



## FDA Acted Illegally in Delaying Required Review of E-Cigarettes

A U.S. federal judge has ruled that the U.S. Food and Drug Administration (FDA) has acted illegally in allowing electronic cigarettes to remain on the market until 2022, prior to applying for FDA authorization. Products have also been able to stay on the market indefinitely during the FDA review.

In March 2018, the American Lung Association, other public health and medical organizations, and several pediatricians filed suit against the FDA decision stating it was unlawful and put kids at risk. This delay allowed e-cigarettes products, including candy and fruit flavors which are very popular among youth, to stay on the market and addict the next generation of tobacco users. These addictive products would have years on the market prior to reviewing their full public health impact.

On May 15, 2019, U.S. District Judge Paul W. Grimm ruled in favor of the public health organizations stating that the FDA exceeded its legal authority to allow these products on the market and the FDA delay has contributed to the skyrocketing number of youth using e-cigarettes. Judge Grimm ruled that the FDA's delay gave "manufacturers responsible for the public harm a holiday from meeting the obligations of the law."

"Arguably, the five-year compliance safe-harbor has allowed the manufacturers enough time to attract new, young users and get them addicted to nicotine before any of their products, labels, or flavors are pulled from the market, at which time the youth are likely to switch to one of the other thousands of tobacco products that are approved – results entirely contrary to the express purpose of the Tobacco Control Act," Judge Grimm continued.

The plaintiff public health organizations and pediatricians now have 14 days to provide guidance to Judge Grimm on what remedial action to take. The FDA will have 14 days to respond.

The lawsuit was filed on March 27, 2018, by the American Academy of Pediatrics and its Maryland chapter, American Cancer Society Cancer Action Network, American Heart Association, American Lung Association, Campaign for Tobacco-Free Kids, Truth Initiative and five individual pediatricians.

To read the American Lung Association's full press release about this order, please click [HERE](#)

**Center for Tobacco Policy & Organizing: May 17, 2019**

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