

Don't Abandon Hope, Vapers! There's Light in the Darkness

By Gil Ross — February 26, 2016

While the forces arrayed against harm reduced products (e-cigarettes, vapor products) are formidable Big Tobacco, Big Government, Big "Public Health" the millions of ex-smokers who now vape instead will eventually hold sway, one way or another. There is light in the tunnel, so don't lose hope.



Courtesy Richard Levine/Corbis

I haven't written on tobacco harm reduction in quite a while, so catching up for lost time now is no longer possible, too much water has flowed under the bridge. But among the ongoing, pervasive campaigns of deception and misleading assertions coming from all the official policy makers and "public health" authorities trying to dissuade smokers from switching to safer reduced-harm products (e-cigarettes, vapor products, etc.), there are some lights in the darkness. I will focus upon these.

In Congress, the recent Omnibus budget bill failed to include perhaps best short-term hope, the "Cole Amendment," HR 2058, sponsored by Rep. Tom Cole (R-OK). This simple, one might say obvious, change in the vile, lethal "Family Smoking Prevention and Tobacco Control Act" (FSPTCA) signed into law by President Obama in 2009, would extend the date by which tobacco harm reduction, or THR, products would be considered "substantially equivalent" to older vapor products, and thereby perhaps escape the most onerous requirements of proving that they do not need the millions of dollars and thousands of man-hours to prove that to the FDA's satisfaction.

(It must be remembered that the FSPTCA, trumpeted as allowing the FDA to finally "regulate tobacco," was in fact crafted by politicians and Philip Morris with the express intent of keeping safer tobacco/nicotine products off the market so as not to compete with or, heaven forbid, actually reduce, cigarette consumption. Thus, cigarette taxes would continue to flow to

governments and cigarette revenue to Big Tobacco. In that destructive goal, at least, the law is proving quite successful).

Don't believe me? [Here's what Dr. Joel Nitzkin](#) ^[1], former head of the American Association of Public Health Physicians, says about the law:

"Since its passage in 2009, the law's effects have been the opposite of [former FDA Commissioner David] Kessler's original intent. Rather than creating legal and regulatory processes that secure public-health benefits by substantially reducing consumption of cigarettes and reducing teen recruitment to nicotine addiction, the current process protects cigarettes from competition from lower-risk and less addictive products. In essence, the law solidifies cigarettes as the default means to deliver nicotine to Americans. In the almost seven years since the law's adoption, the FDA has done nothing to regulate the quality of manufacture of any tobacco product."

The FDA proposed a regulation of e-cigs called the "deeming regulations," which would place these near-harmless products under the same regulatory umbrella as tobacco cigarettes, and thereby make 99 percent of them essentially unmarketable due to the expense of proving them safer than cigarettes a fact which is obvious to anyone who has passed elementary chemistry.

The FSPTCA does not currently cover e-cigarettes. However, the FDA is allowed to "deem" other products as tobacco products and thereby regulate them as if they were which THR products are *most definitely not*. E-cigs/vapors are not combusted and have no tobacco, thus they emit no smoke, so whatever the FDA in its infinite wisdom *deems* them to be, does nothing to change that fact.

If the FDA get away with their word-magic charade, new products that fail the "substantial equivalence" test i.e., all of the currently available products will either go bankrupt or be swept up by that same "evil" Big Tobacco, ostensibly the last thing public health would want. Yeah, right.

The Cole Amendment, which THR devotees thought went down with the budget amendment's failure to include it, is in fact very much alive. It would merely delay the effective date of "substantial equivalence" for vapor products to the date that the regulations are implemented if they ever are. There are now at least 48 other Congressmen (all Republicans, for some reason) supporting the bill.

Moreover, given the toll of cigarettes in our nation the CDC's estimates are that almost a half million Americans die each year of smoking-related causes and the fact that millions of smokers (some estimate 10 million) have quit smoking thanks to THR products, at least one observer who should know the political arena ([Grover Norquist](#) ^[2] of Americans for Tax Reform) predicts that vapers may be the key demographic to decide the upcoming elections.

Even passage of the Cole Amendment would not be a panacea. The real hope rests with the Office of Management and Budget, an outpost of the White House ([where we visited last November](#) ^[3] to plead this case), which has yet to rule on the FDA's destructive proposal.

There is still time, and hope, that OMB will perceive the anti-business, anti-public health nature of the FDA's proposed regulation, and either remove the most heinous parts or simply eviscerate it and tell them to try again, this time with public health, not their own petty agenda, in mind.

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