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Testimony from:

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In OPPOSITION to LD 1693 – “An Act to Advance Health Equity, Improve the Well-being of All Maine People and Create a Health Trust”

February 4, 2022

Committee on Health and Human Services

Chair Claxton, Chair Meyer and Honorable Members of the Committee,

I am writing on behalf of the R Street Institute (RSI) in opposition to LD 1693, which includes a statewide ban on flavored tobacco products. R Street is a nonprofit, nonpartisan public policy research organization focused on advancing limited, effective government in many policy areas, including tobacco harm reduction. We believe that tobacco harm reduction is an effective tool for reducing the negative consequences associated with smoking deadly combustible cigarettes. Although LD 1693 aims to improve health equity, it disregards the benefits of reduced-risk tobacco products, such as electronic nicotine delivery systems, in improving health.

R Street’s approach to harm reduction recognizes that abstinence from a range of risky behaviors cannot be achieved at the population level. To reduce harms effectively, there should be less dangerous alternatives available. This legislature has recognized the value of evidence-based harm reduction approaches in other areas, such as sex—Maine educational standards require students to be taught about contraception and affirmative consent— and substance use disorders, with the state providing syringe replacement to mitigate the risk of contracting HIV or Hepatitis C.¹ These policies are grounded in the concept that if individuals are going to engage in risky behaviors, it is in the state’s interest to ensure they do so with the least subsequent harm.

This principle should also apply to products containing nicotine. While great strides have been made in tobacco cessation strategies over the last two decades, with a consequently increasing number of adults quitting combustible cigarettes, no abstinence-only approach can be completely effective at the population level.²

Because the prohibitions on flavored tobacco products in LD 1693 would apply to flavored e-cigarettes, and because flavored e-cigarettes can be used to encourage smokers to switch to less harmful methods of nicotine delivery, RSI opposes LD 1693 as written. Allowing these products to be sold in Maine will encourage adults to choose safer nicotine-delivery alternatives to combustible cigarettes.

E-cigarettes are a harm reduction and smoking cessation tool



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Public Health England; The Royal College of Physicians; The National Academies of Science, Engineering and Medicine; and the Federal Drug Administration (FDA) have recognized that nicotine products exist on a continuum of risk, with e-cigarettes at the lower end near traditional nicotine replacement therapies, and combustible cigarettes at the highest end of the risk spectrum.³ Importantly, in its comprehensive report, the Royal College of Physicians has stated that e-cigarettes are unlikely to exceed 5 percent of the risk associated with combustible cigarettes.⁴ These products are recognized as presenting a reduced risk because they do not employ the traditional cigarette combustion process that releases more than 7,000 chemicals—some of which are highly carcinogenic.

Although there are a number of pharmaceutical products that can help smokers quit, their low success rates necessitate that the public health community consider expanding the toolbox to include electronic nicotine delivery systems (ENDS).⁵

Indeed, e-cigarettes have quickly become the number one quit tool in many parts of the world, helping an untold number of smokers quit.⁶ Public health modeling suggests that e-cigarettes are contributing to more rapid declines in smoking rates than were seen in previous years.⁷ In the United States and the United Kingdom, e-cigarettes have outpaced traditional quit methods (varenicline, nicotine replacement therapies and counseling) and demonstrate a higher degree of success.⁸ Furthermore, in a randomized trial, smokers who used e-cigarettes as a cessation device achieved sustained abstinence at roughly twice the rate of smokers who used nicotine replacement therapy.⁹

Flavored e-cigarettes can be an effective smoking cessation device

RSI shares the concern of this legislature over youth uptake of e-cigarette products. We have not and do not promote any tobacco use among youth, having long advocated for raising the age of purchase to 21 years old. We continue to urge this legislature and all state and federal officials to take action to keep these products away from young people.

When paired with effective youth education strategies and other policies to reduce youth uptake, the harm reduction benefits of e-cigarettes cannot be overlooked. In the debate over these devices, it often goes unacknowledged that, according to Public Health England, e-cigarettes are 95 percent less harmful than combustibles.¹⁰ Furthermore, e-cigarette users are more likely to attempt to quit smoking and nearly twice as likely to do so successfully as combustible cigarette users who do not use e-cigarettes.¹¹ Even the United States Centers for Disease Control and Prevention (CDC) acknowledges that while e-cigarettes are relatively new, and studies are therefore inconclusive, they suggest that among smokers, more frequent use of e-cigarettes is associated with greater cessation of combustible cigarettes.¹²

Flavored products assist in and encourage smokers to transition from combustibles to e-cigarettes. One study of 4,515 current and former smokers using e-cigarettes found 91 percent had switched entirely from combustibles to e-cigarettes, and 69 percent of former smokers reported switching between flavors within one day.¹³ All study participants called the variety of e-cigarette flavors “very important” in their decision to reduce or switch from combustibles, and 40 percent reported flavor invariability



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would have made it less likely for them to switch.¹⁴ Another study echoed the finding that non-tobacco-flavored e-cigarettes are preferred by most former smokers, and researchers concluded that restricting access to flavors may discourage users of combustible cigarette from switching to e-cigarettes.¹⁵ Moreover, it has been demonstrated that e-cigarette users who use non-tobacco flavors, including menthol and non-menthol (fruit, sweet, dessert) flavors are more likely to switch completely from combustible cigarettes than those who choose tobacco flavors.¹⁶ Flavored e-liquids are yet another way that e-cigarettes can help smokers disassociate combustible cigarettes—and the characteristic flavor—from their pleasurable effects.

Finally, targeting flavors as a method of stemming underage use of e-cigarettes is misguided because flavors are not the primary driver of youth e-cigarette uptake. According to a 2019 CDC study, 55.3 percent of e-cigarette users under age 18 cited curiosity as the primary factor motivating them to try e-cigarettes, while only 22.4 percent cited flavors as the primary factor.¹⁷

As this Committee considers LD 1693, RSI strongly urges the examination of the potential of flavored tobacco products as harm reduction tools that compliment other tobacco cessation strategies. Efforts to curb youth initiation and use should not come at the expense of the health of more than 220,000 Mainers who smoke combustible cigarettes.¹⁸ Both the leaders and the people of Maine benefit when there are a range of accessible products that encourage, rather than discourage, less harmful alternatives to combustible cigarettes while simultaneously prohibiting access to these products for youth.

Respectfully submitted,

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¹ “Maine State Profile,” SIECUS, 2021. https://siecus.org/state_profile/maine-fy21-state-profile/; Maine Drug Data Hub, “Harm Reduction,” State of Maine and University of Maine, 2022. <https://mainedrugdata.org/maine-drug-data-hub/maine-drug-data/harm-reduction/#:~:text=Harm%20reduction%20strategies%20in%20Maine,the%20public%20in%20harm%20reduction>.

² Office of the Surgeon General, “Smoking Cessation: A Report of the Surgeon General – Key Findings,” Department of Health and Human Services, Jan. 23, 2020. <https://www.hhs.gov/surgeongeneral/reports-and-publications/tobacco/2020-cessation-sgr-factsheet-key-findings/index.html>.

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⁴ Tobacco Advisory Group, “Nicotine without smoke,” (2016).

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⁵ Gary Green, “Nicotine Replacement Therapy for Smoking Cessation,” *American Family Physician*, 92:1 (2015) pp. 24A-B. <https://www.aafp.org/afp/2015/0701/od1.html>.

⁶ Health & Wellbeing Directorate, “E-cigarettes” (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; Shu-Hong Zhu et al., “E-cigarette use and associated changes in population smoking cessation: evidence from US current population surveys,” *The BMJ* 358, j3262 (July 26, 2017). <https://www.bmj.com/content/358/bmj.j3262>; K. Michael Cummings, et al. “What Is Accounting for the Rapid Decline in Cigarette Sales in Japan?” *International Journal of Environmental Research and Public Health* (May 20, 2020), 17(10):3570. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7277739>.

⁷ David T. Levy et al., “Examining the relationship of vaping to smoking initiation among US youth and young adults: a reality check,” *Tobacco Control* (2018). <https://www.ncbi.nlm.nih.gov/pubmed/30459182>.

⁸ Health & Wellbeing Directorate, “E-cigarettes” (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; Shu-Hong Zhu et al., “E-cigarette use and associated changes in population smoking cessation” (2017). <https://www.bmj.com/content/358/bmj.j3262>.

⁹ 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. 629-37. <https://www.nejm.org/doi/full/10.1056/nejmoa1808779>.

¹⁰ 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>.

¹¹ Shu-Hong Zhu, et al, “E-cigarette use and associated changes in population smoking cessation” (2017). <https://www.bmj.com/content/358/bmj.j3262>.

¹² Centers for Disease Control and Prevention, “Adult Smoking Cessation—The Use of E-Cigarettes,” Department of Health and Human Services, Jan. 23, 2020. https://www.cdc.gov/tobacco/data_statistics/sgr/2020-smoking-cessation/fact-sheets/adult-smoking-cessation-e-cigarettes-use/index.html#:~:text=Some%20research%20suggests%20that%20using,cessation%20than%20less%20frequent%20use.

¹³ 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. 7272-82. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3881166>.

¹⁴ Ibid.

¹⁵ 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#Abs1>.

¹⁶ Ibid.



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¹⁷ 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.

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¹⁸ “Trend: Smoking, Maine, United States,” America’s Health Ranking, *United Health Foundation*, 2020.

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