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**Testimony: SB 233**  
**Guy Bentley, director of consumer freedom**  
**Reason Foundation**  
**February 13, 2020**

Chair Kelley, members of the committee, thank you for the opportunity to submit testimony on SB 233.

My name is Guy Bentley, and I'm the director of consumer freedom at the Reason Foundation, a 501(c)3 nonprofit think tank. My research focus is on the regulation and taxation of tobacco products.

Proposals to ban the sale of all flavored e-cigarettes to stem and reverse the rise of youth vaping have been made all but obsolete by actions taken at the federal level. In December, the tobacco age was raised to 21. In January, the Food and Drug Administration (FDA) banned the sale of all fruit and sweet flavors in the pod and cartridge-based e-cigarettes.

Furthermore, data released by the Centers for Disease Control and Prevention in December (CDC) shows flavors are not even the leading reason why youth initiate vaping.

According to the CDC, the primary reason was "curiosity," followed by "friend or family member used them," with "they are available in flavors, such as mint, candy, fruit, or chocolate" coming a very distant third.<sup>1</sup> According to the Youth Risk Behavior Surveillance System (YRBSS), in 2018, just 3.2 percent of Maryland high school students said they vaped because of flavors, again coming third after familial and peer influences and "other reasons."<sup>2</sup> Just as the availability of flavored marijuana, alcohol, or condoms fails to predict drug use, drinking, or sexual behavior, the same is true for e-cigarettes.

Further bans would, however, entail high costs. Maryland's vape businesses are directly responsible for more than 1,000 jobs, as well as hundreds more secondary jobs, contributing more than \$31 million in state taxes.<sup>3</sup> The scientific evidence from both the United States and European Union has proved beyond any reasonable doubt that e-cigarettes are safer than

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<sup>1</sup> Wang TW, Gentzke AS, Creamer MR, et al. Tobacco Product Use and Associated Factors Among Middle and High School Students — United States, 2019. *MMWR Surveill Summ* 2019;68(No. SS-12):1–22. [https://www.cdc.gov/mmwr/volumes/68/ss/ss6812a1.htm#T6\\_down](https://www.cdc.gov/mmwr/volumes/68/ss/ss6812a1.htm#T6_down)

<sup>2</sup> Maryland Department of Health. "Youth Risk Behaviour Survey/Youth Tobacco Survey (YRBS/YTS) 2018-2019." <https://phpa.health.maryland.gov/ccdpc/Reports/Pages/YRBS2018.aspx>

<sup>3</sup> Stroud, Lindsey. "Policy Tip Sheet: Tobacco Harm Reduction 101: Maryland." The Heartland Institute. January 12, 2020.

<https://www.heartland.org/publications-resources/publications/policy-tip-sheet-tobacco-harm-reduction-101-maryland>

combustible cigarettes and are significantly more successful in helping smokers quit than traditional nicotine replacement therapies.<sup>456</sup> Prohibition would not just fuel illicit markets and close businesses; it would slow the decline in adult smoking. A 2017 study by researchers from the Yale School of Public Health found “a ban on flavored e-cigarettes would drive smokers to combustible cigarettes, which have been found to be the more harmful way of getting nicotine.”<sup>7</sup>

When it comes to the prohibition of menthol cigarettes, again, the argument for a ban is out of date and not supported by the data. A recent study produced by Reason Foundation demonstrates that states with the largest volume of menthol cigarettes as a proportion of all cigarettes sold, such as Maryland, have the lowest youth smoking rates.<sup>8</sup>

The latest survey data show that among the minority of youth that does smoke, menthol cigarettes are no more popular than regular cigarettes. Prohibition would also disproportionately discriminate against African American adult smokers and present a significant profit opportunity for criminals to supply the product from Virginia, which is the third-highest outbound smuggling state in the country.

The National Organization of Black Law Enforcement Executives (NOBLE), Grand Council of Guardians (GCGNY), National Association of Black Law Enforcement Officers (NABLEO), and Law Enforcement Action Partnership (LEAP) have consistently made the case that prohibitions of all kinds disproportionately affect communities of color and that in the case of menthol cigarettes it's truer than most.<sup>9</sup>

On public health grounds, there is no more reason to prohibit menthol cigarettes than non-menthol cigarettes. Any consideration of menthol prohibition should be made in the context of rapidly falling youth cigarette use, the lack of association between the volume of menthol cigarettes sold and youth smoking rates, and the high costs of prohibition.

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<sup>4</sup> Royal College of Physicians. “Nicotine without the smoke: Tobacco harm reduction.” London RCP, 2016. <https://www.rcplondon.ac.uk/projects/outputs/nicotine-without-smoke-tobacco-harm-reduction-0>

<sup>5</sup> Stephens WE. “Comparing the cancer potencies of emissions from vapourised nicotine products including e-cigarettes with those of tobacco smoke.” *Tobacco Control* 2018;27:10-17. <https://tobaccocontrol.bmj.com/content/27/1/10>

<sup>6</sup> Hajek, Peter et al. “A Randomized Trial of E-Cigarettes versus Nicotine-Replacement Therapy.” *N Engl J Med* 2019; 380:629-637 <https://www.nejm.org/doi/full/10.1056/NEJMoa1808779>

<sup>7</sup> Buckell J, Marti J, Sindelar JL. “Should flavours be banned in cigarettes and e-cigarettes? Evidence on adult smokers and recent quitters from a discrete choice experiment.” *Tobacco Control*. 2019;28:168-175. <https://tobaccocontrol.bmj.com/content/28/2/168.citation-tools>

<sup>8</sup> Bentley, Guy, Rich, Jacob. “Does Menthol Cigarette Distribution Affect Child or Adult Cigarette Use?” Reason Foundation: Policy Study. January 30, 2020. <https://reason.org/policy-study/does-menthol-cigarette-distribution-affect-child-or-adult-cigarette-use/>

<sup>9</sup> Franklin, Neil. “Ban on Menthol Cigarettes Would Have Unintended Consequences.” *City Limits*. December 2, 2019. <https://citylimits.org/2019/12/02/opinion-ban-on-menthol-cigarettes-would-have-unintended-consequences/>

Thank you for your time.

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