

## Testimony for Senate Hearing on Vaping and Electronic Cigarette Safety - November 4, 2019

My name is Spike Babaian. I am the Technical Analysis Director for NYS Vapor Association. I am also a minority woman who owns a small business of vape shops here in New York City. I started my business 8 years ago, after quitting a 2 pack a day habit, with \$2800, a partner and a dream. Since 2011, my amazing employees have converted more than 24,000 adult cigarette smokers from deadly tobacco cigarettes to vapor products.

I have been researching vapor products for nearly 11 years and published the first paper in the US on vapor toxicity in 2011.<sup>1</sup> Over the years I have consulted on many other research studies. I have never received funding or compensation from Tobacco or Pharmaceutical Companies.

A couple months ago I was forced to close one of my Manhattan vape shops. Fear of renewing a lease in this unsteady climate, the state flavor ban and the drop in sales caused by people's fear of vaping, manufactured by the media and our government, so severely damaged my business I was unable to keep the shop open. I have had to let go of 8 of my 9 employees.

FDA<sup>2</sup>, CDC<sup>3</sup>, and our NYS DOH<sup>4</sup> have confirmed that using illegal THC cartridges is the most likely cause of the recent lung illnesses and deaths. Using these illnesses as a justification to propose defacto bans on commercially available, legal, regulated, lifesaving products is both deceitful and defamatory. Conflation of these two completely different products must be corrected in the media immediately to protect public health and reduce death and illness.<sup>5</sup> We don't ban apples if oranges are making people sick. Then people continue to get sick and die.

I am here to present today because I feel strongly that in all areas, regulations should be based on science and data. We presented with our testimony a packet of data with statistics and supporting studies.<sup>6</sup> An emailed copy of this testimony and the packet allows you to click on the links. I would like to go over a few of the most pertinent statistics.

- ▶ Many studies show flavors in vapor products are imperative to successful transition from deadly tobacco.<sup>7, 8, 9, 10, 11, 12, 13</sup>
- ▶ 95% of vapor products sold to adults in vape shops are NOT tobacco flavored.<sup>20</sup> Banning flavors shuts down every shop in NYS.
- ▶ Adults prefer flavors that do not remind them of cigarettes and don't tempt them to go back to smoking.<sup>10, 11, 12, 14, 15, 16, 17, 18, 19</sup>
- ▶ Data shows 92% of former smokers use non-tobacco flavors.<sup>20</sup>
- ▶ Studies suggest that daily users of e-cigarettes for a month or more are six times more likely to have quit smoking cigarettes two years later.<sup>21</sup>
- ▶ E-cigarettes are nearly twice as effective as FDA approved NRTs when used by smokers as an aid to quitting smoking<sup>22</sup>
- ▶ Smokers quit smoking faster from 2014-2018 as vapor products increased in popularity.<sup>23</sup>
- ▶ Many public health experts including the National Academies of Sciences, Engineering and Medicine agree that lives would be saved if smokers continued to switch entirely to vapor products.<sup>24, 25, 26</sup>
- ▶ One study showed smoking cessation rates are twice as high for vape shop customers and internet customers as for retail customers purchasing at non-specialty stores.<sup>27</sup>
- ▶ "The false belief that vaping is as harmful as smoking could be preventing thousands of smokers from switching to e-cigarettes to help them quit."<sup>28</sup>

The biggest mistake being made in the process to regulate vapor products is that they are being compared to using nothing. Studies show these products are being used 99% of the time as a replacement for smoking deadly combustible tobacco products.<sup>29, 30</sup>

Although we agree there has been an increase in both adult and youth use of vapor products, we see a concurrent reduction in smoking rates, to the lowest rates of all time. Studies suggest a significant part of this reduction is most likely a result of substituting combustible tobacco products for vapor products. Whether or not they are approved for smoking cessation, an abundance of data shows this is how they are being used and much research suggests they are effective for this purpose.<sup>21, 22, 23, 31, 32</sup>

You will likely hear today that vaping is a gateway to smoking cigarettes. Vaping has been around for more than a decade in this country, yet smoking rates among youth and adults continue to fall. If the data we provided showing that vaping is a gateway AWAY from smoking<sup>33</sup> is not sufficient, let common sense convince you. One cannot state that youth vaping has been increasing by leaps and bounds and smoking is at the lowest rate ever<sup>30</sup> and consequently state that use of vapor products leads to smoking. This contradicts the very notion of good sense.

Public health experts suggest that currently available studies do not support the idea that nicotine vapor products deform adolescent brains.<sup>34</sup> While studies have been done on mice with vapor<sup>35</sup> and on humans with combustible cigarettes<sup>36</sup>, experts state these studies are not relatable to the effect of nicotine vapor products on human adolescent brains.<sup>34</sup> Ask yourself why doctors would recommend nicotine replacement therapies (even allowing extended use) for youth and young adults whose brains would be deformed by the nicotine. These same doctors take an oath to do no harm. If that is not sufficient, let's go back to common sense. We all know a number of people who used nicotine regularly in some form before the age of 25. Do any of those adults we know have deformed brains?

*New York State 2017 Adolescent E-Cigarette Survey* said for "19.3 percent of adolescent e-cigarette users, flavors were the primary reason for first use."<sup>37</sup> **So what about the other 80%?** What does a flavor ban do for them? (Requested this data by FOIA Request to NYSDOH. Waiting for reply). Vapor product flavor bans did not slow the increase in youth use of vapor products nor did smoking prevalence decrease significantly after tobacco flavor bans in New York City in 2010. Knowing that these restrictions only reduce the use of flavored products and are not likely to have a significant, if any, impact on tobacco use should be an indicator that a flavor ban is just a feel good bill to make it look like something was done.<sup>40, 41</sup>

Common sense says if we can sell flavored alcohol, CBD, THC and other adult products then we must be doing something wrong with vapor products. We don't place defacto bans on life saving products just because they are being misused. We regulate sales to prevent misuse.

58% of New York sales of cigarettes are Black Market (non-stamped, non taxed cigarettes).<sup>42</sup> This has been attributed to the high taxes applied to tobacco cigarettes in New York.<sup>43</sup> Be aware that on Dec 1st a 20% tax will be applied to all e-cigarettes in NYS. This is going to make vaping unaffordable for many of the current low income users who we work very hard to keep off cigarettes over the last decade. Vapor taxes will make the cost of vaping higher than the cost of smoking cigarettes and eliminate financial incentive to quit. Increasing taxes only means people

who can't afford them will go back to smoking. Thankfully most of them have medicaid so when they get sick from smoking related illness, the state can cover the bill.

The majority of youth use is experimentation.<sup>38, 39</sup> An analysis of NYTS data does not support this youth "epidemic" of nicotine vapor products. Data "does not support" concerns that declines in youth tobacco addiction stand to be reversed after years of progress. Among current e-cigarette users who had never tried tobacco products, responses consistently pointed to minimal dependence." In addition, CDC admits the NYTS vaping "epidemic" numbers include THC vaping.<sup>44</sup>

### Unintended Consequences

<u>Remaining Consumer Choices</u>	<u>Risks of These Consequences</u>
<ul style="list-style-type: none"><li>•Buy on the Street – Immediate rise of illicit market</li><li>•Buy online - skirting tax - 56.8% NY cig sales are black market = highest in the nation<sup>1</sup></li><li>•Dangerous Do-It-Yourself</li><li>•Return to smoking</li></ul>	<ul style="list-style-type: none"><li>•No FDA regulation</li><li>•No licensing /age verification</li><li>•Reduce/Eliminate vapor tax income</li><li>•Reversal of 10 yrs of Safety Standards</li><li>•Mixing at home (See diyordievaping.com for instructions).</li><li>•Inhaling unregulated substances</li><li>•High concentration nicotine in homes</li><li>•Protection of Big Tobacco, Big Pharma and Big Vapor</li><li>•Unjustified elimination of a robust small business market</li></ul>

Regulations that severely restrict or ban access to vapor products will be devastating to the public health of New Yorkers. It is imperative to recognize the unintended consequences of our actions. Hundreds of thousands of lives are at risk. 1300 people will die today due to smoking related illness. We have an unprecedented opportunity to reduce that number significantly. I am pleading with you not to throw that opportunity away.

Spike Babaian  
Technical Analysis Director  
New York State Vapor Association  
[spike@nysva.org](mailto:spike@nysva.org)  
516-902-0824

- 1 - <https://www.ncbi.nlm.nih.gov/pubmed/23033998>
- 2 - <https://www.fda.gov/news-events/press-announcements/statement-consumer-warning-stop-using-thc-vaping-products-amid-ongoing-investigation-lung-illnesses>
- 3 - [https://www.cdc.gov/tobacco/basic\\_information/e-cigarettes/severe-lung-disease.html](https://www.cdc.gov/tobacco/basic_information/e-cigarettes/severe-lung-disease.html)
- 4 - <https://www.news10.com/news/doh-commissioner-just-about-all-ny-vaping-illnesses-are-from-black-market-thc-cartridges/>
- 5 - <https://docs.house.gov/meetings/IF/IF14/20191016/110091/HHRG-116-IF14-Wstate-SiegelM-20191016.pdf>
- 6 - <https://drive.google.com/file/d/1NtEsmhPQKBHN07o9sqALGi2WGY5Bw0RQ/view?usp=sharing>
- 7 - Examining the relationship of vaping to smoking initiation among US youth and young adults: a reality check, BMJ Tobacco Control, David T Levy, Kenneth E Warner, K Michael Cummings, David Hammond, Charlene Kuo, Geoffrey T Fong, James F Thrasher, Maciej Lukasz Goniewicz, Ron Borland  
<https://tobaccocontrol.bmj.com/content/early/2018/10/31/tobaccocontrol-2018-054446>
- 8 - Saul Shiffman, PhD Mark A. Sembower, MS Janine L. Pillitteri, PhD Karen K. Gerlach, PhD, MPH Joseph G. Gitchell, BA 2015. The Impact of Flavor Descriptors on Nonsmoking Teens' and Adult Smokers' Interest in Electronic Cigarettes, *Nicotine & Tobacco Research*, 17(10), 1 October 2015: 1255–1262 <https://doi.org/10.1093/ntr/ntu333>
- 9 - Farsalinos, K. E., G. Romagna, D. Tsiapras, S. Kyrzopoulos, A. Spyrou, and V. Voudris. 2013. Impact of flavour variability on electronic cigarette use experience: An Internet survey. *International Journal of Environmental Research and Public Health* 10(12):7272–7282. <http://www.mdpi.com/1660-4601/10/12/7272/html>
- 10 - M.B. Harrell, S.R. Weaver, A. Loukas, M. Creamer et al, 2017. Flavored e-cigarette use: Characterizing youth, young adult, and adult users <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5121224>
- 11 - Coleman, B. N., B. Rostron, S. E. Johnson, B. K. Ambrose, J. Pearson, C. A. Stanton, B. Wang, C. Delnevo, M. Bansal-Travers, H. L. Kimmel, M. L. Goniewicz, R. Niaura, D. Abrams, K. P. Conway, N. Borek, W. M. Compton, and A. Hyland. 2017. Electronic cigarette use among U.S. adults in the Population Assessment of Tobacco and Health (PATH) study, 2013–2014. *Tobacco Control*.
- 12 - Litt MD, Duffy V, Oncken C. 2016. Cigarette smoking and electronic cigarette vaping patterns as a function of e-cigarette flavourings *Tobacco Control*. 2016; 25: ii67-ii72. [http://tobaccocontrol.bmj.com/content/25/Suppl\\_2/ii67](http://tobaccocontrol.bmj.com/content/25/Suppl_2/ii67)
- 13 - John Buckell, Joachim Marti, and Jody L. Sindelar. 2017. Should Flavors be Banned in E-cigarettes? Evidence on Adult Smokers and Recent Quitters from a Discrete Choice Experiment. NBER Working Paper No. 23865 September 2017 JEL No. C35,I12,I18 <http://www.nber.org/papers/w23865.pdf>
- 14 (8)- NYTS National Youth Tobacco Survey (CDC Data)  
<https://www.cdc.gov/mmwr/volumes/66/wr/mm6623a1.htm#contribAff>
- 15 (9)- Brown, J. , Beard, E. , Kotz, D. , Michie, S. and West, R. (2014), Real-world effectiveness of e-cigarettes. *Addiction*, 109: 1531–1540. doi: 10.1111/add.12623 <https://onlinelibrary.wiley.com/doi/full/10.1111/add.12623>
- 16 (10)- L., Y. C. Zhan Wang, Q. D. Li, D. D. Zeng, S. J. Leischow, and J. Okamoto. 2015. An examination of electronic cigarette content on social media: Analysis of e-cigarette flavor content on Reddit. *International Journal of Environmental Research and Public Health* 12(11):14916–14935
- 17 (11)-Yingst, J. M., S. Veldheer, E. Hammett, S. Hrabovsky, and J. Foulds. 2017. A method for classifying user-reported electronic cigarette liquid flavors. *Nicotine & Tobacco Research* 19(11):1381–1385 .
- 18 (12)- Adolescents and e-cigarettes: Objects of concern may appear larger than they are Kozlowski, Lynn T. et al. *Drug & Alcohol Dependence*, Volume 174, 209 = 214  
[http://www.drugandalcoholdependence.com/article/S0376-8716\(17\)30023-6/abstract](http://www.drugandalcoholdependence.com/article/S0376-8716(17)30023-6/abstract)
- 19 (13) - Russell et al. 2018 Changing patterns of first e-cigarette flavor used and current flavors used by 20,836 adult frequent e-cigarette users in the USA *Harm Reduction Journal* 2018 15:33  
<https://doi.org/10.1186/s12954-018-0238-6>
- 20 - EcigIntelligence Survey 2018, March 2019
- 21 - Biener L, Hargraves JL. 2015. A longitudinal study of electronic cigarette use among a population-based sample of adult smokers: association with smoking cessation and motivation to quit. *Nicotine Tob. Res.* 17:127–33  
<https://www.ncbi.nlm.nih.gov/pubmed/25301815>
- 22 - Hajek, P, et al. 2019. A Randomized Trial of E-Cigarettes versus Nicotine-Replacement Therapy. *NEJM*  
[https://www.nejm.org/doi/full/10.1056/NEJMoa1808779?query=featured\\_home](https://www.nejm.org/doi/full/10.1056/NEJMoa1808779?query=featured_home)
- 23 - Levy DT, et al. *Tob Control* 2018;0:1–7. doi:10.1136/tobaccocontrol-2018-054446  
<https://tobaccocontrol.bmj.com/content/tobaccocontrol/early/2018/10/31/tobaccocontrol-2018-054446.full.pdf>
- 24 - <https://www.annualreviews.org/doi/pdf/10.1146/annurev-publhealth-040617-013849>
- 25 - <https://www.ncbi.nlm.nih.gov/pubmed/29617887>
- 26 - <http://nationalacademies.org/hmd/Reports/2018/public-health-consequences-of-e-cigarettes.aspx>
- 27 - <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6427541/>
- 28 - <https://www.theguardian.com/society/2018/dec/28/vaping-is-95-safer-than-smoking-claims-public-health-england>
- 29 - NYTS 2015
- 30 - NYTS 2018

- 31 - <https://www.bmj.com/content/358/bmj.j3262>
- 32 - <https://academic.oup.com/ntr/advance-article-abstract/doi/10.1093/ntr/ntz114/5531618>
- 33 - Kozlowski, Lynn and Warner, K. (2017). Adolescents and e-cigarettes: Objects of concern may appear larger than they are. *Drug & Alcohol Dependence*, Volume 174, 209–214 <https://www.ncbi.nlm.nih.gov/pubmed/29350617>
- 34 - <http://docs.house.gov/meetings/AP/AP07/20191016/110071/HHRG-116-AP07-Wstate-Satels-20191016.pdf>
- 35 - <https://www.frontiersin.org/articles/10.3389/fphar.2019.00885/full>
- 36 - <https://www.sciencedirect.com/science/article/abs/pii/S0006322304011023>
- 37 - [https://www.health.ny.gov/facilities/public\\_health\\_and\\_health\\_planning\\_council/meetings/2019-09-17/docs/title\\_10\\_nycrr.pdf](https://www.health.ny.gov/facilities/public_health_and_health_planning_council/meetings/2019-09-17/docs/title_10_nycrr.pdf)
- 38 - <https://www.geios.com/read/article/391>
- 39 - <https://jamanetwork.com/journals/jama/article-abstract/1895232>
- 40 - <https://www.heartland.org/publications-resources/publications/research--commentary-flavor-bans-do-not-reduce-youth-e-cigarette-use>
- 41 - <https://tobaccocontrol.bmj.com/content/26/1/78.full>
- 42 - Tax Foundation 2015 - <https://taxfoundation.org/cigarette-tax-cigarette-smuggling-2015>
- 43 - <https://www.crainsnewyork.com/markets/big-bust-smuggling-ring-unlikely-stem-flow-illegal-smokes>
- 44 - <https://vimeo.com/showcase/5967467/video/334643964>
- 45 - <https://www.federalregister.gov/documents/2016/05/10/2016-10685/deeming-tobacco-products-to-be-subject-to-the-federal-food-drug-and-cosmetic-act-as-amended-by-the>