

**Testimony before the Maryland House Committee on Economic Matters  
Regarding Prohibiting the Sale of Flavored Tobacco and Vapor Products**

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Chairman Davis and Members of the Committee,

Thank you for your time today to discuss the issue of banning remote sales of tobacco and vapor products. My name is Lindsey Stroud and I am a Policy Analyst with the Taxpayers Protection Alliance (TPA). TPA is a non-profit, non-partisan organization dedicated to educating the public through the research, analysis and dissemination of information on the government's effects on the economy.

As lawmakers attempt to address youth use of age- restricted products, including electronic cigarettes and vapor products, some policymakers are seeking to ban sales of flavored tobacco and vapor products. Although addressing youth use is laudable, policymakers should refrain from policies that would restrict adult access to tobacco harm reduction products, as well as implementing policies that further subvert adult choices, such as is the case with the proposal to ban flavors in tobacco and vapor products.

**E-Cigarettes and Tobacco Harm Reduction**

The evidence of harm associated with combustible cigarettes has been understood since the 1964 U.S. Surgeon General's Report that determined that smoking causes cancer. Research overwhelmingly shows the smoke created by the burning of tobacco, rather than the nicotine, produces the harmful chemicals found in combustible cigarettes.<sup>1</sup> There are an estimated 600 ingredients in each tobacco cigarette, and "when burned, [they] create more than 7,000 chemicals."<sup>2</sup> As a result of these chemicals, cigarette smoking is directly linked to cardiovascular and respiratory diseases, numerous types of cancer, and increases in other health risks among the smoking population.<sup>3</sup>

For decades, policymakers and public health officials looking to reduce smoking rates have relied on strategies such as emphasizing the possibility of death related to tobacco use and implementing tobacco-related restrictions and taxes to motivate smokers to quit using cigarettes. However, there are much more effective ways to reduce tobacco use than relying on government mandates and "quit or die" approaches.

During the past 30 years, the tobacco harm reduction (THR) approach has successfully helped millions of smokers transition to less-harmful alternatives. THR includes effective nicotine delivery systems, such as smokeless tobacco, snus, electronic cigarettes (e-cigarettes), and vaping. E-cigarettes and vaping devices have emerged as especially powerful THR tools, helping nearly three million U.S. adults quit smoking from 2007 to 2015.

In fact, an estimated 10.8 million American adults were using electronic cigarettes and vapor products in 2016.<sup>4</sup> Of the 10.8 million, only 15 percent, or 1.6 million adults, were never-smokers, indicating that e-cigarettes are overwhelmingly used by current and/or former smokers.

## **E-Cigarettes and Vapor Products 101**

E-cigarettes were first introduced in the United States in 2007 by a company called Ruyan.<sup>5</sup> Soon after their introduction, Ruyan and other brands began to offer the first generation of e-cigarettes, called “cigalikes.” These devices provide users with an experience that simulates smoking traditional tobacco cigarettes. Cig-alikes are typically composed of three parts: a cartridge that contains an e-liquid, with or without nicotine; an atomizer to heat the e-liquid to vapor; and a battery.

In later years, manufacturers added second-generation tank systems to e-cigarette products, followed by larger third-generation personal vaporizers, which vape users commonly call “mods.”<sup>6</sup> These devices can either be closed or open systems.

Closed systems, often referred to as “pod systems,” contain a disposable cartridge that is discarded after consumption. Open systems contain a tank that users can refill with e-liquid. Both closed and open systems utilize the same three primary parts included in cigalikes—a liquid, an atomizer with a heating element, and a battery—as well as other electronic parts. Unlike cig-alikes, “mods” allow users to manage flavorings and the amount of vapor produced by controlling the temperature that heats the e-liquid.

Mods also permit consumers to control nicotine levels. Current nicotine levels in e-liquids range from zero to greater than 50 milligrams per milliliter (mL).<sup>7</sup> Many users have reported reducing their nicotine concentration levels after using vaping devices for a prolonged period, indicating nicotine is not the only reason people choose to vape.

## **Health Effects of Electronic Cigarettes and Vapor Products**

Despite recent media reports, e-cigarettes are significantly less harmful than combustible cigarettes. Public health statements on the harms of e-cigarettes include:

**Public Health England:** In 2015, Public Health England, a leading health agency in the United Kingdom and similar to the FDA found “that using [e-cigarettes are] around 95% safer than smoking,” and that their use “could help reducing smoking related disease, death and health inequalities.”<sup>8</sup> In 2018, the agency reiterated their findings, finding vaping to be “at least 95% less harmful than smoking.”<sup>9</sup>

**The Royal College of Physicians:** In 2016, the Royal College of Physicians found the use of e-cigarettes and vaping devices “unlikely to exceed 5% of the risk of harm from smoking tobacco.”<sup>10</sup> The Royal College of Physicians (RCP) is another United Kingdom-

based public health organization, and the same public group the United States relied on for its 1964 Surgeon General's report on smoking and health.

**The National Academies of Sciences, Engineering, and Medicine:** In January 2018, the academy noted “using current generation e-cigarettes is less harmful than smoking.”<sup>11</sup>

A 2017 study in *BMJ*'s peer-reviewed journal *Tobacco Control* examined health outcomes using “a strategy of switching cigarette smokers to e-cigarette use ... in the USA to accelerate tobacco control progress.”<sup>12</sup> The authors concluded that replacing e-cigarettes “for tobacco cigarettes would result in an estimated 6.6 million fewer deaths and more than 86 million fewer life-years lost.”

An October 2020 review in the *Cochrane Library Database of Systematic Reviews* analyzed 50 completed studies which had been published up until January 2020 and represented more than 12,400 participants.

The authors found that there was “moderate-certainty evidence, limited by imprecision, that quit rates were higher in people randomized to nicotine [e-cigarettes] than in those randomized to nicotine replacement therapy.” The authors found that e-cigarette use translated “to an additional four successful quitters per 100.” The authors also found higher quit rates in participants that had used e-cigarettes containing nicotine, compared to the participants that had not used nicotine.

Notably, the authors found that for “every 100 people using nicotine e-cigarettes to stop smoking, 10 might successfully stop, compared with only six of 100 people using nicotine replacement therapy or nicotine-free e-cigarettes.”

### **Tobacco and Vapor Product Use Among Maryland Youth**

According to the Centers for Disease Control and Prevention's Youth Risk Behavior Survey (YRBS), in 2019, 39.7 percent of Maryland high school students reported ever using an e-cigarette or vapor products.<sup>13</sup> This is far less than the national average for 2019 at 50.1 percent of high school students reported having ever tried an e-cigarette.<sup>14</sup> Further, in 2019, only 23 percent of Maryland high school students reported current use of e-cigarettes, or they had used an e-cigarette on at least one occasion in the 30 days prior to the survey. Only 3.7 percent of Maryland high schoolers reported daily e-cigarette use.

According to results from the 2018 YRBS, Maryland high school students reported using flavored vapor products, but flavors weren't overwhelmingly cited by e-cigarette users as a reason for use.<sup>15</sup> When asked about the “main reason” Maryland high school users used flavors only 3.2 percent responded “flavors.” Conversely, 13 percent reported because “friend/family used them,” 11.7 percent reported “other,” and 3.8 percent reported using e-cigarettes because they were less harmful than other tobacco products. This is similar to other state analysis on youth e-cigarette use.

It is worthy to note that Maryland combustible cigarette use is at all-time lows. According to the YRBS, in 2005, 16.5 percent of Maryland high school students reported using combustible cigarettes on at least one occasion in the 30 days prior to the survey.<sup>16</sup> Between 2005 and 2019, current cigarette use among Maryland high schoolers decreased by nearly 70 percent to 5 percent. Further, daily cigarette rates are nearly none existent and have decreased by 85 percent from 5.4 percent of Maryland high school students smoking cigarettes daily in 2005 to 0.8 percent in 2019.

### **Flavors and Youth E-Cigarette Use**

Despite media alarmism, many American high school students are not overwhelmingly using vapor products due to flavors. Indeed, in analyses of state youth tobacco use surveys, other factors including social sources are most often cited among youth for reasons to use e-cigarettes and vapor products.

For example, in 2017, of Connecticut high school students that had ever used an e-cigarette, 23.9 percent reported “flavors” as a reason for use. Conversely, 41.6 percent reported using vapor products because a “friend or family member used them,” and 33 percent cited “some other reason.”<sup>17</sup> In 2019, among all Connecticut high school students, 5.2 percent reported using e-cigarettes because of “flavors,” 18.2 percent cited “other,” and 12.9 percent reported using e-cigarettes because of friends and/or family.<sup>18</sup>

Similarly, in 2017, among Hawaiian high school students that had ever used e-cigarettes, 26.4 percent cited flavors as a reason for e-cigarette use, compared to 38.9 percent that reported “other.”<sup>19</sup>

In 2019, among all Montana high school students, only 7 percent reported using vapor products because of flavors, compared to 13.5 percent that reported using e-cigarettes because of “friend or family member used them.”<sup>20</sup> Further, 25.9 percent of Montana high school students reported using vapor products for “some other reason.”

In 2019, among all students, only 4.5 percent of Rhode Island high school students claimed to have used e-cigarettes because they were available in flavors, while 12.5 cited the influence of a friend and/or family member who used them and 15.9 percent reported using e-cigarettes “for some other reason.”<sup>21</sup>

In 2017, among current e-cigarette users, only 17 percent of Vermont high school students reported flavors as a reason to use e-cigarettes. Comparatively, 35 percent cited friends and/or family members and 33 percent cited “other.”<sup>22</sup>

In 2019, among high school students that were current e-cigarette users, only 10 percent of Vermont youth that used e-cigarettes cited flavors as a primary reason for using e-cigarettes, while 17 percent of Vermont high school students reported using e-cigarettes because their family and/or friends used them.<sup>23</sup>

Lastly, in 2017, among all Virginia high school students, only 6.2 percent reported using e-cigarettes because of flavors, while 11.3 percent used them because a friend and/or family member used them.<sup>24</sup> In 2019, among all Virginia high school students, only 3.9 percent reported using e-cigarettes because of flavors, 12.1 used for some other reason, and 9.6 used them because of friends and/or family members.<sup>25</sup>

### **Effects of Flavor Bans**

Flavor bans have had little effect on reducing youth e-cigarette use and may lead to increased combustible cigarette rates, as evidenced in San Francisco, California.<sup>26</sup>

In April 2018, a ban on the sale of flavored e-cigarettes and vapor products went into effect in San Francisco and in January, 2020, the city implemented a full ban on any electronic vapor product. Unfortunately, these measures have failed to lower youth tobacco and vapor product use.

Data from an analysis of the 2019 Youth Risk Behavior Survey show that 16 percent of San Francisco high school students had used a vapor product on at least one occasion in 2019 – a 125 percent increase from 2017 when 7.1 percent of San Francisco high school students reported using an e-cigarette.<sup>27</sup> Daily use more than doubled, from 0.7 percent of high school students in 2017, to 1.9 percent of San Francisco high school students reporting using an e-cigarette or vapor product every day in 2019.

Worse, despite nearly a decade of significant declines, youth use of combustible cigarettes seems to be on the rise in Frisco. In 2009, 35.6 percent of San Francisco high school students reported ever trying combustible cigarettes. This figure continued to decline to 16.7 percent in 2017. In 2019, the declining trend reversed and 18.6 percent of high school students reported ever trying a combustible cigarette. Similarly, current cigarette use increased from 4.7 percent of San Francisco high school students in 2017 to 6.5 percent in 2019.

An April 2020 study in *Addictive Behavior Reports* examined the impact of San Francisco's flavor ban on young adults by surveying a sample of San Francisco residents aged 18 to 34 years.<sup>28</sup> Although the ban did have an effect in decreasing vaping rates, the authors noted "a significant increase in cigarette smoking" among participants aged 18 to 24 years old.

Other municipal flavor bans have also had no effect on youth e-cigarette use.<sup>29</sup> For example, Santa Clara County, California, banned flavored tobacco products to age-restricted stores in 2014. Despite this, youth e-cigarette use *increased*. In the 2015-16 California Youth Tobacco Survey (CYTS), 7.5 percent of Santa Clara high school students reported current use of e-cigarettes. In the 2017-18 CYTS, this *increased* to 10.7 percent.

### **Menthol Bans Have Little Effect on Smoking Rates, Lead to Black Markets, Lost Revenue and Will Create Racial Tension**

Beyond e-cigarettes, policymakers' fears about the role of menthol and flavorings in cigarettes and cigars are overblown and banning these products will likely lead to black markets.

Data from the National Health Interview Survey (NHIS) finds nearly a third of all American adult smokers smoke menthol cigarettes. In a 2015 NHIS survey, "of the 36.5 million American adult smokers, about 10.7 million reported that they smoked menthol cigarettes," and white menthol smokers "far outnumbered" the black and African American menthol smokers.<sup>30</sup>

Although lawmakers believe banning menthol cigarettes will deter persons from smoking those, such a ban will likely lead to black markets. A 2012 study featured in the journal *Addiction* found a quarter of menthol smokers surveyed indicated they would find a way to purchase, even illegally, menthol cigarettes should a menthol ban go into place.<sup>31</sup> Further, there is little evidence that smokers would actually quit under a menthol ban. A 2015 study in *Nicotine & Tobacco Research* found only 28 percent of menthol smokers would give up cigarettes if menthol cigarettes were banned.<sup>32</sup>

Moreover, there is no evidence to suggest that menthol cigarettes lead to youth tobacco use. Analysts at the Reason Foundation examined youth tobacco rates and menthol cigarette sales.<sup>33</sup> The authors of the 2020 report found that states "with more menthol cigarette consumption relative to all cigarettes have *lower* rates of child smoking." Indeed, the only "predictive relationship" is between child and adult smoking rates, finding that "states with higher rates of adult use cause higher rates of youth use."

With certainty, a ban on flavored tobacco and vapor products would lead to a loss of revenue without decreasing smoking rates as menthol smokers in Maryland are likely to travel to neighboring states to purchase menthol products. This has been demonstrated in Massachusetts, which banned the sale of flavored tobacco and vapor products, including menthol cigarettes and took effect June 1, 2020.

An analysis by the Tax Foundation found that "Massachusetts' flavor ban has not limited use, just changed where Bay Staters purchase cigarettes."<sup>34</sup> The analysis noted that sales of cigarette tax stamps in the Northeast "have stayed remarkably stable," and that "Massachusetts sales plummeted, but only because those sales went elsewhere."

The Tax Foundation's analysis found that sales of cigarettes "skyrocketed" in New Hampshire and Rhode Island – growing 55.8 percent and 56 percent, respectively, between June 2019 and June 2020.

Lawmakers should take note that menthol sales bans will strain minority communities. Although white Americans smoke more menthol cigarettes than black or African Americans, "black smokers [are] 10-11 times more likely to smoke" menthol cigarettes than white smokers.<sup>35</sup>



Given African Americans' preference for menthol cigarettes, a ban on menthol cigarettes would force police to further scrutinize African Americans and likely lead to unintended consequences.

A 2015 analysis from the National Research Council examined characteristics in the illicit tobacco market.<sup>36</sup> The researchers found that although lower income persons were less likely to travel to purchase lower-taxed cigarettes, "having a higher share of non-white households was associated with a lower probability of finding a local tax stamp" and "neighborhoods with higher proportions of minorities are more likely to have formal or informal networks that allow circumvention of the cigarette taxes."

Lawmakers in Maryland should reexamine the case of Eric Garner, a man killed in 2014 while being arrested for selling single cigarettes in the city. In a 2019 letter to the New York City council, Garner's mother, as well as Trayvon Martin's mother, implored officials to "pay very close attention to the unintended consequences of a ban on menthol cigarettes and what it would mean for communities of color."<sup>37</sup> Both mothers noted that a menthol ban would "create a whole new market for loosies and re-introduce another version of stop and frisk in black, financially challenged communities."

### **Tobacco Economics 101: Maryland**

In 2019, 16.6 percent of adults in Maryland smoked tobacco cigarettes, amounting to 781,791 smokers in 2019.<sup>38</sup> When figuring a pack-per-day, over 5.7 billion cigarettes were smoked in 2019 by Marylanders, or about 15.6 million per day.<sup>39</sup>

In 2019, Maryland imposed a \$2.00 excise tax on a pack of cigarettes.<sup>40</sup> In 2019, Maryland collected \$570.7 million in cigarette excise taxes, when figuring for a pack-a-day habit. This amounts to \$730 per smoker per year.

Maryland spent \$10.5 million on tobacco control programs in 2019, or \$13.43 per smoker per year. This is only 33 percent of what the state received in excise taxes in 2019 from Maryland adult smokers, based off a pack-a-day habit. When figuring amount spent on youth in the state, Maryland spent \$7.87 per year for each resident under 18 years of age.

### **Vapor Economics 101: Maryland**

Electronic cigarettes and vapor products are not only a harm reduction tool for hundreds of thousands of smokers in the Old Line State, they're also an economic boon.

According to the Vapor Technology Association, in 2018, the industry created 1,243 direct vaping-related jobs, including manufacturing, retail, and wholesale jobs in Maryland, which generated \$54 million in wages alone.<sup>41</sup> Moreover, the industry has created hundreds of secondary jobs in the Old Line State, bringing the total economic impact in 2018 to \$389,390,600. In the same year, Maryland received more than \$31 million in state taxes

attributable to the vaping industry. The substitution of e-cigarettes for combustible cigarettes could also save the state in healthcare costs.

According to the Centers for Disease Control and Prevention (CDC), it is now well known that Medicaid recipients smoke at rates of twice the average of privately insured persons. In 2013, “smoking-related diseases cost Medicaid programs an average of \$833 million per state.”<sup>42</sup>

A 2015 policy analysis by State Budget Solutions examined electronic cigarettes’ effect on Medicaid spending. The author estimated Medicaid savings could have amounted to \$48 billion in 2012 if e-cigarettes had been adopted in place of combustible tobacco cigarettes by all Medicaid recipients who currently consume these products.<sup>43</sup>

A 2017 study by the R Street Institute examined the financial impact to Medicaid costs that would occur should a large number of current Medicaid recipients switch from combustible cigarettes to e-cigarettes or vaping devices. The author used a sample size of “1% of smokers [within] demographic groups permanently” switching. In this analysis, the author estimates Medicaid savings “will be approximately \$2.8 billion per 1 percent of enrollees,” over the next 25 years.<sup>44</sup>

### **Wasted Tobacco Dollars**

Deeply problematic with the proposed legislation is the fact that Maryland spends very little on tobacco control, including education and prevention.

Between 2000 and 2020, Maryland received an estimated \$3.018 billion in payments attributed to the Master Settlement Agreement (MSA).<sup>45</sup> During the same time period, the Old Line State allocated only \$286.5 million toward tobacco control programs – or about 9 percent of what the state received in MSA payments during the period.<sup>46</sup> These figures do not include the state’s excise tax on cigarettes – which, in fiscal year 2020, Maryland collected over \$319 million in cigarette tax stamps, “a 1.1% increase from fiscal year 2019.”<sup>47</sup> Indeed, Maryland tobacco control spending over 20 years is only 89.8 percent of what the state received in cigarette tax stamps in 2020.

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It is disingenuous that lawmakers would purport to protect public health yet restrict access to safer products. Rather than restricting access to tobacco harm reduction products and flavored tobacco products, lawmakers should encourage the use of e-cigarettes and work towards earmarking adequate funding for smoking education and prevention programs.

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