

Mr. Discount Plus store has become a gathering space for African American communities as local leaders drive forward plans to revitalize and transform the Cottonwood neighborhood for future generations to enjoy.

I am proud to recognize the Shipes family and their business for serving their community for over 70 years, and we look forward to another 70 years.

Madam Speaker, I urge my colleagues to join me in recognizing Black History Month and honoring the Shipes family for their service and dedication to southeast Bakersfield, their community, the Central Valley, and our great Nation.

Madam Speaker, I thank Mr. and Mrs. Shipes.

#### CORONAVIRUS IS A CAUSE OF GREAT CONCERN

(Mr. LAMALFA asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LAMALFA. Madam Speaker, coronavirus obviously is a cause of great concern for our citizens' well-being and impact on our health system in its ability to deliver service in this country.

What is disappointing in the last few days, it is once again being turned into a political football by those who oppose everything that this President does, even this morning before a briefing we had to educate us Members.

Can we please just stop on the bashing and focus on what Americans expect—solutions?

There is much we don't know. It is a moving target. China hasn't been very forthcoming with information.

So, in order to provide an abundance of caution, we need to have a deliberate process, and that is what our health officials are trying to provide.

We don't want an over-panic, but we don't want an under-response either. We need to assure our citizens that proper steps are being taken—and I believe they are—in containing it in this country.

Working together for solutions and leaving the politics to the Presidential debates and the talk shows and all that is what we need to be doing. It will help us best serve the needs and provide assurances as we learn and understand the breadth of this virus and its reach into our lives in this country.

It is not Democrat. It is not Republican. It is just answers and assurances our citizens expect us to do.

□ 0915

#### CONGRESS MUST PROTECT AMERICA'S CHILDREN FROM THE SCOURGE OF NICOTINE ADDICTION

(Ms. ADAMS asked and was given permission to address the House for 1 minute.)

Ms. ADAMS. Madam Speaker, I rise today in support of H.R. 2339, the Pro-

tecting American Lungs and Reversing the Youth Tobacco Epidemic Act.

In 1999, I was tapped to serve as one of the founding members of the American Legacy Foundation whose mission was to create a world where young people reject tobacco, and anyone can quit. For 7 years I served as vice chair of Legacy as we fought to help create a tobacco-free generation. That organization is known today as the Truth Initiative.

We helped air the first advertisements that curtailed teen cigarette use and started us toward the end of an epidemic, but our work is not yet done. We have a new epidemic on our hands, one we cannot ignore.

In 2019, over 5 million middle and high school students used e-cigarettes. That is up almost two million students from 2018. H.R. 2339 tackles this problem. By prohibiting the sale of all flavored tobacco products, we protect our children from the scourge of nicotine addiction.

To be blunt, this legislation puts health before profit, and that is the truth.

#### RECOGNIZING SCOTTSBLUFF/GERING, NEBRASKA

(Mr. SMITH of Nebraska asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SMITH of Nebraska. Madam Speaker, I rise today to recognize my home community of Gering-Scottsbluff, Nebraska for being honored as one of the top western towns by True West Magazine.

As executive director Bob Boze Bell said in the article, "There's so much history, so many stories that are told in the places, the events, the attitude of the people who live there. Scottsbluff and Gering, together, is truly a top western town."

Now in our sixth generation as Scotts Bluff County natives, my family would have to agree. Sharing this honor with famous western towns such as Tombstone, Arizona; Deadwood, South Dakota; and Sheridan, Wyoming, Scottsbluff and Gering have their own important part of American history and the role it played in our westward migration.

Home to one of the most famous Oregon Trail landmarks, the Scotts Bluff National Monument, this area was known as one of the most breathtaking sights on the journey west.

Community support and involvement has led us to this recognition. There truly is no place like Nebraska, and I am proud to call the Gering and Scottsbluff area my home.

I thank Brenda Leisy and Karla Neidan-Streeks for their work in promoting our community. I also thank the people of Gering-Scottsbluff, who, together, make our community a great place to live.

#### COMMUNICATION FROM THE CLERK OF THE HOUSE

The SPEAKER pro tempore laid before the House the following communication from the Clerk of the House of Representatives:

OFFICE OF THE CLERK,  
HOUSE OF REPRESENTATIVES,  
Washington, DC, February 27, 2020.

Hon. NANCY PELOSI,  
Speaker, House of Representatives,  
Washington, DC.

DEAR MADAM SPEAKER: Pursuant to the permission granted in Clause 2(h) of Rule II of the Rules of the U.S. House of Representatives, the Clerk received the following message from the Secretary of the Senate on February 27, 2020, at 5:41 p.m.:

That the Senate passed without amendment H.R. 4998.

With best wishes, I am

Sincerely,

CHERYL L. JOHNSON.

#### REVERSING THE YOUTH TOBACCO EPIDEMIC ACT OF 2019

##### GENERAL LEAVE

Mr. PALLONE. Madam Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and add extraneous material on H.R. 2339, the Protecting American Lungs and Reversing the Youth Tobacco Epidemic Act of 2019.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

Mr. PALLONE. Madam Speaker, pursuant to House Resolution 866, I call up the bill (H.R. 2339) to amend the Federal Food, Drug, and Cosmetic Act with respect to the sale and marketing of tobacco products, and for other purposes, and ask for its immediate consideration.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Pursuant to House Resolution 866, in lieu of the amendment in the nature of a substitute recommended by the Committee on Energy and Commerce printed in the bill, an amendment in the nature of a substitute consisting of the text of Rules Committee Print 116-51, modified by the amendment printed in House Report 116-409, is adopted and the bill, as amended, is considered read.

The text of the bill, as amended, is as follows:

H.R. 2339

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

##### SECTION 1. SHORT TITLE.

*This Act may be cited as the "Protecting American Lungs and Reversing the Youth Tobacco Epidemic Act of 2020".*

##### SEC. 2. TABLE OF CONTENTS.

*The table of contents of this Act is as follows:*

*Sec. 1. Short title.*

*Sec. 2. Table of contents.*

##### TITLE I—FOOD AND DRUG ADMINISTRATION

*Sec. 101. Cigarette graphic health warnings.*

*Sec. 102. Advertising and sales parity for all deemed tobacco products.*

- Sec. 103. Reducing child and adolescent nicotine addiction.  
 Sec. 104. Prohibition against remote retail sales.  
 Sec. 105. Fees applicable to all tobacco products.  
 Sec. 106. Regulation of products containing alternative nicotine.  
 Sec. 107. Update to youth tobacco prevention public awareness campaigns.  
 Sec. 108. Exemption from premarket review of certain tobacco products.  
 Sec. 109. Public education.  
 Sec. 110. Regulations for recordkeeping concerning tracking and tracing.

#### TITLE II—FEDERAL TRADE COMMISSION

- Sec. 201. Advertising of tobacco products.

#### TITLE III—PUBLIC HEALTH PROGRAMS

- Sec. 301. Outreach to medically underserved communities.  
 Sec. 302. Demonstration grant program to develop strategies for smoking cessation in medically underserved communities.  
 Sec. 303. Public awareness, education, and prevention campaign.  
 Sec. 304. Tobacco cessation treatment grants to health centers.  
 Sec. 305. Grants for research.

#### TITLE IV—NICOTINE OR VAPING ACCESS PROTECTION AND ENFORCEMENT

- Sec. 401. Increasing civil penalties applicable to certain violations of restrictions on sale and distribution of tobacco products.  
 Sec. 402. Study and report on e-cigarettes.

#### TITLE V—EXCISE TAX ON NICOTINE USED IN VAPING, ETC.

- Sec. 501. Imposition of tax on nicotine for use in vaping, etc.

#### TITLE VI—FURTHER HEALTH INVESTMENTS

- Sec. 601. Waiving Medicare coinsurance for colorectal cancer screening tests.  
 Sec. 602. Safe harbor for high deductible health plans without deductible for certain inhalers.

#### TITLE I—FOOD AND DRUG ADMINISTRATION

##### SEC. 101. CIGARETTE GRAPHIC HEALTH WARNINGS.

(a) **ISSUANCE DEADLINES.**—Not later than March 15, 2020, the Secretary of Health and Human Services, acting through the Commissioner of Food and Drugs, shall publish a final rule pursuant to section 4(d) of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333(d)). If the Secretary fails to promulgate such final rule by March 15, 2020, then the proposed rule titled “Tobacco Products; Required Warnings for Cigarette Packages and Advertisements” published by the Food and Drug Administration on August 16, 2019 (84 Fed. Reg. 42754) shall be treated as a final rule beginning on March 16, 2020.

(b) **CONFORMING CHANGE.**—The first section 4(d) of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333(d)) (relating to graphic labeling statements) is amended by striking “Not later than 24 months after the date of enactment of the Family Smoking Prevention and Tobacco Control Act, the Secretary” and inserting “The Secretary”.

##### SEC. 102. ADVERTISING AND SALES PARITY FOR ALL DEEMED TOBACCO PRODUCTS.

(a) **IN GENERAL.**—Not later than 1 year after the date of enactment of this Act, the Secretary of Health and Human Services, acting through the Commissioner of Food and Drugs, shall promulgate a final rule amending part 1140 of subchapter K of title 21, Code of Federal Regulations, to apply the provisions of such part 1140 to all tobacco products, as applicable, to which chapter IX of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 387a et seq.) applies pursuant to section 901(b) of such Act (21 U.S.C.

387a(b)), as amended by section 103(a) of this Act.

(b) **EFFECTIVE DATE.**—The final rule required by subsection (a) shall take effect on the date that is 2 years after the date of enactment of this Act.

##### SEC. 103. REDUCING CHILD AND ADOLESCENT NICOTINE ADDICTION.

(a) **APPLICABILITY TO ALL TOBACCO PRODUCTS.**—

(1) **IN GENERAL.**—Subsection (b) of section 901 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 387a) is amended to read as follows:

“(b) **APPLICABILITY.**—This chapter shall apply to all tobacco products.”.

(2) **RULE OF CONSTRUCTION.**—Paragraph (1) and the amendment made thereby shall not be construed to limit the applicability of chapter IX of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 387a et seq.) to—

(A) products that were listed in section 901(b) of such Act as in effect on the day before the date of enactment of this Act; and

(B) products that were deemed by regulation to be subject to such chapter pursuant to section 901(b) of such Act as in effect on the day before the date of enactment of this Act.

(b) **PROHIBITING FLAVORING OF TOBACCO PRODUCTS.**—

(1) **PROHIBITION.**—

(A) **IN GENERAL.**—Subparagraph (A) of section 907(a)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 387g(a)(1)) is amended to read as follows:

“(A) **SPECIAL RULES.**—

“(i) **IN GENERAL.**—Beginning on the date that is 1 year after the date of enactment of the Protecting American Lungs and Reversing the Youth Tobacco Epidemic Act of 2020, a tobacco product (including its components, parts, and accessories, including the tobacco, filter, or paper) that is not an electronic nicotine delivery system shall not contain, as a constituent (including a smoke constituent) or additive, an artificial or natural flavor (other than tobacco) that is a characterizing flavor of the tobacco product or tobacco smoke or an herb or spice, including menthol, mint, mango, strawberry, grape, orange, clove, cinnamon, pineapple, vanilla, coconut, licorice, cocoa, chocolate, cherry, or coffee.

“(ii) **RULE OF CONSTRUCTION.**—Nothing in this subparagraph shall be construed to limit the Secretary’s authority to take action under this section or other sections of this Act applicable to any artificial or natural flavor, herb, or spice.

“(iii) **APPLICABILITY TO CERTAIN INDIVIDUALS.**—Notwithstanding any provision of this Act, no individual who purchases for individual consumption, possesses for individual consumption, or consumes, a tobacco product that is in violation of the prohibition under this subparagraph, including a tobacco product that contains a characterizing flavor of menthol, shall be subject to any criminal penalty under this Act for such purchase, possession, or consumption, nor shall such purchase, possession, or consumption be used as a justification to stop, search, or conduct any other investigative measure against any individual.”.

(B) **SAVINGS PROVISION.**—Section 907(a)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 387g(a)(1)), as in effect on the date of enactment of this Act, shall remain in effect until the amendment made to such section 907(a)(1) by this paragraph takes effect.

(2) **FLAVORED ELECTRONIC NICOTINE DELIVERY SYSTEM.**—Section 910 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 387j) is amended by inserting at the end the following:

“(h) **FLAVORED ELECTRONIC NICOTINE DELIVERY SYSTEMS.**—

“(1) **RESTRICTION.**—Beginning on the date that is 30 days after the date of enactment of the Protecting American Lungs and Reversing the Youth Tobacco Epidemic Act of 2020, any flavored electronic nicotine delivery system that is a new tobacco product, including any solu-

tion or other component or part (such as a liquid or its aerosol) shall not contain an artificial or natural flavor (other than tobacco) that is a characterizing flavor, including menthol, mint, mango, strawberry, grape, orange, clove, cinnamon, pineapple, vanilla, coconut, licorice, cocoa, chocolate, cherry, or coffee, unless the Secretary has issued a marketing order as described in paragraph (2). Nothing in this paragraph shall be construed to limit the Secretary’s authority to take action under this section or other sections of this Act applicable to any artificial or natural flavor, herb, or spice.

“(2) **REVIEW.**—The Secretary shall not issue a marketing order under subsection (c)(1)(A)(i) or a substantial equivalence order under subsection (a)(2)(A)(i) for any electronic nicotine delivery system, including any liquid, solution, or other component or part or its aerosol, that contains an artificial or natural flavor (other than tobacco) that is a characterizing flavor, unless the Secretary issues an order finding that the manufacturer has demonstrated that—

“(A) use of the characterizing flavor—

“(i) will significantly increase the likelihood of smoking cessation among current users of tobacco products; and

“(ii) will not increase the likelihood that individuals who do not use tobacco products, including youth, will start using any tobacco product, including an electronic nicotine delivery system; and

“(B) such electronic nicotine delivery system is not more harmful to users than an electronic nicotine delivery system that does not contain any characterizing flavors.”.

(3) **DEFINITION OF ELECTRONIC NICOTINE DELIVERY SYSTEM.**—Section 900 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 387) is amended—

(A) by redesignating paragraphs (8) through (22) as paragraphs (9) through (23), respectively; and

(B) by inserting after paragraph (7) the following new paragraph:

“(8) **ELECTRONIC NICOTINE DELIVERY SYSTEM.**—The term ‘electronic nicotine delivery system’ means a tobacco product that is an electronic device that delivers nicotine, flavor, or another substance via an aerosolized solution to the user inhaling from the device (including e-cigarettes, e-hookah, e-cigs, vape pens, advanced refillable personal vaporizers, and electronic pipes) and any component, liquid, part, or accessory of such a device, whether or not sold separately.”.

(4) **LIMITATION ON ENFORCEMENT.**—A law enforcement officer of a State or political subdivision thereof may not enforce (including by making any stop, search, seizure, or arrest or by pursuing any prosecution, trial, or punishment) any provision of section 907(a)(1)(A) or 910(h) of the Federal Food, Drug, and Cosmetic Act, as amended and added by this subsection.

##### SEC. 104. PROHIBITION AGAINST REMOTE RETAIL SALES.

(a) **IN GENERAL.**—Paragraph (4) of section 906(d) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 387f(d)) is amended to read as follows:

“(4) **PROHIBITION AGAINST REMOTE RETAIL SALES.**—

“(A) **PROHIBITION.**—Not later than 18 months after the date of enactment of the Protecting American Lungs and Reversing the Youth Tobacco Epidemic Act of 2020, the Secretary shall promulgate a final regulation prohibiting the retail sale of all tobacco products other than retail sales through a direct, face-to-face exchange between a retailer and a consumer.

“(B) **EXCEPTION FOR CERTAIN CIGAR TOBACCO PRODUCTS.**—

“(i) **EXCEPTION.**—The regulation required by subparagraph (A) shall not apply to tobacco products described in section 910(a)(2)(A)(iii).

“(ii) **APPLICABLE REQUIREMENTS.**—Not later than 18 months after the date of enactment of the Protecting American Lungs and Reversing

the Youth Tobacco Epidemic Act of 2020, the Secretary shall promulgate regulations regarding the sale and distribution of tobacco products described in section 910(a)(2)(A)(iii) that occur through means other than a direct, face-to-face exchange between a retailer and a consumer in order to prevent the sale and distribution of tobacco products described in section 910(a)(2)(A)(iii) to individuals who have not attained the minimum age established by applicable law for the purchase of such products, including requirements for age verification.

“(C) RELATION TO OTHER AUTHORITY.—Nothing in this paragraph—

“(i) limits the authority of the Secretary to take additional actions under other provisions of this Act; or

“(ii) preempts the authority of a State or local government to establish restrictions on the retail sale of tobacco products that are in addition to, or more stringent than, the prohibition under subparagraph (A).”.

(b) APPLICABILITY.—Section 906(d)(4) of the Federal Food, Drug, and Cosmetic Act, as in effect on the day before the date of enactment of this Act, shall continue to apply until the effective date of the regulations required by section 906(d)(4) of such Act, as amended by subsection (a).

#### SEC. 105. FEES APPLICABLE TO ALL TOBACCO PRODUCTS.

(a) INCREASE IN TOTAL AMOUNT.—Section 919(b)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 387s(b)(1)) is amended by striking subparagraph (K) and inserting the following subparagraphs:

“(K) For fiscal years 2019 and 2020, \$712,000,000.

“(L) For fiscal year 2021, \$812,000,000.

“(M) For each subsequent fiscal year, the amount that was applicable for the previous fiscal year, increased by the total percentage change that occurred in the Consumer Price Index for all urban consumers (all items; United States city average) for the 12-month period ending June 30 preceding the fiscal year.”.

(b) APPLICABILITY.—

(1) FISCAL YEARS 2020 AND 2021.—Except as amended by subsection (a), for fiscal years 2020 and 2021, section 919 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 387s) shall apply as in effect on the day before the date of enactment of this Act.

(2) SUBSEQUENT FISCAL YEARS.—The amendments made by subsections (c) through (f) apply beginning with fiscal year 2022.

(c) ALLOCATIONS OF ASSESSMENT BY CLASS OF TOBACCO PRODUCTS.—Paragraph (2) of section 919(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 387s(b)) is amended to read as follows:

“(2) ALLOCATIONS OF ASSESSMENT BY CLASS OF TOBACCO PRODUCTS.—

“(A) IN GENERAL.—The total user fees assessed and collected under subsection (a) each fiscal year (beginning with fiscal year 2022) with respect to each class of tobacco products to which this chapter applies shall be an amount that is equal to the applicable percentage of each class for the fiscal year multiplied by the amount specified in paragraph (1) for the fiscal year.

“(B) APPLICABLE PERCENTAGE.—

“(i) IN GENERAL.—For purposes of subparagraph (A), the applicable percentage for a fiscal year for each class of tobacco product shall be the percentage determined by dividing—

“(I) the product of the gross domestic volume of the class multiplied by the tax rate applicable to the class under section 5701 of the Internal Revenue Code of 1986; and

“(II) the sum of the products determined under subclause (I) for all classes of tobacco products.

“(ii) DEFINITION.—For purposes of clause (i), the term ‘gross domestic volume’ means the volume of tobacco products—

“(I) removed (as defined by section 5702 of the Internal Revenue Code of 1986); and

“(II) not exempt from tax under chapter 52 of the Internal Revenue Code of 1986 at the time of their removal under that chapter or the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202).”.

(d) ALLOCATION OF ASSESSMENT WITHIN EACH CLASS OF TOBACCO PRODUCT.—Section 919(b)(4) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 387s(b)(4)) is amended by striking “shall be the percentage determined for purposes of allocations under subsections (e) through (h) of section 625 of Public Law 108-357” and inserting “shall be allocated on a pro rata basis among the manufacturers and importers of each class of tobacco products to which this chapter applies based on the percentage share of each manufacturer’s or importer’s share of gross domestic volume within such class on a quarterly basis, based on data for the second preceding quarter”.

(e) OTHER AMENDMENTS.—Section 919(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 387s(b)) is amended—

(1) by striking paragraph (5);

(2) by redesignating paragraphs (6) and (7) as paragraphs (5) and (6), respectively; and

(3) by amending paragraph (6), as redesignated, to read as follows:

“(6) MEMORANDUM OF UNDERSTANDING; REPORTING.—

“(A) TRANSFER OF INFORMATION.—The Secretary shall request the appropriate Federal agency to enter into a memorandum of understanding that provides for the regular and timely transfer from the head of such agency to the Secretary of all necessary information regarding all tobacco product manufacturers and importers required to pay user fees. The Secretary shall maintain all disclosure restrictions established by the head of such agency regarding the information provided under the memorandum of understanding.

“(B) REPORTING.—

“(i) MANUFACTURER REPORTING.—The Secretary may require the manufacturers and importers of each class of tobacco products to which this chapter applies to submit such information, by such time, and in such manner, as the Secretary determines to be necessary to implement this section.

“(ii) REPORTS TO CONGRESS.—For fiscal year 2020 and each subsequent fiscal year for which fees are collected under this section, the Secretary shall, not later than 120 days after the end of the respective fiscal year, submit to the Congress financial and performance reports with respect to such fees.”.

(f) PROHIBITED ACT.—Section 301(q)(1)(B) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331(q)(1)(B)) is amended by inserting “919(b)(6)(B),” before “or 920”.

#### SEC. 106. REGULATION OF PRODUCTS CONTAINING ALTERNATIVE NICOTINE.

(a) IN GENERAL.—The Secretary of Health and Human Services, acting through the Commissioner of Food and Drugs, shall—

(1) not later than 1 year after the date of enactment of this Act, issue an interim final rule providing for the regulation of products containing alternative nicotine under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.); and

(2) not later than 2 years after such date of enactment, issue a final rule providing for such regulation.

(b) ALTERNATIVE NICOTINE.—In this section, the term “alternative nicotine” means nicotine that is not made or derived from tobacco plants and may include nicotine that is chemically synthesized, synthesized from recombinant genetic technology, or extracted from non-tobacco plants.

#### SEC. 107. UPDATE TO YOUTH TOBACCO PREVENTION PUBLIC AWARENESS CAMPAIGNS.

(a) IN GENERAL.—The Secretary of Health and Human Services shall—

(1) review all public health awareness campaigns of the Department of Health and Human

Services designed to educate at-risk individuals about the harmful effects of tobacco use, including the use of e-cigarettes and other electronic nicotine delivery systems; and

(2) as applicable, modify such campaigns to include awareness and education materials designed for individuals who are 18 to 21 years of age.

(b) CONSULTATION.—In carrying out subsection (a), the Secretary of Health and Human Services may consult with medical and public health associations and nonprofit organizations.

#### SEC. 108. EXEMPTION FROM PREMARKET REVIEW OF CERTAIN TOBACCO PRODUCTS.

(a) IN GENERAL.—Section 910(a)(2) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 387j(a)(2)) is amended—

(1) in subparagraph (A)—

(A) in clause (i)(II), by striking “or”;

(B) in clause (ii), by striking the period at the end and inserting “; or”;

(C) by adding at the end the following:

“(iii) subject to subparagraph (C), for the period beginning on the date of the enactment of the Protecting American Lungs and Reversing the Youth Tobacco Epidemic Act of 2020 and ending on September 30, 2028, the tobacco product is a cigar and—

“(I) is wrapped in whole tobacco leaf;

“(II) contains a 100-percent leaf tobacco binder;

“(III) contains primarily long filler tobacco;

“(IV) does not have a characterizing flavor other than tobacco;

“(V) weighs more than 6 pounds per 1000 units;

“(VI) has no filter, tip, or non-tobacco mouthpiece;

“(VII)(aa) is made by combining manually the wrapper, filler, and binder and is capped by hand; or

“(bb) has a homogenized tobacco leaf binder and is made in the United States using human hands to lay the 100-percent leaf tobacco binder onto only one machine that bunches, wraps, and caps each individual cigar; and

“(VIII) has a retail price (after discounts or coupons) per cigar of no less than—

“(aa) for calendar years 2019 and 2020, \$12; and

“(bb) for each subsequent calendar year, \$12 multiplied by any percent increase in the Consumer Price Index for all urban consumers (all items; U.S. city average) since calendar year 2020.”; and

(2) by adding at the end the following:

“(C) DETERMINATION OF APPLICABILITY.—

“(i) IN GENERAL.—The Secretary shall, notwithstanding subparagraph (A)(iii) or any determination of substantial equivalence, if any of the conditions specified in clause (ii) are met—

“(I) withdraw any exemption applicable to a tobacco product or products described in such subparagraph;

“(II) require that applications for review under this section be submitted with respect to such product or products; and

“(III) require that manufacturers may only market such tobacco product after the issuance of an order under subsection (c)(1)(A)(i) with respect to such product or products.

“(ii) CONDITIONS.—The conditions specified in this clause are that—

“(I) the Secretary determines that the use of a tobacco product or products described in subparagraph (A)(iii) has resulted in an emerging public health threat;

“(II) data from a National Youth Tobacco Survey (or successor survey) conducted after the date of the enactment of the Protecting American Lungs and Reversing the Youth Tobacco Epidemic Act of 2020 identifies a rise in youth usage of tobacco products described in section 910(a)(2)(A)(iii); or

“(III) the Secretary determines that a tobacco product or products no longer meets the criteria specified in such subparagraph.”.

(b) NATIONAL ACADEMIES STUDY AND REPORT.—

(1) IN GENERAL.—The Secretary of Health and Human Services, acting through the Commissioner of Food and Drugs, shall enter into an agreement with the National Academies of Sciences, Engineering, and Medicine under which the National Academies shall conduct a study on—

(A) the public health impact of having tobacco products described in subsection (a)(2)(A)(iii) of section 910 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 387j), as amended by subsection (a), exempt from premarket review under such section;

(B) the youth usage of such tobacco products; and

(C) the market share of such products.

(2) REPORT.—The agreement under paragraph (1) shall include a requirement that the National Academies of Sciences, Engineering, and Medicine submit to Congress, not later than December 31, 2026, a report on the findings of the study conducted under such paragraph.

#### SEC. 109. PUBLIC EDUCATION.

Section 906 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 387f) is amended by adding at the end the following:

“(g) EDUCATION ON TOBACCO PRODUCTS.—

“(1) IN GENERAL.—Beginning not later than 6 months after the date of the enactment of the Protecting American Lungs and Reversing the Youth Tobacco Epidemic Act of 2020, the Secretary of Health and Human Services, acting through the Commissioner of Food and Drugs and in consultation with the Surgeon General of the Public Health Service, shall provide educational materials for health care providers, members of the public, and law enforcement officials, regarding—

“(A) the authority of the Food and Drug Administration with respect to the regulation of tobacco products (including enforcement of such regulation);

“(B) the general processes of the Food and Drug Administration for enforcing restrictions on the manufacture and sale of tobacco products;

“(C) the general enforcement actions the Food and Drug Administration may take to implement the prohibition on characterizing flavors in tobacco products under section 907(a)(1);

“(D) the public health impact of tobacco products with characterizing flavors; and

“(E) other information as the Secretary determines appropriate.

“(2) CONTENT.—Educational materials provided under paragraph (1) may include—

“(A) explanations of key statutory and regulatory terms, including the terms ‘tobacco product’, ‘component parts’, ‘accessories’, ‘constituent’, ‘additive’, ‘tobacco product manufacturer’, and ‘characterizing flavor’;

“(B) an explanation of the Food and Drug Administration’s jurisdiction to regulate tobacco products, including tobacco products with characterizing flavors under section 907(a)(1);

“(C) general educational information related to enforcement tools and processes used by the Food and Drug Administration for violations of the prohibition specified in section 907(a)(1);

“(D) information on the health effects of using tobacco products, including those with the characterizing flavors referred to in section 907(a)(1); and

“(E) information on resources available related to smoking cessation.

“(3) FORMAT.—Educational materials provided under paragraph (1) may be—

“(A) published in any format, including an internet website, video, fact sheet, infographic, webinar, or other format, as the Secretary determines is appropriate and applicable; and

“(B) tailored for the unique needs of health care providers, members of the public, law enforcement officers, and other audiences, as the Secretary determines appropriate.

“(4) FUNDING.—To carry out this subsection, there is authorized to be appropriated, and there is appropriated, out of any funds in the Treasury not otherwise appropriated, \$5,000,000 for each of fiscal years 2021 through 2025. Funds made available by the preceding sentence to carry out this subsection shall be in addition to funds that are derived from fees under section 919 and are otherwise made available to carry out this chapter.”.

#### SEC. 110. REGULATIONS FOR RECORDKEEPING CONCERNING TRACKING AND TRACING.

The Secretary of Health and Human Services, acting through the Commissioner of Food and Drugs, shall promulgate the regulations required by section 920(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 387t) in accordance with the following schedule:

(1) Not later than 1 year after the date of enactment of this Act, the Secretary shall issue proposed regulations.

(2) Not later than 2 years after the date of enactment of this Act, the Secretary shall promulgate final regulations.

#### TITLE II—FEDERAL TRADE COMMISSION

##### SEC. 201. ADVERTISING OF TOBACCO PRODUCTS.

(a) ADVERTISING OF ELECTRONIC NICOTINE DELIVERY SYSTEMS.—

(1) IN GENERAL.—It shall be unlawful—

(A) to market, advertise, or promote any electronic nicotine delivery system in a manner that appeals to an individual under 21 years of age; or

(B) to market, advertise, promote, or endorse, or to compensate any person for the marketing, advertising, promotion, or endorsement of, any electronic nicotine delivery system without clearly disclosing that the communication is an advertisement, unless the communication is unambiguously identifiable as an advertisement.

(2) ENFORCEMENT BY COMMISSION.—

(A) UNFAIR OR DECEPTIVE ACTS OR PRACTICES.—A violation of paragraph (1) shall be treated as a violation of a regulation under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)) regarding unfair or deceptive acts or practices.

(B) POWERS OF COMMISSION.—The Commission shall enforce paragraph (1) in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this Act. Any person who violates such paragraph shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act.

(3) ENFORCEMENT BY STATE ATTORNEYS GENERAL.—

(A) IN GENERAL.—If the attorney general of a State has reason to believe a violation of paragraph (1) has occurred or is occurring, the attorney general, in addition to any authority the attorney general may have to bring an action in State court under the law of the State, may bring a civil action in any court of competent jurisdiction to—

(i) enjoin further such violation by the defendant;

(ii) enforce compliance with such paragraph;

(iii) obtain civil penalties in the same amount as may be obtained by the Commission in a civil action under section 5(m) of the Federal Trade Commission Act (15 U.S.C. 45(m)); or

(iv) obtain damages, restitution, or other compensation on behalf of residents of the State.

(B) NOTICE.—Before filing an action under subparagraph (A), the attorney general of a State shall provide to the Commission a written notice of such action and a copy of the complaint for such action. If the attorney general determines that it is not feasible to provide the notice described in this subparagraph before the filing of the action, the attorney general shall provide written notice of the action and a copy

of the complaint to the Commission immediately upon the filing of the action.

(C) AUTHORITY OF FEDERAL TRADE COMMISSION.—

(i) IN GENERAL.—On receiving notice under subparagraph (B) of an action under subparagraph (A), the Commission shall have the right—

(I) to intervene in the action;

(II) upon so intervening, to be heard on all matters arising therein; and

(III) to file petitions for appeal.

(ii) LIMITATION ON STATE ACTION WHILE FEDERAL ACTION IS PENDING.—If the Commission has instituted a civil action for violation of paragraph (1) (referred to in this clause as the “Federal action”), no attorney general of a State may bring an action under subparagraph (A) during the pendency of the Federal action against any defendant named in the complaint in the Federal action for any violation of such paragraph alleged in such complaint.

(D) RELATIONSHIP WITH STATE-LAW CLAIMS.—

(i) PRESERVATION OF STATE-LAW CLAIMS.—Nothing in this section shall prevent the attorney general of a State from bringing an action under State law for acts or practices that also violate paragraph (1).

(ii) ASSERTION IN SAME CIVIL ACTION.—If the attorney general of a State has authority to bring an action under State law for acts or practices that also violate paragraph (1), the attorney general may assert the State-law claim and the claim for violation of such paragraph in the same civil action.

(E) ACTIONS BY OTHER STATE OFFICIALS.—In addition to civil actions brought by attorneys general under subparagraph (A), any other consumer protection officer of a State who is authorized by the State to do so may bring a civil action under such subparagraph, subject to the same requirements and limitations that apply under this paragraph to civil actions brought by attorneys general.

(4) RULEMAKING AUTHORITY.—The Commission may promulgate regulations under section 553 of title 5, United States Code, to implement paragraph (1).

(b) REPORT TO CONGRESS ON TOBACCO PRODUCT ADVERTISING.—

(1) IN GENERAL.—Not later than 2 years after the date of the enactment of this Act, and annually thereafter, the Commission shall submit to Congress a report relating to each category of products described in paragraph (2) (or a single report a portion of which relates to each such category) that contains the following:

(A) Information on domestic sales and advertising and promotional activity by the manufacturers that have the largest market shares of the product category.

(B) Such recommendations for legislation as the Commission may consider appropriate.

(2) PRODUCT CATEGORIES DESCRIBED.—The categories of products described in this paragraph are the following:

(A) Cigarettes.

(B) Cigars.

(C) Smokeless tobacco.

(D) Electronic nicotine delivery systems.

(c) PRESERVATION OF AUTHORITY.—Nothing in this section may be construed in any way to limit the Commission’s authority under any other provision of law.

(d) DEFINITIONS.—In this section:

(1) CIGAR.—The term “cigar” means a tobacco product that—

(A) is not a cigarette; and

(B) is a roll of tobacco wrapped in leaf tobacco or any substance containing tobacco.

(2) CIGARETTE.—The term “cigarette” has the meaning given such term in section 900 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 387).

(3) COMMISSION.—The term “Commission” means the Federal Trade Commission.

(4) ELECTRONIC NICOTINE DELIVERY SYSTEM.—The term “electronic nicotine delivery system”

means a tobacco product that is an electronic device that delivers nicotine, flavor, or another substance via an aerosolized solution to the user inhaling from the device (including e-cigarettes, e-hookah, e-cigs, vape pens, advanced refillable personal vaporizers, and electronic pipes) and any component, liquid, part, or accessory of such a device, whether or not sold separately.

(5) **ENDORSE.**—The term “endorse” means to communicate an advertising message (including a verbal statement, demonstration, or depiction of the name, signature, likeness, or other identifying personal characteristics of an individual or the name or seal of an organization) that consumers are likely to believe reflects the opinions, beliefs, findings, or experiences of a party other than the sponsoring advertiser, even if the views expressed by such party are identical to those of the sponsoring advertiser.

(6) **NICOTINE.**—The term “nicotine” has the meaning given such term in section 900 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 387).

(7) **SMOKELESS TOBACCO.**—The term “smokeless tobacco” has the meaning given such term in section 900 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 387).

(8) **TOBACCO PRODUCT.**—The term “tobacco product” has the meaning given such term in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321).

### TITLE III—PUBLIC HEALTH PROGRAMS

#### SEC. 301. OUTREACH TO MEDICALLY UNDERSERVED COMMUNITIES.

Section 399V of the Public Health Service Act (42 U.S.C. 280g–11) is amended—

(1) in subsection (b)—

(A) by redesignating paragraphs (4) and (5) as paragraphs (5) and (6), respectively; and

(B) by inserting after paragraph (3) the following:

“(4) to educate and provide guidance to medically underserved communities, particularly racial and ethnic minority populations, regarding effective evidence-based strategies—

“(A) to prevent tobacco, e-cigarette, and nicotine addiction, including among youth; and

“(B) for smoking cessation, including cessation of the use of menthol-flavored tobacco products, and the cessation of the use of e-cigarettes and electronic nicotine delivery systems;”;

(2) in subsection (d)(1)(B), by inserting “, including chronic diseases related to and caused by tobacco use” after “diseases”; and

(3) in subsection (j), by striking “are authorized to be appropriated, such sums as may be necessary to carry out this section for each of fiscal years 2010 through 2014” and inserting “is authorized to be appropriated, and there is appropriated, out of any funds in the Treasury not otherwise appropriated, \$75,000,000 to carry out this section for each of fiscal years 2021 through 2025”.

#### SEC. 302. DEMONSTRATION GRANT PROGRAM TO DEVELOP STRATEGIES FOR SMOKING CESSATION IN MEDICALLY UNDERSERVED COMMUNITIES.

Part B of title III of the Public Health Service Act (42 U.S.C. 243 et seq.) is amended by inserting after section 317U (42 U.S.C. 247b–23) the following:

#### “SEC. 317V. DEMONSTRATION GRANT PROGRAM TO DEVELOP STRATEGIES FOR SMOKING CESSATION IN MEDICALLY UNDERSERVED COMMUNITIES.

“(a) **IN GENERAL.**—The Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall establish a demonstration program to award grants to, or contract with, State, local, or Tribal public health departments to support—

“(1) the development of improved evidence-based strategies for smoking cessation, including cessation of the use of menthol-flavored tobacco products, and the cessation of the use of e-cigarettes and electronic nicotine delivery systems, for populations in medically underserved com-

munities, particularly racial and ethnic minority populations;

“(2) the development of improved communication and outreach tools to reach populations in medically underserved communities, particularly racial and ethnic minority populations, addicted to tobacco products, including e-cigarettes and menthol-flavored tobacco products; and

“(3) improved coordination, access, and referrals to services for tobacco cessation and the cessation of the use of e-cigarettes and electronic nicotine delivery systems, including tobacco cessation products approved by the Food and Drug Administration and mental health and counseling services.

“(b) **APPLICATION.**—To be eligible to receive a grant under subsection (a), a State, local, or Tribal public health department shall submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require.

“(c) **AUTHORIZATION OF APPROPRIATIONS.**—To carry out this section, there is authorized to be appropriated, and there is appropriated, out of any funds in the Treasury not otherwise appropriated, \$75,000,000 for each of fiscal years 2021 through 2025.”.

#### SEC. 303. PUBLIC AWARENESS, EDUCATION, AND PREVENTION CAMPAIGN.

Part B of title III of the Public Health Service Act (42 U.S.C. 243 et seq.), as amended by section 302, is further amended by inserting after section 317V the following new section:

#### “SEC. 317W. PUBLIC AWARENESS, EDUCATION, AND PREVENTION CAMPAIGN REGARDING TOBACCO.

“(a) **IN GENERAL.**—The Secretary, acting through the Director of the Centers for Disease Control and Prevention and in consultation with the Surgeon General of the Public Health Service, shall develop and implement a national campaign to educate youth and young adults, parents, clinicians, health professionals, and others about the harms associated with the use by youth and young adults of tobacco products, including e-cigarettes.

“(b) **REQUIREMENTS.**—The campaign under this section shall—

“(1) be an evidence-based media and public engagement initiative;

“(2) be carried out through competitively bid contracts;

“(3) include the development of culturally and linguistically competent resources that may be tailored for communities with high rates of youth tobacco use;

“(4) be complementary to, and coordinated with, any other Federal efforts; and

“(5) include message testing to identify culturally and linguistically competent and effective messages for behavioral change.

“(c) **OPTIONAL COMPONENTS.**—The campaign under this section may include—

“(1) the use of—

“(A) television, radio, print, the internet, and other commercial marketing venues; and

“(B) in-person public communications; and

“(2) the award of grants to State, local, and Tribal public health departments to encourage partnerships with community organizations and health care providers to develop and deliver evidence-based strategies to prevent youth tobacco use.

“(d) **FUNDING.**—To carry out this section, there is authorized to be appropriated, and there is appropriated, out of any funds in the Treasury not otherwise appropriated, \$45,000,000 for each of fiscal years 2021 through 2025.”.

#### SEC. 304. TOBACCO CESSATION TREATMENT GRANTS TO HEALTH CENTERS.

(a) **IN GENERAL.**—Section 330 of the Public Health Service Act (42 U.S.C. 254b) is amended—

(1) by redesignating subsections (k) through (r) as subsections (l) through (s), respectively; and

(2) by adding after subsection (j) the following new subsection:

“(k) **TOBACCO CESSATION GRANTS.**—

“(1) **IN GENERAL.**—The Secretary may award grants to health centers to provide comprehensive tobacco cessation treatment, including counseling and tobacco cessation therapies.

“(2) **FUNDING.**—For the purpose of carrying out this subsection, in addition to other amounts available for such purpose, there is authorized to be appropriated, and there is appropriated, out of funds in the Treasury not otherwise appropriated, \$125,000,000 for each of fiscal years 2021 through 2025.”.

(b) **CONFORMING CHANGES.**—Section 330 of the Public Health Service Act (42 U.S.C. 254b) is amended—

(1) in subsection (c)(3)(B), by striking “(k)(3)(J)” and inserting “(l)(3)(J)”;

(2) in subsection (e)(1)(B), by striking “(k)(3)” each place it appears and inserting “(l)(3)”;

(3) in subsection (l)(3)(H), as redesignated, by striking “or (p)” and inserting “or (q)”;

(4) in subsection (m), as redesignated—

(A) by striking “(k)(3)” and inserting “(l)(3)”;

and

(B) by striking “(m)” and inserting “(n)”;

(5) in subsection (q), as redesignated, by striking “(k)(3)(G)” and inserting “(l)(3)(G)”;

(6) in subsection (s)(2)(A), as redesignated—

(A) by striking “(k)(3)” and inserting “(l)(3)”;

and

(B) by striking “(k)(3)(H)” and inserting “(l)(3)(H)”;

“(l)(3)(H)”;

(7) in subsection (s)(3)(I), as redesignated, by striking “(q)(4)” and inserting “(r)(4)”.

(c) **TECHNICAL CORRECTIONS.**—

(1) Section 330(h)(5)(B) of the Public Health Service Act (42 U.S.C. 254b(h)(5)(B)) is amended by striking “substance abuse” each place it appears and inserting “substance use disorder”.

(2) Subclause (II) of subsection (l)(3)(E)(i), as redesignated, of section 330 of the Public Health Service Act (42 U.S.C. 254b) is amended by moving the indentation 2 ems to the left.

#### SEC. 305. GRANTS FOR RESEARCH.

Part P of title III of the Public Health Service Act (42 U.S.C. 280g et seq.) is amended by adding at the end the following new section:

#### “SEC. 399V–7. GRANTS FOR RESEARCH ON PREVENTION, AND CESSATION, OF THE USE OF TOBACCO PRODUCTS.

“(a) **IN GENERAL.**—The Secretary shall award grants to support—

“(1) research to develop and improve effective strategies for prevention, and cessation, of the use of tobacco products, including—

“(A) cessation of the use of flavored combustible cigarettes, including menthol-flavored cigarettes;

“(B) cessation of the use of e-cigarette products; and

“(C) prevention and cessation strategies targeted toward youth; and

“(2) research to aid in the development of safe and effective tobacco cessation therapies, including therapies appropriate for populations under the age of 18.

“(b) **FUNDING.**—To carry out this section, there is authorized to be appropriated, and there is appropriated, out of any funds in the Treasury not otherwise appropriated, \$75,000,000 for each of fiscal years 2021 through 2025.”.

### TITLE IV—NICOTINE OR VAPING ACCESS PROTECTION AND ENFORCEMENT

#### SEC. 401. INCREASING CIVIL PENALTIES APPLICABLE TO CERTAIN VIOLATIONS OF RESTRICTIONS ON SALE AND DISTRIBUTION OF TOBACCO PRODUCTS.

(a) **PENALTIES.**—Subparagraph (A) of section 103(q)(2) of the Family Smoking Prevention and Tobacco Control Act (21 U.S.C. 333 note) is amended to read as follows:

“(A) **IN GENERAL.**—The amount of the civil penalty to be applied for violations of restrictions promulgated under section 906(d), as described in paragraph (1), shall be as follows:

“(i) With respect to a retailer with an approved training program, the amount of the civil penalty shall not exceed—

“(I) in the case of the first violation, \$0, together with the issuance of a warning letter to the retailer;

“(II) in the case of a second violation within a 12-month period, \$500;

“(III) in the case of a third violation within a 24-month period, \$1,000;

“(IV) in the case of a fourth violation within a 24-month period, \$4,000;

“(V) in the case of a fifth violation within a 36-month period, \$10,000; and

“(VI) in the case of a sixth or subsequent violation within a 48-month period, \$20,000 as determined by the Secretary on a case-by-case basis.

“(ii) With respect to a retailer that does not have an approved training program, the amount of the civil penalty shall not exceed—

“(I) in the case of the first violation, \$500;

“(II) in the case of a second violation within a 12-month period, \$1,000;

“(III) in the case of a third violation within a 24-month period, \$2,000;

“(IV) in the case of a fourth violation within a 24-month period, \$4,000;

“(V) in the case of a fifth violation within a 36-month period, \$10,000; and

“(VI) in the case of a sixth or subsequent violation within a 48-month period, \$20,000 as determined by the Secretary on a case-by-case basis.”

(b) **APPLICABILITY.**—The amendment made by subsection (a) applies with respect to a violation of a restriction promulgated under section 906(d)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 387f(d)(1)), as described in section 103(q)(1) of the Family Smoking Prevention and Tobacco Control Act (21 U.S.C. 333 note), occurring on or after the day that is 6 months after the date of enactment of this Act. The penalties specified in section 103(q)(2)(A) of the Family Smoking Prevention and Tobacco Control Act (21 U.S.C. 333 note), as in effect on the day before the date of enactment of this Act, shall continue to apply to violations occurring before the day specified in the preceding sentence.

#### **SEC. 402. STUDY AND REPORT ON E-CIGARETTES.**

Not later than 5 years after the date of enactment of this Act, the Comptroller General of the United States shall—

(1) complete a study on—

(A) the relationship of e-cigarettes to tobacco cessation;

(B) the perception of the harmful effects of e-cigarettes; and

(C) the effects of secondhand exposure to smoke from e-cigarettes; and

(2) submit to the Congress a report on the results of such study, including recommendations based on such results.

#### **TITLE V—EXCISE TAX ON NICOTINE USED IN VAPING, ETC.**

##### **SEC. 501. IMPOSITION OF TAX ON NICOTINE FOR USE IN VAPING, ETC.**

(a) **IN GENERAL.**—Section 5701 of the Internal Revenue Code of 1986 is amended by redesignating subsection (h) as subsection (i) and by inserting after subsection (g) the following new subsection:

“(h) **NICOTINE.**—On taxable nicotine, manufactured in or imported into the United States, there shall be imposed a tax equal to the dollar amount specified in section 5701(b)(1) (or, if greater, \$50.33) per 1,810 milligrams of nicotine (and a proportionate tax at the like rate on any fractional part thereof).”

(b) **TAXABLE NICOTINE.**—Section 5702 of such Code is amended by adding at the end the following new subsection:

“(g) **TAXABLE NICOTINE.**—

“(1) **IN GENERAL.**—Except as otherwise provided in this subsection, the term ‘taxable nicotine’ means any nicotine which has been extracted, concentrated, or synthesized.

“(2) **EXCEPTION FOR PRODUCTS APPROVED BY FOOD AND DRUG ADMINISTRATION.**—Such term

shall not include any nicotine if the manufacturer or importer thereof demonstrates to the satisfaction of the Secretary of Health and Human Services that such nicotine will be used in—

“(A) a drug—

“(i) that is approved under section 505 of the Federal Food, Drug, and Cosmetic Act or licensed under section 351 of the Public Health Service Act; or

“(ii) for which an investigational use exemption has been authorized under section 505(i) of the Federal Food, Drug, and Cosmetic Act or under section 351(a) of the Public Health Service Act; or

“(B) a combination product (as described in section 503(g) of the Federal Food, Drug, and Cosmetic Act), the constituent parts of which were approved or cleared under section 505, 510(k), or 515 of such Act.

(3) **COORDINATION WITH TAXATION OF OTHER TOBACCO PRODUCTS.**—Cigars, cigarettes, smokeless tobacco, pipe tobacco, and roll-your-own tobacco shall not be treated as containing taxable nicotine solely because the nicotine naturally occurring in the tobacco from which such product is manufactured has been concentrated during the ordinary course of manufacturing.”

(c) **TAXABLE NICOTINE TREATED AS A TOBACCO PRODUCT.**—Section 5702(c) of such Code is amended by striking “and roll-your-own tobacco” and inserting “roll-your-own tobacco, and taxable nicotine”.

(d) **MANUFACTURER OF TAXABLE NICOTINE.**—Section 5702 of such Code, as amended by subsection (b), is further amended by adding at the end the following new subsection:

“(r) **MANUFACTURER OF TAXABLE NICOTINE.**—

“(1) **IN GENERAL.**—Any person who extracts, concentrates, or synthesizes nicotine shall be treated as a manufacturer of taxable nicotine (and as manufacturing such taxable nicotine).

“(2) **APPLICATION OF RULES RELATED TO MANUFACTURERS OF TOBACCO PRODUCTS.**—Any reference to a manufacturer of tobacco products, or to manufacturing tobacco products, shall be treated as including a reference to a manufacturer of taxable nicotine, or to manufacturing taxable nicotine, respectively.”

(e) **EFFECTIVE DATE.**—

(1) **IN GENERAL.**—The amendments made by this section shall apply to articles manufactured or imported in calendar quarters beginning more than 90 days after the date of the enactment of this Act.

(2) **TRANSITION RULE FOR PERMIT AND BOND REQUIREMENTS.**—A person which is lawfully engaged in business as a manufacturer or importer of taxable nicotine (within the meaning of subchapter A of chapter 52 of the Internal Revenue Code of 1986, as amended by this section) on the date of the enactment of this Act, first becomes subject to the requirements of subchapter B of chapter 52 of such Code by reason of the amendments made by this section, and submits an application under such subchapter B to engage in such business not later than 90 days after the date of the enactment of this Act, shall not be denied the right to carry on such business by reason of such requirements before final action on such application.

#### **TITLE VI—FURTHER HEALTH INVESTMENTS**

##### **SEC. 601. WAIVING MEDICARE COINSURANCE FOR COLORECTAL CANCER SCREENING TESTS.**

Section 1833(a) of the Social Security Act (42 U.S.C. 1395l(a)) is amended—

(1) in the second sentence, by striking “section 1834(0)” and inserting “section 1834(o)”;

(2) by moving such second sentence 2 ems to the left; and

(3) by inserting the following third sentence following such second sentence: “For services furnished on or after January 1, 2024, paragraph (1)(Y) shall apply with respect to a colorectal cancer screening test regardless of the

code that is billed for the establishment of a diagnosis as a result of the test, or for the removal of tissue or other matter or other procedure that is furnished in connection with, as a result of, and in the same clinical encounter as the screening test.”

##### **SEC. 602. SAFE HARBOR FOR HIGH DEDUCTIBLE HEALTH PLANS WITHOUT DEDUCTIBLE FOR CERTAIN INHALERS.**

(a) **IN GENERAL.**—Section 223(c)(2)(C) of the Internal Revenue Code of 1986 is amended—

(1) by striking “for preventive care” and inserting “for one or more of the following:

“(i) Preventive care”, and

(2) by adding at the end the following new clause:

“(ii) Inhalers or nebulizers for treatment of any chronic lung disease (and any medicine or drug which is delivered through such inhaler or nebulizer for treatment of such disease).”

(b) **CONFORMING AMENDMENT.**—The heading for section 223(c)(2)(C) of such Code is amended by striking “PREVENTIVE CARE DEDUCTIBLE” and inserting “CERTAIN DEDUCTIBLES”.

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to months beginning after the date of the enactment of this Act.

The SPEAKER pro tempore. The bill, as amended, shall be debatable for 90 minutes equally divided and controlled by the chair and the ranking minority member of the Committee on Energy and Commerce and the Committee on Ways and Means.

The gentleman from New Jersey (Mr. PALLONE), the gentleman from Oregon (Mr. WALDEN), the gentleman from Massachusetts (Mr. NEAL), and the gentleman from Texas (Mr. BRADY) each will control 22½ minutes.

The Chair recognizes the gentleman from New Jersey.

Mr. PALLONE. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, I am pleased to speak in support of H.R. 2339. This bill provides a comprehensive approach to address the youth tobacco epidemic that has unfolded before our eyes in recent years.

The numbers are disturbing. About 6.2 million American middle and high school students used some type of tobacco product last year, and one in every three high school students have used a tobacco product in the last 30 days. These numbers should alarm us all, especially as we have worked so hard and invested so much to ensure the next generation doesn't face the same type of tobacco-related disease and death as those that have preceded them.

It is clear the tobacco industry has employed the same tactics that they have used for decades to hook young people on new versions of their products in order to generate new customers that will be addicted for life. E-cigarette manufacturers like Juul have used slick product designs, glossy advertisements, and sweet flavors to appeal to kids. The rapid rise of products like these have reversed the progress we have made in slowing youth tobacco use.

In fact, the Centers for Disease Control and Prevention found that e-cigarette use by high school students has increased by 78 percent between 2017



and 2018. Young people have said that kid-friendly flavors like bubble gum, chocolate, cotton candy, and mango are the driving force behind why they say they began using e-cigarettes in the first place.

There is also evidence that kids perceive flavored tobacco products to be less harmful than nonflavored alternatives. And flavors mask the harshness and flavor of the tobacco, causing young and adult smokers to smoke more, not less.

But e-cigarettes are not the only contributor to the youth tobacco epidemic. Research has shown that menthol-flavored cigarettes have contributed to the increased number of young people smoking. In 2019, nearly half of middle and high school students who were currently smoking used menthol cigarettes.

Congressional action is necessary today because President Trump broke his promise to clear the market of flavored e-cigarettes. The administration's proposal created giant loopholes, leaving a myriad of disposable and open tank e-cigarette systems on the market that continue to attract kids, as well as menthol-flavored products.

While it is important for us to increase the minimum age to purchase tobacco products from age 18 to 21, which we did, the surge in youth tobacco usage cannot be reversed just by increasing the age alone. In order to fully combat this crisis, we need a multipronged approach that tackles all of the reasons and ways that kids are using these products, and H.R. 2339 is the solution that we need.

This bill prohibits all flavors that are so popular among kids. It updates and extends existing marketing and advertising restrictions for combustible tobacco products to all tobacco products, including e-cigarettes. It restricts the purchase of most tobacco products to only face-to-face settings and makes it explicitly unlawful to market, advertise, or promote any e-cigarette product to individuals under the age of 21. It also invests \$2 billion in Federal resources in cessation support prevention in medically underserved populations, including racial and ethnic minorities, supplying tobacco cessation therapies and counseling in community health centers, and funding new strategies for cessation of menthol tobacco products.

We are proud to have the support of more than 100 organizations, including the Campaign for Tobacco-Free Kids, the American Lung Association, the American Academy of Pediatrics, the American Heart Association, the American Cancer Society, the NAACP, and the National Medical Association.

Madam Speaker, we have to take decisive action in order to prevent losing the next generation of our kids to a lifetime of nicotine addiction. We have to pass this bill, and I urge all of my colleagues to join us in supporting the legislation.

Madam Speaker, I reserve the balance of my time

Mr. WALDEN. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, my colleague from the Energy and Commerce Committee and I do disagree on this bill.

Every Member in this Chamber is concerned, and rightfully so, about the rise in youth tobacco use. We all know this: Smoking is harmful, and we must do what we can to prevent use by children and adolescents.

This is a goal that we share as Republicans and Democrats and with President Trump, which is why we have worked together to address the increase in youth tobacco use by making it illegal for anybody under the age of 21 to buy these products. We have done that together. We have passed that. It is now law.

The use of traditional tobacco products by children has actually declined over the last decade. In fact, the surge in tobacco use in recent years has been caused by one thing, and that is the emerging popularity of e-cigarettes, vaping. The use of e-cigarettes increased from 3.6 million youth users in 2018 to 5.4 million last year. That increase is truly alarming. But that is not what this bill addresses.

We addressed youth vaping when we raised the age to 21 to be able to buy these tobacco products. Most children were acquiring e-cigarettes through social sourcing. So, what does that mean? This occurs in high schools where kids who are over 18 at that time would acquire the products and then resell them to kids who were under 18. That is what was going on. By moving the legal age to 21, we have closed that loophole.

We unanimously passed legislation requiring online retailers to verify age at the time of sale and delivery. That bill is still awaiting the Senate's action, but I think it demonstrates that we did come together in a bipartisan way to address this problem.

Now the legislation before us goes much further than most of us can support, because what it does is make legal products for adults illegal. Now, I am not a smoker, I am not a chewer, I don't do any of that stuff, but I know a lot of people who do. And they use these products as adults, and these flavored products will be banned under this law. So if you do chew, if you do smoke, if you use these menthol cigarettes or menthol chew or something, and you are an adult, this legal product today will be illegal if this bill were to become law.

Now, meanwhile, the majority Democrats have refused to address another issue that is a big problem in my communities and my schools. Marijuana-based products can still be flavored, and they are not covered by this legislation. Now, they will say, oh, that is illegal in America anyway. Well, we all know states like Oregon and others that have passed these rules, nobody is enforcing the law against marijuana, it is Federal.

But what we do have is literally products named CannaKids grape flavor. Another one over here CannaKids. This is what is happening. They are using these products mixed with acetate vitamin E oil to cut it with cannabis products, THC products, and they are vaping those. That is left out of this legislation. So you can't go to the store and get your snuff and chew that or whatever you do with it if it is menthol, but you can still go to the pot store and get this. That makes no sense to me.

Madam Speaker, I reserve the balance of my time

Mr. PALLONE. Madam Speaker, I yield 1 minute to the gentlewoman from New York (Ms. CLARKE), the vice chair of our committee.

Ms. CLARKE of New York. Madam Speaker, I thank the gentleman for yielding me time to address this very important issue.

I rise today in the best interests of the American people, the African American community, and my constituents.

I include in the RECORD this letter from the ACLU about the concerns of H.R. 2339, Reversing the Youth and Tobacco Epidemic Act.

FEBRUARY 27, 2020.

Re Coalition Concerns with Blanket Prohibition on Menthol and Other Flavored Tobacco within H.R. 2339, Reversing the Youth Tobacco Epidemic Act.

Hon. FRANK PALLONE,  
Chairman, House Committee on Energy and Commerce, Washington, DC.

The undersigned civil rights and civil liberties organizations write to express concerns with a broad prohibition on menthol and other flavored tobacco products within H.R. 2339, the Reversing the Youth Tobacco Epidemic Act of 2019. While this legislation is a well-intended effort to address health issues associated with tobacco use among youth, we have concerns that a blanket prohibition on menthol and other flavored tobacco products, which will apply to adults, will (1) disproportionately impact people and communities of color; (2) trigger criminal penalties, prioritizing criminalization over public health and harm reduction; and (3) instigate unconstitutional policing and other negative interactions with local law enforcement.

#### I. H.R. 2339 DISPROPORTIONATELY IMPACTS PEOPLE AND COMMUNITIES OF COLOR

Of adults, approximately 80 percent of Blacks and 35 percent of Latinx who choose to smoke prefer menthol cigarettes. Thus, any ban on menthol cigarettes will disproportionately affect people of color. While H.R. 2339 and similar legislation are often motivated by the desire to decrease and eliminate smoking among certain populations, Blacks and other people of color should not disproportionately bear the brunt of enforcement of such prohibitions, which a menthol ban would ensure.

Similarly, enforcement of a ban on flavored cigars will also disproportionately impact people of color given cigar preferences. Black adults are 60% of cigarillo and nonpremium cigar smokers, with these products often flavored. Additionally, at Committee markup, H.R. 2339 was amended to exempt certain traditional, expensive cigars from a prohibition of online tobacco sales. There is no justification for differentiating a La Palina from a Black and Mild. Making this

distinction undermines the public health arguments made for this bill and suggests that some tobacco preferences, within certain communities, will be prioritized and protected over others.

#### II. H.R. 2339 INCREASES CRIMINAL PENALTIES OVER PUBLIC HEALTH

H.R. 2339 prohibits menthol and other flavored tobacco products under the Food, Drug, and Cosmetic Act (FD&C Act). This prohibition criminalizes the manufacturing, importing, distributing, or selling of menthol and other flavored tobacco products under the FD&C Act, imposing up to three years of imprisonment. Violating a menthol and flavored tobacco ban would implicate other federal criminal penalties as well. For example, the Federal Cigarette Contraband Trafficking Act would be implicated, allowing up to five years of imprisonment.

With a criminal legal system that incarcerates Blacks at nearly six times the rate of white Americans and a prison population that is 67 percent Black and Latinx, any prohibition on menthol and flavored tobacco products promises continued overcriminalization and mass incarceration of people of color. A ban on menthol and flavored tobacco products could reintroduce many of the harms imposed by the failed war on drugs as lawmakers work to legalize cannabis and take a public health approach to opioids. A bill criminalizing tobacco is contrary to those efforts. Righting the wrongs of earlier failed drug policy requires consideration of the unintended consequences of well-intentioned policies, especially on the most vulnerable communities. It also requires us to remember that harm reduction, including education and counseling, are what work to reduce usage and harm in our society, not prohibition.

#### III. H.R. 2339 ENCOURAGES HARMFUL POLICE PRACTICES

Recent history shows us that drug prohibitions and bans increase negative interactions between law enforcement and people of color. The New York Police Department's (NYPD) stop and frisk program resulted in nearly 700,000 stops in 2011, with drugs serving as the alleged pretext for most of those stops. Ninety percent of those stops were of Black and Latinx people. We are concerned that law enforcement's attempts to enforce a menthol and flavored tobacco ban will undoubtedly lead to fines, arrests, and eventual incarceration for those who continue to use and sell menthol and flavored tobacco products. While the legislation was amended at Committee to try to minimize law enforcement practices here, it only applies in the context of federal enforcement of the FD&C Act; it does not govern local enforcement around any state and city prohibition policies that will follow.

The death of Eric Garner in 2014 generated national attention not only for the brutality he experienced at the hands of NYPD police, but for the reason that led to the encounter with law enforcement. Mr. Garner died from an illegal chokehold having been stopped by police for selling single cigarettes in violation of state law. Gwendolyn Carr, Eric Garner's mother, cautions: "When you ban a product sold mostly in Black communities, you must consider the reality of what will happen to that very same overrepresented community in the criminal justice system." With a federal prohibition on menthol and flavored tobacco products, states will develop their own prohibition and enforcement policies that could result in harmful police practices like that witnessed with Mr. Garner.

Based on our concerns, we urge you to not impose a blanket ban on menthol and related tobacco products. A prohibition on all men-

thol and flavored tobacco products will not achieve a public health goal of reducing smoking among Black people, young people, or others. We hope we can work together to avoid repetitions of policies that are intended to protect youth and communities of color, but instead only further engrain systemic criminalization and racism.

Sincerely,

American Civil Liberties Union, Center for Popular Democracy, Drug Policy Alliance, Friends Committee on National Legislation, Law Enforcement Action Partnership, National Action Network, National Association of Criminal Defense Lawyers.

□ 0930

Ms. CLARKE of New York. While it is indeed a health imperative to reduce and eliminate the use of tobacco products in our society, I would like to recognize the inequity, potential harm, and unintended consequences of a ban on menthol combustible products within the Reversing the Youth Tobacco Epidemic Act.

This bill's purpose is to curb youth tobacco usage by banning flavored tobacco products, more specifically ending the scourge of youth vaping in our Nation and the flavored products used to attract young people to its use.

However, this legislation has dire, unintended consequences for African American users, the overwhelming majority of which are over the age of 21.

It does not treat all flavored tobacco products equally, exempting premium cigars preferred by White smokers, yet banning menthol cigarettes. Menthol is the preferred flavor of African American tobacco users, used by 90 percent of Black tobacco users.

While I would love to assume the best intentions of all parties of this legislation and hope for the best in regard to law enforcement, lived experiences demand caution.

The SPEAKER pro tempore. The time of the gentlewoman has expired.

Mr. PALLONE. Madam Speaker, I yield an additional 30 seconds to the gentlewoman.

Ms. CLARKE of New York. Madam Speaker, as a result of this asymmetric ban, law enforcement would have an additional reason to stop and frisk menthol tobacco users because menthol would be considered illegal under this ban.

Having said that, I cannot support H.R. 2339 due to the potentially dire consequences that would create additional stop and frisk opportunities of African Americans and the constituents I took an oath to protect.

I really believe that this is a health imperative, and if that is the case, the ban should be on all tobacco products and would be the best answer. Unfortunately, this bill does not do that.

Mr. WALDEN. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, I commend my colleague for her comments and putting this letter into the RECORD. She is absolutely right, according to the ACLU, the National Association of Social Workers, the Law Enforcement Action

Partnership. They say in this letter: "Any ban on menthol cigarettes will disproportionately affect people of color."

They go on to talk about how other criminal laws will be affected under this act, including those that could lead, their concern, to the sort of stop and frisk that occurred in New York in the Eric Garner case that they cite in this letter.

Madam Speaker, I yield 2 minutes to the gentleman from Texas (Mr. FLORES).

Mr. FLORES. Madam Speaker, I thank Mr. WALDEN for yielding.

Madam Speaker, I rise in strong opposition to H.R. 2339, a bill that bans all flavors of all tobacco products while imposing a new excise tax on vaping products.

Let me start by saying this: I don't smoke. I don't chew. I don't vape. And I don't dip. But I do represent adult constituents who do.

Bills like this make it clear that House Democrats are more interested in placing partisan politics over real solutions.

Since 2011, the share of high school students who say they have smoked cigarettes recently has fallen from 16 percent to 6 percent. More than 2.5 million U.S. adult smokers have quit smoking by switching to e-cigarettes, and many rely on flavored e-liquids.

If flavored e-cigarettes are outright banned and e-cigarettes have increased taxes, as this bill does, many of these ex-smokers will return to traditional cigarettes while others will be forced into the dangerous e-cigarette black market that this legislation creates.

Let's be clear: Science proves that e-cigarettes are safer than traditional smoking.

Both Congress and President Trump have taken important steps to address the youth vaping epidemic. Unfortunately, today's legislation has nothing to do with the youth vaping epidemic and would instead eliminate consumer choice for millions of law-abiding adults.

Mr. PALLONE. Madam Speaker, I yield 1 minute to the gentlewoman from Minnesota (Ms. CRAIG).

Ms. CRAIG. Madam Speaker, I thank the chairman for his time and especially for his leadership on this issue.

The tobacco industry has targeted our kids for too long, and we have a moral responsibility to act. E-cigarette usage among middle and high school students is a public health crisis. The industry's targeting of our children has resulted in the highest rate of tobacco usage in 20 years as a new generation is addicted to nicotine.

It is all disguised by the 15,000 flavors, like mint, mango, and cotton candy, developed to cover up the unpleasant harshness affiliated with tobacco use.

This is absolutely unacceptable. As a mother, I have survived middle school four times with four sons, and three have now finished high school. I have



seen how rampant and widespread vaping has become in our Nation's schools. Parents and schools need our help.

Madam Speaker, my colleagues and I must stand up to the industries responsible for this epidemic. Public health—more importantly, our children's health—depends on it.

Madam Speaker, I strongly support and urge my colleagues to support this bill.

Mr. WALDEN. Madam Speaker, I yield 2½ minutes to the gentleman from North Carolina (Mr. HUDSON), a distinguished member of the Energy and Commerce Committee.

Mr. HUDSON. Madam Speaker, we have a crisis of youth vaping, and we have seen a disturbing number of lung injuries and deaths tied to the oil used in marijuana vaping, but this bill does nothing to impact either. In fact, Republicans offered an amendment in committee to ban flavored marijuana vaping, the root cause of lung injuries and deaths, and every single Democrat voted “no.”

The fact is, working with President Trump, this Congress has already taken major bipartisan actions to combat the youth vaping epidemic. We have already raised the age to purchase tobacco products to 21; the President banned flavors in e-cigarettes; and the House passed legislation to require an ID check at every tobacco point of sale. Clearly, there is bipartisan support on this issue. Unfortunately, this is not what we are voting on today.

The bill before us today is a partisan publicity stunt. This bill is not about youth vaping. This bill is the worst example of Big Brother, liberal elites telling the rest of us how to live our lives.

They say tobacco vaping, a safer alternative to smoking, is bad, but marijuana vaping, the root cause of injury and death, is okay.

The \$100 cigars that their liberal elite campaign donors smoke, those are okay, but cheaper cigars and menthol cigarettes smoked by working men and women in this country, those would be banned.

You can vape flavored marijuana in San Francisco, but they are going to take away your flavored dip in Scranton.

Let's set aside this partisan overreach and continue to work together to solve this crisis, to deal with the real root causes.

This is not a public health response to an epidemic. It is Big Government, liberal elites telling adults what they can and cannot do.

Madam Speaker, I urge my colleagues to vote “no.”

Mr. PALLONE. Madam Speaker, I yield 2 minutes to the gentlewoman from Illinois (Ms. SCHAKOWSKY), who chairs our Consumer Protection and Commerce Subcommittee.

Ms. SCHAKOWSKY. Madam Speaker, I thank the chairman for yielding.

This certainly is an issue of consumer protection.

I rise in support of this bill so that we can take action to end the youth tobacco epidemic before it claims any more lives.

Prohibiting flavors that attract youngsters across the board, we need to eliminate these flavors that are really the thing that attracts them the most. We can take that step to ensure that more youth do not get addicted to nicotine and tobacco.

In addition to fruity flavors, menthol plays a significant role in attracting kids to cigarettes. By cooling and numbing the throat, menthol makes it easier to hook kids on smoking. Over half of all youth who smoke cigarettes smoke menthol cigarettes, compared to less than one-third of adult smokers.

The NAACP, the National Medical Association, the Black Women's Health Imperative, and many other organizations are supporting this legislation and voicing their approval of the legislation.

There is no public health justification for removing menthol tobacco products from the flavor prohibition in this bill.

Big Tobacco is trying to divert our attention from that by raising questions of criminal justice that we have gone above and beyond to protect against in this bill.

We don't want to create a whole new generation of people addicted to nicotine; that is the intention of the tobacco industry.

Let's keep our focus and pass this legislation for our kids.

Mr. WALDEN. Madam Speaker, I yield myself such time as I may consume.

I want to point out again that if you want to do something about kids, if you want to do something about lung disease, then we need to do something about marijuana and the oils it gets mixed with that this bill does not address.

These are literally named CannaKids—CannaKids, flavors. What does this one say? Liquid Black Cherry, DOPE.

They voted that down when we tried to put this in the bill to ban it. If you are going to ban something, let's ban something kids are using. But, no, we let the marijuana products go forward.

Madam Speaker, I yield 2 minutes to the gentleman from Georgia (Mr. ALLEN).

Mr. ALLEN. Madam Speaker, we all agree that the current youth vaping trend is cause for concern, and we must evaluate strategies to prevent young people from using e-cigarettes and tobacco products. But this bill does nothing to address the youth vaping epidemic or the use of illicit products that have been linked to the outbreak of lung illnesses as just described by our ranking member.

That is why this body has taken steps to address this issue, including passing legislation to raise the minimum age to buy tobacco products from 18 to 21.

But the flavored tobacco ban and excise tax increase act is a textbook example of Federal overreach. H.R. 2339 would instead ban all flavors for all tobacco products and impose a new excise tax on nicotine used in vaping.

I find it confusing that many of my colleagues who support banning these tobacco products also support legalizing marijuana. Where is the common sense in this House?

Instead of putting a partisan, overreaching bill on the floor, Democrats should work with Republicans on bipartisan solutions that actually address the youth vaping epidemic that we are going to talk about here probably the entire time we are debating this issue.

Mr. WALDEN. Madam Speaker, I would inquire how much time is remaining on each side.

The SPEAKER pro tempore. The gentleman from Oregon (Mr. WALDEN) has 13 minutes remaining. The gentleman from New Jersey (Mr. PALLONE) has 14 minutes remaining.

Mr. PALLONE. Madam Speaker, I want to say that Ms. PELOSI has been so much out front on trying to move this bill and always thinks of herself as a mom or, as she says, a grandmother first, and that is why she so cares about the children.

Madam Speaker, I yield 1 minute to the gentlewoman from California (Ms. PELOSI), our Speaker.

Ms. PELOSI. Madam Speaker, I thank the gentleman for yielding, for his kind words about calling me a mom, as that is the greatest thrill of my life, now grandmother as well.

I very much thank the chairman, Mr. PALLONE, for his leadership in bringing this legislation to the floor. It is so important for our children.

Madam Speaker, to Mr. RICHARD NEAL, I thank him for the role that the Ways and Means Committee played in this as well. I want to acknowledge and thank Mr. TOM SUOZZI for the work that he did on the tax piece in here, and also DONNA SHALALA, who knows so much about this subject in so many capacities that she has served our government and our children, as well as KAREN BASS, the chair of the Congressional Black Caucus.

When people ask me what are the three most important issues facing Congress, now for 30 years or so in Congress, I have always said the same thing: our children, our children, our children; their health; their education; the economic security of their families; a safe, clean environment in which they can thrive; a world at peace in which they can reach their fulfillment.

□ 0945

It is all about the children. It is all about their future.

Today, I rise to join my colleagues to take urgently needed action to confront the growing youth tobacco crisis, which is, in the words of the U.S. Surgeon General, an “epidemic.”

This is legislation to protect our children, and I thank Mr. PALLONE and Mr. NEAL for their leadership here.

Today, corporations are waging a brazen special interest campaign to addict our children to e-cigarettes. Last year, more than 5 million middle school and high school students were using e-cigarettes, up from 3.6 million just last year, and more than 3 million more than 2 years ago, according to the Centers for Disease Control. Nearly 1 million children are using e-cigarettes every day.

Earlier today, we all met Abby, a high school student from Kentucky, and several other students, parents, and teachers who shared their stories. Abby spoke about how she was just a freshman—she is 15 now, but she was just a freshman when her friends offered her an e-cigarette at her first high school football game.

She quickly became addicted and started spending birthday money and babysitting cash to pay for e-cigarettes that older friends in high school would buy. She tried to quit, but headaches and other painful symptoms of withdrawal prevented her. Only when her supply was cut off was she able to stop.

Abby said that she never would have tried a traditional cigarette, which she and her peers considered “harmful and disgusting,” but they just did not know the facts about e-cigarettes, which Big Tobacco had designed to specifically target and addict millions of young people like her.

Youth tobacco use is a serious public health crisis that is endangering young people like Abby.

Today, I also met with the pediatrician Dr. Falusi, representing 67,000 pediatricians, members of the American Academy of Pediatrics. This is what Dr. Falusi said: “The teenage brain is still developing, and symptoms of dependence can appear within days of first use. These products quickly deliver high levels of nicotine, so addiction can happen fast. Adolescents often have no idea how much nicotine they’re getting from each hit.

“In the short term, we’ve seen compromised lung function and asthma exacerbations as well as seizures and respiratory distress, but we still don’t know the long-term health effects of e-cigarette use. That should alarm us all.”

Dr. Falusi went on to say: “Pediatricians have seen this addiction in our own patients. We receive frantic calls from parents whose children don’t know how to stop using. We’ve even heard of teens who sleep with the e-cigarette under their pillow at night because they” want to use them as soon as they wake up to vape.

We also heard from our distinguished colleague, Mr. RUIZ, who will be speaking—so I won’t quote him—and Dr. SCHRIER, the Congresswoman from Washington State, a pediatrician, speaking on this subject.

With this bill, we are protecting the health of millions of young people who are at risk from Big Tobacco’s deadly products.

Most importantly, this bill blocks the manufacture and sale of all fla-

vored tobacco products, including flavored e-cigarettes. Studies show that 7 out of 10 users of e-cigarettes do so because they come in flavors like gummy bear and mango.

This ban also covers menthol cigarettes—which more than half of youth smokers and 7 in 10 African American youth smokers smoke.

This bill, therefore, helps ensure justice and reduces health disparities. The National Medical Association, the association for African American doctors; NAACP; National Black Nurses Association; African American Tobacco Control Leadership Council; Association of Black Cardiologists; Black Women’s Health Imperative; and many other associations have put out this call for action from this Congress.

They said: “Today, the tobacco industry is using e-cigarettes to hook a new generation with flavors like bubble gum, mint, mango—and menthol. It’s a public health crisis affecting over 5.3 million kids.”

“Congress,” it says, “End the sale of all flavored tobacco products, including menthol cigarettes and flavored e-cigarettes. Support H.R. 2339 to protect our kids.”

Again, that is from the NAACP, National Black Nurses Association, National Medical Association, Black Women’s Health Imperative, Association of Black Cardiologists, and the African American Tobacco Control Leadership Council.

Madam Speaker, they joined scores of other organizations who are representing communities of color and otherwise.

I include in the RECORD a flyer from the Tobacco-Free Kids Action Fund.

BIG TOBACCO HAS NO PROBLEM TARGETING  
AFRICAN AMERICAN COMMUNITIES  
BUT CONGRESS SHOULD HAVE A PROBLEM WITH  
IT

For decades, Big Tobacco has targeted African Americans with menthol cigarettes, with devastating consequences. Menthol cigarettes have addicted generations of African Americans, resulting in high death rates from lung cancer, heart disease, stroke and other smoking-related illnesses. Seven out of ten African American youth smokers smoke menthol, making them more likely to become addicted smokers.

Today, the tobacco industry is using e-cigarettes to hook a new generation with flavors like bubble gum, mint, mango—and menthol. It’s a public health crisis affecting over 5.3 million kids.

Congress: End the sale of all flavored tobacco products, including menthol cigarettes and flavored e-cigarettes. Support H.R. 2339 to protect our kids.

Paid for by Tobacco-Free Kids Action Fund  
Ms. PELOSI. Madam Speaker, the bill protects our communities with other strong steps, including prohibiting companies from marketing e-cigarettes to youth under age 21. Ninety-five percent of adult smokers start before age 21, and those who do not begin smoking by their early twenties are unlikely to start.

Group after group is demanding action. More than 75 organizations—from the American Academy of Pediatrics to

the American Federation of Teachers, to the National Association of School Nurses, to the Society of Thoracic Surgeons—recently wrote: “This legislation will address the current youth e-cigarette epidemic that is undermining the progress made in reducing youth tobacco use.”

We had all of the tobacco-free kids there lined up in their T-shirts. These little children know better than some of us in this Chamber how dangerous these e-cigarettes are to our young children, especially those in middle school who are so very young and that we see evidence of.

Now, let me just say, in our own community in San Francisco, Juul came in with a proposal, and they were selling it as if this is the way we are going to stop young children from smoking. We are going to have them smoke e-cigarettes, and we are going to do this and that. It was a total fraudulent campaign. Some of us just stepped forward and said: This is wrong.

But I wish some of you could see the ads that they sent to our homes, as if they were the saviors of children instead of the addicts of children, putting them on a path to tobacco use.

So there is a lot of money involved here from the tobacco industry, and we have to weigh the equities in favor of children and not in favor of profits for the tobacco industry for a long time to come.

Madam Speaker, I urge our colleagues to vote for this legislation. We cannot stand by while tobacco companies entice a new generation of young people into a lifetime of nicotine addiction and preventable death.

Congress must act for young people like Abby and millions of others exposed to the scourge of tobacco. I urge a strong bipartisan vote. I thank so many of our Members who have taken the lead on protecting our children, our children, our children.

Mr. WALDEN. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, I just want to point out the administration, in their opposition to this legislation, reminds us that, in January of 2020, the administration issued guidance to prioritize enforcement against the unauthorized marketing of certain vaping products to youth.

The FDA is conducting regular surveillance and, when appropriate, taking enforcement measures against websites, social media, and other publications that advertise regulated tobacco products.

And the Speaker knows, the President signed into law the ban against these products being sold to anyone 21 and under. So we agree that it is about the children. We believe Congress has acted in this measure. This bill is about adults.

Madam Speaker, I yield 1½ minutes to the gentlewoman from North Carolina (Ms. FOXX), the top Republican on the Education and Labor Committee.

Ms. FOXX of North Carolina. Madam Speaker, I thank my colleague for yielding.

Madam Speaker, I rise in opposition to H.R. 2339. While I don't doubt the majority's sincere interest in reducing nicotine use among minors, this bill is a premature and poorly thought-out attempt to do so.

Instead of building on bipartisan efforts to address teenage smoking, such as raising the age to purchase tobacco to 21, H.R. 2339 broadly overreaches and contains provisions that would unacceptably restrict the choice of adult consumers. It would have a negligible impact on teenage tobacco use and, instead, could actually increase the use of illicit and more dangerous tobacco products.

As my colleagues have pointed out this morning, most on the other side of the aisle favor legalizing marijuana, which has proven to be harmful and leads to worse drugs, but will vote for this bad bill. If one is concerned about teenagers, don't push marijuana.

This bill does nothing to address the actual injuries we do see from vaping products, which are typically associated with illegal THC vapor products and not the products covered under H.R. 2339.

This is a bad bill, and I urge my colleagues to vote "no."

Mr. PALLONE. Madam Speaker, I yield 2 minutes to the gentleman from California (Mr. RUIZ), a member of our committee.

Mr. RUIZ. Madam Speaker, I thank the gentleman for yielding.

Madam Speaker, I am an emergency physician trained in humanitarian disaster aid and a public health expert, and I represent California's 36th Congressional District.

As a doctor, I am all too familiar with the devastation that addiction to nicotine can cause, devastation such as strokes, heart attack, COPD, and patients coming in with 100 percent oxygen because they can't breathe without it. I have seen, firsthand, the health decline in patients who tried nicotine as teenagers, who got addicted and never quit.

When we talk about vaping, we need to make sure we identify three different problems:

One is the problem of the acute respiratory distress syndrome, that caused by open containers where they can mix different types of chemicals, including THC, that have the vitamin E oils that can cause severe lung damage that requires lung transplant. That is one issue.

Another issue is whether or not there is a public benefit or whether or not vaping is safe. It is not. That is a general conversation.

This bill addresses the third issue, which is that kids using these products are getting addicted at an alarming rate. The number of kids using these products is disturbing to me as a Member of Congress, as a physician, and as a parent of two young kids.

From 2017 to 2019, e-cigarette use doubled among high school students and tripled among middle school students. There are 5 million kids using e-cigarettes today, an increase of 3 million in just 2 years, and the health effects of these are real and dangerous.

Cigarettes, no doubt, are the deadliest form of tobacco. No tobacco product, however, is safe. Vape aerosol contains some of the same chemicals found in cigarette smoke: chromium, formaldehyde, lead, nickel, and tin.

Nicotine use changes an adolescent's brain cell activity affecting attention, learning, behavior, and memory function.

The SPEAKER pro tempore. The time of the gentleman has expired.

Mr. PALLONE. Madam Speaker, I yield the gentleman from California an additional 1 minute.

Mr. RUIZ. Madam Speaker, research shows that you are more likely to start smoking cigarettes if you vape, and using nicotine at an early age means you are more likely to be addicted for life.

So we need to address and pass H.R. 2339, the Protecting American Lungs and Reversing the Youth Tobacco Epidemic Act of 2019, because it will help us reach the objective of reducing the youth vaping epidemic.

This bill also contains my bill, the NO VAPE Act, which will crack down on retailers who sell these products to underaged youth.

It is my job as a public health expert and it is our job as Members of Congress to ensure measures are put in place to prevent more Americans from getting hooked on nicotine at an early age. So I urge a vote on H.R. 2339, Protecting American Lungs and Reversing the Youth Tobacco Epidemic Act of 2019, for the sake of our children and our public's health.

Mr. WALDEN. Madam Speaker, I yield 2 minutes to the gentleman from North Carolina (Mr. BISHOP).

Mr. BISHOP of North Carolina. Madam Speaker, I thank the gentleman for yielding.

Madam Speaker, H.R. 2339 will hurt farmers in North Carolina, disrespect the free choice of Americans—especially African Americans—and do nothing to advance public health.

The uncertainty this bill will create serves no legitimate purpose and will hurt 1,300 hard-pressed, hardworking farmers all across North Carolina.

Why are Democrats so dismissive of the interest of farmers and the challenges they face?

Consider this: Nearly 30 percent of adult tobacco users report flavored tobacco use.

□ 1000

Almost nine in ten adult African American smokers choose menthol. This bill would ban them all.

How can you not only dismiss but discriminate against their adult choices?

Do you really expect that no black market will emerge to cater to those choices?

Have you considered the harms that will result from that?

Kids shouldn't use tobacco, nor, in my opinion, should adults, but more bureaucracy, trampling arbitrarily on adult free choice, and destroying family farmers are nowhere close to the solution.

Mr. PALLONE. Madam Speaker, I yield 2½ minutes to the gentlewoman from California (Ms. ESHOO), who chairs our Health Subcommittee.

Ms. ESHOO. Madam Speaker, I thank the chair of our committee, and I rise in support of this legislation that is so important for the next generation of Americans, H.R. 2339.

Very sadly, there has been a reversal of our country's great progress on tobacco use, and it is because of flavored products and a tobacco industry that preys on our Nation's youth.

From 2017 to 2019 e-cigarette use more than doubled among high school students and more than tripled among middle schoolers—even younger. These are kids. They are not even young adults yet. By 2019, last year, 5.3 million middle and high school students were current users, already using some type of tobacco product or e-cigarettes.

Over 80 percent of kids who have used tobacco started with a flavored product. That is the hook. According to the surgeon general, they begin using and become addicted to these products because e-cigarette manufacturers have targeted extensive advertising campaigns to kids and to young adults. So this didn't just come out of the ether. This is very purposeful. It is directed, and it is targeted to middle schoolers and high schoolers.

Last year Congress raised the legal age to purchase tobacco to 21, but in January the President walked back his promise to address the youth tobacco epidemic by taking only some flavored e-cigarette products off the market. But as we heard from witnesses during our subcommittee hearing last October, those actions are not enough.

The single most important action to reduce youth e-cigarette use is to crack down on the flavors because that is what addicts our kids. If any flavored products are still available, kids are going to find a way to get them. All flavors must be removed from the market including menthol, because this, again, is what hooks kids on smoking, and this legislation addresses that.

We also have to address how tobacco companies target their advertisements to our kids. This bill ensures that e-cigarettes have the same strict marketing prohibitions as other tobacco products.

The SPEAKER pro tempore. The time of the gentlewoman has expired.

Mr. PALLONE. Madam Speaker, I yield the gentlewoman from California an additional 30 seconds.

Ms. ESHOO. Madam Speaker, I think it is eminently clear that Congress must pass strong legislation to reduce the attractiveness and availability of flavored tobacco products to adolescents and teens to save this generation

from lifetime addiction. There are costs to addiction, and our healthcare system has to absorb that.

So why not prevent it and stop it in its tracks today?

That is why I urge my colleagues to vote for H.R. 2339 to accomplish all of this.

Mr. WALDEN. Madam Speaker, may I inquire as to the time available on both sides.

The SPEAKER pro tempore. The gentleman from Oregon has 9½ minutes remaining. The gentleman from New Jersey has 7 minutes remaining.

Mr. WALDEN. Madam Speaker, I yield 2 minutes to the gentleman from Kentucky (Mr. COMER).

Mr. COMER. Madam Speaker, few would deny that we are facing a dangerous epidemic of youth vaping.

But the bill before us today is not about youth vaping. Instead, this legislation seeks to eliminate consumer choice of flavored tobacco products for law-abiding adults over the age of 21.

With this bill Democrats are seeking to play politics with a crisis and ram through an extreme, partisan measure that is government overreach at its finest.

We should be focused on reducing youth consumption and removing counterfeit products from the market. That is what this debate should focus on, not reducing the freedoms of law-abiding adults. Unfortunately, Democrats are making clear that they are uninterested in further action to reduce youth tobacco use. By banning flavored tobacco products and the sale of menthol cigarettes for adults, they are seeking to destroy consumer freedom in this country.

Thankfully, if this bill were to pass today, this anti-consumer choice overreach will be stopped in its tracks in the Senate.

Mr. PALLONE. Madam Speaker, I yield 2 minutes to the gentleman from Illinois (Mr. RUSH), who is the chairman of our Energy Subcommittee.

Mr. RUSH. Madam Speaker, I want to thank the gentleman for yielding.

Madam Speaker, I am proud to rise today in support of H.R. 2339, the Reversing the Youth Tobacco Epidemic Act.

This bill would ban menthol products which are primarily used because of decades of predatory advertising by tobacco companies in the African American community and on the African American community, particularly, Madam Speaker, African American males, the so-called Kool generation, spelled with a K and not a C.

Smoking cigarettes, especially menthol-flavored cigarettes, has resulted in approximately 45,000 African American deaths each and every year. Lung cancer, COPD, and heart disease are the leading preventable causes of death for African Americans. Smoking menthol-flavored cigarettes is the primary culprit.

Earlier this week, Madam Speaker, I wrote an op-ed with Nancy Brown, the

CEO of the American Heart Association, on the importance of this bill and the ban on menthol flavoring for our kids' health. I am pleased to report that our op-ed was published in *The Hill* on last Wednesday.

Madam Speaker, I include in the RECORD my op-ed.

[From *The Hill*, Feb. 26, 2020]

NO EXCEPTIONS WHEN IT COMES TO KIDS' HEALTH

(By Rep. Bobby L. Rush (D-IL) and Nancy Brown)

Imagine a world in which our children are not using tobacco or addicted to nicotine—a world in which tobacco products that appeal to youth cannot be sold, the tobacco industry is prohibited from preying upon youth with their deceptive marketing, and tobacco no longer represents a grave health threat to children.

With tobacco and nicotine use among youth at epidemic levels in this country, we must address this public health crisis. The House of Representatives has an historic opportunity to do just that this week by passing the Reversing the Youth Tobacco Epidemic Act, a bill that takes bold action to remove all flavored e-cigarettes and other tobacco products, including menthol, from the market.

Until recently, the goal of a tobacco- and nicotine-free generation seemed within reach. Youth smoking rates, which were at 28 percent in 1997, fell to just 5 percent in 2018. But this hard-fought public health success against youth tobacco use is threatened by the skyrocketing popularity of e-cigarettes. More than 1 in 4 high-school students and more than 5 million youth nationwide now report using e-cigarettes, which pose serious health risks to users and could increase the likelihood of traditional cigarette use. An American Heart Association study released last year found that kids who use e-cigarettes are more likely to start smoking traditional cigarettes.

The reasons for this surge in youth e-cigarette use is clear. Tobacco companies introduced thousands of products with fruit, candy, mint, and menthol flavors specifically intended to appeal to youth. The companies then designed sophisticated and well-funded marketing campaigns that relentlessly target youth on social media. While the Trump administration pledged last fall to halt the sale of all flavored e-cigarettes, the policy it released last month fell far short of that goal. Urgent action is still needed to stem the youth e-cigarette epidemic given menthol products, disposable e-cigarettes, and flavored liquid nicotine used in open tank systems are being allowed to remain on the market.

Congress took an important first step in December by raising the national minimum legal sales age for tobacco products from 18 to 21. But we know that just raising the sales age for these products is not enough to counteract the actions of an industry intent on addicting another generation of youth. The industry has known for decades that cigarettes and other tobacco products flavored with menthol are less harsh and more appealing to users—especially youth smokers. Tobacco companies have been especially aggressive with retail advertising and price promotions for menthol products in minority communities. As a result, more than 70 percent of adolescent African-American smokers and more than half of adolescent Latino smokers use menthol.

Where existing policies have fallen short, the Reversing the Youth Tobacco Epidemic Act will fill the gaps. The bipartisan legislation, first introduced by Reps. Frank Pallone

(D-N.J.) and Donna Shalala (D-Fla.), will remove all flavored tobacco products from the market within a year and subject all tobacco products, including e-cigarettes, to the same advertising restrictions that currently apply to cigarettes. It will also require e-cigarette companies to stop selling any flavored product without pre-market authorization from the Food and Drug Administration (FDA) within 30 days. Additionally, the bill directs the FDA to prohibit online sales of most tobacco products, cutting off a way many youth access these products.

We are at a pivotal moment in the fight to protect our children from tobacco-caused addiction and disease. We urge lawmakers to listen to and stand with parents and health advocates to support this important legislation.

Mr. RUSH. Madam Speaker, I encourage my colleagues to join me in supporting this very, very worthwhile legislation.

Mr. WALDEN. Madam Speaker, I reserve the balance of my time.

Mr. PALLONE. Madam Speaker, I yield 1 minute to the gentlewoman from Illinois (Ms. KELLY), who is a member of our committee.

Ms. KELLY of Illinois. Madam Speaker, as chair of the Congressional Black Caucus Health Braintrust, I rise to express my support for H.R. 2339, the Protecting American Lungs and Reversing the Youth Tobacco Epidemic Act of 2019.

This critical legislation will protect young people, especially young people of color, from a lifetime of nicotine addiction. Simply put, prohibiting menthol and other flavored tobacco products will save lives, especially Black lives.

Opponents of the legislation assert that because 85 percent of the African American smokers use menthol products that it would disproportionately harm communities of color. This logic only perpetuates the cycle in which many members of the African American community are already trapped. Tobacco companies specifically marketed menthol cigarettes to Black communities because they are more addictive. Opposing this bill only continues this shameful past.

We must pass H.R. 2339 and ensure the tobacco industry can no longer target minority communities to the detriment of public health.

Mr. WALDEN. I continue to reserve the balance of my time, Madam Speaker.

Mr. PALLONE. Madam Speaker, I yield 1 minute to the gentlewoman from Florida (Ms. WASSERMAN SCHULTZ).

Ms. WASSERMAN SCHULTZ. Madam Speaker, today we finally comprehensively address America's resurgent youth nicotine epidemic.

In 2019 more than 5.3 million middle and high school students used e-cigarettes, double the number who reported vaping just 2 years before. It is no surprise when flavors like gummy bear and cotton candy are used to lure children to e-cigarettes. And the aggressive digital marketing aimed at minors, like the campaigns Juul admitted to running, obviously work.

But this Republican administration failed to holistically address this issue. Worse, they caved to Big Tobacco by embracing a woefully inadequate flavor ban. So this bill does just what this administration refused to; it bans flavors and proactively combats this epidemic.

I am grateful to Chairman PALLONE for including language from my legislation, the PROTECT Act, that directs the CDC to implement a successful—like the anti-tobacco youth campaign was—youth anti-vaping education and prevention campaign. That is vital because if a child never starts vaping, we keep them off this perilous path to nicotine addiction.

Madam Speaker, I urge a “yes” vote on this bill to stand up to Big Tobacco and to protect the health of young people.

Mr. WALDEN. Madam Speaker, I yield myself such time as I may consume.

I just want to follow up on my friend from Florida's comments. Let me remind the body that it was the Obama administration that failed to take enforcement action against e-cigarette manufacturers while these products grew in popularity among our children.

In contrast, it is the Trump administration that is actually taking significant action to curb youth use of tobacco and e-cigarettes. The Food and Drug Administration under President Trump has already removed most flavored e-cigarettes from the market and stated they will take additional action against any products found to be targeting children.

My friends will say the administration left open a giant loophole by not targeting all these cigarette products. I reiterate: FDA has stated they will “take action against any product, regardless of whether a product is cartridge-based, disposable, or flavored, if it is targeted to minors, its marketing is likely to promote youth use, or if the manufacturer has failed to take, or is failing to take, adequate measures to prevent minors’ access.”

The FDA has that authority to regulate e-cigarettes. It has taken action to remove those products that are targeted to kids from the market. In addition, any product wishing to come back on the market will need to receive marketing authorization from the FDA beginning later this year making the actions of this bill actually unnecessary.

But remember this bill deals with adults because we already, in a bipartisan way, passed a law to prohibit these products from being sold to people under 21 years of age. That was a huge problem. There was a big loophole. As I said, the Obama administration let all this unfold before their eyes.

We passed a bill. It is now law. Nobody under 21 has access to these products.

Madam Speaker, the bill doesn't address this issue; this is literally called CannaKids. This is literally DOPE e-

Liquid, Black Cherry. Marijuana-flavored vaping products are not covered under this legislation.

But this legislation goes so far as to take legal products that adults may use—I don't use any of this stuff. I am not a big fan of it at all. But they have their choice. These are adult products. Adults will no longer have access to these products. They are gone. They are banned under this bill.

Madam Speaker, you are going to set up a whole new criminal enforcement effort that some, including the ACLU, believe will target people of color more than others.

Madam Speaker, I reserve the balance of my time.

Mr. PALLONE. Madam Speaker, may I inquire about the amount of time remaining on both sides.

The SPEAKER pro tempore (Ms. PINGREE). The gentleman from New Jersey has 3 minutes remaining. The gentleman from Oregon has 5½ minutes remaining.

□ 1015

Mr. PALLONE. Madam Speaker, I yield 1 minute to the gentlewoman from Texas (Ms. JACKSON LEE).

Ms. JACKSON LEE. Madam Speaker, I am not here to target people of color. I am here to save lives.

I support this legislation because it closes an effective tax loophole for e-cigarettes and taxes them just accordingly as tobacco.

It prohibits the manufacture of flavored tobacco and, more importantly, actually prohibits companies from marketing or promoting e-cigarettes to youth under the age of 21. That is an important element.

It makes sure that the grants that are gotten from those dollars are utilized for outreach and education, for evidence-based smoking-cessation programs. It awards grants to make tobacco-cessation therapies and counseling available to community health centers.

We have to save lives. People of color die disproportionately through tobacco products, including these flavored cigarettes.

The NAACP says flavored cigarettes, e-cigarettes, have driven the youth epidemic and more than half of youth smokers. Organizations like the National Black Nurses Association, African American Tobacco Control Leadership Council, Black Women's Health Imperative, and National Hispanic Medical Association all support this.

Madam Speaker, I am here to save lives. That is why I am supporting this legislation.

Madam Speaker, I rise in support of H.R. 2339, the “Protecting American Lungs and Reversing Youth Tobacco Epidemic Act.”

I support this important lifesaving and life-extending legislation because it:

1. Closes a tax loophole for e-cigarettes by establishing tax parity with current tobacco taxes, which is a highly effective way to reduce youth smoking.

2. Prohibits the manufacture and sale of all flavored tobacco products, including menthol

cigarettes, within one year, and removes all flavored e-cigarettes from the market within 30 days.

3. Prohibits companies from marketing or promoting e-cigarettes to youth under age 21.

4. Directs the Food and Drug Administration (FDA) to prohibit non-face-to-face (online) sales of most tobacco products, including e-cigarettes, thereby blocking a key path for high schoolers to obtain tobacco products, many of which are sold online with limited or no age verification requirements.

5. Provides FDA with the authority to collect user fees from all classes of tobacco products, including e-cigarettes, and increases the annual user fees collected for tobacco products by \$100 million.

6. Requires the Federal Trade Commission to issue an annual report to Congress on the domestic sales, advertising, and promotional activities of cigarette, cigar, smokeless tobacco, and e-cigarette manufacturers.

7. Invests in grants for outreach and education for evidence-based smoking cessation programs for individuals in medically underserved communities, including racial and ethnic minorities.

8. Awards grants to make tobacco cessation therapies and counseling available at Community Health Centers.

This critical legislation provides a comprehensive approach to address the youth tobacco epidemic, which has surged in recent years with the introduction of such new tobacco products as e-cigarettes.

I support H.R. 2339 because it will help prevent the loss of an entirely new generation to a lifetime of nicotine addiction.

Madam Speaker, one of the most effective ways to reduce youth use of a tobacco product is to increase taxes on that product.

This legislation closes the tax loophole for e-cigarettes by establishing tax parity with current tobacco taxes—significantly increasing the cost of e-cigarettes.

Currently, there is no federal excise tax on the nicotine contained in e-cigarettes, which could result, for example, in up to a 75 percent increase in the cost of some brands of e-cigarettes.

As the Campaign for Tobacco-Free Kids points out, “The Surgeon General has called raising prices on cigarettes ‘one of the most effective tobacco control interventions.’”

The tobacco industry has targeted kids through social media advertisements, glossy marketing campaigns, and other kid-friendly platforms.

Banning the marketing and promotion of e-cigarettes to young people will have a salutary effect because about 95 percent of adult smokers start before age 21 and young people who do not begin smoking by their early 20s are unlikely to ever start.

The legislation also includes numerous other provisions to address the youth tobacco epidemic, including prohibiting the manufacturer and sale of all flavored tobacco products, prohibiting companies from marketing or promoting e-cigarettes to youth under age 21, and directing the FDA to prohibit non-face-to-face (online) sales of most tobacco products, including e-cigarettes.

Madam Speaker, it is gratifying to know that this legislation is supported by nearly 100 groups, including the Campaign for Tobacco-Free Kids, American Lung Association, American Heart Association, American Cancer Society Cancer Action Network, American Academy of Pediatrics, African American Tobacco

Control Leadership Council, Black Women's Health Imperative, National Black Nurses Association, National Hispanic Medical Association, Catholic Health Association of the United States, American Public Health Association, National Education Association, Parents Against Vaping e-cigarettes (PAVe), First Focus, Children's Defense Fund, and American College of Physicians.

In support this legislation, the NAACP, the nation's oldest civil rights organization, has stated that: "Flavored e-cigarettes have driven the youth epidemic, and more than half of youth smokers—including seven out of ten African American youth smokers—smoke menthol cigarettes, so it's time to take these products off the market once and for all."

Madam Speaker, over the last few years, the use of e-cigarettes has skyrocketed among American middle school and high school students.

More than 5.3 million middle school and high school students used e-cigarettes in 2019, an alarming increase of more than 3 million in two years.

The recent dramatic rise in the number of middle and high school students using e-cigarettes has reversed the progress that had been made in previous years in the use of tobacco by kids and teenagers.

The U.S. Surgeon General has labeled the skyrocketing growth in youth use of e-cigarettes an "epidemic."

The Surgeon General has also concluded that youth use of nicotine in any form, including e-cigarettes, is unsafe, causes addiction, and can harm brain development, which impacts attention, memory, and learning.

The Surgeon General also found that using nicotine in adolescence increases the risk of future addiction to other drugs.

E-cigarettes have very high levels of nicotine, placing young people at significant risk for developing nicotine addiction.

Studies have shown that one brand of e-cigarette cartridge can contain as much nicotine as a full pack of traditional cigarettes.

In 2009, Congress enacted a federal law prohibiting the manufacture and sale of traditional cigarettes that had flavors (other than the flavors of menthol or tobacco), since the tobacco industry had begun targeting young people by offering flavored cigarettes, including candy and fruit flavors.

However, that 2009 flavor prohibition has not applied to tobacco products other than traditional cigarettes.

Now, the legislation being considered this week would broaden that 2009 prohibition—blocking the manufacture and sale of all flavored tobacco products, including e-cigarettes and menthol cigarettes.

In recent years, tobacco companies have significantly stepped up the introduction and marketing of flavored tobacco products, especially e-cigarettes, with more than 15,000 flavors now available on the market.

The widespread availability and appeal of kid-friendly flavors has significantly contributed to the rapid rise in e-cigarette use by young people—with the tobacco industry targeting and addicting kids with enticing flavors such as gummy bear and cotton candy.

Flavors mask the harsh taste of tobacco and make it easier for kids to start to use a tobacco product and to become addicted.

More than 9 out 10 young persons using e-cigarettes use flavored the e-cigarettes, with 7

out of 10 current youth e-cigarette users saying they used them "because they come in flavors I like."

The bill's prohibition on menthol cigarettes will also help protect kids.

More than half of youth smokers—and seven in ten African American youth smokers—smoke menthol cigarettes.

A 2013 FDA analysis concluded that menthol cigarettes soothe the harshness of tobacco, increase youth initiation, increase nicotine addiction, and make it harder for smokers to quit.

Madam Speaker, the National Medical Association, the voice of America's African American physicians, supports this legislation, stating:

As the collective voice of African American physicians, we know that banning menthol cigarettes will save lives in our community. Smoking-related illnesses are the number one cause of death in the African American community and approximately 45,000 African Americans die each year from smoking-related diseases. Further, more than 85 percent of African American smokers use menthols cigarettes. . . . For years, the tobacco industry has aggressively promoted menthol cigarettes and other flavored tobacco products in African American communities. Taking action to ban menthol cigarettes is long overdue and the NMA requests that Congress move swiftly to take up this bill and save lives.

Madam Speaker, I do not agree with opponents of the legislation who assert that because 85% of African American smokers use menthol products, that it would disproportionately harm communities of color.

H.R. 2339 is not intended to disproportionately impact people and communities of color; instead it treats all tobacco products the same by prohibiting flavoring in all tobacco products.

Further, the legislation prohibits the sale, but not the possession, of the banned products and expressly prohibits law enforcement from using abusive practices, such as stop and frisk, to enforce the ban.

In 2009, President Obama signed into law the Family Smoking Prevention and Tobacco Control Act which prohibited all flavored cigarettes, other than menthol, after the tobacco industry used these products to target kids.

H.R. 2339 merely extends the same enforcement authorities enacted under the Tobacco Control Act to prohibit all flavored tobacco products and ensure that the tobacco industry is no longer manufacturing or importing any flavored products.

Finally, instead of imposing criminal penalties, should the U.S. Food and Drug Administration find a manufacturer or retailer in violation of the law, the FDA most commonly utilizes warning letters, no-tobacco sale orders, and civil monetary penalties.

Thus, it is simply untrue that H.R. 2339 increases criminal penalties or "criminalizes tobacco."

Before concluding, it is noteworthy that H.R. 2339 makes critical investments to medically underserved communities to enhance smoking cessation, particularly among racial and ethnic minority populations.

In order to ensure there are necessary resources for current smokers to quit and transition off flavored tobacco products, the bill provides significant resources to Community Health Centers to provide for the availability of counseling and tobacco cessation therapies,

as well as other grant programs to enhance the availability of smoking cessation, in particular for menthol products, in medically underserved communities.

In sum, H.R. 2339 will help ensure the tobacco industry can no longer target minority communities to the detriment of public health.

I strongly support this legislation and urge all Members to join me in voting for its passage.

Mr. WALDEN. Madam Speaker, I reserve the balance of my time.

Mr. PALLONE. Madam Speaker, I am prepared to close the Committee on Energy and Commerce's portion, and I reserve the balance of my time.

Mr. WALDEN. Madam Speaker, I think we have had a good debate here today, and we understand the differences between the proponents and opponents. I want to close with a couple of comments.

Marijuana and THC-laced products are illegal at the Federal level under the Controlled Substances Act. Nobody disputes that. Yet, we have seen how easy it is for individuals, including children, to get their hands on these products.

They are marketed all over the internet in kid-friendly flavors. Not only are these illegal products easy to access, but they caused an outbreak of serious illnesses known as e-cigarette, or vaping, product use-associated lung injury—it is known as EVALI—and resulted in the deaths of 68 Americans. Centers for Disease Control confirmed this outbreak was linked to vitamin E acetate used in THC-containing e-cigarettes.

The point is, though, as more people are pushed away from flavored tobacco products that are currently legal—again, we already made all this illegal for anybody under 21, so we are talking about adults here—they will start pushing products through illicit markets.

We all hope that in the face of the tobacco prohibition, tobacco users would simply quit using these products, but the fact is, these products are addictive. They are designed so users cannot simply quit.

Without accounting for this reality, this legislation will simply push individuals to more dangerous and unregulated products. Illicit markets are already thriving, as is evidenced by the cannabis marketplace and the existing illicit tobacco trade.

Madam Speaker, I include in the RECORD a letter from the National Association of Black Law Enforcement Executives. They say:

Organized criminal groups are already increasingly active in selling illicit cigarettes from low tax states to high tax states. A new market—menthol cigarettes—will only fuel those criminal enterprises and everything that comes with them from money laundering of shell companies that are funding gang and terrorist activities.



NATIONAL ORGANIZATION OF  
BLACK LAW ENFORCEMENT EXECUTIVES,  
*Alexandria, VA, June 11, 2019.*

Re H.R. 2339: Reversing the Youth Tobacco  
Epidemic of 2019, Bill introduced by: U.S.  
Congressman Frank Pallone.

Hon. FRANK PALLONE,  
*House of Representatives,*  
*Washington, DC.*

DEAR REPRESENTATIVE MOORE: The National Organization of Black Law Enforcement Executives (NOBLE) serves as the conscience of law enforcement in America by being committed to Justice by Action. Founded in 1976, NOBLE is committed to ensure equity in the administration of justice and its unyielding commitment is to work toward the elimination of racism and bias of any type within the law enforcement field.

NOBLE has nearly 60 chapters and represents over 3,000 members worldwide that represent chief executive officers and command-level law enforcement officials from federal, state, county, municipal law enforcement agencies, and criminal justice practitioners.

As an organization, NOBLE has no stance on the scientific and medical issues regarding the impact of the use of menthol cigarettes aside from saying that we believe any governmental decision—especially one that could ban a previously legal product—should be rooted on rigorous science.

Historically, NOBLE has expressed concerns over the ban of menthol cigarettes for adults due to the unintended consequences that occur when said products are made available through a illicit market. The result can be the increased encounters between the consumer (in this case African Americans) and law enforcement officials who are enforcing the ban.

NOBLE applauds the legislation to increase the minimum age to consume tobacco products from 18 to 21. We currently are launching a program aimed at educating and informing young people to the dangers of consuming tobacco products and their derivatives. However, we are concerned over the inclusion of menthol flavored products in H.R. 2339 that may encourage a ban of these products in the adult market. Research data shows that menthol cigarettes constitute one-third of the U.S. market and is the preferred cigarette of more than 80% of African Americans who choose to smoke. Our goal is to reduce policies and legislative actions that may increase unintended enforcement interaction between police and people of color.

Organized criminal groups are already increasingly active in selling illicit cigarettes from low tax states to high tax states. A new market—menthol cigarettes—will only fuel those criminal enterprises and everything that comes with them from money laundering or shell companies that funding gang and terrorist activities. A ban on menthol cigarettes would be exploited by criminal organizations to finance their activities.

We urge you to consider the real-world evidence of the ramifications of the unintended consequences of a ban on the sale of menthol cigarettes and the disproportionate impact of a menthol ban in African American communities.

Given all of these concerns, NOBLE respectfully requests that this legislation remove menthol from the list of flavors being considered for a ban on retail sales.

Thank you for your consideration.

Sincerely,

VERA BUMPERS,  
*National President.*

Mr. WALDEN. Those aren't my words. Those are the words of the National Organization of Black Law En-

forcement Executives, which opposes this legislation.

This bill is making an additional set of products illegal that will further encourage illegal behavior that is already occurring and difficult to combat.

Madam Speaker, where does this stop? We are all for stopping children from having access to these products. We did that with T21. It is now law. We have legislation—bipartisanly passed in the House, pending in the Senate—to require age verification at point of sale and delivery of tobacco products so that we really get boundaries around these products getting into the hands of youth.

But if you are going to ban flavored tobacco products but not flavored marijuana products, are you going to ban flavored alcohol products?

We know childhood obesity is an epidemic. Are we going to go down that path as well and ban products adults use but tell kids they can't have a candy bar?

I mean, where does this end?

I led an effort when I was student body president in high school to get smoking out of the bathrooms. I went to the school board, and we actually created a smoking area outside that required parental permission, a permit, and a fee. That was the 1970s. It was an amazing, revolutionary thing. Thankfully, a few years later, they got rid of the whole thing, but I got tired of using the bathroom only to find my friends smoking in there and lighting fires in the trash cans.

I have been an advocate for getting smoking and smoking products away from kids my entire life. That is why I supported T21 to ban the sale of tobacco products to anybody under 21, the age verification issue, and all that. But we are talking here about now telling adults in America that you can no longer have access to these legal products.

Now, I am not a fan of these legal products. Don't get me wrong. But I represent people who do use them, and I am going to go home, and they are going say: "What do you mean you took away my Grizzly or Kodiak or Snuffs?" I don't even know what you do with those products, but we are going to take them away. We are going to ban them for good under your law, and we are going to have our law enforcement go enforce that.

Now, they will tell you that it is just the FDA, but what they won't tell you is, in the bill, it only relates to the FDA, but there are criminal penalties in this bill. It probably should have gone to the Committee on the Judiciary.

There are other laws on the books that law enforcement can enforce, and that is why the ACLU and others sent us this letter concerned about the stop and frisk tactics. Remember, Eric Garner was selling illegal cigarettes on the streets, individual cigarettes. That is what led to the law enforcement action that tragically ended up in his death with the illegal choke hold.

They reference all that in their letter in opposition to this legislation. We are not making this up on our side. It is all right here.

I include in the RECORD this letter, along with a Statement of Administration Policy in opposition to H.R. 2339.

MONDAY, FEBRUARY 24, 2020.

Re Coalition Concerns with Blanket Prohibition on Menthol and Other Flavored Tobacco within H.R. 2339, Reversing the Youth Tobacco Epidemic Act.

Hon. FRANK PALLONE,  
*Chairman, House Committee on Energy and Commerce, Washington, DC.*

The undersigned civil rights and civil liberties organizations write to express concerns with a broad prohibition on menthol and other flavored tobacco products within H.R. 2339, the Reversing the Youth Tobacco Epidemic Act of 2019. While this legislation is a well-intended effort to address health issues associated with tobacco use among youth, we have concerns that a blanket prohibition on menthol and other flavored tobacco products, which will apply to adults, will (1) disproportionately impact people and communities of color; (2) trigger criminal penalties, prioritizing criminalization over public health and harm reduction; and (3) instigate unconstitutional policing and other negative interactions with local law enforcement.

#### I. H.R. 2339 DISPROPORTIONATELY IMPACTS PEOPLE AND COMMUNITIES OF COLOR

Of adults, approximately 80 percent of Blacks and 35 percent of Latinx who choose to smoke prefer menthol cigarettes. Thus, any ban on menthol cigarettes will disproportionately affect people of color. While H.R. 2339 and similar legislation are often motivated by the desire to decrease and eliminate smoking among certain populations, Blacks and other people of color should not disproportionately bear the brunt of enforcement of such prohibitions, which a menthol ban would ensure.

Similarly, enforcement of a ban on flavored cigars will also disproportionately impact people of color given cigar preferences. Black adults are 60% of cigarillo and non-premium cigar smokers, with these products often flavored. Additionally, at Committee markup, H.R. 2339 was amended to exempt certain traditional, expensive cigars from a prohibition of online tobacco sales. There is no justification for differentiating a La Palina from a Black and Mild. Making this distinction undermines the public health arguments made for this bill and suggests that some tobacco preferences, within certain communities, will be prioritized and protected over others.

#### II. H.R. 2339 INCREASES CRIMINAL PENALTIES OVER PUBLIC HEALTH

H.R. 2339 prohibits menthol and other flavored tobacco products under the Food, Drug, and Cosmetic Act (FD&C Act). This prohibition criminalizes the manufacturing, importing, distributing, or selling of menthol and other flavored tobacco products under the FD&C Act, imposing up to three years of imprisonment. Violating a menthol and flavored tobacco ban would implicate other federal criminal penalties as well. For example, the Federal Cigarette Contraband Trafficking Act would be implicated, allowing up to five years of imprisonment.

With a criminal legal system that incarcerates Blacks at nearly six times the rate of white Americans and a prison population that is 67 percent Black and Latinx, any prohibition on menthol and flavored tobacco products promises continued over-criminalization and mass incarceration of people of color. A ban on menthol and flavored tobacco products could reintroduce many of

the harms imposed by the failed war on drugs as lawmakers work to legalize cannabis and take a public health approach to opioids. A bill criminalizing tobacco is contrary to those efforts. Righting the wrongs of earlier failed drug policy requires consideration of the unintended consequences of well-intentioned policies, especially on the most vulnerable communities. It also requires us to remember that harm reduction, including education and counseling, are what work to reduce usage and harm in our society, not prohibition.

### III. H.R. 2339 ENCOURAGES HARMFUL POLICE PRACTICES

Recent history shows us that drug prohibitions and bans increase negative interactions between law enforcement and people of color. The New York Police Department's (NYPD) stop and frisk program resulted in nearly 700,000 stops in 2011, with drugs serving as the alleged pretext for most of those stops. Ninety percent of those stops were of Black and Latinx people. We are concerned that law enforcement's attempts to enforce a menthol and flavored tobacco ban will undoubtedly lead to fines, arrests, and eventual incarceration for those who continue to use and sell menthol and flavored tobacco products. While the legislation was amended at Committee to try to minimize law enforcement practices here, it only applies in the context of federal enforcement of the FD&C Act; it does not govern local enforcement around any state and city prohibition policies that will follow.

The death of Eric Garner in 2014 generated national attention not only for the brutality he experienced at the hands of NYPD police, but for the reason that led to the encounter with law enforcement. Mr. Garner died from an illegal chokehold having been stopped by police for selling single cigarettes in violation of state law. Gwendolyn Carr, Eric Garner's mother, cautions: "When you ban a product sold mostly in Black communities, you must consider the reality of what will happen to that very same overrepresented community in the criminal justice system." With a federal prohibition on menthol and flavored tobacco products, states will develop their own prohibition and enforcement policies that could result in harmful police practices like that witnessed with Mr. Garner.

Based on our concerns, we urge you to not impose a blanket ban on menthol and related tobacco products. A prohibition on all menthol and flavored tobacco products will not achieve a public health goal of reducing smoking among Black people, young people, or others. We hope we can work together to avoid repetitions of policies that are intended to protect youth and communities of color, but instead only further engrain systemic criminalization and racism.

Sincerely,

American Civil Liberties Union, Drug Policy Alliance, Law Enforcement Action Partnership, National Action Network, National Association of Criminal Defense Lawyers, National Association of Social Workers, The Center for Popular Democracy.

STATEMENT OF ADMINISTRATION POLICY  
H.R. 2339—REVERSING THE YOUTH TOBACCO  
EPIDEMIC ACT OF 2019

(Rep. Pallone, D-NJ, and 126 cosponsors)

The Administration opposes H.R. 2339. The Administration is encouraged by legislative efforts to protect American youth from the harms of addiction and unsafe tobacco products, and it also acknowledges that H.R. 2339 exempts premium cigars, which have comparatively lower youth usage rates, from certain regulatory burdens. Unfortunately,

however, this bill contains provisions that are unsupported by the available evidence regarding harm reduction and American tobacco use habits and another provision that raises constitutional concerns. Accordingly, the Administration cannot support H.R. 2339 in its current form.

The Administration cannot support H.R. 2339's counterproductive efforts to restrict access to products that may provide a less harmful alternative to millions of adults who smoke combustible cigarettes. This includes the bill's prohibition of menthol e-liquids, which available evidence indicates are used relatively rarely by youth. It also includes the bill's approach to remote retail sales. At this time, problems surrounding such sales should be addressed through the application of age verification technologies rather than, as this bill would do, prohibiting such sales entirely.

The Administration is also concerned about the constitutionality of a provision in the bill that prohibits certain advertising practices with respect to electronic nicotine delivery system (ENDS) products. The bill would prohibit marketing and advertising that "appeals to an individual under 21 years of age." This standard may not satisfy the stringent vagueness test applied to regulations of speech under the Constitution's Due Process Clause.

The Administration is committed to protecting the Nation's youth from the harms of tobacco and has already taken several steps to do so. This includes signing legislation to raise the minimum age of sale for tobacco products to 21. In January 2020, moreover, the Administration issued guidance to prioritize enforcement against the unauthorized marketing of certain ENDS products to youth. And the Food and Drug Administration (FDA) is conducting regular surveillance of—and, when appropriate, taking enforcement measures against—websites, social media, and other publications that advertise regulated tobacco products.

The bill takes the wrong approach to tobacco regulation. Rather than continuing to focus on the FDA's Center for Tobacco Products, Congress should implement President Trump's Budget proposal to create a new, more directly accountable agency within the Department of Health and Human Services to focus on tobacco regulation. This new agency would be led by a Senate-confirmed Director and would have greater capacity to respond to the growing complexity of tobacco products and respond effectively to tobacco-related public health concerns.

If presented to the President in its current form, the President's senior advisors would recommend that he veto the bill.

Mr. WALDEN. Meanwhile, marijuana products are not covered by the bill. Go figure. I urge my colleagues to vote against this legislation.

Madam Speaker, I yield back the balance of my time.

Mr. PALLONE. Madam Speaker, I yield myself the balance of my time.

Madam Speaker, I respect the ranking member, but I have to say this: The notion that somehow the Trump administration is doing anything significant to deal with this youth vaping epidemic or tobacco epidemic is simply not the case. They are weak-kneed proposals that are not going to do anything significant.

The problem that we have and what this bill is trying to address is this: The tobacco companies know that vaping or e-cigarettes are basically exempted from most of the restrictions

that exist now for regular cigarettes. So what do they do? They go and advertise these products on TV. They try to convince young people and adults that vaping and e-cigarettes are a cessation device, which is simply not true.

The CDC says they are not cessation devices. They hook people; they addict people; they contain large amounts of nicotine.

The flavors that they promote—whether it be menthol, mango, whatever it is—make the kids and adults think that these are not tobacco products or that these are not products that contain nicotine.

Then what do the kids do? Sure, we have legislation now, a statute that says you can't sell these products to kids under 21, but they go online. They buy them online. They don't need an ID for that. Or they get some adult to go to the store and buy the e-cigarettes or cigarettes for them.

So, we need this legislation. We need to say that e-cigarettes are deemed a tobacco product. They come under the same restrictions for advertising and warnings as regular cigarettes. We need to ban online sales so that kids cannot go online and buy these things without having an ID. We need to ban flavors across-the-board because that is what masks the nicotine and makes people think it is okay, that somehow these are cessation devices, or even that if you smoke a menthol or mango cigarette, somehow that does not contain nicotine and does not become addictive.

Madam Speaker, I urge my colleagues to please vote for this legislation. Vote for the kids. It is that important.

Madam Speaker, I yield back the balance of my time.

REQUEST TO ADD COSPONSORS TO H.R. 2339

Mr. PALLONE. Madam Speaker, I ask unanimous consent to add Congressman MICHAEL SAN NICOLAS, the Delegate from Guam, and Congressman GREG STANTON of Arizona, to be added as cosponsors of the legislation.

The SPEAKER pro tempore. The Chair cannot entertain the request of the gentleman from New Jersey.

The gentleman from New York (Mr. SUOZZI) and the gentleman from Nebraska (Mr. SMITH) each will control 22½ minutes.

The Chair recognizes the gentleman from New York.

Mr. SUOZZI. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, every Democrat and every Republican in this Chamber recognizes there is a youth vaping epidemic in the United States of America. I am sure that every Member of Congress has heard stories about millions of middle school and high school students using addictive vaping products.

I became focused on this issue last year when a group of mothers from Parents Against Vaping e-cigarettes told me about the stories of schools filled with student vaping. I actually spoke to my 16-year-old son, and I

learned just how prevalent vaping has become in the school districts in my community and how they are throughout the country.

We have to act, and we must act now.

Madam Speaker, this important bipartisan legislation we are considering today includes my bipartisan bill, the Protecting American Lungs Act, which passed out of the Committee on Ways and Means with bipartisan support.

This bill will establish much-needed tax parity between vaping products and cigarettes. It will tax nicotine, a harmful and addictive substance, at approximately the same rate, whether you get it from an e-cigarette or from traditional cigarettes.

Importantly, this bill includes an exception for FDA-approved nicotine replacement therapies, which means that if a company can prove that its product is a legitimate cessation device, then the nicotine will not be taxed.

This bill has the support of over 50 public health, medical, and educational organizations, including the American Academy of Nursing, the American Academy of Pediatrics, the Cancer Action Network, the American Heart Association, the American Lung Association, the American Medical Association, and the Campaign for Tobacco-Free Kids.

These groups agree that one of the best ways we can stop people from using vaping products is to tax them. For young people especially, who have less money and higher price sensitivity, taxes on these products are an effective way to decrease usage. It is proven.

In fact, according to the Campaign for Tobacco-Free Kids, every 10 percent increase in the cost of cigarettes leads to a 4 percent overall smoking reduction and 7 percent less youth smoking.

I know that some people raised their voices against this effort. We have heard it all before when we fought to raise cigarette taxes in my State of New York. Some will say the science is not conclusive yet. Some will advocate for free choice. Others will say this is typical taxing Big Government.

When it is all said and done, however, the opposition will come from those who put their lucrative nicotine interests ahead of our children's health and proven public policy.

In my home State of New York, despite intense industry opposition, we raised cigarette taxes. Because of that, we have some of the Nation's lowest rates of smoking and smoking-related illnesses.

We can save lives with this bill by raising the prices of harmful vaping products and decreasing their usage among teenagers. The opportunity to stop the youth vaping epidemic is one that we must not pass up.

Madam Speaker, I urge my colleagues to support this legislation, and I reserve the balance of my time.

Mr. SMITH of Nebraska. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, we know that smoking is bad for us. We all agree we don't want kids using tobacco or vaping, which is why we came together on a bipartisan basis last year to make it hard for kids to access these products by raising the legal age to buy them to 21.

I cosponsored last year's bill to raise the age. Mr. SUOZZI was also a cosponsor of that bill, and I am glad we got that done.

The questions we are addressing today from the Committee on Ways and Means' perspective, however, are whether we should tax vaping products and by how much.

□ 1030

I am going to vote "no" today because we don't have a good answer.

I will give the sponsor of this proposal credit. They endeavored to tax liquid nicotine at a per-unit level comparable to the tax-to-nicotine ratio of cigarettes, and they appear to have come very close to that goal.

However, tobacco isn't taxed because it contains nicotine. It is taxed because we understand the serious health consequences which come with smoking or chewing tobacco itself, and those health consequences create vast costs for programs like Medicare and Medicaid.

If we are going to consider taxing vaped nicotine, we first need to address the underlying issues, such as the value of vaping as a smoking-cessation tool, the relative safety of vaped nicotine versus cigarette smoking and what really caused the spate of vaping-related illnesses we have seen in the past year. I will start with the easiest one first.

According to the CDC, the vaping-related illnesses can be tied back to vitamin E acetate, an oil used in THC vaping, not to the ingredients used to vape nicotine. Taxing nicotine does nothing to address vitamin E acetate.

Second, how safe is vaping compared to smoking, and what is its value as a smoking-cessation tool?

The British Journal of Family Medicine found e-cigarettes are 95 percent safer than traditional smoking, based on the fact most harmful chemicals from smoking are not present, and those which are present pose a limited amount of danger.

Another study from Britain's NHS found e-cigarettes were nearly twice as likely as nicotine gum or lozenges to help quit long term.

At the same time, a study from the nonpartisan National Bureau of Economic Research found the State of Minnesota's efforts to bring parity to the taxation of cigarettes and e-cigarettes actually flatlined the State's smoking-cessation trend, while other States which didn't raise taxes continued to see smoking decrease.

Let me say that again. The State of Minnesota's efforts to bring parity to the taxation of cigarettes and e-cigarettes actually flatlined the State's

smoking-cessation trend, while other States which did not raise taxes continued to see smoking decrease.

At the same time, JCT's economists tell us increasing the cost of e-cigarettes with taxes will cause some people to choose cigarettes over e-cigarettes. That is not a choice we should be encouraging people to make.

These are all factors which we could have considered in a bipartisan fashion before the Ways and Means Committee marked up this bill had we had any hearings whatsoever on vaping or this proposal itself.

Madam Speaker, we should be open to a conversation about the best way to ensure the tax code treats tobacco and e-cigarettes appropriately. Rushing this bill through is not the solution.

I reserve the balance of my time.

Mr. SUOZZI. Madam Speaker, before I yield to the chairman of our committee, I just want to note again that the Protecting American Lungs and Reversing the Youth Tobacco Epidemic Act has an exception for FDA-approved nicotine replacement therapies and has over 50 public health, medical, and educational organizations supporting it.

Madam Speaker, I yield 4 minutes to the gentleman from Massachusetts (Mr. NEAL), the chairman of the Ways and Means Committee who is just a fantastic chairman.

Mr. NEAL. Madam Speaker, I support H.R. 2339, which will address the epidemic of rising youth smoking across the country.

Importantly, the bill before us today incorporates a proposal reported by the Ways and Means Committee that would establish a Federal excise tax on nicotine products, including vaping products.

I thank TOM SUOZZI, who has really done a great job on this, in a bipartisan effort, to ensure that e-cigarette products are taxed the same as traditional tobacco.

Studies show that excise taxes reduce both adult and underage smoking. In general, every 10 percent increase in the real price of cigarettes reduces the number of kids who smoke by 6 to 7 percent and reduces overall cigarette consumption by 3 to 5 percent.

In recognition of the effort that we are making this morning, measured by the effectiveness of excise taxes as they reduce youth smoking, the World Health Organization recommends that e-cigarettes be treated and regulated in the same way as traditional tobacco products.

The Surgeon General has said that raising prices on cigarettes is "one of the most effective tobacco control interventions" because it reduces smoking, particularly among kids.

With this legislation, we are simply building on what we already know works. We are ensuring that nicotine will be taxed at approximately the same rate, whether you get it from e-cigarettes or traditional cigarettes.

The revenue that we raise by creating parity here will be reinvested

into important public health work such as smoking cessation, colorectal screening, and increasing access to treatment for people with chronic lung disease. Specifically, we will provide needed financial protection for Medicare beneficiaries undergoing important colorectal cancer screenings.

I want to thank Representative PAYNE for leading efforts on this commonsense policy that would reduce out-of-pocket costs for seniors to access this effective preventative care.

In addition, H.R. 2339 allows high-deductible health plans to cover inhalers and nebulizers for treatment of chronic lung disease. Under this provision, patients will receive coverage before reaching their deductible and remain eligible for health savings accounts. For patients with chronic lung disease, lower cost and easier access to these treatments reduces the use of more expensive medical care, including hospitalization.

I thank Mr. COX and Ms. SEWELL for leading on these provisions.

This legislation will protect our children from significant health consequences that come with nicotine addiction, while helping seniors and patients with chronic lung disease.

Madam Speaker, I urge my colleagues to step up this morning and vote for this very important measure.

Mr. SMITH of Nebraska. Madam Speaker, I yield 4 minutes to the gentleman from Georgia (Mr. FERGUSON).

Mr. FERGUSON. Madam Speaker, as we stand here today, I look at this bill with mixed emotions.

Like the gentleman from New York, from the Ways and Means Committee, I, too, have a 16-year-old son, and we have had discussions about the youth vaping epidemic and a real desire to curb—not only curb, but to end youth vaping. It is a public health crisis, and we must address it.

We have done some very important things in this body.

I heard one speaker, a few minutes ago, say that the President has done nothing to address this issue. I think signing into law T21 is a very important piece of legislation and a very big step.

Doing all that we can to end youth vaping and youth use of tobacco is important. As a healthcare provider for 25 years, I understand this. More importantly, as a father of a teenager, I understand it.

I have learned in Congress that many times I don't get to vote on the bill that I want; I have to vote on the bill that is in front of me, and that is just the way it goes here.

But I will tell you what. This bill makes it almost impossible—as a matter of fact, it makes it impossible to do the one thing that we all agree on, which is that we need to end youth vaping, because let me tell you what this bill does. It goes way beyond that.

I would be willing to bet that most Americans in the districts of the sponsors of these bills don't know every-

thing that these folks are about to vote on. I would be willing to bet, as they should, that they have communicated to the constituents back home that they are attacking youth vaping. That is a solid, solid thing to do. But what I bet that they haven't done is tell them what else they are about to do.

The gentleman from Oregon, the ranking member on the Committee on Energy and Commerce, in the previous section of this debate held up a poster with many of the products that are about to be banned. I bet most Americans don't know that that is coming, and I think that they should know. I think it should be part of this discussion.

I think it is outrageous that this body, once again, is going to try to tell the American people what they can have and what they can't have.

They are not banning tobacco; they are only banning choices.

They are not taxing high-end tobacco; they are taxing low-end tobacco.

They are not taxing high-end cigars; they are taxing the cigars that the working class, the men and women out there that are on the lines every day, the ones that they are using.

What I find that is just absolutely remarkable on this is that they are not even looking at this in a comprehensive fashion to deal with another important part of vaping, and that is with marijuana and vitamin E acetate.

I think that if we are going to go down this road and have the discussion about youth vaping, why are we not including flavored marijuana in this bill? It is a real question.

Look at where the lung damage is occurring—not the addiction, but let's look at where the actual tissue damage occurs. It is coming from the vitamin E acetate that is associated with THC in these pods, and yet we are not touching that piece of it.

As a matter of fact, the chairman of the Energy and Commerce Committee, in the Rules Committee the other night, actually indicated that this was not necessarily a youth vaping bill but, in fact, a tobacco bill. Well, I was proud that he, at least at that point, told the truth on that part.

The SPEAKER pro tempore. The time of the gentleman has expired.

Mr. SMITH of Nebraska. Madam Speaker, I yield the gentleman from Georgia an additional 2 minutes.

Mr. FERGUSON. Again, what this bill does is it goes after Americans' choice. You may not think that they should use tobacco—we can acknowledge the health risk associated with it—but it is not Congress' job to make that decision for adults, for the American voter.

We have seen a consistent pattern of this. We have seen it time and time again, whether it was from a mayor in a large city like New York telling Americans what size Coke or soft drink they could have to something as outrageous as my friends on the other side of the aisle trying to tell the American

voter who the President should be through the impeachment process. Now they are going to tell them what kind of tobacco they can use. It goes on and on and on and on.

And do you know what? If we continue down this path, it really does start to look and smell and sound just like socialism. I don't think that is right for this country, and we should fight back against it.

Mr. SUOZZI. Madam Speaker, I just want to point out to my good friend from Georgia that the tax does not exempt premium cigars in any way whatsoever.

Madam Speaker, I yield 4 minutes to the gentleman from Oregon (Mr. BLUMENAUER), a senior member of the Ways and Means Committee and chair of the Trade Subcommittee.

Mr. BLUMENAUER. Madam Speaker, I appreciate the gentleman's courtesy, and I appreciate his leadership on this issue.

I have listened to my friends on the other side of the aisle, and I am saddened that they somehow feel that this is boiling down to some sort of notion of choice, discrimination against African Americans.

Let's get a grip here. The cigarette is the only product which, if used as directed, will kill you. That is why Big Tobacco has become a genius at marketing. They have to replace their customers that they kill every day by the thousands.

That is why they are looking at being able to hook, especially, young people who are more impressionable, and they will smoke longer if they are addicted.

That is how they hooked my father. He was part of the GIs in the Pacific who got free cigarettes and became addicted. It killed him.

This is the latest chapter in this insidious marketing juggernaut.

I am sorry, it is not discrimination against African Americans who somehow have a genetic predisposition toward menthol flavoring. That is the result of tactics by Big Tobacco, by using advertising, politics, culture to target this population, and it has been successful. Their use is much higher than the general population.

Dealing with vaping and e-cigarettes is the latest chapter in that recruitment that they have to replace the customers who die.

Well, I would suggest that, first and foremost, it is widely understood that taxation is the single most effective mechanism to discourage use, especially for young people. We are doing it in this legislation, and it is important.

Now, I have heard my friends on the other side of the aisle, my good friend from Oregon, holding up two charts, products that will be illegal, that are widely available now, and then talking about cannabis products and that there is no regulation.

□ 1045

Well, that is because we have failed to actually deal with regulating cannabis. That is like regulating flavored

heroin. When we tax and regulate cannabis—and we have legislation that has passed out of the Judiciary Committee that would enable us to have regulation. The Commerce Committee is looking at being able to research, but we are prohibited by outmoded Federal law from actually being able to research this.

The challenge that we have now is to be able to move forward, to be able to protect young people and the public.

Cannabis is a red herring. If we tax and regulate it, then we can deal with the products they are talking about. But unless and until, as two-thirds of the States have done, we actually tax and regulate it, we can't deal with that. That doesn't matter.

But today we can do something. Today, we can move this legislation forward to protect young people, to have a reasonable tax mechanism, to be able to finally strike a blow against the Big Tobacco marketing juggernaut that is e-cigarettes and flavored tobacco.

I strongly urge support of this legislation. I appreciate what has been done going forward. We should not fall for the phony argument that somehow because we haven't regulated cannabis, we haven't solved the problem.

Mr. SMITH of Nebraska. Madam Speaker, I yield 2 minutes to the gentlewoman from West Virginia (Mrs. MILLER).

Mrs. MILLER. Madam Speaker, I rise in opposition to the legislation before us, because today my colleagues across the aisle are trying to tax people who want to quit smoking. It is cut and dried. That is the issue, and it is just plain wrong.

I commend this House for the advances we have made this year when it comes to addressing youth nicotine use. Up until this point, we have already raised the purchasing age of tobacco products to 21 years old. We have already increased age verification standards for the online sales of e-cigarettes, and we are continuously performing oversight over vaping-associated lung injuries. These are serious actions to address serious problems.

But this bill before us today completely misses the mark and punishes the very people who should be supported. Give me a break.

Studies show that taxing vaping products increases cigarette use, not inhibits it. And further, this doesn't even address the root of vaping-related lung injuries, because the supporters of this bill remain silent—silent—on black market THC products.

Federal health officials recently reported a case study that found 95 percent of vaping-related injuries were caused by using these illicit products. This is the real problem.

Instead of overregulating this industry and overburdening taxpayers trying to take control of their healthcare, I request that my colleagues vote against H.R. 2339.

Mr. SUOZZI. Madam Speaker, I just want to note again that the bipartisan

Protecting American Lungs Act, again, has over 50 public health, medical, and educational organizations supporting it.

Madam Speaker, I yield 2 minutes to the gentleman from Illinois (Mr. DANNY K. DAVIS), another senior member of the Ways and Means Committee, the chairman of the Subcommittee on Worker and Family Support, and my good friend.

Mr. DANNY K. DAVIS of Illinois. Madam Speaker, I want to thank the gentleman from New York for yielding and for his leadership on this issue.

You know, I have never appreciated being discriminated against, but I have always been told that if you fool me once, shame on you; fool me twice, shame on me.

And there is one thing that we do know. We know from evidence-based research that tobacco products that are smoked, inhaled, or chewed, have no measurable health benefits. Tobacco product usage is still one of the leading causes of preventable death in the United States, resulting in an estimated 480,000 lives each year.

Cigarette usage is still declining in the United States. Some analysts have reported that 34 million American adults smoke cigarettes on a regular basis, and there are 1.2 million American middle and high school students who smoked cigarettes in the last 30 days. According to the Centers for Disease Control and Prevention, 8.1 million American adults used e-cigarettes every day or some days in 2018, and about 5.4 million American middle and high school students have used an e-cigarette in the last 30 days.

I support H.R. 2339, Protecting American Lungs and Reversing the Youth Tobacco Epidemic Act of 2020. This bill would stop the manufacturing and use of fruity and flavored tobacco products in all electronic nicotine delivery systems that are battery operated containing nicotine and other chemicals.

In addition, this legislation would provide grants to community health workers and educational awareness to cessation programs for tobacco.

Madam Speaker, I urge my colleagues to vote for this bill.

Mr. SMITH of Nebraska. Madam Speaker, I yield 4 minutes to the gentleman from Kansas (Mr. ESTES).

Mr. ESTES. Madam Speaker, I rise today in opposition to H.R. 2339.

I want to be clear from the outset, we need to find ways to keep vaping and tobacco products out of the hands of children and teenagers, including legal products that contain nicotine, as well as the black market products that contain THC and which have contributed to an alarming number of health concerns and deaths, including two in my home State of Kansas.

In recent months, these deaths have rightly attracted national attention and scrutiny, but the bill before us today is not the right solution to address this troubling situation.

Instead of following regular order, the tax title of this legislation did not

have a hearing prior to markup in the Ways and Means Committee. I believe our constituents deserve to know about the impacts of vaping and the direct causes of recent deaths before we consider a \$10 billion tax hike.

In addition, the substance of this legislation is technically flawed. While the bill is titled the "Protecting American Lungs and Reversing the Youth Tobacco Epidemic Act," it does nothing to address youth access to tobacco.

Congress has already raised the legal age of tobacco and nicotine consumption to 21 in December of last year. Because of this action, it seems that the only purpose of this legislation is to eliminate choice of millions of law-abiding adults.

The tax chapter of this legislation defines "taxable nicotine," not vaping. This targets other legal nicotine products that are unrelated to vaping. A better solution would have been to use the FDA's definition of Electronic Nicotine Delivery Systems, or ENDS.

Additionally, this legislation taxes nicotine on the basis of weight. It would have been more appropriate and technically easier to tax vaping on the basis of milliliters, just as Kansas has done, as vaping products are sold as liquids.

Instead of targeting black market products, the bill levies a nearly \$10 billion tax on American consumers of these legal products, which medical journals have found to be 95 percent safer than cigarettes.

This nicotine tax does not reflect the harm of vapor products related to traditional tobacco products. Instead it taxes vaping at a higher level per unit than traditional combustible tobacco products, which may encourage adults to transition back to cigarettes.

Both the CDC and the FDA have acknowledged that the outbreak of lung illnesses and deaths are mostly attributable to illicit marijuana and THC in vaping, which are not addressed at all in this bill.

The bill appears to be primarily a massive money grab and another step towards an outright tobacco ban rather than a solution to a very real health crisis.

I look forward to working to address the crisis, but I urge my colleagues today to vote against this bill.

Mr. SUOZZI. Madam Speaker, I include in the RECORD an analysis by the Campaign for Tobacco Free Kids, showing that e-cigarette use is dramatically higher among high school and middle school students than amongst adults.

#### ACTION NEEDED: E-CIGARETTES

Since their introduction in 2008, e-cigarettes have become both ubiquitous and an increasing source of public policy concern and debate. This concern stems primarily from drastic increases in youth e-cigarette use. The most recent data show that 27.5% of high schoolers are using these products—a rate of youth tobacco product use not seen in nearly two decades. The public health community, parents and educators are shocked and worried to find their children and students using these products at home and even

in class. Young people are reporting severe signs of dependence, including using e-cigarettes when they first wake up, inability to concentrate in the classroom without using an e-cigarette, and even waking in the night to get a nicotine fix.

We have known for decades that youth in particular should not be exposed to nicotine because it changes brain chemistry to create a stronger addiction, can lead to memory and concentration problems, and can make youth who use it more susceptible to addiction to other substances. Research also suggests that young people who use e-cigarettes are four times more likely to go on to smoke combustible cigarettes.

E-cigarettes are now threatening to undo all the progress that the public health community and government have made over decades to reduce cigarette smoking. Indeed, the surgeon general raised the alarm by issuing an advisory declaring a youth e-cigarette epidemic in December 2018. Since then, data show that more and more youth continue to use e-cigarettes. And this isn't just experimental or occasional use—it's regular use likely driven by addiction. The most recent National Youth Tobacco Survey data show that 34.2% of current high school e-cigarette users use them on 20 days or more per month.

Conversely, as the youth e-cigarette epidemic has continued unabated, we have seen adults, and especially older smokers, simply reject the product. In 2014, the first year that the National Health Interview Survey measured adult use of e-cigarettes, 3.7% of adults used the product in the last 30 days. In 2018, the adult usage remained low, at 3.2%, and was largely driven by young adult users (7.6%), who have matured during the youth e-cigarette epidemic. While some adults have switched completely to e-cigarettes from combustible cigarettes, the predominant pattern among adult users continues to be e-cigarette use in conjunction with smoking. This "dual use," however, provides no reduction in the harms associated with smoking.

As youth use continues to rise, the science around the potential harms of e-cigarettes has grown. Studies show that e-cigarettes produce lower amounts, but are not free from the toxins found in cigarettes. At the same time, flavoring compounds and other ingredients may be producing their own unique harms. Recent studies demonstrate the harms e-cigarettes pose to the respiratory system. Similarly, new studies show e-cigarettes may present unique threats to cardiovascular health. It continues to be nearly impossible to make generalized statements about the potential harms and benefits of the overall category of e-cigarettes due to the incredible variation in hardware design and ingredients. Moreover, as industry executives themselves have acknowledged, we simply do not know the long-term health impacts of e-cigarette use. It took us many decades to understand the toxicity of cigarettes, and, even today, we are discovering new ways in which they harm health.

Simply put, the data show that e-cigarettes as they are currently sold and regulated in the United States are overwhelmingly a vehicle for youth initiation, not adult cessation. E-cigarettes expose kids—who otherwise never would have been—to nicotine and put them at risk for both long- and short-term health consequences.

#### THE POSITION OF TRUTH INITIATIVE®

Truth Initiative has maintained that there may be some possible public health benefit from properly regulated e-cigarettes, provided manufacturers can demonstrate that the products can help adults quit smoking combustible cigarettes safely and completely. However, no e-cigarette has been ap-

proved for smoking cessation and no e-cigarette has gone through the rigorous scientific review necessary to determine whether it actually does help smokers to quit. Furthermore, any public health benefit from e-cigarettes for smokers must be weighed against the incredibly high youth use of e-cigarettes and the fact that there are currently no significant marketing restrictions on these products. Without a significant change in regulatory approach, it is unlikely that e-cigarettes will contribute to the overall benefit of public health.

Mr. SUOZZI. Madam Speaker, I yield 3 minutes to the gentleman from California (Mr. COX), a good friend and leader on this important issue to reduce cost for Americans with chronic lung disease and asthma.

Mr. COX of California. Madam Speaker, I rise today to applaud the inclusion of my bipartisan bill, the Inhaler Coverage and Access Now Act, the I CAN Act, into H.R. 2339, the Protecting American Lungs and Reversing the Youth Tobacco Epidemic Act of 2020.

The I CAN Act is about commonsense prevention and investing in consistent treatment to avoid expensive care later down the road. Moms and dads shouldn't have to choose between paying their mortgage or paying their rent or buying an inhaler for their kids. No one should have to make that choice. The I CAN Act allows you to access inhalers, whether or not you have reached your deductible. For so many families, this removes a critical cost barrier for the care they need and deserve.

Like so many preventive medicines and procedures, inhalers actually save patients, hospitals, and insurers money by cutting down on hospitalizations and medical emergencies before they start. As we all know, an ounce of prevention is worth a pound of cure.

Today, the annual cost of asthma in the United States is more than \$56 billion. Why is that? That is because of the 1.8 million emergency room visits which could have been avoided if people had the inhalers they needed.

But worse yet are the 3,300 deaths from asthma each year. And these deaths were preventable. Let me say that again: These deaths were preventable. And in the richest country in the world, it is an outrage that anyone dies because they cannot get the medicine they need. We need to make treatment accessible, and this bill does just that.

For so many families, our friends and our coworkers, asthma medicine is lifesaving, and many will pay whatever it takes to get the drugs they need.

Naturally, Big Pharma knows this, and they have taken advantage of that. For example, albuterol, one of the oldest asthma medicines, typically costs \$50 to \$100 per inhaler in the U.S. Less than a decade ago, it was \$15. Then the manufacturer made some small changes, repatented it, and raised the price by 600 percent. That is price gouging. And while it might be good for the drug company's bottom lines, it is bad medicine for America.

I represent California's 21st Congressional District in the San Joaquin Valley, which has the worst air basin in the Nation. And to make matters worse, many of our rural communities have faced extreme challenges when accessing asthma care.

For my constituents and for patients across the country with asthma, it was a major priority for me to introduce the I CAN Act, to remove barriers and increase access to inhalers by providing patients with the coverage for inhaler medication.

I want to thank the Ways and Means Committee and the Energy and Commerce Committee for taking the necessary action to protect the health of America's children.

We can pass the I CAN Act to make inhalers available to everyone. We can prevent youth tobacco use. We can address the youth e-cigarette epidemic. We can, with our vote today, show we care, and we can act to improve the health of our young people.

I urge my colleagues to support H.R. 2339.

Mr. SMITH of Nebraska. Madam Speaker, I include in the RECORD 10 letters in opposition to H.R. 2339.

The first letter is from a group of letter-writers that would include the Drug Policy Alliance, the Law Enforcement Action Partnership, the National Action Network, the National Association of Criminal Defense Lawyers, the National Association of Social Workers, the Center for Popular Democracy, and the American Civil Liberties Union.

Other letters come from the National Taxpayers Union, Freedom Works, R Street Institute, Citizens Against Government Waste, and the National Association of Convenience Stores.

MONDAY, FEBRUARY 24, 2020.

Re Coalition Concerns with Blanket Prohibition on Menthol and Other Flavored Tobacco within H.R. 2339, Reversing the Youth Tobacco Epidemic Act.

Hon. FRANK PALLONE,  
Chairman, House Committee on Energy and Commerce, Washington, DC.

The undersigned civil rights and civil liberties organizations write to express concerns with a broad prohibition on menthol and other flavored tobacco products within H.R. 2339, the Reversing the Youth Tobacco Epidemic Act of 2019. While this legislation is a well-intended effort to address health issues associated with tobacco use among youth, we have concerns that a blanket prohibition on menthol and other flavored tobacco products, which will apply to adults, will (1) disproportionately impact people and communities of color; (2) trigger criminal penalties, prioritizing criminalization over public health and harm reduction; and (3) instigate unconstitutional policing and other negative interactions with local law enforcement.

#### I. H.R. 2339 DISPROPORTIONATELY IMPACTS PEOPLE AND COMMUNITIES OF COLOR

Of adults, approximately 80 percent of Blacks and 35 percent of Latinx who choose to smoke prefer menthol cigarettes. Thus, any ban on menthol cigarettes will disproportionately affect people of color. While H.R. 2339 and similar legislation are often motivated by the desire to decrease and



eliminate smoking among certain populations, Blacks and other people of color should not disproportionately bear the brunt of enforcement of such prohibitions, which a menthol ban would ensure.

Similarly, enforcement of a ban on flavored cigars will also disproportionately impact people of color given cigar preferences. Black adults are 60% of cigarillo and non-premium cigar smokers, with these products often flavored. Additionally, at Committee markup, H.R. 2339 was amended to exempt certain traditional, expensive cigars from a prohibition of online tobacco sales. There is no justification for differentiating a La Palina from a Black and Mild. Making this distinction undermines the public health arguments made for this bill and suggests that some tobacco preferences, within certain communities, will be prioritized and protected over others.

#### II. H.R. 2339 INCREASES CRIMINAL PENALTIES OVER PUBLIC HEALTH

H.R. 2339 prohibits menthol and other flavored tobacco products under the Food, Drug, and Cosmetic Act (FD&C Act). This prohibition criminalizes the manufacturing, importing, distributing, or selling of menthol and other flavored tobacco products under the FD&C Act, imposing up to three years of imprisonment. Violating a menthol and flavored tobacco ban would implicate other federal criminal penalties as well. For example, the Federal Cigarette Contraband Trafficking Act would be implicated, allowing up to five years of imprisonment.

With a criminal legal system that incarcerates Blacks at nearly six times the rate of white Americans and a prison population that is 67 percent Black and Latinx, any prohibition on menthol and flavored tobacco products promises continued overcriminalization and mass incarceration of people of color. A ban on menthol and flavored tobacco products could reintroduce many of the harms imposed by the failed war on drugs as lawmakers work to legalize cannabis and take a public health approach to opioids. A bill criminalizing tobacco is contrary to those efforts. Righting the wrongs of earlier failed drug policy requires consideration of the unintended consequences of well-intentioned policies, especially on the most vulnerable communities. It also requires us to remember that harm reduction, including education and counseling, are what work to reduce usage and harm in our society, not prohibition.

#### III. H.R. 2339 ENCOURAGES HARMFUL POLICE PRACTICES

Recent history shows us that drug prohibitions and bans increase negative interactions between law enforcement and people of color. The New York Police Department's (NYPD) stop and frisk program resulted in nearly 700,000 stops in 2011, with drugs serving as the alleged pretext for most of those stops. Ninety percent of those stops were of Black and Latinx people. We are concerned that law enforcement's attempts to enforce a menthol and flavored tobacco ban will undoubtedly lead to fines, arrests, and eventual incarceration for those who continue to use and sell menthol and flavored tobacco products. While the legislation was amended at Committee to try to minimize law enforcement practices here, it only applies in the context of federal enforcement of the FD&C Act; it does not govern local enforcement around any state and city prohibition policies that will follow.

The death of Eric Garner in 2014 generated national attention not only for the brutality he experienced at the hands of NYPD police, but for the reason that led to the encounter with law enforcement. Mr. Garner died from an illegal chokehold having been stopped by

police for selling single cigarettes in violation of state law. Gwendolyn Carr, Eric Garner's mother, cautions: "When you ban a product sold mostly in Black communities, you must consider the reality of what will happen to that very same overrepresented community in the criminal justice system." With a federal prohibition on menthol and flavored tobacco products, states will develop their own prohibition and enforcement policies that could result in harmful police practices like that witnessed with Mr. Garner.

Based on our concerns, we urge you to not impose a blanket ban on menthol and related tobacco products. A prohibition on all menthol and flavored tobacco products will not achieve a public health goal of reducing smoking among Black people, young people, or others. We hope we can work together to avoid repetitions of policies that are intended to protect youth and communities of color, but instead only further engrain systemic criminalization and racism.

Sincerely,

American Civil Liberties Union, Drug Policy Alliance, Law Enforcement Action Partnership, National Action Network, National Association of Criminal Defense Lawyers, National Association of Social Workers, The Center for Popular Democracy.

#### NATIONAL TAXPAYERS UNION,

February 25, 2020.

National Taxpayers Union urges all Representatives to vote "NO" on H.R. 2339, the "Protecting American Lungs and Reversing the Youth Tobacco Epidemic Act" of 2020. This disastrous legislation would significantly raise taxes and limit the ability for cigarette smokers to transition to less harmful vapor and e-cigarette products.

As written, H.R. 2339 contains one of the largest tax increases considered by the 116th Congress to date. This legislation would levy a new excise tax on nicotine contained in vaping products to match the rate of the federal cigarette excise tax and could raise nearly \$10 billion, according to CBO. It's a significant tax hike that will severely harm consumers and small business owners. While there is likely to be harm to the economic health of the country, there would also be damage to the health of adults transitioning away from deadly cigarettes. According to a study published by the National Bureau of Economic Research, taxing vapor products at the same rate as traditional cigarettes would deter approximately 2.75 million Americans from kicking their habit. In other words, tax policy alone could make it less likely that millions of Americans make choices that would improve their health.

It is particularly concerning that this legislation prohibits all flavors of tobacco products, including menthol. In their attempts to quit, adult tobacco smokers typically start with tobacco-flavored e-liquid, but research indicates many end up switching to other flavors that this legislation would prohibit. Cracking down on legal-age buyers of flavored e-cigarettes will limit access to less harmful alternatives that could potentially save hundreds of thousands of lives each year. Blanket prohibitions are seldom successful and often lead consumers to untaxed and unregulated black markets to access products.

These devastating provisions completely disregard the benefits vapor products have as an important cigarette cessation tool. Vapor products still allow users to consume nicotine, but avoid the traditional combustion of cigarettes, which contain toxins and other dangerous chemicals. Some government studies have found that e-cigarettes are 95 percent safer than traditional tobacco products and can be as much as twice as effective

as gum or patches to help users quit. Smoking is a high-risk activity and providing smokers with a way to consume nicotine in a safer way is a large public health benefit, increasing life expectancy and reducing mortality.

Roll call votes on H.R. 2339 will be heavily-weighted in NTU's annual Rating of Congress and a "NO" vote will be considered the pro-taxpayer position.

FREEDOMWORKS,

February 26, 2020.

#### KEY VOTE NO ON THE QUIT OR DIE ACT, H.R. 2339

On behalf of FreedomWorks' activist community, I urge you to contact your representative and ask him or her to vote NO on the "Protecting American Lungs and Reversing the Youth Tobacco Epidemic Act," H.R. 2339. This bill is nothing short of an assault on the vaping industry, which provides smokers with a method of harm reduction that is 95 percent safer than traditional, combustible cigarettes. The message House Democrats are sending with H.R. 2339 is that Americans who want to kick the habit through vaping should either "quit or die."

H.R. 2339 would outright ban online sales of flavored vaping products, and ban the flavors themselves. The bill would also require graphic health warnings on tobacco packaging. This is nanny state governance at its worst.

Despite the bill's wildly misleading short title, it will not, in fact, do anything to combat youth usage of tobacco products. What it will do is make it more difficult for adult smokers to quit on their own terms. This bill prohibits the use of any and all characterizing flavors of tobacco products, including menthol. It's important to note this is not limited to e-cigarettes. Traditional menthol cigarettes would become illegal if this bill were made law.

The sponsors of H.R. 2339, Reps. Frank Pallone (D-N.J.) and Donna Shalala (D-Fla.), have put a stark choice before smokers in the United States: quit or die. Studies have shown that e-cigarettes are both 95 percent less harmful than traditional cigarettes and a more effective means of quitting. H.R. 2339 takes that option entirely off the table. Under this legislation, if smokers cannot quit cold turkey, they are left to suffer the crippling medical consequences on their own.

This bill also presents a variety of First Amendment concerns. It would require tobacco companies to provide graphic health warnings on their packaging. This is compelled commercial speech by the government, something that's been ruled unconstitutional a number of times. The late Supreme Court Justice Lewis Powell set forth a test for government regulation of commercial speech. The two prongs were that in order to be regulated, the existing labeling must actively be misleading and there must be a substantial government interest involved. The Pallone-Shalala bill fails both tests.

Furthermore, this bill greatly increases the Food and Drug Administration's (FDA) authority to regulate this space. The FDA would have the ability to hand down even more stringent regulations on the sale of existing products and collect fees or taxes on them. This is an unacceptable growth of an unelected bureaucratic agency.

Amusingly, this package contains a provision that would require a study to be conducted on the effects of e-cigarettes. This is a clear admission by the drafters of this legislation that they not only ignored the medical research surrounding vaping but that they also have no intention of doing so before they wholesale ban an entire category of products.

H.R. 2339 also includes the text of H.R. 4742. This aspect of the bill would impose a new excise tax on nicotine used in vaping, at a rate of \$50.33 per 1,810 milligrams or at a proportional rate. The Congressional Budget Office projects that H.R. 4742 would increase tax revenues by nearly \$10 billion over ten years. Obviously, this bill is aimed at deterring people from vaping by increasing the costs, which will be passed along to the consumer at the point of sale.

This kind of excise tax typically impacts lower-income individuals. The National Center for Biotechnological Information notes, "In 2013, the prevalence of smoking among US adults living at or below the US Census poverty threshold was 80% greater than that of those living above the poverty line (33.8% compared to 18.7%). This elevated prevalence is in part due to the reality that compared to more advantaged smokers, over time disadvantaged smokers have a lesser likelihood of quitting."

We find it peculiar that House Democrats, who have so frequently relied on class warfare rhetoric to push a socialist agenda, have sought to protect the state and local tax (SALT) deduction—which overwhelmingly benefits higher-income earners in high-tax states like California, New Jersey, and New York—but are so willing to hit lower-income individuals with such a regressive tax. We find the hypocrisy palpable.

Because H.R. 2339 creates new prohibitions on certain activities—including banning menthol and other flavors—it opens up the possibility of criminal penalties under the Food, Drug, and Cosmetic Act (21 U.S.C. 333) and the Federal Cigarette Contraband Trafficking Act (18 U.S.C. 2344). In short, individuals who participate in this behavior could be exposed to fines and prison time.

FreedomWorks will count the vote on H.R. 2339 on our 2020 Congressional Scorecard and reserves the right to score any related votes. The scorecard is used to determine eligibility for the FreedomFighter Award, which recognizes Members of the House and Senate who consistently vote to support economic freedom and individual liberty.

Sincerely,

ADAM BRANDON,  
*President, FreedomWorks.*

R STREET,

*Washington, DC, February 25, 2020.*

DEAR SPEAKER PELOSI, MINORITY LEADER MCCARTHY AND MEMBERS OF THE HOUSE OF REPRESENTATIVES: The R Street Institute—a nonprofit, nonpartisan public policy research organization focused on pragmatic solutions to policy challenges—has a number of concerns with H.R. 2339, the "Reversing the Youth Tobacco Epidemic Act of 2019." We recognize that preventing non-smoking young people from establishing both e-cigarette and combustible cigarette use is vital to the future health of the population. However, it is important to recognize that smoking is the leading cause of preventable death in the United States, and we must continually evaluate the available strategies for decreasing tobacco-related morbidity and mortality. E-cigarettes provide such a strategy.

Undoubtedly, the youth use trend is cause for concern and continued investigation. However, this cannot be the only measure of the effect of e-cigarettes on population health. Based on the body of research as a whole, we urge the committee to consider pursuing policies that reflect the short- and long-term population health impact of e-cigarettes relative to the known harms of combustible cigarettes.

E-CIGARETTES ARE A HARM REDUCTION AND SMOKING CESSATION TOOL

The best available science indicates e-cigarettes are not likely to exceed 5 percent of

the harm associated with combustible cigarettes, a conclusion supported by both Public Health England and recently the National Academies of Sciences, Engineering and Medicine. Also, like traditional nicotine replacement therapies, e-cigarettes do not produce environmental tobacco smoke that harms bystanders. It is estimated that e-cigarettes have the potential to save up to 6 million lives by 2100 if only 10 percent of current smokers switch to e-cigarettes in the next 10 years.

Many experts recognize that e-cigarettes present a reduced risk because they do not employ the traditional cigarette combustion process that releases around 7,000 chemicals—some of which are highly carcinogenic. For this reason, one such expert, former FDA commissioner Scott Gottlieb, has made reduced-risk products like e-cigarettes central to the FDA's roadmap:

While it's the addiction to nicotine that keeps people smoking, it's primarily the combustion, which releases thousands of harmful constituents into the body at dangerous levels that kills people. This fact represents both the biggest challenge to curtailing cigarette addiction—and also holds the seeds of an opportunity that's a central construct for our actions. E-cigarettes may present an important opportunity for adult smokers to transition off combustible tobacco products.

Although there are a number of pharmaceutical products that can help smokers quit, it is important to remember that it is not only nicotine dependence that makes quitting combustible cigarettes difficult. For some, smoking offers stress relief, comradery or other psycho-social pleasure, and some even consider it a component of their identity. This often makes the physical act of smoking just as difficult to quit as the nicotine. Unlike the FDA-approved methods of smoking cessation, e-cigarettes do not force a smoker to forgo the secondary pleasure they get from the act of smoking while they are adjusting to the physiological effects of decreased nicotine.

Indeed, e-cigarettes have quickly become the number one quit tool in many parts of the world, allowing an untold number of smokers to quit cigarettes. Public health modeling has suggested that e-cigarettes are contributing to more rapid declines in smoking rates than were seen in previous years. In the United States and the United Kingdom e-cigarettes have outpaced traditional quit methods (varenicline, nicotine replacement therapies and counseling) and demonstrate a higher degree of success. Furthermore, in a randomized trial, smokers who used e-cigarettes as a cessation device achieved sustained abstinence at roughly twice the rate of smokers who used nicotine replacement therapy.

FLAVORS HELP SMOKERS TRANSITION AWAY FROM COMBUSTIBLE CIGARETTES

The availability of non-tobacco flavors also assists smokers with the transition away from combustible cigarettes. The International Journal of Environmental Research and Public Health reports that limitations in flavor choices negatively impact user experience. About 40 percent of former and current adult smokers predict that removing their ability to choose flavors would make them less likely to remain abstinent or attempt to quit. In fact, data suggests that current smokers are partial to the flavor of traditional tobacco, while fruit and sweet flavors are preferred by former smokers, indicating a correlation between flavors and sustained abstinence from combustible cigarettes.

Moreover, it has recently been demonstrated that e-cigarette users who use

non-tobacco flavors, including menthol and non-menthol (fruit, sweet, dessert) flavors are more likely to completely switch from combustible cigarettes than those who choose tobacco flavors. Flavored e-liquids are yet another way that e-cigarettes can help smokers disassociate combustible cigarettes—and the characteristic flavor—from their pleasurable effects.

Although many organizations and leaders suggest flavors attract young people to e-cigarettes, the 2019 National Youth Tobacco Survey casts doubt on that assertion. Among middle school and high school students, the most commonly endorsed reason for using e-cigarettes was "I was curious about them." Overall, 53 percent of students surveyed indicated curiosity as a reason they use e-cigarettes. The second most common reason for use was if a student's friend or family member used e-cigarettes. With just 22 percent of students endorsing availability of flavors as a reason for vaping, it is clear that social factors, not flavors, are the driving force behind youth e-cigarette use.

R STREET APPLAUDS RAISING THE AGE OF PURCHASE OF ALL TOBACCO PRODUCTS TO 21

Of course, smokers are not the only population impacted by e-cigarettes, and addressing youth use is important. Our organization, the R Street Institute, endorsed raising the minimum age of purchase for all tobacco products to 21, which was signed into law Dec. 20, 2019. This change will help prevent youth access in high school by limiting opportunities for younger students to buy from peers who, prior to the federal minimum-age-to-purchase increase, obtained the products legally. In combination with more stringent point-of-sale age verification and meaningful penalties for merchants who violate minimum-age-to-purchase laws, this change will significantly limit youth access.

The impact of nationwide 21-to-purchase legislation is yet to be evaluated; however, evidence from areas that raised the minimum age to purchase prior to the federal legislation suggests that this change will be highly effective at decreasing youth tobacco use. Following implementation of a 21-to-purchase law in Needham, Massachusetts, there was an unprecedented 47 percent reduction (from 13 to 7 percent) in past 30-day smoking rates among high schoolers over four years (2008–2012).

R STREET DOES NOT SUPPORT BANNING NON-FACE-TO-FACE SALES OF E-CIGARETTES

It is imperative that the availability of reduced-risk alternatives remains in place for people who use e-cigarettes as a cessation tool. According to the 2016 Surgeon General's Report, in 2014, 20 percent of all e-cigarette sales occurred online. It is estimated that in 2018, 32 percent of all e-cigarette sales occurred online. As more proposals arise to limit what kinds of brick and mortar establishments are able to sell e-cigarettes or other reduced-risk products—all while protecting combustible sales—online sales may be the only point of access for people who, for many reasons, cannot reach specialty stores. It should not be a surprise to the committee that people who live with disabilities, are economically disadvantaged or live in rural areas are overrepresented in the smoking population. These particular factors represent true barriers to face-to-face access to specialty products. Online sales and delivery may be the only way that smokers have access to safer products.

Furthermore, there is a misperception that online sales of e-cigarettes are more vulnerable to underage access. Legal retailers that sell their products online have strict FDA-mandated age verification systems that are successful in preventing underage access to their products. Unverified underage sales

largely occur on eBay or other websites where age verification is not vital. Banning non-face-to-face sales will not stop illegitimate online sales to underage persons from occurring, as these sales are already illegal.

#### THE FDA'S ROLE IN PROTECTING PUBLIC HEALTH

Finally, it is important to recognize that the FDA has developed a regulatory pathway to evaluate the safety and public health impact of all new tobacco products, including considerations of flavors. This is a process that has been carefully designed over several years to ensure new tobacco products, like e-cigarettes, will not have a negative impact on the health of the population as a whole. Given that manufacturers must file their Premarket Tobacco Applications for all deemed tobacco products, which includes virtually all e-cigarettes, by May 12, 2020 or risk removal from the market, it makes sense to delay enacting any federal bans. Allowing the safety and regulatory experts at the FDA to lead the way in authorizing the sale of these products is the most appropriate way forward, something acknowledged by §103(d.2) of this bill.

Policies that treat e-cigarettes the same as combustible cigarettes encourage current smokers to continue doing enormous harm to their health by discouraging a switch from combustible products. Conversely, policies that reflect the lesser harm of e-cigarettes can significantly reduce the enormous burden of disease that combustible cigarettes impose on society.

One thing is certain: We are all striving to improve and protect the nation's health. To do so, we must recognize the potential for e-cigarettes to mitigate risks associated with combustible cigarettes if we wish to encourage a healthful populace. We encourage you to consider policies that reflect the reduced risk of e-cigarettes compared to combustible cigarettes as we work towards creating a healthier population.

Thank you for your time and consideration.

Respectfully submitted,

CARRIE WADE, PH.D.,  
M.P.H.,

*Director of Harm Reduction Policy, R Street Institute.*

CHELSEA BOYD, M.S.,  
*Research Associate in Harm Reduction Policy, R Street Institute.*

FEBRUARY 14, 2020.

HOUSE OF REPRESENTATIVES,  
Washington, DC.

DEAR REPRESENTATIVE: On November 19, 2019, H.R. 2339, the Reversing the Youth Tobacco Epidemic Act of 2019, was reported out of the Energy and Commerce Committee. It is likely you will vote on this legislation before the end of February.

The Council for Citizens Against Government Waste (CCAGW) understands the concerns Congress has with youth use of tobacco products, particularly electronic nicotine delivery systems (ENDS) and vaping, but legislation was passed in December 2019 that raised the age from 18 to 21 for the legal use of any tobacco product. It would seem obvious that Congress should allow that new law to take hold before H.R. 2339, a far more drastic measure, is even considered. If this bill should become law, it would create a black market that will cause great harm to our citizens. On behalf of the more than 1 million members and supporters of CCAGW, I ask that you oppose H.R. 2339.

The legislation would make it illegal to sell any flavored ENDS product and ban flavors in other tobacco products, including

menthol, mint, and spice flavors found in combustible cigarettes and non-combustible products like flavored cigars and chewing tobacco. Only natural tobacco flavor would be allowed.

Adults use ENDS and other non-combustible harm-reduction tobacco products to quit smoking because they enjoy the sweet and fruity flavors, finding them essential in moving away from smoking. Banning menthol and other flavors, like spices and herbs found in combustible cigarettes and other products like chewing tobacco, will encourage many current users to find other sources of these flavors. Menthol crystals can easily be bought and enterprising street vendors will be eager to sell a variety of flavorings for all tobacco users.

Much of the impetus behind H.R. 2339 was based on reports that youth use of e-cigarettes had climbed significantly. The 2019 National Youth Tobacco Survey data showed that 64.8 percent of youth had never tried an e-cigarette and 6.7 percent had used an e-cigarette in their entire life for more than 100 days. The largest percent of youth purchased their e-cigarette from a friend, not a store. Certainly, 6.7 percent is a number to be concerned about but whether that should be considered an epidemic and warrant passing such radical legislation that will hurt adults who are using harm reduction tobacco products to quit smoking is questionable.

For example, according to 2017 Centers for Disease Control (CDC) statistics, it was found that among high school students, during the past 30 days, 30 percent drank some amount of alcohol; 14 percent binge drank; 6 percent drove after drinking alcohol; and, 17 percent rode with a driver who had been drinking alcohol. Yet despite these numbers, Congress is not calling for a ban on alcohol. That was tried before with disastrous results.

In late summer and into the early fall, there were reports of severe illnesses and death due to a national outbreak of "e-cigarette, or vaping, product use-associated lung injury" or EVALI. The CDC admits that as of February 11, 2020 the data shows tetrahydrocannabinol (THC)-containing e-cigarette, or vaping products, which were obtained from "informal sources like friends, family, or in-person or online dealers, are linked to most EVALI cases and play a major role in the outbreak" and that "Vitamin E acetate is strongly linked to the EVALI outbreak."

In other words, it was the illicit market that caused the problem, not the legitimate ENDS market that produces thousands of jobs and helps millions of ex-smokers stay away from combustible cigarettes that Congress and the Food and Drug Administration are so keen to destroy.

Fortunately, the EVALI cases have dropped significantly, so Congress and health officials should take heed. Tobacco is a legal product in the U.S. and even if Congress could ban it, there should be little doubt that China would step in and flood an illicit market as it is the leading producer of tobacco in the world. The same result will occur if flavors are banned, especially with ENDS products. Current adult users will either go back to combustible cigarettes, which are deadly, or take the chance and purchase illegal products. Congress will have created a real health crisis that could have been avoided.

Again, I urge you to vote no on H.R. 2339. All votes on this legislation will be among those considered for CCAGW's 2020 Congressional Ratings.

Sincerely,

TOM SCHATZ,  
*President, CCAGW.*

NACS,

*Alexandria, VA, February 24, 2020.*

Re Key Vote Alert: Oppose the Reversing the Youth Tobacco Epidemic Act of 2019 (H.R. 2339).

Hon. NANCY PELOSI,  
*Speaker, House of Representatives,*  
*Washington, DC.*

Hon. KEVIN MCCARTHY,  
*Minority Leader, House of Representatives,*  
*Washington, DC.*

DEAR SPEAKER PELOSI AND LEADER MCCARTHY: The National Association of Convenience Stores (NACS) represents the convenience industry, which has approximately 153,000 stores in the United States and employees over 2.36 million workers. In 2018, the convenience industry generated \$654.3 billion in total sales. Convenience stores serve about 165 million people per day—around half of the U.S. population—and the industry processes nearly 75 billion payment transactions per year. Yet, the industry is truly an industry of small businesses—approximately 62 percent of convenience store owners operate a single store, and approximately 74 percent of NACS' membership is composed of companies that operate ten stores or fewer.

The industry has devoted a substantial amount of time and resources to ensuring that convenience store operators are equipped to comply with federal, state, and local tobacco regulations. NACS shares Congress's concern with the number of underage users of e-cigarettes and supports legislative efforts to curb underage use of tobacco products.

NACS, however, opposes certain provisions in the Reversing the Youth Tobacco Epidemic Act of 2019 (H.R. 2339). H.R. 2339 would ban all flavored tobacco products—including menthol cigarettes, flavored smokeless tobacco, and flavored cigars—which in turn would create an illicit market for these flavored tobacco products.

It's important for lawmakers to understand the impact that banning flavored tobacco products would have on the market. Today, the menthol market accounts for roughly 30 percent of cigarette sales and the flavored market accounts for roughly 50 percent of cigar sales. What's more, nearly 86 percent of smokeless tobacco sales are for flavored products. It is unreasonable to assume that consumers will simply transition away from these flavored products to unflavored tobacco alternatives.

Instead, a ban on menthol cigarettes, flavored smokeless tobacco, and flavored cigars will undoubtedly lead to a black market for these products because of the broad consumer base that exists among adult users. When that happens, the illicit purveyors of menthol cigarettes, flavored smokeless tobacco, and flavored cigars, operating outside of the law, will not discriminate among their customers based on age. We already see this problem in the large illicit tobacco market that exists today.

Moreover, growth in the illicit market for tobacco increases health concerns. Congress, when it passed the Tobacco Control Act in 2009, granted the Food and Drug Administration (FDA) the authority to regulate tobacco products, including oversight into how tobacco products are manufactured. Tobacco manufacturers create products that are fully scrutinized and regulated by FDA; black market suppliers may ignore those regulations. Banning menthol cigarettes, flavored smokeless tobacco, and flavored cigars will eliminate FDA's oversight of these products, an important public health safeguard that Congress intended in the Tobacco Control Act.

A ban of menthol cigarettes, flavored smokeless tobacco, and flavored cigars also will create a “grey” market. Without a domestic source for these products, adult users will purchase them over the Internet, when they travel abroad, and through bulk importers/distributors. Again, these products will be unregulated by the FDA, therefore losing whatever health protections that Congress intended in the Tobacco Control Act.

The FDA needs to have a plan and demonstrated ability to deal with the problems of the illicit market for tobacco products before anyone considers a ban on menthol cigarettes, flavored smokeless tobacco, and flavored cigars. If a ban comes first, children and public health will be negatively impacted by the resulting illicit market.

Because of these concerns, NACS is key voting the bill and urges you to vote against H.R. 2339.

Respectfully,

LYLE BECKWITH,

Senior Vice President, *Government Relations.*

Mr. SMITH of Nebraska. Madam Speaker, I will include letters from Americans for Tax Reform, Altria, Taxpayer Protection Alliance, and the Tax Foundation.

I reserve the balance of my time.

Mr. SUOZZI. Madam Speaker, I just want to mention again that the Protecting American Lungs Act had over 50 public health, medical, and educational organizations sponsoring it.

Madam Speaker, I yield 2 minutes to the gentlewoman from Florida (Ms. SHALALA), a very good friend, a real leader on health issues, and the former Secretary of Health and Human Services in the United States of America.

Ms. SHALALA. Madam Speaker, I would like to submit for the RECORD a letter from the leading voice of African American physicians, Dr. Louis Sullivan, in support of the legislation.

Dr. Sullivan was my predecessor at HHS. He served as Secretary from 1989 to 1993 under President Bush and is the president emeritus of Morehouse School of Medicine.

LOUIS W. SULLIVAN, MD,  
Atlanta, GA, February 26, 2020.

Hon. FRANK PALLONE,  
Chairman, *Committee on Energy and Commerce,*  
House of Representatives, Washington, DC.

DEAR CHAIRMAN PALLONE: I write to you today to express my strong support for H.R. 2339, Reversing the Youth Tobacco Epidemic, and I urge its passage by the House of Representatives.

There is an urgent need for action to protect the health of Americans—including the health of our young minority citizens—from the adverse health consequences of tobacco, including menthol-flavored cigarettes. For too many years, the tobacco industry has used menthol cigarettes—and now flavored cigars—to prey on minority youth and addict them to deadly tobacco products.

In 2011, the Food and Drug Administration's Tobacco Products Scientific Advisory Committee found that removing menthol cigarettes from the marketplace “would benefit public health in the United States.” It concluded that menthol cigarettes have been disproportionately targeted at African Americans and have been disproportionately smoked by African Americans. Yet, the Food and Drug Administration failed to act to remove these products from the marketplace.

A number of localities prohibit the sale of all flavored products, including menthol cigarettes. Local action is important but

local policies will not protect millions of African Americans: Congress must remove all flavored products from store shelves in order to protect minority populations. A nationwide policy will also help end inconsistent enforcement.

Removing all flavored tobacco products, including menthol cigarettes will save lives—especially the lives of our minority citizens. I urge you and the House to move forward with removing all flavored tobacco products, including menthol cigarettes and flavored cigars.

Sincerely yours,

LOUIS W. SULLIVAN, MD,  
President Emeritus,  
Morehouse School of  
Medicine, U.S. Sec-  
retary of Health and  
Human Services,  
1989–1993.

□ 1100

Madam Speaker, as our Nation anticipates the probability of a pandemic, here today in this House, the people's House, we have the opportunity to save millions of young lives that would be cut short by nicotine if we fail to act.

I am not exaggerating. The CDC predicted that, if the children of our country continue to use tobacco products at the current rate, 5.6 million will have premature deaths.

This is a test of our courage. Let's look at the facts.

In 1997, 24.6 percent of all 12th graders reported daily use of cigarettes. Thanks to smart, tough policies and a national commitment to reducing cigarette use, those numbers dropped to 3.6 percent by 2018.

Nearly 90 percent of adult smokers began smoking before the age of 18. If you don't start smoking as a child, it is very unlikely you will smoke as an adult. This isn't a secret. Public health officials know this, and tobacco companies know this, too. They also know nicotine is a highly addictive substance.

This dramatic reduction in cigarette use by children put tobacco companies in a bind. If children and teenagers have stopped using cigarettes and 90 percent of all adult smokers began smoking as children, how can they maintain a pipeline of customers?

Their answer arrived in the form of a new technology: e-cigarettes and vaping products. Companies knew that the pipeline of lifetime smokers was dwindling, so they started to market new vaping products to young people.

The SPEAKER pro tempore. The time of the gentlewoman has expired.

Mr. SUOZZI. Madam Speaker, I yield an additional 30 seconds to the gentlewoman from Florida.

Ms. SHALALA. They started marketing new vaping products to young people through Instagram ads and influencers and other social media platforms. They handed out free vaping products. They clearly targeted our children, and the strategy worked.

It is time to ensure that our children do not face a lifetime of nicotine addiction. It is time to finally pass a bill that protects their health, and that is

what this bill does. I strongly support it.

Mr. SMITH of Nebraska. Madam Speaker, I yield myself such time as I may consume.

It is important to note that I previously asked for some letters to be entered into the RECORD, and I think it is important to note some of the points that these organizations raise back to the ACLU and the Association of Social Workers and other groups.

They talk about this bill leading to overcriminalization and mass incarceration of people of color. It talks about the bill disproportionately impacting people in communities of color.

I think our country has had some, I think, very constructive conversations of late relating to these issues of mass incarceration and overcriminalization, and I think this bill sets us back in terms of those conversations that we have been having.

Madam Speaker, I reserve the balance of my time.

Mr. SUOZZI. Madam Speaker, I yield 1 minute to the gentleman from New Jersey (Mr. PALLONE), the chairman of the Energy and Commerce Committee, a good friend and a leader on this issue.

Mr. PALLONE. Madam Speaker, I want to thank my colleague from New York for yielding me this time.

Madam Speaker, I include in the RECORD the following letters of support for H.R. 2339:

First, a letter from 76 leading public health organizations; second, a letter from the NAACP; third, a letter from the National Medical Association; and fourth, a letter from public health organizations specifically supporting the menthol prohibition.

FEBRUARY 4, 2020.

HOUSE OF REPRESENTATIVES,  
Washington, DC.

DEAR REPRESENTATIVE: We are writing to express our strong support for H.R. 2339, the Reversing the Youth Tobacco Epidemic Act of 2019. This legislation will address the current youth e-cigarette epidemic that is undermining the progress made in reducing youth tobacco use.

Use of e-cigarettes by youth has escalated rapidly in recent years, placing a new generation at risk of nicotine addiction and tobacco use. Between 2017 and 2019, e-cigarette use more than doubled among high school students (from 11.7% to 27.5%) and tripled among middle school students (from 3.3% to 10.5%). More than 5.3 million middle and high school students used e-cigarettes in 2019, an alarming increase of more than 3 million in two years. Use of other tobacco products, including cigarettes, cigars and hookah, is also a serious problem. Tobacco use remains the leading preventable cause of death in the United States and is responsible for approximately \$170 billion in health care costs each year.

The Reversing the Youth Tobacco Epidemic Act provides a much-needed response to this serious public health problem. Its prohibition on flavored tobacco products, including flavored e-cigarettes, flavored cigars, and menthol cigarettes, is needed to stop tobacco companies from targeting and addicting kids with enticing flavors, such as gummy bear and cotton candy. Flavors mask the harsh taste of tobacco and make it easier for kids to start to use a tobacco product and to become addicted.

The bill's prohibition on flavored e-cigarettes is all the more important because the Administration's recently released policy on flavored e-cigarettes will leave thousands of flavored e-liquids and devices on the market. Flavors are a key reason for widespread youth use of e-cigarettes. Ninety-seven percent of current youth e-cigarette users have used a flavored e-cigarette in the past month, and seven out of ten said they used e-cigarettes "because they come in flavors I like."

The bill's prohibition on menthol cigarettes, flavored cigars, and other flavored tobacco products will also help protect kids and public health. More than half of youth smokers—and seven in ten African American youth smokers—smoke menthol cigarettes. As a result of decades of pervasive tobacco industry marketing, 85 percent of African-American smokers smoke menthol cigarettes, and menthol is a likely contributor to the higher rates of tobacco-caused death and disease experienced by African Americans. A 2013 Food and Drug Administration (FDA) analysis concluded that menthol cigarettes increase youth initiation, increase nicotine addiction, and make it harder for smokers to quit. Cigars are also available in a wide variety of flavors that make them more attractive to kids. More than one million high school students smoke cigars.

In addition to its prohibition on flavored tobacco products, the Reversing the Youth Tobacco Epidemic Act includes a number of other provisions that will help to reduce youth use of e-cigarettes and use of other tobacco products, including prohibiting online sales of most tobacco products, addressing inappropriate marketing and advertising, and ensuring that FDA will promptly implement the graphic health warnings on cigarette packs and advertising that are required under the 2009 Tobacco Control Act.

Youth use of e-cigarettes and other tobacco products is a problem that will not resolve itself. It will require action by Congress. The Reversing the Youth Tobacco Epidemic Act provides the comprehensive response that is needed. We urge you to support this important legislation when it comes to the House floor.

Sincerely,

AASA, The School Superintendents Association; Academy of General Dentistry; Action on Smoking & Health; African American Tobacco Control Leadership Council; American Academy of Oral and Maxillofacial Pathology; American Academy of Oral and Maxillofacial Radiology; American Academy of Otolaryngology-Head and Neck Surgery; American Academy of Pediatrics; American Association for Cancer Research.

American Association for Dental Research; American Association for Respiratory Care; American Cancer Society Cancer Action Network; American College Health Association; American College of Cardiology; American College of Occupational and Environmental Medicine; American Dental Association; American Federation of School Administrators; American Federation of Teachers; American Heart Association.

American Lung Association; American Medical Association; American Public Health Association; American School Counselor Association; American School Health Association (ASHA); American Society of Addiction Medicine; American Thoracic Society; Americans for Nonsmokers' Rights; Association of Educational Service Agencies; Association of Maternal & Child Health Programs.

Association of School Business Officials International; Association of Schools and Programs of Public Health; Association of State and Territorial Health Officials (ASTHO); Association of Women's Health,

Obstetric and Neonatal Nurses; Asthma and Allergy Foundation of America; Big Cities Health Coalition; Campaign for Tobacco-Free Kids; Catholic Health Association of the United States; Children's Wisconsin; ClearWay Minnesota.

Common Sense Media; Community Anti-Drug Coalitions of America's (CADCA); Eta Sigma Gamma—National Health Education Honorary; First Focus Campaign for Children; International Association for the Study of Lung Cancer; March of Dimes; Mesothelioma Applied Research Foundation; NAACP; National African American Tobacco Prevention Network; National Association of County and City Health Officials.

National Association of Elementary School Principals; National Association of Pediatric Nurse Practitioners; National Association of School Nurses; National Association of Secondary School Principals; National Association of Social Workers; National Black Nurses Association; National Center for Health Research; National Coalition for Cancer Survivorship; National Education Association; National Hispanic Medical Association.

National Medical Association; National Network of Public Health Institutes; National Rural Education Advocacy Collaborative; National Rural Education Association; Oncology Nursing Society; Parents Against Vaping e-cigarettes (PAVe); Prevent Cancer Foundation.

Public Health Solutions; SHAPE America; Society for Cardiovascular Angiography and Interventions; Society for Public Health Education; Students Against Destructive Decisions; The Society of State Leaders of Health and Physical Education; The Society of Thoracic Surgeons; Trinity Health; Trust for America's Health; U.S. PIRG.

NAACP,  
WASHINGTON BUREAU,  
Washington, DC, October 16, 2019.

Re NAACP Support for H.R. 2339, the "Reversing the Youth Tobacco Epidemic Act of 2019".

Hon. FRANK PALLONE,  
Chairman, Committee on Energy and Commerce,  
House of Representatives, Washington, DC.

DEAR CHAIRMAN PALLONE: On behalf of the NAACP, our nation's oldest, largest and most widely-recognized grassroots-based civil rights organization, I would like to thank you for your leadership in introducing H.R. 2339, the "Reversing the Youth Tobacco Epidemic Act of 2019." Nearly all tobacco use begins during youth and young adulthood—which is a crucial period for the development of the human brain. Your legislation would help put a stop to tobacco use by including a ban on all characterizing flavors of tobacco products, which are often created to appeal to the younger market.

As was noted in our 2016 NAACP resolution, "Support State and Local Restrictions on the Sale of Flavored Tobacco Products," "the tobacco industry has a well-documented history of developing and marketing brands targeted to African Americans and their youth" and further that "the tobacco industry manipulated the manufacturing of cigarettes to ensure the uptake and continued use of tobacco, especially by African-American young people and other vulnerable populations for many years." Your legislation makes clear that the proliferation of slick new products purposefully designed to appeal to young people to get them addicted to nicotine and tobacco should not, and will not, be tolerated.

The use of tobacco and nicotine has evolved since that first Surgeon General's report. A quick Google search will lead you to an array of products online, including cigarettes, cigars, smoking pipes, and the most

recent addition—e-cigarettes. These e-cigarettes are now available in many flavors and studies show that flavor choices like mint, candy, fruit, or chocolate draw the interest of teens in middle school and high school. Unfortunately, while combustible cigarette use among teens has declined over the past two decades, there is a widespread—and false—perception that e-cigarettes are safe.

This false belief threatens any progress we have made in combatting this controllable public health threat. Recent data shows that over 3.6 million youth used e-cigarettes in 2018, making this product the most commonly used tobacco product on the market.

Flavored e-cigarettes have driven the youth epidemic, and more than half of youth smokers—including seven out of ten African-American youth smokers—smoke menthol cigarettes, so it's time to take these products off the market once and for all. States and cities are standing up and taking action, and we believe our federal government should do the same.

Thank you again for your leadership on this important issue, and for your concern for the health and well-being of future generations.

Sincerely,

HILARY O. SHELTON,  
Director, NAACP  
Washington Bureau  
& Senior Vice President for Policy and Advocacy.

NATIONAL MEDICAL ASSOCIATION,  
Silver Spring, MD, April 16, 2019.

NMA Applauds the Introduction of Legislation to Ban the Sale of All Flavored Tobacco Products, including Menthol Cigarettes and Flavored Cigars

The National Medical Association strongly supports the Reversing the Youth Tobacco Epidemic Act of 2019 legislation introduced today. This would prohibit the sale of all flavored tobacco products, including menthol cigarettes and flavored cigars. We applaud Representative Frank Pallone (D-NJ) for introducing the bill and taking this important step forward.

As the collective voice of African-American physicians, we know that banning menthol cigarettes will save lives in our community. Smoking-related illnesses are the number one cause of death in the African-American community and approximately 45,000 African Americans die each year from smoking-related diseases. Further, more than 85 percent of African-American smokers use menthol cigarettes. According to a 2013 report by the U.S. Food and Drug Administration (FDA), when compared to non-mentholated cigarette use, the "cooling and anesthetic properties" of mentholated cigarette use increases smoking initiation and the likelihood of becoming addicted in children and adults and decreases success in quitting smoking.

As reported by the Surgeon General in a 1994 report by the U.S. Department of Health and Human Services, 90 percent of smokers first started smoking by age 18. Also, as reported by B. K. Ambrose in a 2015 article of The Journal of the American Medical Association (JAMA), a majority of the youth ages 12-17 first tried flavored tobacco products and that flavoring was the leading reason for their tobacco use.

For years the tobacco industry has aggressively promoted menthol cigarettes and other flavored tobacco products in African-American communities. Taking action to ban menthol cigarettes is long overdue and the NMA requests that Congress move swiftly to take up this bill and save lives. To that end, increased funding should be earmarked to increase smoking-cessation initiatives

and increased promotion of same in African American communities. Our support of this legislation is for the betterment of the public health.

The National Medical Association is the collective voice of African American physicians and the leading force for parity and justice in medicine. The NMA is the oldest organization of African American professionals in America representing the over 50,000 African American physicians and the patients we serve in the United States and its territories.

NIVA LUBIN-JOHNSON, M.D., FACP,  
President.

OCTOBER 16, 2019.

Hon. FRANK PALLONE,  
Chairman, Committee on Energy & Commerce,  
House of Representatives, Washington, DC.

Hon. GREG WALDEN,  
Ranking Member, Committee on Energy & Commerce,  
House of Representatives, Washington, DC.

DEAR CHAIRMAN PALLONE AND RANKING MEMBER WALDEN: We write in support of prohibiting menthol cigarettes, which is a key part of the Reversing the Youth Tobacco Epidemic Act (H.R. 2339). There is overwhelming scientific evidence that menthol cigarettes have had a profound adverse effect on public health. Removing them from the market would drive down tobacco use and the death and disease it causes, particularly among youth and African Americans.

Menthol cigarettes are popular with youth. Over half of youth smokers—and seven in ten African American youth smokers—smoke menthol cigarettes. Menthol cools and numbs the throat and reduces the harshness of tobacco, making it easier and more appealing for youth to start smoking. In 2013, the U.S. Food and Drug Administration (FDA) released a report finding that menthol cigarettes lead to increased smoking initiation among youth and young adults, greater addiction, and decreased success in quitting smoking. An FDA scientific advisory committee concluded, “Removal of menthol cigarettes from the marketplace would benefit public health in the United States.”

Smoking-related illnesses are the number-one cause of death in the African American community and claim the lives of approximately 45,000 African Americans each year. Menthol cigarettes are a major reason why. Eighty-five percent of all African American smokers smoke menthol cigarettes, which is a direct result of a decades-long marketing campaign by the tobacco industry aimed at the African American community. African Americans generally have higher levels of nicotine dependence as a consequence of their preference for mentholated cigarettes.

Estimates of the harm menthol cigarettes cause to African Americans are alarming. The FDA advisory committee found that the marketing and availability of menthol cigarettes increases the overall prevalence of smoking and reduces smoking cessation among African Americans. In 2011, it estimated that by 2020, 4,700 excess deaths in the African-American community will be attributable to menthol cigarettes, and over 460,000 African Americans will have started smoking because of menthol cigarettes.

Our organizations fully support the menthol prohibition in the Reversing the Youth Tobacco Epidemic Act. It will protect public health and save lives. We look forward to working with you to advance this bill.

Sincerely,

Action on Smoking & Health, African American Tobacco Control Leadership Council, American Academy of Oral and Maxillofacial Pathology, American Academy of Pediatrics, American Association for Dental Research, American Association for Res-

piratory Care, American Cancer Society Cancer Action Network, American College of Physicians, American College of Preventive Medicine, American Dental Education Association, American Heart Association.

American Lung Association, American Medical Association, American Public Health Association, American Society of Addiction Medicine, American Society of Clinical Oncology, American Thoracic Society, Americans for Nonsmokers' Rights, Association of Schools and Programs of Public Health, Association of Women's Health, Obstetric and Neonatal Nurses, Big Cities Health Coalition, Black Lives/ Black Lungs, Campaign for Tobacco-Free Kids, CATCH Global Foundation, Inc.

Catholic Health Association of the United States, Clearway Minnesota, Community Anti-Drug Coalitions of America, Counter Tools, Eta Sigma Gamma—National Health Education Honorary, LUNGevity Foundation, March of Dimes, National African American Tobacco Prevention Network, National Association of County & City Health Officials.

National Association of Pediatric Nurse Practitioners, National Association of School Nurses, National Center for Health Research, National Medical Association, National Network of Public Health Institutes, Oncology Nursing Society, Prevent Cancer Foundation, Respiratory Health Association, Society for Public Health Education, Society for Research on Nicotine & Tobacco, Students Against Destructive Decisions.

Mr. PALLONE. Madam Speaker, supporters have emphasized that this bill is urgently needed to combat the youth e-cigarette epidemic that is getting worse every day and is being driven by flavored products. I am proud of the broad coalition of support that this legislation has engendered, and I agree with these organizations that the time is now to ensure we protect our kids and the next generation.

Madam Speaker, if we don't pass this bill today, all of the gains we have made in the past to prevent tobacco use and nicotine addiction will simply be wiped out—will be wiped out.

I urge my colleagues, support this legislation. This is the best thing we can do to prevent this youth epidemic.

Mr. SMITH of Nebraska. Madam Speaker, as we have this exchange here, it is interesting to dig a little deeper here and certainly realize that there is a carve-out. I think we heard earlier there is a carve-out, actually, that would exempt the high-end cigars that would not have to be subject to this tax. And I guess I struggle to think why that would be if there are revenue concerns here and, you know, looking at a balance and so forth.

I just hope that we can end up with good public policy, but certainly this is not the vehicle to do that.

Madam Speaker, I reserve the balance of my time.

Mr. SUOZZI. Madam Speaker, I just want to clarify, again, that premium cigars are already subject to a Federal excise tax, and there is no carve-out for the taxes on premium cigars.

Madam Speaker, I yield 1 minute to the gentlewoman from New York (Mrs. CAROLYN B. MALONEY), a good friend, the chairwoman of the Committee on Oversight and Reform.

Mrs. CAROLYN B. MALONEY of New York. Madam Speaker, I rise in strong support, and I thank Chairman PALLONE for his incredible leadership on this.

Madam Speaker, I also want to thank Congressman KRISHNAMOORTHY, who has been a leader on the youth vaping epidemic as the chair of the Subcommittee on Economic and Consumer Policy on the Oversight Committee. He has led a months' long investigation into e-cigarette companies, which revealed mountains of evidence that these companies are illegally targeting children in advertising campaigns.

And the way they target children is by selling flavored tobacco products with kid-friendly flavors like mango and mint. This is despicable and will cause long-term damage to countless children's lives.

This bill is very important because it will ban the manufacture and sale of all flavored tobacco products, which will make it much more difficult for companies to target children. This is extremely important. It will save lives.

I strongly support the bill and urge my colleagues for a “yes” vote.

Mr. SMITH of Nebraska. Madam Speaker, I yield myself the balance of my time.

As we wrap up this discussion, I think perhaps both sides have good intentions. This would not be the first time that both sides would have good intentions, and the outcome would accomplish the exact opposite from what we would want.

We want youth to not vape, to not smoke. It is dangerous. And, certainly, I think we should also respect law-abiding adults exercising the choices that they wish to make in a reasonable context.

Madam Speaker, I think that this bill would actually set us back in many ways. As I mentioned earlier, the National Bureau of Economic Research found that Minnesota's efforts to bring so-called parity to the taxation of cigarettes and e-cigarettes actually flatlined the State's smoking-cessation trend, while other States that didn't raise taxes continue to see smoking decrease. That is very telling. And I think it is very instructive for all of us here as we formulate policy and, hopefully, keep future generations in mind with good public policy along the way.

Madam Speaker, I certainly urge a vote “no” on this bill, and I yield back the balance of my time.

Mr. SUOZZI. Madam Speaker, I yield myself the balance of my time.

Madam Speaker, every Democrat, every Republican in this House knows there is a problem with youth vaping in the United States of America. Every single one of us recognizes that something must be done, and today we are taking important action.

I want to point out that this is not a new debate. It is pretty much the same debate we went through with smoking years ago.

I used to serve as the Nassau County Executive in New York State when the



smoking issue was a massive debate in this country, and we heard the same arguments about Big Government. We heard the same arguments about taxing. We heard the same arguments about choice. And we can't fall for it again.

We saw it happen in this country with smoking, that for so many years we ignored the fact that smoking was the number one killer in this country, and it took us decades to act.

Now that we see youth vaping growing in this country every single day, efforts that are being made to market specifically to young children every single day, we must act to try and protect our families and to try and protect our children.

Again, I want to point out that the Protecting American Lungs Act, which is part of this bill, has the support of over 50 public health, medical, and education organizations, including the American Academy of Nursing, the American Academy of Pediatrics, the American Cancer Society Cancer Action Network, the American Heart Association, the American Lung Association, the American Medical Association, and the Campaign for Tobacco-Free Kids.

Madam Speaker, I want to thank Chairman NEAL. I want to thank Chairman PALLONE. I want to thank all of the leaders, such as DONNA SHALALA, former-Secretary SHALALA, and RAJA KRISHNAMOORTHY and all of my colleagues who have spoken here today.

I urge my colleagues, both Democrats and Republicans, to act now on behalf of the children of our country.

Madam Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. All time for debate has expired.

Pursuant to House Resolution 866, the previous question is ordered on the bill, as amended.

The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. Pursuant to clause 1(c) of rule XIX, further consideration of H.R. 2339 is postponed.

Mr. SMITH of Nebraska. Madam Speaker, I include in the RECORD these additional letters in opposition to H.R. 2339.

6 REASONS TO OPPOSE HR 2339 (PALLONE)  
TOTAL FLAVORED TOBACCO PRODUCT PROHIBITION

1. This bill bans all flavored tobacco products.

That means menthol cigarettes (36% of market), flavored moist smokeless tobacco (60% of market), flavored cigars (26% of market), and most pipe tobacco.

2. The age for tobacco was just raised to 21 nationwide.

Teen vapor trends need to be reversed. That's why Congress just raised the minimum age for all tobacco products to 21. Also, the FDA is now taking concrete steps to remove child-friendly vapor products from the market. We should give these policies time to work.

3. Adults 21 + can choose flavors in alcohol and cannabis (where legal), and they should be able to choose flavors in tobacco.

Adults 21 and older buy alcohol (and cannabis where it's legal). They are taxpayers, voters, and can serve in the military. Taking this decision away from adults 21 and over won't stop the behavior—it will just move it into the illegal market. We should respect adults and let them make these decisions.

4. Prohibition doesn't work. It never has.

This bill would criminalize the sale and distribution of these products for adults. That's Prohibition. In the 1920s, Alcohol Prohibition created an illegal market, increased crime, burdened law enforcement, and endangered the public.

5. Youth use of traditional products is DOWN. Underage vapor rates are too high. But underage use of traditional tobacco products is at historic lows. Longstanding public health efforts are working—so why take the risk of criminalizing these products and moving them into an illegal market where there is no regulation?

6. Banning large segments of the tobacco market guts government revenues.

Banning the sale of flavored tobacco products to adults would impact over a third of the industry, devastating jobs and the economy:

Over 250,000 retail and other jobs at risk  
Over \$13.6 billion in federal, state, and local tax revenues at risk annually (see states detail below)

#### AMERICANS FOR TAX REFORM

Today, Americans for Tax Reform issued a Key Vote Alert in opposition to H.R. 2339.

Here are the top 6 key facts you need to know before the vote on the full House floor vote on H.R. 2339 (Reversing the Youth Tobacco Epidemic Act) this week:

1. Prohibition Never Works, But it Does Create Profitable Criminal Enterprises.

2. Congress Just Passed Tobacco 21 to Address Youth Use of Tobacco Products.

3. A Flavored Tobacco Product Ban Would Kill Over 400,000 Jobs.

4. State, Local, and Federal Government Would Lose over \$130 Billion in Tobacco Tax Revenue Over 10 Years.

5. Criminalizing The Sale of Some Tobacco Products Would Reverse Progress on Criminal Justice Reform.

6. This Bill is a Tax Increase.

Rep. Frank Pallone's flavored tobacco product ban bill is opposed by Americans for Tax Reform, Citizens Against Government Waste, FreedomWorks, Heritage Action, Taxpayers Protection Alliance, Independent Women's Forum, the Competitive Enterprise Institute, the Consumer Choice Center, and Reason, among others.

But it's also opposed by the American Civil Liberties Union, the Center for Popular Democracy, the Law Enforcement Action Partnership, the Drug Policy Alliance, the National Association of Social Workers, the National Association of Criminal Defense Lawyers, and Al Sharpton's National Action Network. You can read their letter here.

Here's what you need to know regarding the inclusion of a new national tax on nicotine e-cigarettes and vapor products (Section 501 of the bill):

The tax imposed by this bill would result in a \$.01 tax on an average 30 milliliter bottle of refillable vapor product liquid that contains 6 milligrams of nicotine, the type of products many smokers purchase in thousands of vape shops in America. For multi-packs of "closed-system" products sold in 150,000 convenience stores, the tax would be range between \$3-5 per pack. Compare that to the federal excise tax on combustible tobacco cigarettes, which is \$1.01 per pack. Taxing reduced risk electronic cigarettes at a significantly higher rate than cigarettes works at cross purposes with both the gov-

ernment and free market's ongoing effort to reduce the harm associated with cigarette use. That's what this bill does.

Note: because this language was previously a stand-alone bill (H.R. 4742), the impact on taxpayers has changed since it was first scored. Banning products that +80% of adult consumers use diminishes the likelihood of collecting much money. This bill is still a net tax hike and will be scored as such.

Americans for Tax Reform urges you to reject H.R. 2339, which would create the biggest black market in America since the 1920's, fueling criminal enterprises without any good reason for doing so. This bill is a tax increase and represents a moral crusade against disfavored consumer choices without respect to the tools that already exist that could address some of the concerns of proponents.

TAXPAYERS PROTECTION ALLIANCE,

Washington, DC, February 12, 2020.

HOUSE OF REPRESENTATIVES,  
Washington, DC.

DEAR REPRESENTATIVE: On behalf of millions of taxpayers and consumers across the United States, the Taxpayers Protection Alliance (TPA) urges you to vote against the Reversing the Youth Tobacco Epidemic Act (H.R. 2339), which would, amongst other things, impose a full ban on the sale of flavored e-cigarette products throughout the U.S. H.R. 2339 would also ban menthol-flavored conventional tobacco. These deeply misguided proposals would lead to the demise of millions of Americans by forcing smokers across the country to continue using deadly combustible cigarettes.

The scientific evidence is overwhelming and incontrovertible that vaping saves lives. Flavors provide an effective exit ramp for adults to quit smoking but have no impact upon teen uptake. Smoking rates are at their lowest in history and dropping dramatically. Furthermore, there is no gateway from vaping to smoking, and menthol cigarettes have no demonstrable impact on youth uptake.

Countless studies conclude that e-cigarettes are a proven and safe way for people to quit smoking. A recent U.S. National Academies of Sciences, Engineering and Medicine report on e-cigarettes found that, based on the available evidence, "e-cigarettes are likely to be far less harmful than combustible tobacco cigarettes." The United Kingdom (UK) Government and all major medical bodies now "encourage" smokers to use e-cigarettes as a quit-smoking aid. This is not surprising because of the overwhelming evidence on the effectiveness of a product that is "around 95 percent less harmful than smoking," a figure confirmed by Public Health England (part of the U.K. government) and reaffirmed every year since 2015. Similarly, air quality studies have found that e-cigarettes pose no threat to bystanders via "passive smoking." Hundreds of studies have been published in the course of the last few years, measuring everything from cardiovascular health to lung capacity and regeneration. In fact, the only study to have found any negative impact of vaping on heart health has been thoroughly debunked; it was discovered that the heart attacks it claimed were correlated to vaping happened ten years prior to the individuals taking up vaping.

So powerful is the life-saving potential of these products that, according to the most comprehensive peer-reviewed research on the effects of switching coordinated by the George Washington University Medical Center, 6.6 million lives could be saved over the next ten years if a majority of U.S. smokers quit smoking through the use of e-cigarettes.

In addition, numerous studies have shown that e-cigarettes are considerably more effective than traditional nicotine replacement therapies. In January 2019, the New England Journal of Medicine reported the results of the largest and most comprehensive of these, finding unequivocally that e-cigarettes are nearly twice as effective as conventional nicotine replacement products (such as patches and gum) for quitting smoking.

As a result of the introduction of vaping products, smoking rates in the United States have plummeted in recent years. In 2018, 13.7 percent of U.S. adults smoked, a sharp decline from 20.9 percent in 2005. Most of this decline has occurred since the introduction of e-cigarettes, as smokers now have more options than ever to kick their deadly habit. In particular, 5.8 percent of high school students smoke, down from more than 15 percent in 2011.

Contrary to anti-vaping arguments, there is no evidence that e-cigarettes provide a “gateway” to smoking for youths as they enter adulthood. This has been demonstrated through numerous studies which instead find that vaporized nicotine has almost exclusively been taken up by smokers attempting to quit or lower their intake, therefore acting as a “gateway” away from tobacco smoking. Only 1 percent of daily users of e-cigarettes were not previous smokers or tobacco users. A 2015 survey of nonsmoking teens aged 13–17 found interest levels in flavored e-cigarettes of 0.4 out of a possible score of 10. An April 2019 study funded by the UK’s National Institute for Health Research and led by Cardiff University concluded that “fears over a resurgence in youth tobacco smoking because of the rise in e-cigarette use are largely unfounded to date” and that there is “no evidence” that e-cigarettes are causing young persons to commence smoking traditional combustible tobacco. In October 2019 the prestigious medical journal *Nicotine and Tobacco Research* found that, “E-cigarette use does not appear to be associated with current, continued smoking.” As such, e-cigarettes are a gateway away from smoking and give teens who were already smokers a safer alternative.

While flavors may be helping conventional smokers quit smoking, the evidence shows that flavors play little to no role in inducing middle-and-high school students to use e-cigarettes. A 2016 study published in *Tobacco Control* used a national phone survey to ascertain teenage usage and interest in e-cigarettes and attempted to gauge the role of flavor in increasing interest in these products. The researchers found that, of teenagers that

have never smoked, only 3.3 percent expressed interest in trying e-cigarettes and that there was no evidence for flavors driving e-cigarette uptake. Fewer than a third of high school students self-report to care about flavors, while academic studies have found that teenage non-smokers’ “willingness to try plain versus flavored varieties did not differ.”

Advocates of greater vaping restrictions continue to ignore the evidence and cite instances of e-cigarettes allegedly inducing lung illnesses. But, as confirmed by the Centers for Disease Control and Prevention and corroborated by numerous peer-reviewed academic publications such as the New England Journal of Medicine, every case of illness and tragic death has been as a result of illicit, black-market THC vaping devices bought on the streets and laced with substances such as Vitamin E acetone.

There is no evidence whatsoever that menthol cigarettes are in any way more harmful or dangerous than conventional combustible cigarettes. There is similarly no evidence that menthol cigarettes are in any way more likely to be a contributing factor to people taking up smoking. A recent analysis of data from the National Survey on Drug Use and Health found that states with more menthol cigarette consumption relative to all cigarettes actually have lower rates of child smoking. In addition, econometric analysis consistently shows consistent nonpredictive relationships between relative menthol cigarette consumption rates and use of any age group. Youth menthol smoking has already become less popular than non-menthol smoking, and on the current trend line, youth usage of menthol cigarettes will be at a rate of near-zero within the next few years. Curtailing menthol cigarettes will only succeed in damaging already-fraught race relations. More than 80 percent of black smokers prefer menthol cigarettes, compared to less than 30 percent of white smokers. As the tragic case of Eric Garner shows, tobacco prohibition can easily escalate into deadly encounters with law enforcement. Policymakers must consider racial disparities in the consumption of tobacco products, and refrain from restrictive policies with myriad unintended consequences.

Illicit tobacco is lucrative source of funding for terrorism, with the U.S. State Department having described international tobacco smuggling as a “threat to national security.” Their report detailed how “we know that 15 of the world’s leading terrorist groups regularly rely on illicit cigarettes for funding, including al Qaeda, the Taliban, Hezbollah, and Hamas. Illicit cigarettes are

now second only to the heroin trade in helping fund some of the Taliban militias.”

TPA urges you to carefully examine the facts and science attesting toe-cigarettes’ efficacy as a powerful quit-smoking aid and reject this grossly irresponsible bill.

Regards,

TIM ANDREWS,  
*Director.*

[From Tax Foundation, Feb. 12, 2020]

BANNING FLAVORED TOBACCO COULD HAVE  
UNINTENDED CONSEQUENCES

(By Ulrik Boesen)

Several states have considered bans on flavored tobacco and nicotine products this legislative session, spurred by increased vaping by minors. Among them are California, Maine, Maryland, New York, Vermont, and Virginia. There is also a federal proposal to ban flavors in tobacco products. While youth uptake is a very real concern which deserves the public’s attention, outright bans could impede historically high smoking cessation rates. Lawmakers must thread the needle between protecting adult smoker’s ability to switch and barring minor’s access to nicotine products.

Aside from public health concerns, a ban on flavored tobacco, especially when including cigarettes, would have significant tax implications and result in unintended consequences such as increased smuggling. Tobacco excise taxes are already an unstable source of tax revenue. Further narrowing the tobacco tax base by banning a portion of tobacco sales altogether could worsen the instability of this revenue source while driving up the costs of administration and law enforcement associated with the ban, especially if the lost revenue is made up by raising the tax rate on the remaining tobacco tax base.

Cigarettes make up about 82.5 percent of the total tobacco market and even more of the excise tax revenue due to higher rates on cigarettes versus other tobacco products. According to sales data, about 35 percent of the U.S. cigarette market is flavored, which means that 35 percent of the revenue collected would be affected by a ban. The flavor used in cigarettes is almost exclusively menthol.

Below is a calculation of implicated revenue in the states that are considering a ban. The numbers are based on tax collections and sales of menthol cigarettes. On top of this number one could add reduced revenues from chewing tobacco, cigars, cigarillos, and in some states flavored vapor liquid.

STATE REVENUE FROM CIGARETTE EXCISE TAXES ON MENTHOL CIGARETTES

State	Menthol Smokers As % of Smokers (FY2018)	Revenue from Menthol Ciga- rettes (FY2018)	Total Cigarette Excise Revenue (FY2018)
California .....	28.1%	\$528,848,463	\$1,882,023,000
New York .....	38.6%	\$414,418,000	\$1,073,0622,000
Maine .....	17.5%	\$20,851,000	\$119,146,000
Maryland .....	54.3%	\$180,080,000	\$331,639,000
Vermont .....	17.6%	\$10,839,000	\$61,584,000
Virginia .....	42.7%	\$59,350,000	\$138,992,000
Federal*	35.2%	\$4,268,355,168	\$12,126,009,000

\* Implied revenue for the federal government if menthol cigarettes were federally banned. Source: Nielsen Consumer Data; Orzechowski and Walker, “The Tax Burden on Tobacco,” Volume 53, 2018; Tax Foundation calculations.

The figures indicating revenue from menthol cigarettes reflect the loss of revenue if all current consumers of menthol cigarettes were to quit. That is almost certainly not going to happen. In reality, some will quit, some will substitute to other nicotine products, and some will access the products illegally. The last option is the most fiscally problematic because states will not only incur lost revenue, they will also take on increased costs related to enforcement of the ban. While it is impossible to estimate the

exact revenue effect, it is clear that revenues will decline.

The impact differs significantly from state to state with Maryland and Virginia seeing the largest effect. This is likely due to larger minority populations in those states. In a national survey in 2015, 76.8 percent of non-Hispanic black adult smokers reported smoking menthol products.

As I argue in my latest publication, there are several problems with bans. The Pigouvian concept of internalizing

externalities suggests that inefficient market outcomes can be addressed by an excise tax equal to the negative externality. In other words, using taxes to price in societal cost related to a product, such as increased governmental medical expenses from cancers caused by tobacco smoke. This is part of the idea behind levying excise taxes on tobacco products. However, flavored nicotine products are helping adult smokers quit cigarettes and switch to less harmful products.

Several states seem to have had this in mind and have taken a lighter approach to the taxation of vaping products to keep an incentive for smokers to move towards less harmful vaping. Thus, on the one hand there is an argument for lower taxation on vaping to move people away from smoking. On the other hand a ban on flavored products would push users away from vaping and back towards more harmful traditional tobacco products or into the illegal market.

In fact, a recent publication found that 32,400 smokers in Minnesota were deterred from quitting cigarettes after the state implemented a 95 percent excise tax on vapor products.

Another study concluded that vapor products are highly elastic and “for every one standard e-cigarette pod (a device that contains liquid nicotine in e-cigarettes) of 0.7 ml no longer purchased as a result of an e-cigarette tax, the same tax increases traditional cigarettes purchased by 6.2 extra packs.”

In the same way that exceptionally high tax rates on products can create the incentives for illicit activities, a ban certainly opens the door to contraband and bootleg activities. Thus, bans are likely to hurt public health by limiting adult smokers’ ability to quit cigarettes and fuel black market activity similar to when states levy heavy taxation on cigarettes. Local bans in particular invite smuggling activity in the same way that occurs when localities have high cigarette excise taxes.

Cigarettes are already being smuggled into and around the country in large quantities, and nicotine-containing liquid is coming into the U.S. from questionable sources. Black market liquids and cigarettes have the problem of being extremely unsafe and cost governments billions in lost taxes. The recent serious pulmonary diseases have prompted the FDA to publish a warning about black market THC-containing liquid. Other reports of illicit products containing dangerous chemicals resulting in serious conditions have been released over the last months.

On top of the dangers to consumers, the legal market would suffer, as untaxed and unregulated products have significant competitive advantages over high-priced legal products. This would impact not only the large number of small business owners operating over 10,000 vape shops around the country but also convenience stores and gas stations relying heavily on vapers as well as tobacco sales. Policymakers should not lose sight of the law of unintended consequences as they set tax rates and regulatory regimes for nicotine products.

These unintended consequences have a real cost which the taxpayers would have to cover, while the ban would result in less revenue from the legal and regulated market. In states like California, where tobacco tax revenue is earmarked to certain government programs, the impact on revenue could lead to underfunded programs which will need funding from other sources.

The prospect of a ban on flavored tobacco and nicotine products highlights the complications of contradictory tax and regulatory policy, the instability of excise taxes that go beyond pricing in the cost of externalities, and the public risks of driving consumers into the black market through excessive taxation or regulation.

Ms. CASTOR of Florida. Madam Speaker, I rise today in support of H.R. 2339, the Protecting American Lungs and Reversing the Youth Tobacco Epidemic Act of 2019 and the efforts by the House to curb the youth e-cigarette and vaping epidemic.

Congress must take strong action to stop the marketing of tobacco products to children

and end the e-cigarette epidemic among our youth. In 2009, Congress passed the Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act), which provided the Food and Drug Administration (FDA) with authority to regulate certain tobacco products marketed towards children. And today, the House is passing the Protecting American Lungs and Reversing the Youth Tobacco Epidemic Act introduced by Representatives PALLONE and SHALALA, which will strengthen the FDA’s authority to regulate tobacco products marketed towards children, particularly the insidious e-cigarettes that have swept the country in the decade since we passed the Tobacco Control Act. The legislative intent is rooted in the important objective of preventing youth access to tobacco products and stopping big tobacco and others from preying on our children by developing a new generation of nicotine-addicted smokers.

For years, many of my colleagues and I have worked with FDA and stakeholders to ensure that traditional, handcrafted premium cigars that are not used by or marketed to children are not swept up in an overbroad regulation. We introduced bipartisan legislation this Congress, as we have in last four Congresses, that reinforces the legislative intent of the Tobacco Control Act and narrowly defines traditional non-flavored handcrafted premium cigars not marketed to children. Our bill currently has 78 bipartisan cosponsors, and last Congress, our legislation H.R. 564 had 149 bipartisan cosponsors.

I would like to thank Chairman PALLONE for working with me and others to address what I believe could have been unintended consequences of H.R. 2339 of subjecting traditional large and premium cigars not marketed to children to overbroad regulation. The bill as amended in the Energy and Commerce Committee correctly exempts from certain regulations this small subset of traditional, handcrafted cigars that are not marketed to children. The FDA would continue to have the authority to subject traditional and large premium cigars to important FDA regulations like minimum age requirements; prohibition of adulterated and misbranded products; requirements to register and report products and ingredients; FDA inspections every two years; good manufacturing practices and tobacco product standards; user fees; and the FDA should have enforcement powers for these.

While it was appropriate to provide exemption from certain provisions for traditional large and premium cigars in the bill, the definition of traditional large and premium cigars contained in H.R. 2339 should be updated to conform with the definition in H.R. 1854, to wit:

A traditional large and premium cigar should be defined as any roll of tobacco that is wrapped in 100 percent leaf tobacco, bunched with 100 percent tobacco filler, contains no filter, tip, flavor additive, or non-tobacco mouthpiece, and weighs at least 6 pounds per 1,000 count. It also must either have a 100 percent leaf tobacco binder and be handrolled, or have a homogenized tobacco leaf binder and be made in the United States using human hands to lay the 100 percent leaf tobacco wrapper onto only one machine that bunches, wraps, and caps each individual cigar. And, it should explicitly exclude cigarettes or little cigars, as defined by the FDA.

The above definition is essentially the definition from H.R. 2339 but without the single

cigar retail price provision. The price point included in the bill has no rational basis for inclusion and a cigar made consistent with the definition above meets the test of the type of cigar not consumed by our youth. Had I had the opportunity to offer an amendment, I would have proposed striking this arbitrary provision from the legislation to ensure that the family cigar producers in my district, across Florida and small business owners across the country including the many mom and pop retail shops are not subjected to this unnecessary job-killing arbitrary price that lacks a rational basis.

I look forward to continuing to work with the Senate, the FDA and to press my own bill in the House, H.R. 1854, to ensure that any laws or regulations that deal with traditional large and premium cigars are consistent with our shared goals of preventing youth tobacco use, stopping arbitrary or unintended regulation and protecting American jobs.

Ms. JOHNSON of Texas. Madam Speaker, today, I rise in support of H.R. 2339 the Protecting American Lungs and Reversing the Youth Tobacco Epidemic Act of 2019. This critical legislation provides a comprehensive approach to address the youth tobacco epidemic, which has surged in recent years with the introduction of such new tobacco products as e-cigarettes. The bill will prevent the loss of an entirely new generation to a lifetime of nicotine addiction.

Tobacco use is the leading cause of preventable death, disability, and disease in the United States, and it is attributed to more than 480,000 deaths in the United States each year. Even more concerning is the rapid escalation in youth e-cigarette use, as youth use of nicotine in any form is unsafe and can seriously harm brain development and lead to other forms of addiction. In 2019, 5.3 million middle and high school students have reported to have used e-cigarettes. According to the Centers for Disease Control and Prevention, these recent increases have erased the decline in any tobacco product use that occurred in previous years.

As the first registered nurse elected to Congress, I am proud to support the Protecting American Lungs and Reversing the Youth Tobacco Epidemic Act. Particularly, I am pleased to be joined by the American Public Health Association, American Academy of Pediatrics, National Medical Association, NAACP, and the National Black Nurses Association, who have all shown their support for this critical legislation.

As representatives of Americans from all corners of our country, we have a responsibility to protect the health and well-being of our communities and especially our children. On behalf of my home state of Texas, I urge my colleagues to support H.R. 2339.

Mr. RESCHENTHALER. Madam Speaker, I commend the House Energy and Commerce Committee for including language in the Protecting American Lungs and Reversing the Youth Tobacco Epidemic Act of 2019 (H.R. 2339) to more appropriately treat premium cigars, which are marketed to and enjoyed by adult consumers. However, a \$12 per cigar price requirement is arbitrary, impossible to enforce, and puts states like Pennsylvania at a significant disadvantage.

Pennsylvania is home to small business premium cigar retailers, importers, distributors, and farmers who grow tobacco used in hand-

made cigars. The history of cigar tobacco farming in Pennsylvania dates to the 1700s, and today, farmers in the Commonwealth produce the coveted cigar leaf. Numerous premium cigar mail order companies are based in Pennsylvania, due to the state's favorable business climate. In fact, Pennsylvania is second in the nation in premium cigar industry jobs, and my district is home to small businesses who proudly serve their adult consumers.

The Commonwealth is also one of few states without an additional tax on premium cigars. When I was in the Pennsylvania State Senate, I fought against proposals to impose such a tax, which would have crippled small businesses and hurt consumers. If a price requirement like the one proposed in this bill were enacted, small businesses in my district and across Pennsylvania would be disproportionately impacted, as more products in their humidors would fall below \$12 than products in other states that are subject to higher taxes.

Madam Speaker, while I am grateful this bill acknowledges that premium cigars are marketed and enjoyed solely by adults, a \$12 price requirement will devastate Pennsylvania's cigar industry. As Congress and the Trump Administration continue to work to address important issues related to regulation of tobacco products, I urge removal of an arbitrary price point that picks winners and losers.

#### GOLD STAR MOTHERS FAMILIES NATIONAL MONUMENT EXTENSION ACT

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, the unfinished business is the vote on the motion to suspend the rules and pass the bill (H.R. 2819) to extend the authority for the establishment of a commemorative work in honor of Gold Star Families, and for other purposes, as amended, on which the yeas and nays were ordered.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Colorado (Mr. NEGUSE) that the House suspend the rules and pass the bill, as amended.

The vote was taken by electronic device, and there were—yeas 407, nays 0, not voting 22, as follows:

[Roll No. 76]  
YEAS—407

Abraham	Bilirakis	Cárdenas
Adams	Bishop (NC)	Carson (IN)
Aderholt	Bishop (UT)	Carter (GA)
Aguilar	Blumenauer	Carter (TX)
Allen	Blunt Rochester	Cartwright
Allred	Bonamici	Case
Amash	Bost	Casten (IL)
Amodei	Boyle, Brendan	Castor (FL)
Armstrong	F.	Castro (TX)
Arrington	Brindisi	Chabot
Axne	Brooks (AL)	Cheney
Babin	Brooks (IN)	Chu, Judy
Bacon	Brown (MD)	Cicilline
Baird	Brownley (CA)	Cisneros
Balderson	Buchanan	Clark (MA)
Banks	Buck	Clarke (NY)
Barr	Bucshon	Clay
Barragán	Budd	Cleaver
Bass	Burchett	Cline
Beatty	Burgess	Cloud
Bera	Bustos	Cohen
Bergman	Butterfield	Cole
Beyer	Calvert	Collins (GA)
Biggs	Carbajal	Comer

Conaway	Huffman	O'Halleran
Connolly	Huizenga	Ocasio-Cortez
Cook	Hurd (TX)	Olson
Cooper	Jackson Lee	Omar
Correa	Jayapal	Palazzo
Costa	Jeffries	Pallone
Courtney	Johnson (GA)	Palmer
Cox (CA)	Johnson (LA)	Panetta
Craig	Johnson (OH)	Pappas
Crawford	Johnson (SD)	Pascarell
Crenshaw	Johnson (TX)	Payne
Crist	Jordan	Pence
Crow	Joyce (OH)	Perlmutter
Cunningham	Joyce (PA)	Perry
Curtis	Kaptur	Peters
Davids (KS)	Katko	Peterson
Davidson (OH)	Keating	Phillips
Davis (CA)	Keller	Pingree
Davis, Danny K.	Kelly (IL)	Pocan
Davis, Rodney	Kelly (MS)	Porter
Dean	Kelly (PA)	Posey
DeFazio	Kennedy	Pressley
DeGette	Khanna	Price (NC)
DeLauro	Kildee	Quigley
DelBene	Kilmer	Raskin
Delgado	Kim	Ratcliffe
Demings	Kind	Reed
DeSaulnier	King (IA)	Reschenthaler
DesJarlais	King (NY)	Rice (NY)
Deutch	Kinzing	Rice (SC)
Diaz-Balart	Krishnamoorthi	Richmond
Dingell	Kuster (NH)	Riggleman
Doggett	Kustoff (TN)	Roby
Doyle, Michael	LaHood	Rodgers (WA)
F.	LaMalfa	Roe, David P.
Duncan	Lamb	Rogers (AL)
Emmer	Lamborn	Rogers (KY)
Engel	Langevin	Rose (NY)
Escobar	Larsen (WA)	Rose, John W.
Eshoo	Larson (CT)	Rouda
Espallat	Latta	Rouzer
Estes	Lawrence	Roy
Evans	Lawson (FL)	Roybal-Allard
Ferguson	Lee (CA)	Ruiz
Finkenauer	Lee (NV)	Ruppersberger
Fitzpatrick	Lesko	Rush
Fleischmann	Levin (CA)	Rutherford
Fletcher	Levin (MI)	Ryan
Flores	Lieu, Ted	Sánchez
Fortenberry	Lipinski	Sarbanes
Foster	Loebach	Scalise
Fox (NC)	Lofgren	Scanlon
Frankel	Lowenthal	Schakowsky
Fudge	Lowey	Schiff
Fulcher	Lucas	Schneider
Gaetz	Luetkemeyer	Schrader
Gallagher	Luján	Schrier
Gallego	Luria	Schweikert
Garamendi	Lynch	Scott (VA)
García (IL)	Malinowski	Scott, Austin
García (TX)	Maloney,	Scott, David
Gianforte	Carolyn B.	Sensenbrenner
Gibbs	Maloney, Sean	Serrano
Golden	Marshall	Sewell (AL)
Gomez	Mast	Shalala
Gonzalez (OH)	Matsui	Sherman
Gonzalez (TX)	McAdams	Sherrill
Gooden	McBath	Shimkus
Gosar	McCarthy	Simpson
Gottheimer	McCaul	Slotkin
Graves (GA)	McClintock	Smith (MO)
Graves (LA)	McCollum	Smith (NE)
Graves (MO)	McEachin	Smith (NJ)
Green, Al (TX)	McGovern	Smith (WA)
Griffith	McHenry	Smucker
Grothman	McKinley	Soto
Guest	McNerney	Spanberger
Guthrie	Meadows	Spano
Haaland	Meeks	Speier
Hagedorn	Meng	Stanton
Harder (CA)	Meuser	Staubert
Harris	Miller	Stefanik
Hartzel	Mitchell	Steil
Hastings	Moolenaar	Steube
Hayes	Mooney (WV)	Stevens
Heck	Moore	Stewart
Hern, Kevin	Morelle	Stivers
Herrera Beutler	Moulton	Suozzi
Hice (GA)	Mucarsel-Powell	Swalwell (CA)
Higgins (LA)	Murphy (FL)	Takano
Higgins (NY)	Murphy (NC)	Taylor
Hill (AR)	Nadler	Thompson (CA)
Himes	Napolitano	Thompson (MS)
Hollingsworth	Neal	Thompson (PA)
Horn, Kendra S.	Neguse	Thornberry
Horsford	Newhouse	Timmons
Houlahan	Norcross	Tipton
Hoyer	Norman	Titus
Hudson	Nunes	Tlaib

Tonko	Wagner	Wexton
Torres (CA)	Walberg	Wild
Torres Small	Walden	Williams
(NM)	Walker	Wilson (FL)
Trahan	Walorski	Wilson (SC)
Trone	Waltz	Wittman
Turner	Wasserman	Womack
Underwood	Schultz	Woodall
Upton	Waters	Wright
Van Drew	Watkins	Yarmuth
Vargas	Watson Coleman	Yoho
Veasey	Weber (TX)	Young
Vela	Welch	Zeldin
Velázquez	Wenstrup	
Visclosky	Westerman	

#### NOT VOTING—22

Bishop (GA)	Granger	Marchant
Brady	Green (TN)	Massie
Byrne	Grijalva	Mullin
Clyburn	Holding	Rooney (FL)
Cuellar	Kirkpatrick	Sires
Dunn	Lewis	Webster (FL)
Gabbard	Long	
Gohmert	Loudermilk	

□ 1140

So (two-thirds being in the affirmative) the rules were suspended and the bill, as amended, was passed.

The result of the vote was announced as above recorded.

The title of the bill was amended so as to read: "A bill to extend the authority for the establishment of a commemorative work in honor of Gold Star Mothers Families, and for other purposes."

A motion to reconsider was laid on the table.

#### REVERSING THE YOUTH TOBACCO EPIDEMIC ACT OF 2019

The SPEAKER pro tempore. Pursuant to clause 1(c) of rule XIX, further consideration of the bill (H.R. 2339) to amend the Federal Food, Drug, and Cosmetic Act with respect to the sale and marketing of tobacco products, and for other purposes, will now resume.

The Clerk will report the title of the bill.

The Clerk read the title of the bill.

#### MOTION TO RECOMMIT

Mr. WALDEN. Madam Speaker, I have a motion to recommit at the desk.

The SPEAKER pro tempore. Is the gentleman opposed to the bill?

Mr. WALDEN. In its present form, oh, yes, I am opposed.

The SPEAKER pro tempore. The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. Walden moves to recommit the bill H.R. 2339 to the Committee on Energy and Commerce with instructions to report the same back to the House forthwith with the following amendment:

At the end of the bill, insert the following new title:

#### TITLE VII—BORN-ALIVE ABORTION SURVIVORS PROTECTION

##### SEC. 701. BORN-ALIVE INFANTS PROTECTION.

(a) REQUIREMENTS PERTAINING TO BORN-ALIVE ABORTION SURVIVORS.—Chapter 74 of title 18, United States Code, is amended by inserting after section 1531 the following:

##### "§ 1532. Requirements pertaining to born-alive abortion survivors

"(a) REQUIREMENTS FOR HEALTH CARE PRACTITIONERS.—In the case of an abortion