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Testimony from:

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R Street Testimony in Opposition to Flavor Bans for Vapor Products and Smokeless Tobacco in Maryland

February 16, 2023

Maryland Senate Finance Committee

Chairwoman Griffith and members of the committee,

My name is Robert Melvin, and I am the senior manager of state government affairs for the Northeast region with the R Street Institute. The R Street Institute is a nonprofit, nonpartisan public policy research organization. Our mission is to engage in policy research and outreach to promote free markets and limited, effective government in many areas, including tobacco harm reduction. This is why SB 259 is of interest to us.

The R Street Institute has long been worried about the health effects of inhaling combustible cigarettes, and have been steadfast proponents for limiting the ability to purchase tobacco products to individuals at least 21 years of age. We have concerns that SB 259—which would prohibit the sale of flavored electronic nicotine delivery systems (ENDS), such as e-cigarettes and vapes—could undermine efforts to curb the smoking of combustible cigarettes.

To minimize the dangers of smoking effectively, we believe less risky alternatives should be accessible to the public as abstinence is not a viable harm reduction strategy. While nicotine-related products all carry some degree of risk, non-combustible products such as e-cigarettes, vapes, snus and chewing tobacco are significantly less hazardous than products like cigarettes.¹ This view is shared by public health agencies, including the National Academies of Science, Engineering, and Medicine; the U.S. Food and Drug Administration; Royal College of Physicians; and Public Health England.² This is because e-cigarettes and vapes do not burn tobacco, which release the 7,000 chemicals found in combustible cigarette smoke.³

An examination of e-cigarettes by the Royal College of Physicians led them to conclude that the “hazard to health from long term vapor inhalation from the e-cigarettes available today is unlikely to exceed 5% of the harm from smoking tobacco.”⁴ ENDS are a viable and safe alternative for individuals who are attempting to quit smoking.⁵ The world leader in tobacco control, the United Kingdom, endorses e-cigarettes as an effective and practical method that encourages the termination of smoking.⁶ Studies are showing ENDS are more productive at curtailing combustible tobacco use than other prevention tools—



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like the nicotine patch or gum—and are producing larger declines in smoking than previously.⁷ Adult smokers should not be restrained from accessing a wide variety of products that deliver nicotine while minimizing the harm brought by combustion.

The professed aim that is behind efforts to forbid the sale of flavored e-cigarettes is to inhibit the use by underage individuals; however, reports have found that youth use is not precipitated by flavor variety. According to the U.S. Centers for Disease Control and Prevention, 55 percent of minors who use e-cigarettes indicated curiosity was the primary motivator to try them, and about 22 percent stated that flavors were the reason.⁸

Adolescents are not the ones who would bear the burden of a ban on flavored e-cigarettes; instead, it would affect adult smokers who are attempting to cease their smoking habit. It is well documented that flavors are critical for motivating smokers to quit; one study of over 4,500 former and current smokers who used ENDS found that 48.5 percent of former smokers indicated that limitations on flavor options would increase their cravings for cigarettes.⁹ Another 39 percent of participants reported that banning flavors would have discouraged them from quitting smoking.¹⁰

Forbidding the sale of flavored e-cigarettes would foster the development of an illicit market that would be built around unregulated products that lack safety protocols for products currently available to the public.¹¹ We have seen this play out in Massachusetts. When the state adopted a flavor ban in June 2020, it resulted in cross-border trade with sales declining in Massachusetts, but increasing by equal measure in surrounding states.¹² A flavor ban in Maryland is likely to have a similar outcome.

Finally, the penalties imposed by the bill—punishments of up to \$1,000 in fines and 30 days incarcerated—would result in additional interactions with law enforcement. It is well documented that when an individual is detained it results in a greater propensity for that individual to engage in future criminal activity.¹³

The R Street Institute encourages you to consider all facts around this issue as you review SB 259. In Maryland, the rate of adults who ingest combustible cigarettes is 12.7 percent, and imposes a cost of \$2.7 billion and 7,500 lives annually.¹⁴ While we support efforts to reduce smoking, this bill subverts efforts to discourage cigarette consumption. Removing the important harm reduction tools offered by flavored e-cigarettes and smokeless tobacco will not only harm adult consumers of nicotine products while doing little to reduce the rates of youth use, it can also lead to the formation of an illicit market driven by cross-border sales, and reduced public safety. For these reasons, we strongly urge you to oppose SB 259.

Thank you,



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¹ Chris Proctor et al., "A Model Risk Continuum for Tobacco and Nicotine Products," Food and Drug Law Institute, last accessed Jan. 30, 2023. <https://www.fdi.org/2017/08/spotlight-tobacco-model-risk-continuum-tobacco-nicotine-products>.

² National Academies of Science, Engineering, and Medicine et al., "Public Health Consequences of E-Cigarettes," National Library of Medicine, Jan. 23, 2018. <https://pubmed.ncbi.nlm.nih.gov/29894118>; U.S. Food and Drug Administration, "FDA announces comprehensive regulatory plan to shift trajectory of tobacco-related disease, death," U.S. Department of Health and Human Services, July 27, 2017. <https://www.fda.gov/news-events/press-announcements/fda-announces-comprehensive-regulatory-plan-shift-trajectory-tobacco-related-disease-death>; Tobacco Advisory Group, "Nicotine without smoke: Tobacco harm reduction," Royal College of Physicians, April 28, 2016. <https://www.rcplondon.ac.uk/projects/outputs/nicotine-without-smoke-tobacco-harm-reduction>; Health and Wellbeing Directorate, "E-cigarettes: a new foundation for evidence based policy and practice," Public Health England, August 2015. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/454517/E-cigarettes_a_firm_foundation_for_evidence_based_policy_and_practice.pdf.

³ National Cancer Institute, "Harms of Cigarette Smoking and Health Benefits of Quitting," National Institutes of Health, Dec. 19, 2017. <https://www.cancer.gov/about-cancer/causes-prevention/risk/tobacco/cessation-fact-sheet>.

⁴ Tobacco Advisory Group. <https://www.rcplondon.ac.uk/projects/outputs/nicotine-without-smoke-tobacco-harm-reduction>.

⁵ Centers for Disease Control and Prevention, "Smoking & Tobacco Use: About Electronic Cigarettes (E-Cigarettes)," U.S. Department of Health and Human Services, Nov. 10, 2022. https://www.cdc.gov/tobacco/basic_information/e-cigarettes/about-e-cigarettes.html#e-cigarettes-less-harmful; Jamie Brown et al., "Real-world effectiveness of e-cigarettes when used to aid smoking cessation: a cross-sectional population study," *Addiction* 109:9 (September 2014), pp. 1531-1540. <https://onlinelibrary.wiley.com/doi/full/10.1111/add.12623>.

⁶ "Using e-cigarettes to stop smoking," National Health Service, Oct. 10, 2022. <https://www.nhs.uk/live-well/quit-smoking/using-e-cigarettes-to-stop-smoking>.



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⁷ J Hartmann-Boyce et al., “Can electronic cigarettes help people stop smoking, and do they have any unwanted effects when used for this purpose?,” *Cochrane*, Nov. 17, 2022.

https://www.cochrane.org/CD010216/TOBACCO_can-electronic-cigarettes-help-people-stop-smoking-and-do-they-have-any-unwanted-effects-when-used%20; Peter Hajek et al., “A Randomized Trial of E-Cigarettes versus Nicotine-Replacement Therapy,” *The New England Journal of Medicine* 380 (Feb. 14, 2019), pp. 629-637.

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⁸ Teresa W. Wang et al., “Tobacco Product Use and Associated Factors Among Middle and High School Students—United States, 2019,” *Surveillance Summaries* 68: 12 (Dec. 6, 2019), pp. 1-22.

<https://www.cdc.gov/mmwr/volumes/68/ss/ss6812a1.htm>.

⁹ Konstantinos E. Farsalinos et al., “Impact of Flavour Variability on Electronic Cigarette Use Experience: An Internet Survey,” *International Journal of Environmental Research and Public Health* 10:12 (Dec. 17, 2013), pp. 7272-7282.

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3881166>.

¹⁰ Farsalinos et al. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3881166>.

¹¹ Peter Reuter, “Can tobacco control endgame analysis learn anything from the US experience with illegal drugs?,” *Tobacco Control* 22 (May 2013), pp. i49-i51. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3632990>.

¹² Ulrik Boesen, “Massachusetts Flavored Tobacco Ban: No Impact on New England Sales,” Tax Foundation, Feb. 3, 2022. <https://taxfoundation.org/massachusetts-flavored-tobacco-ban-sales-jama-study>.

¹³ Paul Heaton et al., “The Downstream Consequences of Misdemeanor Pretrial Detention,” *Stanford Law Review* 69 (2017), p. 711. <https://review.law.stanford.edu/wp-content/uploads/sites/3/2017/02/69-Stan-L-Rev-711.pdf>.

¹⁴ Centers for Disease Control and Prevention, “Extinguishing the Tobacco Epidemic in Maryland,” U.S. Department of Health and Human Services, Oct. 13, 2022. <https://www.cdc.gov/tobacco/stateandcommunity/state-fact-sheets/maryland/index.html>.