Durbin issues statement on FDA announcement of new enforcement actions on kid-friendly e-cigarette flavors

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WASHINGTON – U.S. Senate Democratic Whip Dick Durbin (D-IL) today released the following statement regarding the U.S. Food and Drug Administration's (FDA) decision to issue new enforcement actions on e-cigarette companies' use of kid-appealing flavors, in order to better protect children and teens from using addictive and dangerous e-cigarettes:

"We have seen an increase in children using e-cigarettes and vaping of 75 percent this year – and 12 percent of kids are vaping in America today. Though the companies that make these products are arguing that this is a way to stop smoking tobacco cigarettes, the exact opposite is happening. They have all types of candy flavors that are designed to attract children to use these vaping devices. We need to do more to prevent kids from using these dangerous and addictive products. The FDA decided not to wait any longer and started that effort today with its announcement to crack down on these e-cigarette companies, and I want to thank Dr. Gottlieb for taking that important step. These companies are expanding their reach into our kids' lives, and that has got to come to an end."

Today, FDA Commissioner Gottlieb announced that his agency was taking three important steps to curb youth use of e-cigarettes, including sending letters to five leading e-cigarette manufacturers (including JUUL, which owns more than 70 percent of the market), requiring them to submit plans within 60 days detailing ways they will sharply curb sales to underage consumers. If these plans do not promise to "substantially reverse" youth use, Dr. Gottlieb announced that FDA will consider temporarily or permanently ordering the removal of flavors from the market. FDA also announced that it was sending letters to 1,200 brick-and-mortar stores and online retailers warning them

that they could face penalties for selling e-cigarettes to people under age 18, and is imposing fines (ranging from $279 to $11,182) to another 130 establishments for repeatedly selling e-cigarettes to minors.

While e-cigarette companies claim their products are solely made to help adults quit traditional cigarettes, only three percent of adults are using e-cigarettes whereas 12 percent of kids are using them. A recent study out of Dartmouth found that e-cigarette use leads to 81 times more new smokers than quitters. While smoking rates for traditional cigarettes are decreasing—from 28 percent in 2000 to 8 percent in 2017—the nation is seeing significant increases in youth use of cigars and e-cigarettes. From 2011 to 2015, the percentage of e-cigarette use among high school kids increased ten-fold from 1.5 percent to 16 percent. Among kids, 81 percent of e-cigarette users said their first tobacco product had flavoring.

This year, Durbin and some of his colleagues in the Senate have repeatedly sent letters urging the FDA to take immediate steps to ban kid-friendly candy and fruit flavorings that are used with e-cigarettes and cigars. In August 2016, the FDA issued the "deeming rule," which deemed e-cigarettes, cigars, and hookahs "tobacco products" and asserted FDA's ability to regulate them. However, the FDA made a decision last year to delay its regulation of e-cigarette products and flavorings from 2018 to 2022. New products targeted to youth – like JUUL Labs, Inc.'s e-cigarette vaping product - have been able to slip by FDA review. Durbin has urged FDA to end the delay and begin regulation and review of e-cigarette products now.

Additionally in July, Durbin and Senator Lisa Murkowski (R-AK) introduced bipartisan legislation to crack down on kid-friendly flavorings in highly-addictive e-cigarettes and cigars. Durbin's *Stopping Appealing Flavors in E-Cigarettes for Kids (SAFE Kids) Ac*t would place strong restrictions on e-cigarette flavorings and ban cigar flavorings altogether, most notably:

Place Strong Restrictions on E-Cigarette Flavorings: The bill would generally restrict flavored e-cigarette products, but allow manufacturers one year to prove to the FDA that their e-cigarette flavorings meet three criteria. If companies can prove that their e-cigarette flavors meet these three criteria, they can remain on the market:

(1) Help adults quit smoking cigarettes;

(2) Do not increase youth initiation of nicotine or tobacco products; and

(3) Do not increase the risk of harm to the person using the flavor.

Ban Cigar Flavorings Altogether: Given that there is no public health benefit to smoking cigars, the bill would ban the use of all flavors in cigars within one year.