



ADDRESSING TOBACCO INDUSTRY TARGETING OF TRIBES



Laws and policies can support the efforts of Tribal nations to reduce and prevent chronic disease within their communities.

Tribes are sovereign nations with unique political and legal status, which makes them distinct from other cultural and racial groups in the U.S. They have the ability to swiftly address the needs of their community through various policies. This resolution is one such tool that can be used to address the urgent issue of the commercial tobacco industry targeting Tribes.

In February of 2019, Juul Labs, manufacturer of the most popular e-cigarette in the United States, targeted the Cheyenne River Sioux Tribe by proposing that they would greatly discount



Photo: Robert Slocum, courtesy of the Canli Coalition of the Cheyenne River Sioux Tribe



This resource is intended as a guide for Tribal communities working on policies to address targeting of Tribal Nations by the commercial tobacco industry. The information contained in this guide is not intended to be used as or to replace legal advice. Readers are encouraged to consult with Tribal legal counsel before moving forward with policy initiatives.



Nearly three in ten
high school students
are current e-cigarette
users

As of February 18, 2020 ...

2,807

Serious lung illnesses or
deaths from e-cigarettes (mostly
people under 34 years old)

68

Deaths from e-cigarettes
(in 29 states and D.C.)

Photo: Robert Slocum, courtesy of the Canli Coalition of the Cheyenne River Sioux Tribe

the price of their starter kits for the Tribe. In exchange, Juul asked for the Tribe's Department of Health to promote Juul as an alternative to cigarettes alongside other cessation treatment. Juul representatives also proposed to collect data on the Tribe and improperly claimed that e-cigarettes are safe and less harmful than cigarettes.¹

A September 2019 letter from the FDA to Juul revealed that these statements were part of a larger pattern of misconduct by the company, a fact which was also described by a Congressional investigative report.² The truth about e-cigarettes is that the long-term health effects of these products are not yet known. What is known is that Juul and similar e-cigarettes have been the primary driver in the rapidly increasing use of e-cigarettes among young people. The most recent figures from the 2019 National Youth Tobacco Survey indicate that over 27 percent of high school students nationwide are current users of e-cigarettes.³ On top of the youth use crisis, as of early 2020, many e-cigarette users have experienced lung injuries that have not responded to traditional treatment. After the number of mysterious illnesses and

deaths peaked in September 2019, researchers identified Vitamin E acetate as the primary cause. In response to the youth crisis, in December 2019, Congress raised the minimum legal age for purchasing commercial tobacco products, including e-cigarettes, to 21 years old, and in January 2020, the FDA announced new restrictions on many flavored vaping products taking effect on February 6, 2020.⁴

Because of these concerns and the concern of Tribes for the health of their own peoples, a Tribe could consider adopting a resolution in response to these crises. Below is a model resolution that addresses accepting any funding from the commercial tobacco industry, including e-cigarette companies, which Tribes could consider adapting and adopting to express a commitment to rejecting sponsorships from the commercial tobacco and e-cigarette industries. Additionally, Tribes can reach out to partner organizations such as the National Native Network, National Indian Health Board, or the Public Health Law Center for assistance with drafting policies that would address the sale or use of e-cigarettes on Tribal lands.

Sample Resolution on Electronic Smoking Devices and Commercial Tobacco Industry Sponsorships:

[Resolution #]

Title: Resolution on Electronic Smoking Devices and Commercial Tobacco Industry Sponsorships

WHEREAS, the [name of Tribe], [typical language used by Tribe or Tribal Organization to declare its authority. For example: [name of Tribe] is a federally recognized Indian Tribe organized pursuant to the provisions of the Indian Reorganization Act of 1934, 25 U.S.C. S 461, et seq]; and

WHEREAS, the [name of Tribe] hereby finds the cultural, spiritual, and ceremonial use of traditional tobacco is an integral part of traditional, native life; and

WHEREAS, American Indian/Alaska Native people have the highest rate of commercial tobacco use in the nation [Alternatively, Tribes could use regionally or Tribally-specific data or statistics]; and

WHEREAS, commercial tobacco use is the leading cause of preventable death and disease and causes American Indian/Alaska Native people to suffer serious health consequences including heart disease and cancer; and

WHEREAS, electronic smoking devices (ESD) are not a proven cessation device and may maintain or restore the habit of smoking, and are causing a new generation to become addicted to nicotine; and

WHEREAS, nicotine exposure from aerosolized ESD can negatively impact developing fetuses as well as teenage brain development; and

WHEREAS, the ESD industry is deceptively marketing the products to the public — especially to young adults via social media — as a “safe” alternative to smoking and as an easy way to quit smoking tobacco cigarettes, despite no conclusive evidence; and

WHEREAS, the ESD industry entices youth with attractive flavors; and

WHEREAS, according to the 2016 U.S. Surgeon General’s Report on e-cigarette use among youth and young adults, ESDs are now the most commonly used form of tobacco by youth in the United States and 85% of ESD users ages 12-17 use flavored products; and

WHEREAS, the 2018 National Youth Tobacco Survey reveals that there is a national crisis of youth use of ESDs that has been described by the U.S. Surgeon General as an epidemic and American Indian/Alaska Native leaders, teachers, and parents have reported American Indian/Alaska Native youth have been impacted as well; and

WHEREAS, ESD use has been shown to cause heart disease and is likely the cause of severe, acute lung injuries that have resulted in several deaths nationwide; and

WHEREAS, industry leaders have directly targeted Tribal communities by misleading Tribal Councils and community members about the risks and harms associated with using ESDs; and

WHEREAS, ESD and commercial tobacco industry companies are targeting Tribes by offering their products to Tribes and providing them with incorrect information in exchange for data on Tribal members’ ESD and commercial tobacco use; and

WHEREAS, testimony in front of the Subcommittee on Economic and Consumer Policy of the Committee on Oversight and Reform of the United States House of Representatives revealed that ESD companies targeted youth by speaking in high school assemblies, funding and offering schools money to accept their own anti-tobacco curriculum, and funding youth camps where they collected data on children and youth without permission; and

WHEREAS, Juul, an ESD company, has been warned by the FDA against using language that would suggest that its products are safer or that people should “switch” to its product — both claims that were made to American Indian/Alaska Native communities by the company; and

WHEREAS, commercial tobacco industry documents establish that the industry has historically targeted Tribes by appropriating our images and sacred peace pipes, promoting and encouraging policies that restrict the use of traditional tobacco, and by targeting Tribal members with promotions, coupons, giveaways, gaming promotions, charitable contributions, and sponsorships; and

WHEREAS, the use of ESDs perpetuates addiction, mimics the use of cigarettes, and circumvents efforts to eradicate the harms associated with cigarettes and other commercial tobacco products; and

WHEREAS, the health of our people is of utmost importance and American Indians/Alaska Natives have taken the lead in addressing health issues in our communities.

RESOLVED, the [name of Tribe] shall neither solicit nor accept any commercial tobacco, ESD or nicotine-related direct or indirect funding or sponsorship of events or activities,

RESOLVED, the [name of Tribe] shall not partner with commercial tobacco, ESD or nicotine-related companies to further industry goals or share information on Tribal members.

RESOLVED, the [name of Tribe] shall not allow the commercial tobacco, ESD, or other nicotine-related companies to present at or fund programs in Tribally controlled schools, after school programs, camps, or other child or youth-related activities.

RESOLVED, the [name of Tribe]'s fundamental, traditional, and ceremonial use of traditional tobacco shall not be restricted or impacted in any way by this Resolution.

CERTIFICATION

I hereby certify that the above resolution was duly adopted at a regular meeting of the Tribal Council on this [day] of [month], [year], at which a quorum was present, with a vote of [number] for, [number] against, [number] abstentions, and [number] absent.

[name], Tribal Council President

Date

ATTEST:

[name], Tribal Administrator

Date

This publication was prepared by the Public Health Law Center at Mitchell Hamline School of Law, St. Paul, Minnesota, located in the Bdote Region of the traditional homelands of the Dakota People, in partnership with the Great Lakes Inter-Tribal Epidemiology Center, Great Lakes Inter-Tribal Council, Inc., residing on the Lac du Flambeau Band of Lake Superior Chippewa Indians Reservation. It was made possible with funding provided by the Centers for Disease Control and Prevention's Good Health and Wellness in Indian Country grant program.

The Public Health Law Center wishes to thank Rae O'Leary of the Canli Coalition of the Cheyenne River Sioux Tribe for her review and comments on an earlier draft and for her graphic design ideas.

The Public Health Law Center provides information and legal technical assistance on issues related to public health. The Center does not provide legal representation or advice. This document should not be considered legal advice.



Endnotes

- 1 Testimony of Rae O'Leary before the Subcommittee on Economic and Consumer Policy (July 24, 2019).
- 2 Letter from U.S. Food and Drug Administration, Center for Tobacco Products to Kevin Burns, CEO Juul Labs, Inc. (Sept. 9, 2019), <https://www.fda.gov/inspections-compliance-enforcement-and-criminal-investigations/warning-letters/juul-labs-inc-590950-09092019>; and Jessie Hellmann, *Juul Pitched Products to Native American Tribes, Congressional Investigation Finds*, THE HILL, Feb. 5, 2020, <https://thehill.com/policy/healthcare/481662-juul-pitched-products-to-native-american-tribes-congressional-investigation>. A copy of the Congressional report can be found at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/2020-02-04.RK%20Memo%20re%20JUUL.pdf>. See also, Alex Norcia, *Juul Pitched Native American Tribes. It Did Not Go Well*, VICE, July 25, 2019, https://www.vice.com/en_us/article/vb999b/juul-pitched-native-american-tribes-it-did-not-go-well.
- 3 News release, U.S. Food and Drug Administration, Center for Tobacco Products, *Trump Administration Combating Epidemic of Youth E-Cigarette Use with Plan to Clear Market of Unauthorized, Non-Tobacco-Flavored E-Cigarette Products* (Sept. 11, 2019), <https://www.fda.gov/news-events/press-announcements/trump-administration-combating-epidemic-youth-e-cigarette-use-plan-clear-market-unauthorized-non>.
- 4 CTRS. FOR DISEASE CONTROL AND PREVENTION, OUTBREAK OF LUNG INJURY ASSOCIATED WITH THE USE OF E-CIGARETTE, OR VAPING, PRODUCTS, https://www.cdc.gov/tobacco/basic_information/e-cigarettes/severe-lung-disease.html#map-cases (updated Feb. 25, 2020); FDA, TOBACCO 21, <https://www.fda.gov/tobacco-products/retail-sales-tobacco-products/tobacco-21> (current as of Feb. 15, 2020); Press Release, FDA, FDA Finalizes Enforcement Policy on Unauthorized Flavored Cartridge-Based E-Cigarettes that Appeal to Children, Including Fruit and Mint (Jan. 2, 2020), <https://www.fda.gov/news-events/press-announcements/fda-finalizes-enforcement-policy-unauthorized-flavored-cartridge-based-e-cigarettes-appeal-children>.