers could use in such places without exposing
16 others to secondhand smoke; the electronic
17 cigarette.

18 Now, some New Yorkers have responded to the
19 advent of e-cigarettes the way they might react to
20 seeing a spider on their kitchen floor, "quick,
21 stomp on it," without knowing whether it's really a
22 threat to their safety, and without regard for any
23 beneficial impact it may have.

24 Truth be told, the jury is still out on the
25 degree to which e-cigarettes are a smoking-cessation

1 tool, a public-health threat, or some combination of
2 the two.

3 The FDA has officially begun sorting that out
4 in an orderly fashion, undertaking the scientific
5 analysis necessary to objectively define benefits
6 and risks, and then properly balance them through
7 regulation.

8 Consistent with our commitment to preventing
9 youth access to tobacco-related products, NYACS is
10 on record supporting Senator Hannon's bill, S-7027A,
11 prohibiting sale liquid nicotine to minors, and
12 requiring such products to display ingredients and a
13 warning label, and requiring the containers to be
14 child-proof.

15 We have also endorsed another Hannon bill,
16 7139, to require standalone vaping shops to register
17 with the State, and undergo periodic undercover
18 compliance inspections just like retail tobacco
19 dealers do.

20 But in our view, outlawing the sale of liquid
21 nicotine to adult customers under any circumstances,
22 as proposed in S-6939A, and, completely banning
23 e-cigarette use wherever smoking is banned, as
24 proposed in S-6562, would be premature at best.

25 Why squish a product category that, for many

1 smokers, has already become the long-awaited viable
2 solution to quitting combustible cigarettes?

3 Why leapfrog the FDA by enacting an
4 e-cigarette-use ban based on conjecture that may or
5 may not conform to what the FDA ultimately deems
6 appropriate based on science.

7 If there are suddenly fewer places that you
8 can use an e-cigarette, will the transition from
9 combustibles to vaping be retarded, or even
10 reversed?

11 And is that in the long-term interest of
12 public health?

13 Before you stomp on that spider, we
14 respectfully implore you to first let the FDA
15 determine whether that's a black widow scurrying
16 across the floor, or a species that can help achieve
17 the public-health objective of further reducing
18 tobacco-related illness and death.

19 I also add that there are many others in the
20 e-cigarette industry that -- who would have liked to
21 have testified today.

22 One of them is Dr. Richard Carmona, a former
23 surgeon general of the United States, and native
24 New Yorker, who has joined the board of an
25 e-cigarette company called "NJOY."

1 He authored the 2006 Surgeon General's Report
2 declaring secondhand smoke a serious public-health
3 hazard.

4 He is far more knowledgeable and articulate
5 and credible on this subject than I, and I urge you
6 in strongest forms to read the written comments he
7 prepared for this hearing, which I have submitted to
8 the staff.

9 Thank you.

10 SENATOR HANNON: Thank you.

11 Questions?

12 Senator Savino.

13 SENATOR SAVINO: Thank you, Senator Hannon.

14 Thank you, gentlemen, for your testimony.

15 Unfortunately, I had to leave before, and
16 I didn't get to hear some of the other testifiers.

17 I find myself in an odd position, because
18 I am probably one of the most obnoxious ex-smokers
19 you've ever met.

20 I also understand the lure of cigarettes,
21 though, and how dangerous they can be.

22 When I started smoking, I was 12. I could
23 walk into any convenience store that were a member
24 of your organization, and I would could buy
25 cigarettes for myself and my mother and my father.

1 You know, you could smoke anywhere.

2 You could smoke in a hospital. You could
3 smoke in a doctor's office.

4 You could smoke in the -- you could smoke
5 any -- it's the culture of where we were.

6 Restaurants and bars.

7 And when I quit smoking the first time, at
8 the age of 30 -- everyone can go figure out how old
9 I was -- how long ago that was -- they were just
10 beginning to crack down on indoor smoking in
11 offices.

12 And, again, for 12 years, I was -- no, 13,
13 I was an obnoxious ex-smoker.

14 And then when I went back to smoking, I was a
15 very avid smoker for a short period of time.

16 So I know how dangerous cigarettes are.

17 I used the e-cigarette once or twice, but
18 I quit the old-fashioned way, the second time.

19 What I'm concerned about, though, because
20 I -- again, I find myself in an odd spot.

21 I think we should do everything possible to
22 prevent people from getting access to nicotine
23 products that will allow them to become addicted to
24 something that I will be addicted to for the rest of
25 my life.

1 So I support the idea of preventing people
2 from buying e-cigarettes before the age of, I think,
3 21. I think 18 is still too young. I think we
4 should move cigarettes to 21.

5 And we should be consistent across the state
6 on that.

7 I don't think we should allow people to buy
8 the liquid stuff and recharge it.

9 But I look at the e-cigarette, and I see that
10 we don't have the evidence that the surgeon general
11 has produced for secondhand smoke; that evidence
12 that took decades to really produce, to show the
13 effects of secondhand smoke.

14 And that's what led to the indoor smoking
15 ban.

16 I look at restaurants and bars now.

17 They're certainly much nicer. You know, you
18 don't walk out of there stinking.

19 But then I look at what's outside the door,
20 and that's where smokers go, and they stand in front
21 and they smoke.

22 Go outside any major, you know, office
23 building in Manhattan.

24 And, we're concerned about the effects of
25 secondhand smoke; and, yet, every one of us walks

1 through a cloud of it to get in and out of buildings
2 or out of bars and restaurants.

3 And so I wonder, if we do this, if we
4 restrict them, or cover them by the indoor smoking
5 ban, will they be standing outside your restaurants
6 and bars smoking their e-cigarette, and how long
7 before they go back to smoking real cigarettes?

8 SENATOR HANNON: That is a question?

9 SENATOR SAVINO: No.

10 I'm just -- how -- so you look at -- you look
11 at -- we have the science, scientists, but then we
12 have the people who are going to have to enforce it;
13 and that's our bars and restaurants, that's our
14 convenience stores, that's our other retailers, who
15 are going to have to be responsible for enforcing
16 this.

17 And I'm curious as to whether or not you feel
18 that this would be an additional burden on you, and
19 how you're going to enforce it consistent with what
20 we do with regular cigarettes now.

21 I know it was a long question, but I got
22 there to the end.

23 SCOTT WEXLER: It was a good question,
24 Senator Hannon.

25 Thank you, Senator Savino.

1 I think that managing the use of an
2 e-cigarette in a restaurant or a bar is no different
3 than any of the other challenges that you have.

4 By the way, we support the owner of a
5 restaurant or a bar deciding the best way to solve
6 the problem is to ban it completely. That's their
7 privilege.

8 But we see exactly the scene in front of our
9 establishments, people leaving their drinks, going
10 outside.

11 In some urban locations, we have issues with
12 noise, from the neighbors, from people gathering
13 outside.

14 And while there's a lot of concern about our
15 employees who might be exposed to secondhand smoke,
16 e-cigarettes is a product that we are now seeing
17 some of our employees starting to use.

18 Instead of going out for a 15-minute
19 cigarette break when you're working behind the bar
20 or on the dining room floor, you can step into a
21 side space, have a puff or two, as you've
22 experienced with the e-cigarette, and go on.

23 So unless and until we see that information
24 that's out there that would support something
25 more --a broader ban, we really do believe that you

1 ought to let us try to sort it out.

2 We'll probably sort it out reasonably well,
3 because having our customers happy is what we do.
4 We're in the hospitality business.

5 SENATOR SAVINO: The City of New York
6 recently adopted adding e-cigarettes to the indoor
7 smoking ban.

8 Has -- how has that worked out so far in
9 terms of enforcement?

10 SCOTT WEXLER: It's really pretty new.

11 And from talking to our folks down there,
12 they're just beginning to have the experience. And
13 I think we really need to take some time.

14 I will say that, when we look at the
15 cigarettes, one of the reasons that we don't see it
16 as an economic loss, is that it's not like -- as
17 Mr. Calvin was saying, it's not like a large portion
18 of the community is engaged in this behavior, or a
19 large portion of our patrons were.

20 You know, when the City and State and
21 localities were regulating smoking in bars and
22 restaurants, there were a lot of our customers who
23 were smoking, and we had to referee that.

24 I actually think we are aware of very few of
25 our customers who are engaging in e-smoking because

1 it's not an obtrusive behavior. It's not something
2 that you have to do and be very demonstrative about
3 it. It's something you do fairly quietly, and to
4 yourself.

5 SENATOR HANNON: Senator Golden.

6 SENATOR GOLDEN: Thank you, Mr. Chairman.

7 And thank you, gentlemen, for being here
8 today.

9 I'm one that would like to err on the side of
10 caution and make sure that we have all the
11 information that is needed and required.

12 But I do believe Senator Hannon has some good
13 bills that we should probably move forward.

14 There's a difference, obviously, between a
15 liquid and cartridge, that's still to be determined
16 as to health risk.

17 But we've noticed that, on the liquid form,
18 they're [unintelligible] using nicotine, but they
19 use liquid hashish, they will use different types of
20 narcotics. It's becoming the new fad for their new
21 hashish pipe, in certain areas.

22 As far as enforcement, enforcement in the
23 restaurants is -- it's very good. Now there's
24 plenty of enforcement in the restaurants.

25 The enforcement that's lacking is in the

1 actual sale of the cigarettes and the actual sale of
2 the products, and, there is no enforcement.

3 The enforcement across the state of New York
4 is to about 17 people.

5 And I think we have two or three agents in
6 all of the city of New York.

7 Everybody knows that nothing happens between
8 or after, before 9:00 in the morning and after
9 5:00 at night on Monday to Friday, so there is no
10 enforcement whatsoever.

11 And the estimates out there are, 6 in 10 on
12 the cartons of cigarettes being sold in the city of
13 New York and across the state of New York are from
14 outside the state of New York, and are with bad
15 stamps, and that it's costing the state of New York
16 somewhere in the category of about \$2 billion a year
17 in untaxed cigarettes that are being sold in these
18 locations across the city and the state.

19 So that's one of our biggest problems, is
20 going to be enforcement. Being able to get that
21 \$2 billion back that's being lost in the state, but
22 making sure the regulations work across the state of
23 New York, and that there are enough people going in
24 and throughout the delicatessens, bodegas. These
25 are even being sold in supermarkets and in

1 drugstores and our chain stores, are illegal
2 cigarettes being sold.

3 I mean, it's really something that the
4 State of New York has to get more serious about.

5 And I think we got to be very, very cautious
6 about placing this type of product in the store
7 where there is no regulations or limited regulation.

8 So mine is more of a statement.

9 You can respond to it, but that's a -- I'm a
10 pro-business guy, but there has to be some form of
11 regulation. And I don't see any regulation in this
12 city, in this state.

13 JAMES CALVIN: Thank you, Senator Golden.

14 One of our concerns about the proposed
15 prohibition of the sale of e-liquids, is that
16 experience has proven, time and again, that in
17 New York, when you attempt to ban or overtax a
18 tobacco-related product, the customers stop coming
19 to our stores to buy it, but they find a way to get
20 it, from neighboring states, from the Internet, from
21 Native American tribal stores, all of which are free
22 from the encumbrances of New York State regulation
23 and taxation.

24 So, we lose the sale, but there's still
25 consumption going on.

1 And that's one of our biggest concerns about
2 on outright ban on the e-liquid product.

3 We think it would be far better to impose the
4 child-proofing provision, make sure that all retail
5 outlets are registered, make sure there's proper
6 labeling on the e-liquids, and so forth.

7 We hope you'll decide to stop short of an
8 outright ban, because what that will do is create a
9 black market for the product.

10 SENATOR GOLDEN: I believe you have good
11 actors and bad actors out there in all fields, in
12 all industries, but there are definitely many more
13 bad actors in your field when it comes to
14 cigarettes.

15 And I'm being, not facetious, but I'm being
16 totally honest.

17 There's a tremendous amount of untaxed
18 cigarettes being sold by members of your
19 organization. And it's sad that the State has
20 allowed this to get as far as it has.

21 I notice when a task force has been created
22 that has yet to meet, and I believe that we need to
23 deal with that issue before we put any type of these
24 e-cigarettes into sale into these locations.

25 JAMES CALVIN: Senator, I'm going to

1 respectfully object to the comment that members of
2 my association selling are illegal cigarettes or
3 illegally trafficking in cigarettes.

4 That is not the case.

5 And I defy you to show me a single one of our
6 members of the New York Association of Convenience
7 Stores that are selling cigarettes illegally.

8 SENATOR GOLDEN: You do not want to challenge
9 me today.

10 JAMES CALVIN: I just did.

11 SENATOR HANNON: Well, we'll let that be
12 settled.

13 I'm going to call this to an end.

14 I would suggest you gentlemen, and anybody
15 else who's raised this, about the questions about
16 the efficacy of e-cigarettes for withdrawal, and the
17 effect of e-cigarettes on secondhand smoke, that
18 they go back and read carefully the testimony
19 presented this morning, especially the testimony by
20 Dr. Hyland from Roswell, Dr. Eisenstein from
21 NYSACHO, and the very well-documented testimony from
22 the Department of Health.

23 It does not support the conclusions that you
24 have said.

25 Let me also, just one more comment about the

1 FDA.

2 Probably, in the last few years, I've had
3 more experience with the FDA than anybody else in
4 the Legislature because of different proposals in
5 regard to different ingredients, but also because of
6 something that I got into sponsoring, which was
7 calories on menu labeling.

8 And I had the statewide bill.

9 And I had the statewide bill because
10 localities started to enact their own statutes,
11 which then led people to say we have to have some
12 uniformity, which was very difficult to write a
13 statewide bill, because there were such disparate
14 elements of each of the laws.

15 And now we find the same thing happening with
16 e-cigarettes, New York, [unintelligible], people are
17 doing that.

18 So you're going to at some point say, Well,
19 wait a minute. We need a statewide bill.

20 But here's what happened to me on the menu
21 calories:

22 The industry -- the food industry said, Oh,
23 well, it's going to happen in the Affordable Care
24 Act. It's going to be a separate title. It will be
25 passed.

1 And it was passed.

2 That was four years ago.

3 To date, the FDA has been unable to issue the
4 regulations.

5 It was very clear what was being done.

6 It was very clear what they had to do.

7 They've been unable to do it.

8 I'm afraid waiting for the FDA is like
9 waiting for [unintelligible]. Maybe it never comes.

10 So, by the way, a piece of -- some details
11 I really need to say is, for the people who have
12 submitted written testimony, and I just want that to
13 be noted to go on the record:

14 NJOY, with the testimony of Richard Carmona,
15 the former associated surgeon general, you had
16 mentioned, Mr. Calvin;

17 Lorillard Tobacco; Altria Tobacco;
18 American Council on Science and Health; "NATO,"
19 which is National Association of Tobacco Outlets;

20 And, an extensive memo that my staff did when
21 they met with Ms. Spike Babaian, in regard to what
22 she felt the rights of vapor sellers were.

23 So, all of those are going to be part of the
24 record, and we will be doing a report in due course,
25 but, we'll also see how this affects the legislation

1 that's pending.

2 I thank you very much.

3 The hearing is now over.

4

5 (Whereupon, at approximately 12:45 p.m.,
6 the public hearing held before the New York State
7 Senate Standing Committee on Health concluded, and
8 adjourned.)

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