E-cigarettes can be regulated now without more research, expert says

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Credit: TheNorlo/Wikipedia

A legal scholar and tobacco control expert says he has developed a research-based roadmap that allows for the immediate regulation of e-cigarettes.

Writing in the March issue of *Food and Drug Law Journal*, Eric N. Lindblom, JD, senior scholar at the O'Neill Institute for National and

Global Health Law, says his proposal would minimize the threats e-cigarettes pose to public health while still enabling them potentially help reduce smoking.

"This approach could help to heal the current split in the public health community over e-cigarettes by addressing the concerns of both sides," Lindblom says.

Lindblom, the former director of the Office of Policy at the Center for Tobacco Products at the U.S. Food and Drug Administration (FDA), is on a special detail to the O'Neill Institute at Georgetown University Law Center. He says enough is already known about e-cigarettes to regulate them effectively without any further research or delay.

"We already know that using e-cigarettes is less harmful than smoking, but more harmful than not using any tobacco or nicotine at all, and that's enough to figure out how to regulate them both to protect and promote the public health," he says.

In "Effectively Regulating E-Cigarettes and Their Advertising - And the First Amendment," Lindblom writes, "Because e-cigarette use, by itself, is neither beneficial nor benign to users and nonusers, the only public health justification for allowing their marketing would be if doing so would help smokers quit completely or provide them with a less harmful way to obtain the nicotine they crave, without causing any offsetting public health harms."

Based on that observation, Lindberg suggests that an effective regulatory scheme would 1) make e-cigarettes less harmful to users and non-users; 2) increase their use as a cessation aid and as a less harmful alternative for smokers who would not otherwise quit; and 3) minimize e-cigarette use among everyone else.

Lindblom's proposal hinges on the implementation of the FDA's pending deeming rule (expected later this year), which would enable the agency to regulate all non-drug e-cigarettes as tobacco products. "The deeming rule, by itself, will not minimize e-cigarette harms or maximize their public health potential," he says.

Lindblom notes that the proposal faces challenges in the United States, primarily from First Amendment constraints on government action to regulate e-cigarette advertising. His paper suggests, however, that "some helpful text and established procedures in the Tobacco Control Act reduce those constraints in this context, providing the FDA with a tremendous opportunity to place the kinds of careful restrictions and requirements on e-cigarette advertising necessary to minimize their harmful aspects and maximize their potential to produce substantial net public health gains."

The views expressed by Lindblom are entirely his own, and he reports having no conflicts of interest related to the *Food and Drug Law Journal* paper.

Provided by O'Neill Institute for National and Global Health Law