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Testimony of James S. Calvin, President
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Submitted to

NYS SENATE CONSUMER PROTECTION COMMITTEE

Hon. Kevin Thomas, Chair

NYS SENATE HEALTH COMMITTEE

Hon. Gustavo Rivera, Chair

NYS SENATE EDUCATION COMMITTEE

Hon. Shelley Mayer, Chair

concerning

Electronic Cigarettes and Youth Vaping

November 4, 2019

Chair Thomas, Chair Rivera, Chair Mayer, and honorable Members of the Committees, thank you for the opportunity to participate in today's hearing.

My name is Jim Calvin. I am President of the New York Association of Convenience Stores. We are a trade organization comprised of 1,600 leading chain and independent mini-marts statewide, most of which are licensed retail dealers of tobacco and vaping products. Many of our members are single-store, family-run enterprises.

I am not here to defend vapers or vaping. If you don't vape, don't start. If you do vape, please find a way to quit, there are resources available to help you.

Rather, I am here representing responsible retailers whose business includes selling age-restricted products to adult customers who choose to use them despite the known health risks.

For many years, NYACS has been at the forefront of preventing youth access to tobacco.

- We were one of the first entities approved by the state Department of Health as a provider of certified tobacco sales training to retail personnel. I have personally taught over 7,500 clerks, cashiers and managers the proper techniques for blocking kids from buying tobacco and vaping products.
- We supported legislation making it illegal to sell e-cigarettes to anyone under 18.
- We supported legislation to require all sellers of e-cigarettes to register with the state Tax Department.
- Our industry has achieved an underage tobacco sale prevention rate of better than 95 percent, and we're striving every day to improve that record.

While some of your constituents may not feel enough is being done to address teen vaping, positive steps have been taken by both government and industry.

- The Legislature this year passed, and the Governor signed, bills to impose a 20 percent supplemental sales tax on vaping products, to mandate registration of all shops selling electronic cigarettes, and to elevate the statewide purchase age to 21, which takes effect next week.

- Meanwhile, under pressure from the FDA, manufacturers have withdrawn most e-cigarette flavors from brick-and-mortar stores, and many licensed retailers have deployed additional technology to further strengthen the age verification process.

For now, however, e-cigarettes are still in circulation, and an alarming percentage of kids are still getting their hands on them, mainly through social sources – older friends or older relatives who are old enough to legally buy them – or online. Some are demanding further action.

That clamor is driven largely by hysteria surrounding horrific vaping-related lung illnesses that caused multiple deaths – the overwhelming majority of which resulted from vaping marijuana or illicit THC products, *not* from using the commercial e-cigarettes sold in our stores.

That distinction didn't seem to matter to the public health community, which exploited the situation to justify an emergency ban on most flavored vaping products, which was announced by Governor Cuomo on September 15 but is now temporarily blocked by the courts.

The Senate, when it reconvenes in January, no doubt will be tempted to pass legislation banning flavored e-cigarettes.

I urge you to consider whether such a ban is the best solution, or just the most expedient.

Would it truly ensure that kids can no longer get their hands on vaping products? Or would it merely drive New York vapers to neighboring states, tribal enterprises, bootleggers, and online vendors, allowing the product to remain in wide circulation – beyond the reach of New York taxes and regulations?

Would a ban preclude the sale in New York of any future vaping products that earn approval from the Food and Drug Administration as Modified Risk Tobacco Products?

As you ponder these questions, there are other steps that can and should be taken.

For example, we commend Senator Skoufis for introducing a bill last week to make it illegal for people under 21 to possess tobacco or vaping products. Incredibly, the behavior we are all so alarmed about – teen vaping – is perfectly legal in most places in New York State.

Parents, educators, and society tell kids not to smoke, not to vape. If they go ahead and do it anyway, they should be held accountable – not *instead* of holding retailers accountable, but *in addition* to holding retailers accountable.

The teen vaping crisis is a consumer, health and education issue. Inviting me here today is a welcome acknowledgement that it's also a business issue. And while we may disagree on policy, there are legitimate business impacts that need to be factored into any action your Committees may consider.

For example, the wording of the Public Health Council's emergency order prohibiting any business from possessing flavored e-cigarettes after a certain date created confusion and fear among our members who were scrambling to comply.

Not all suppliers of e-cigarettes were willing to take the product back from retailers. Stores needed to get them off the shelves, but then what? If they remained in boxes on site, the retailer risked thousands of dollars in fines for continuing to possess them. Putting them in the trash would be irresponsible. As the clock ticked, our requests for clarification from the administration went unanswered. I instructed my members to box them up, seal the boxes, and label them "Do Not Open, Not for Sale."

Meanwhile, at the wholesale level, the emergency order would have precluded wholesale distributors in the Hudson Valley, Long Island, and Western New York from warehousing flavored e-cigarettes for delivery to retail accounts in other states where the product remained legal. Again, there was no response to our repeated requests for a stipulation that the order was not intended to interfere with interstate commerce in this manner.

To avoid unintended consequences like these, and to help ensure that all affected parties have a voice in your examination of the teen vaping crisis, NYACS would be pleased to serve as a resource for your Committees going forward.

Thanks again for the opportunity to testify.

NYS Senate Hearing on Vaping and e-cigarettes
November 4, 2019
Eric Byrne, EdD
Superintendent of Schools, Rye City School District

Good afternoon, and thank you very much for the opportunity to testify at today's hearing. My name is Eric Byrne and I am the Superintendent of Schools of the Rye City School District in Rye, NY. I am also the parent of a 20-year-old whose adolescent years coincided exactly with the massive growth of the e-cigarette and vaping industry.

Data and Information

In 2018, a US Surgeon General's Advisory on E-cigarette Use Among Youth noted that e-cigarette usage among 12th grade students nearly doubled from 11% to 21% from 2017 to 2018. It was the single biggest year-over-year increase of usage of any substance in the history of Monitoring the Future Data collection, which began in 1975. Specific to my school district's county, Westchester County data shows that the use of e-cigarettes among 12th grade students currently stands at 31%, which exceeds the national average, and statewide, that number is at 37%. To provide a sense of the magnitude of those numbers: in 2019, 5 million youth reported using e-cigarettes, up from 3 million in 2017.

According to Dr. Nora Volkow, the Director of the National Institute on Drug Abuse:

- Drugs of addiction, of which nicotine is one of the most powerful, change the brains of those who use them - and this is especially true for adolescent brains that are still developing
- Youth who use e-cigarettes are 6-7 times more likely to move on to combustible cigarettes as compared to peers who didn't use e-cigarettes

In 2018, Dr. Robert DuPont *et al* describe the Data from the National Survey of Drug Use and Health and Monitoring the Future Survey (which includes thousands of respondents) among youth aged 12-17 who use nicotine versus their peers who do not. These youth are :

- 4 times more likely to drink alcohol
- 6 times more likely to binge drink
- 7 times more likely to use marijuana
- 8 times more likely to use other illicit drugs

The National Center of Addiction and Substance Abuse reports that addiction is a pediatric-onset disease. 90% of adults with substance use disorders began smoking, drinking, and using drugs prior to age 18. As a parent, an educator, and a policy-maker in a nation that is in the throes of an

epidemic of addiction, policies around e-cigarettes and vaping have an impact that is far-reaching.

Four out of five youths say flavors are what first attracted them to e-cigarettes. Data from the 2016-2017 PATH Study (PATH stands for Population Assessment of Tobacco and Health) showed that 96.17% of 12-17 year olds who initiated e-cigarette use did so with a flavored product. Additionally, 97% of current youth e-cigarette users report using a flavored e-liquid in the last month. 63.9% of high school aged e-cigarette users reported using mint or menthol which are almost as popular as fruit flavors.

In 2016, advertising of e-cigarettes and e-cigarette related products was seen by 78.25% of middle school students in the United States as reported by the National Youth Tobacco Survey of the Centers for Disease Control (CDC). This amounts to approximately 20.5 million children. Another study found that 82% of 12-17 year olds and 88% of 18-21 year olds reported seeing e-cigarette advertising in 2015. The investment in e-cigarette marketing has been coupled with an increase in use among youth and young adults. A 2016 study in Pediatrics, analyzing 2014 NYTS data, found that exposure to e-cigarette advertising is associated with current e-cigarette use among youth and that greater exposure to e-cigarette advertising is associated with higher odds of use.

The positive messages that we send to children in schools through health classes, assemblies, presentations, don't stand a chance against such pervasive sales and marketing campaigns. Demonstrably effective marketing, ease of access, and the appeal of vaping and e-cigarette usage have created a rapidly growing crisis in our young people. According to the 2018 Monitoring the Future Survey, more than 60% of 10th grade students say it is easy to get vaping devices and e-liquids. According to the 2018 National Youth Tobacco Survey, 14.8% of middle and high school e-cigarette users under 18 report obtaining e-cigarettes from a vape shop in the past month, 8.4% from a gas station or convenience store, and 6.5% from the Internet. The explosive growth of e-cigarette usage among young people is frightening. Adults need to step up, take responsibility, and take strong measures to protect children from those who have created and support this epidemic.

Impact on Schools

Vaping and e-cigarette use in school buildings and on school campuses and at school events, has created a challenge of epic proportions. Teachers and school administrators are challenged to identify and address vaping and e-cigarette usage throughout the school day and after school at school-sponsored events in both hidden and open settings. Vaping technology is so sophisticated that the small size of devices are easily hidden in a student's hand -- out of sight and nearly

invisible. The power necessary to use these devices comes directly from a USB port in a laptop computer - a tool that is commonplace in schools today. To the untrained eye, many e-cigarettes look identical to a common USB thumb drive that is used for computer document storage. The fact that the vapor disintegrates rapidly makes detection incredibly difficult. A student might inhale while a teacher's back is turned, and all evidence would be gone 10 seconds later.

The dramatic increase of e-cigarette usage in schools has created and continues to increase levels of:

- Student distraction from school work and healthy socialization
- Fear and discomfort among non-users due to vaping in restrooms and classrooms
- Negative peer pressure and the desire to live up to the 'cool' factor that comes with e-cigarette usage
- Loss of school instructional time due to discipline for vaping in school
 - Increase of suspensions due to vaping and e-cigarette usage in school
- To borrow words from a youth leader, "Vaping is all too commonplace in school bathrooms, libraries, and even classrooms. Anti-drug campaigns can only do so much on their own. As youth leaders, we are doing our part by getting the message out to our peers. Flavored vape pods need to be banned. It is vital to end e-cig use by teens. We need policy makers to take responsibility for their part and help us make that change a reality."

In addition, schools are faced with challenges that are both operational and fiscal:

- Difficulty in monitoring
 - Poor effectiveness and high cost of detection devices available
 - Small vaping devices are easy to hide and keep out of sight
- Shifting resources from instructional and co-curricular budgets to monitoring vaping and enforce infractions