

# Appeals court says US can't block electronic cigarettes

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A US appeals court ruled Tuesday that the government cannot block the sale or import of so-called electronic cigarettes under existing laws, in a victory for the industry.

The appellate panel upheld a lower court ruling that said the [Food and Drug Administration](#) has no authority to halt the sales of the battery-powered [nicotine](#) devices if they are not marketed for therapeutic purposes.

The court in Washington ruled in a case brought by NJOY, a company which has imported and distributed e-cigarettes since 2007 and sells them for "smoking pleasure," rather than as a therapeutic or [smoking cessation](#) product.

The ruling means the FDA cannot while full arguments are heard halt the sale of the devices which have no tobacco but deliver a dose of nicotine to the user, while producing water vapor that looks like smoke.

The court said "NJOY is likely to succeed" in a final court ruling in the case and that halting sales would cause "irreparable harm" to the company.

The case stems from FDA action in April 2009 to deny the import of e-cigarettes as "unapproved drug-device combinations." The company sued and won a preliminary order that bars the FDA from enforcing its ban.

The FDA has said e-cigarettes are unauthorized and potentially dangerous.

But the lower court and appeals court said the FDA has no authority to ban the devices under its statutory authority or under the Tobacco Act of 2009 that allows it to regulate cigarettes.

The American Legacy Foundation, an educational group set up with funds from [tobacco industry](#) court settlements, said it was disappointed with the ruling.

"Despite claims that electronic [nicotine delivery](#) systems are a safer alternative to smoking, their novel construction has raised challenging concerns for other risks, including their appeal to young people with flavors like strawberry or chocolate as well as their appeal to people who would use them to bridge times when they cannot smoke and might otherwise be trying to quit," said Cheryl Heaton, who heads the group.

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