



February 24, 2020

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, DC 20515

The Honorable Kevin McCarthy
Minority Leader
U.S. House of Representatives
Washington, DC 20515

RE: KEY VOTE ALERT: Oppose the Reversing the Youth Tobacco Epidemic Act of 2019 (H.R. 2339)

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.¹ 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,

A handwritten signature in black ink that reads "Lyle Beckwith". The signature is written in a cursive, slightly slanted style.

Lyle Beckwith
Senior Vice President, Government Relations

cc: Members of the United States House of Representatives

¹ For example, it appears that most or all vaping products associated with the e-cigarette, or vaping, product use-associated lung injury (EVALI) were illicit products. In fact, the Centers for Disease Control and Prevention (CDC) warned against using products from "informal sources like friends, family, or in-person or online dealers" (i.e., illicit sources) because they are most frequently associated with EVALI. See CDC, Outbreak of Lung Injury Associated with the Use of E-Cigarette, or Vaping, Products *available at* https://www.cdc.gov/tobacco/basic_information/e-cigarettes/severe-lung-disease.html.