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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 Maine

April 25, 2023

Maine Joint Committee on Health and Human Services

Chairman Baldacci, Chairwoman Meyer 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. The importance of harm reduction, especially for tobacco and nicotine products, is what drives our interest in and opposition to LD 1174 and LD 1215.

The R Street Institute is well established as a proponent for limiting the sale of tobacco products to individuals who are at least 21 years old. We have not and do not support youth having access to any tobacco- or nicotine-related products. However, we believe that adults who smoke need viable products that produce lesser harms. This is driven by our concerns about the detrimental effects of consuming combustible cigarettes. LD 1174 and LD 1215 would enjoin the sale of flavored nicotine products such as e-cigarettes and vapes in Maine.

While well intentioned, these measures are counterproductive and will compromise the declining smoking rates of combustible cigarettes by restricting adult access to alternatives, such as electronic nicotine delivery systems (ENDS), that have been proven to be drastically less hazardous.

To mitigate the hazards of combustible cigarette use effectively, we need to complement abstinence-only approaches with harm reduction. Another method to address adult users who cannot or will not abstain is through tobacco harm reduction. Leading public health authorities including the U.S. Food and Drug Administration (FDA); the National Academies of Science, Engineering, and Medicine; Public Health England; and the Royal College of Physicians have all recognized that nicotine products exist on a continuum of risk.¹ On this spectrum, combustible cigarettes are viewed as being the most harmful, whereas, non-combustible products including vapes, e-cigarettes, snus and chewing tobacco have been substantiated as being far less harmful to the health of the consumer.² Since e-cigarettes do not burn tobacco, the users of these products are not inhaling the over 7,000 chemicals, which includes more



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than 70 deadly carcinogens, found in combustible cigarettes.³ Nicotine itself is addictive; however, it has few adverse impacts on health.⁴

The lower-risk profile has been documented by the Royal College of Physicians who have found 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.”⁵ Public Health England shares a similar position and found e-cigarettes to be 95 percent less harmful than traditional cigarettes.⁶ Frankly, ENDS are a safer substitute for those attempting to cease smoking.⁷ Moreover, they are almost two times as effective as FDA-approved nicotine replacement therapies—such as nicotine gum or the patch—at assisting smokers in quitting cigarettes, and has resulted in higher reductions in smoking than previously observed.⁸ As a result of these facts, the United Kingdom’s National Health Service recommends e-cigarettes as an effective method to quit smoking.⁹ Restricting access to a class of nicotine products that lack the harms of combustible cigarettes is misguided.

The purported rationale for outlawing the vending of flavored nicotine products like e-cigarettes is to suppress underage access; however, research has revealed that underage use is not induced by flavor selection. A study by the U.S. Centers for Disease Control and Prevention (CDC) concluded that 55 percent of adolescents reported that curiosity was the motivator to try e-cigarettes, and about 22 percent cited flavors as the reason.¹⁰

Adults, not adolescents, who are attempting to quit smoking, would be adversely impacted by a prohibition on the sale of flavored nicotine products. Flavor selection is a critical factor for adults looking to switch from combustible tobacco to e-cigarettes. In fact a study of over 4,500 former and current smokers who used ENDS concluded that 48.5 percent of former smokers would have increased cravings for cigarettes if flavor options were limited.¹¹ Additionally, this examination also found that 39 percent of participants would be discouraged from quitting smoking if e-cigarette flavors were restricted.¹² Another analysis discovered that 86.6 percent of individuals who were vaping to curtail cigarette use selected candy flavors and 86.2 percent chose fruit flavors.¹³ These flavors are how e-cigarettes aid smokers in disassociating from the tobacco flavoring, thereby helping them quit smoking.¹⁴ Research has clearly demonstrated that adults overwhelmingly prefer these non-tobacco flavors, so it runs counter to logic to ban these flavors.¹⁵

Restricting consumer access to flavored e-cigarettes will inadvertently lead to the rise of an illegal market that is flush with unregulated products.¹⁶ The CDC found that vaping-related illnesses seen several years ago were solely related to vitamin E-acetate in home-engineered illicit products that infused THC, the psychoactive chemical in cannabis.¹⁷ When Massachusetts adopted a flavor ban in June 2020, it resulted in cross-border trade, with sales decreasing in Massachusetts, and increasing by equal



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measure in surrounding states.¹⁸ We expect that Maine will experience a similar outcome if it enacts a flavor ban.

The R Street Institute urges you to examine this issue fully as you consider LD 1174 and LD 1215. In Maine, the number of adult smokers is 17.6 percent, and it imposes a cost of \$811 million and 2,400 lives annually.¹⁹ While we are champions of reducing combustible tobacco consumption, this is a step backward and will undermine the national momentum in reducing smoking rates. Depriving adults who smoke of important harm reduction tools like flavored e-cigarettes and smokeless tobacco will do little to abate underage use, and will lead to the formation of illicit markets and cross-border sales. There are multiple tools to address youth use, from enforcement for purchasing to targeted prevention campaigns. Recently, others have even adopted the installation of vape detectors in schools.²⁰

We can save both youth and adults from the perils of smoking. For these reasons, we ask you to oppose LD 1174 and LD 1215.

Thank you,

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¹ 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.



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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/454517/Ecigarettes_a_firm_foundation_for_evidence_based_policy_and_practice.pdf.

² Ibid.

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 Scott Gottlieb and Mitchell Zeller, "A Nicotine-Focused Framework for Public Health," *The New England Journal of Medicine* 377 (Sept. 21, 2017), pp. 1111-1114. <https://www.nejm.org/doi/10.1056/NEJMp1707409>.

⁵ Tobacco Advisory Group. <https://www.rcplondon.ac.uk/projects/outputs/nicotine-without-smoke-tobacco-harm-reduction>.

⁶ Ann McNeill et al., "Evidence review of e-cigarettes and heated tobacco products 2018: executive summary," Public Health England, March 2, 2018. <https://www.gov.uk/government/publications/e-cigarettes-and-heated-tobacco-products-evidence-review/evidence-review-of-e-cigarettes-and-heated-tobacco-products-2018-executive-summary>.

⁷ 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;

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<https://onlinelibrary.wiley.com/doi/full/10.1111/add.12623>.

⁸ 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. <https://www.nejm.org/doi/full/10.1056/nejmoa1808779>.

⁹ "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>.

¹⁰ 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>.

¹¹ 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>.

¹² Ibid.

¹³ Shannon Gravely et al., "The Association of E-cigarette Flavors With Satisfaction, Enjoyment, and Trying to Quit or Stay Abstinent From Smoking Among Regular Adult Vapers From Canada and the United States: Findings From the 2018 ITC Four Country Smoking and Vaping Survey," *Oxford Journals: Nicotine & Tobacco Research* 22:10 (May 25, 2020), pp. 1831-1841. <https://academic.oup.com/ntr/article/22/10/1831/5843872?login=true>.



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¹⁴ Christopher Russell et al., “Changing patterns of first e-cigarette flavor used and current flavors used by 20,836 adult frequent e-cigarette users in the USA,” *Harm Reduction Journal* 15:33 (June 28, 2018).

<https://harmreductionjournal.biomedcentral.com/articles/10.1186/s12954-018-0238-6>.

¹⁵ Ibid.

¹⁶ Roberta Freitas-Lemos et al., “The Illegal Experimental Tobacco Marketplace I: Effects of Vaping Product Bans,” *Oxford Journals: Nicotine & Tobacco Research* 23:10 (May 5, 2021), pp. 1744-1753.

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8403238>.

¹⁷ Sascha Ellington et al., “Update: Product, Substance-Use, and Demographic Characteristics of Hospitalized Patients in a Nationwide Outbreak of E-cigarette, or Vaping, Product Use-Associated Lung Injury—United States, August 2019-January 2020,” Centers for Disease Control and Prevention, Jan. 17, 2020.

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¹⁸ 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>.

¹⁹ Centers for Disease Control and Prevention, “Extinguishing the Tobacco Epidemic in Maine,” U.S. Department of Health and Human Services, Oct. 13, 2022. <https://www.cdc.gov/tobacco/stateandcommunity/state-fact-sheets/maine>.

²⁰ Mia Nelson, “Lynchburg City Schools installs vape detectors in high schools,” ABC 13 News, March 16, 2023. <https://wset.com/news/local/lynchburg-city-schools-installs-vape-detectors-ec-glass-heritage-high-school-vaping-tobacco-thc-weed-pen-dr-derrick-brown-director-student-services-lcs-virginia-march-2023>.