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House of Representatives

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Opening Statement Chairman Raja Krishnamoorthi

Hearing on “The Federal Response to the Epidemic of E-Cigarette Use, Especially Among Children, and the Food and Drug Administration’s Compliance Policy”

December 4, 2019

On September 11th, the Administration released deeply disturbing results from the National Youth Tobacco Survey, or NYTS. The data confirmed our fears that the youth vaping epidemic continues to grow to all-time highs. 5.3 million high school and middle school students use e-cigarettes. The percentage of high schoolers using e-cigarettes – 27.5% – has jumped 135% over the last two years. 10.5% of middle schoolers are vaping. As a parent of 3 children, these statistics are alarming.

The NYTS data also shows that flavors are driving youth use. 72% of youth who vape use flavors. And 64% of all kids who vape use menthol or mint – JUUL’s most popular flavors. That makes sense because NYTS data also confirmed that JUUL is the most popular youth brand, with most kids who vape using it.

Armed with the data, the heads of America’s public health agencies convinced the President, at least temporarily, to do the right thing. With data linking the alarmingly high youth vaping rates to flavors, the President and the heads of HHS and FDA announced their proposal on September 11th. They put forward a sound and logical response to the problem – HHS Secretary Alex Azar pledged to quote **“require that all flavors, other than tobacco flavor, be removed from the market. This would include mint and menthol flavoring, as well as candy flavors, bubble gum flavor, fruit flavor, and alcohol flavor.”**

Secretary Azar explained that quote, **“these products are still getting to kids and we cannot let a whole generation get addicted to them through mint and menthol and other flavors.”** During that same announcement, the President committed that this bold flavor ban would be issued within the next, quote, **“couple of weeks.”**

When the President made this exciting announcement, I and many Members of this Committee led the charge in commending him. A ban of all flavors would deter new youth users from starting to vape. During a tumultuous moment in politics, I frequently referenced the President’s announcement as bipartisanship at its best. It was a move to protect and preserve the health of American youth. But while it was our privilege to back the President when he took steps to strengthen public health, it is also our responsibility to hold him and his Administration accountable on their bold promises.

Unfortunately, almost 3 months after the President's initial announcement, the flavor ban is not yet implemented. Reports illustrate that Big Tobacco lobbyists are working to weaken the ban. There are indications that the Administration is considering exempting menthol, as well as exempting vape shops. We sincerely hope these reports are inaccurate.

In light of these allegations, we tried to find out what was happening. We first wrote to FDA, asking it to finalize and issue the flavor ban without exemptions. FDA did finalize its guidance, but instead of publishing it, FDA sent it to the Office of Information and Regulatory Affairs, or OIRA, for review. That was concerning because OIRA often guts or indefinitely delays agency action. In fact, FDA had submitted an e-cigarette flavor ban to OIRA once before in 2016, and after a flood of industry lobbying, OIRA eliminated that prior flavor ban altogether.

We then wrote to OIRA, asking it to quickly complete its review so the flavor ban wouldn't again fall victim to lobbying. OIRA complied, but again the guidance wasn't published. Not publishing at that stage is highly unusual, so the Subcommittee wrote to both OIRA and FDA to ascertain which agency currently controlled the guidance. Neither answered. So far, neither FDA or OIRA will clarify if the guidance is with their office. If it is with neither, we fear it has entered an irregular channel within the White House.

The American people deserve answers. Mr. Zeller, you are the Director of FDA's Center for Tobacco Products. Today, parents across the country expect you to provide them with answers.

Once we get those answers, we deserve immediate implementation of a flavor ban with no exemptions.

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