



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 irony 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,

A handwritten signature in black ink, appearing to read 'A. Brandon', with a stylized flourish at the end.

Adam Brandon  
President, FreedomWorks