

Good afternoon, my name is Jay Green and I serve as Director of Business Optimization at R. H. Foster Energy, LLC, headquartered in Hampden, Maine. We are a third generation, family-owned business, founded by Robert H. Foster in 1959. Our company is celebrating our third generation of Foster family members in management. We own and operate 17 convenience stores throughout Maine and employ approximately 390 Mainers¹.

We provide a critical resource to many small towns in Maine and have worked hard to establish and keep our locations open, in the face of many challenges – including labor shortages, increased supply cost, supply chain issues, and protecting the health and safety of our customers and employees.

In Maine, state law requires that tobacco products be sold in a direct, face-to-face exchange where the purchaser may be clearly identified². We are legally prohibited from selling tobacco products to any person that is not 21 years of age, and we cannot sell to anyone under 30 years of age without verifying age by photo ID. As an employer, we train diligently on these requirements, and take this very seriously.

Banning the sale of flavored tobacco products in Maine will not solve the problem of flavored tobacco products getting into the hands of underage consumers. This is already an age-restricted product, and it is illegal for it to be purchased, but middle and high school students are still finding ways to obtain it. We recognize and do not diminish the public health issues associated with tobacco use. However, banning the sale of flavored tobacco in Maine will harm Maine small businesses and legal consumers, and will shift the purchase of this product outside of Maine or via online channels.

Prior to 2016, e-cigarettes, cigars and hookah products were not regulated by the FDA. That is because the original grant from Congress only covered cigarettes, smokeless tobacco, cigarette tobacco, and roll-your own tobacco. In 2016, the “Deeming Rule” took effect, which was aimed to protect the public health and future generations from the dangers of tobacco use³. Before the deeming rule, there was no regulation on retailers selling unregulated tobacco products to youth.

In August 2021, the FDA rejected thousands of applications for new flavored tobacco products after determining that the applications lacked evidence that they have a benefit to adult smokers sufficient to overcome the public health threat posed by alarming levels of youth use⁴. The FDA review requires that any company that wants to continue to market their flavored products must have robust and reliable evidence that their products potential benefits for adult smokers outweigh the significant known risk to youth.

To ban the sale of these products in Maine, when the FDA has determined that there is robust and reliable evidence that the potential benefit of this product to an adult consumer outweighs the risk to youth, and the state has enacted strict age-restriction laws, only harms Maine retailers and does not change the reality of consumer access.

¹ Our company history can be reviewed at www.rhfoster.com.

² MRSA Title 22, Section 1555-B. Sales of Tobacco Products

³ <https://www.fda.gov/media/97860/download>

⁴ <https://www.fda.gov/news-events/press-announcements/fda-denies-marketing-applications-about-55000-flavored-e-cigarette-products-failing-provide-evidence>

Low-income Maine consumers are already facing significant challenges to their budgets. Data suggests that 38.1% of Maine adults that earn less than \$15,000 per year smoke versus 10.1% of adults making over \$50,000 per year smoke. In 2020, the Cigarette and Tobacco Tax generated approximately \$137M in general fund revenue. In 2021, the Governor's office is budgeting for approximately \$144M in tax revenue, a 5.15% increase and in 2022, is budgeting approximately \$148M, representing a 3.17% increase of 2021⁵. Removing flavored products from the market will create additional tax on the remaining Cigarette and Tobacco products, putting stress on Maine's lowest income population.

According to the National Association of Convenience Stores, tobacco is the top revenue generator, representing 38.8% of in-store sales nationwide. An increased tax, coupled with the lack of availability of options, will drive Maine consumers to alternative retail sources, whether that is across state line or via unregulated, untaxable channels, negatively impacting Maine's retailers, and not changing the consumption of tobacco products. In June 2020, Massachusetts enacted a similar ban. As of January 2021, the accelerated decline predicts an estimated \$120M in lost revenue, not including sales tax losses⁶. Data in neighboring states indicates that the ban did not decrease the tobacco consumption in the state, it merely sent the tax revenue to neighboring states and failed to address the public health concerns.

A quick google search will tell you that vapor cartridges⁷, Juul pods, and other nicotine salt products can be purchased and are available online without ID required or verified. And unless there is some suggestion that there is a high degree of illegal sale happening, it is likely that the majority of middle and high school kids are not purchasing tobacco products from Maine retailers.

The FDA has demonstrated a deep commitment to preventing youth from using and becoming addicted to tobacco products, including e-cigarettes, which includes investing in public education campaigns to educate youth about the dangers of e-cigarette use, providing resources to educators, parents, and community leaders to prevent youth use, and exploring how to help kids that are addicted to e-cigarettes quit. Maine should follow suit.

It is critical to be mindful of how this policy will impact smokers using this type of product to transition away from cigarettes. With limited research on the topic, studies have shown that vapers who use sweet flavors were more likely to transition away from cigarette smoking and quit cigarette use.⁸

A ban on flavored products to keep them out of the hands of Maine's youth and will not solve the problem of access. It will only harm Maine retailers, burden low-income Maine people, and drive Maine revenue into neighboring states or online.

Thank you.

⁵ https://www.maine.gov/budget/sites/maine.gov.budget/files/inline-files/Governors%20Biennial%20Budget%20Overview_0.pdf

⁶ <https://taxfoundation.org/massachusetts-flavored-tobacco-ban/>

⁷ <https://www.vapeshack.com/>

⁸ Li L, Borland R, Cummings KM, Fong GT, Gravely S, Smith DM, Goniewicz ML, O'Connor RJ, Thompson ME, McNeill A. How Does the Use of Flavored Nicotine Vaping Products Relate to Progression Toward Quitting Smoking? Findings From the 2016 and 2018 ITC 4CV Surveys. *Nicotine Tob Res.* 2021 Aug 18;23(9):1490-1497. doi: 10.1093/ntr/ntab033. PMID: 33631007; PMCID: PMC8500174.