WRITTEN TESTIMONY OF MICHAEL A. MADDEN, MD

REGARDING LD 1423

I. Introduction

My name is Dr. Michael Madden, and I've been a family physician for 39 years. I write in opposition to LD 1423, which would result in a doubling of the tax on all tobacco products, including smokeless tobacco products and electronic nicotine delivery systems and other nicotine vapor products. I urge you to consider and reflect science-backed tobacco harm reduction policy in Maine's tobacco taxation structure.

Non-combustible tobacco products present an enormous opportunity for tobacco harm reduction, and a 100 percent increase in the taxes imposed by the state on these products disincentivizes their use among Maine's adult cigarette smoking population.

In my roles as a family physician, as President of the Board of Allies for Health + Wellbeing (Southwest Pennsylvania's largest provider of services and care for individuals with or at risk for HIV), and as former Chief Medical Officer of Gateway Health (a multi-state managed care company serving Medicare and Medicaid populations), I have worked in clinical and administrative settings to address harm reduction in a variety of public health crises, including the opioid epidemic, HIV/AIDS, and smoking. I have also taught evidence-based literature review extensively to physicians, residents, and medical students. Importantly, you should know that, while RAI Services Company has compensated me for my time in preparing this testimony, the opinions expressed are my own.

II. What is Harm Reduction?

Harm reduction is a key principle we public-health professionals employ to mitigate deadly health risks. You are, no doubt, familiar with harm-reduction methods or techniques used to address a variety of public health ills, such as methadone, needle-exchange programs, and naloxone for people addicted to opioids. Additionally, condoms and PrEP (preexposure prophylaxis) are harm reduction tools used to decrease the chance of HIV transmission in sexually active adults, while helmet and seatbelt laws have long been commonplace methods for reducing death and serious injury in motor vehicle accidents.

While neither methadone, nor condoms, nor seatbelts entirely reduce an individual's risk of death from drug overdose, HIV, or a car accident, respectively, all of these harm reduction techniques are substantially safer than the conditions they address.

In the case of smoking, which claims 1,300 lives per day in the United State, tobacco harm reduction equals a broad array of non-combustible tobacco products (including vapor, SNUS, and moist tobacco) that are both available and acceptable to current cigarette smokers. A body of evidence from leading health authorities indicates that vapor products are 90 to 95 percent

less harmful than combustible cigarettes, and decades of scientific research have established that oral tobacco products pose substantially fewer health risks to users than cigarettes.

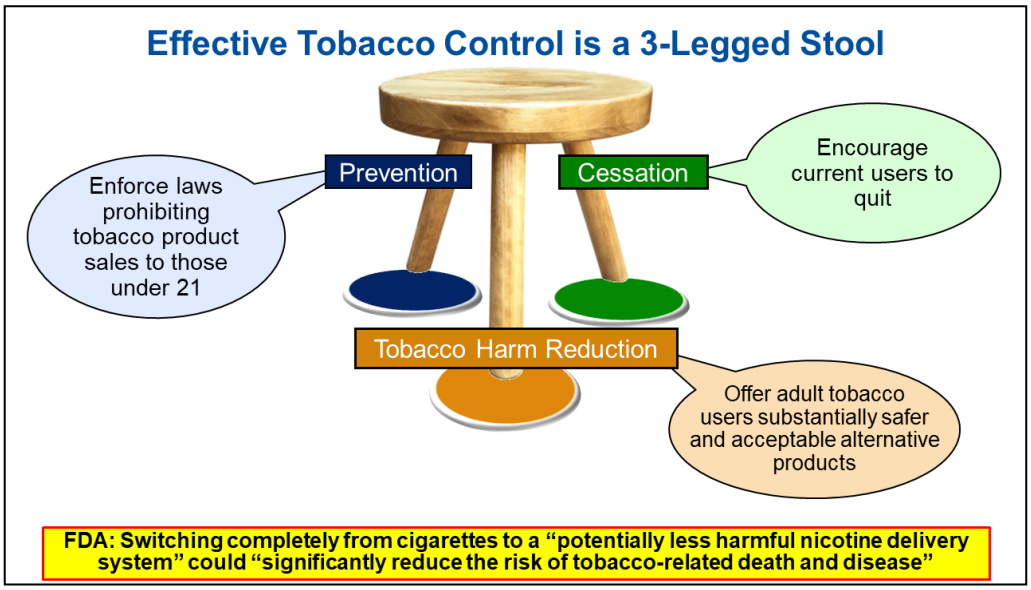
However, the bill before you now turns that science on its head by making these less harmful products more expensive and, therefore less acceptable to smokers of traditional, combustible cigarettes.

III. **What is Tobacco Harm Reduction?**

Smokers die prematurely not because they consume nicotine – which is not a carcinogen – but because of **how** they consume it: in the combustible form of a cigarette. According to the FDA, switching completely from cigarettes to a "potentially less harmful nicotine delivery system," could "significantly reduce the risk of tobacco-related death and disease."[1] Further, the National Academies of Sciences, Engineering, and Medicine has found that "[t]here is conclusive evidence that completely substituting e-cigarettes for combustible tobacco cigarettes reduces users' exposure to numerous toxicants and carcinogens present in combustible tobacco cigarettes."[2]

And beyond simple substitution of products, recent studies reveal that use of e-cigarettes may actually help adult smokers quit. According to Public Health England, a leading public health organization in the U.K., "vaping carries a small fraction of the risk of smoking" and "[u]sing a nicotine-containing e-cigarette makes it much more likely someone will quit successfully than relying on willpower alone."[3] And a study recently published in the New England Journal of Medicine found that cigarettes smokers who used e-cigarettes while quitting smoking were nearly twice as likely to be smoke free one year later.[4] While 9.9 percent of the smokers who did not use e-cigarettes were smoke free at the end of the year, 18 percent of the smokers using e-cigarettes were no longer smoking at the end of the study period.

[1] 83 Fed. Reg. at 11824.
[2] http://nationalacademies.org/hmd/reports/2018/public-health-consequences-of-e-cigarettes.aspx
[3] https://publichealthmatters.blog.gov.uk/2019/10/29/vaping-and-lung-disease-in-the-us-phes-advice/
[4] Hajek, et al., "A Randomized Trial of E-cigarettes versus Nicotine-Replacement Therapy," NEJM, 380:7, Feb. 14, 2019.



Successful, public health-focused tobacco control is a three-legged stool supported by prevention of initiation, education regarding tobacco cessation, and encouraging tobacco harm reduction for those adult smokers who choose to continue using tobacco or nicotine-containing products.

IV. What Role Does Taxation Play in Tobacco Harm Reduction?

While LD 1423 seeks to decrease adult cigarette smoking and increase funding for tobacco control and heath disparities research, unfortunately, state law mandates that when cigarette taxes are increased, taxes on all other tobacco products, including moist snuff and vapor products must also be increased by the same percentage.

The resulting doubling of the taxes on both moist snuff and other oral tobacco products and nicotine vapor means that demonstrably less hazardous oral tobacco products will be, in fact, more expensive than a pack of cigarettes and that the tax on e-cigarettes jumps to *86 percent* of their wholesale cost. This would be the second highest tax on nicotine vapor products in the country.

Research funded by the National Institutes of Health and published in 2020 by the National Bureau of Economic Research indicates that as e-cigarette prices rise, combustible cigarette sales rise along with them.[5] The study's authors estimate that for every e-cigarette cartridge not purchased because of an increase in the tax on e-cigarettes, more than *six packs* of cigarettes are purchased.[6]

[5] https://www.forbes.com/sites/kellyphillipserb/2020/02/10/new-study-suggests-raising-taxes-on-e-cigarettes-could-encourage-traditional-smoking/?sh=220f433d57bf

[6] Cotti, et al., The Effects of E-Cigarette Taxes on E-Cigarette Prices and Tobacco Product Sales: Evidence from Retail Panel Data. NBER Working Paper Series, Working Paper 26724, http://www.nber.org/papers/w26724.

A risk-based tobacco tax structure that levies the highest taxes on the more dangerous products (combustible cigarettes) and the lowest taxes on the less dangerous products (vapor and moist tobacco) would reflect an acknowledgment of the science underlying true tobacco harm reduction.

For example, some 20 years ago, both Maine and the nation recognized the need to decrease the teen pregnancy rate. While some lawmakers might have preferred a teen pregnancy prevention strategy grounded only in encouraging teen abstinence and advocated raising prices on and limiting access to condoms and other birth control for teens, it was an increase in the availability of and appropriate education about condoms and other birth control that was a major driver in Maine's nearly 80 percent decline in teen pregnancy in little more than a decade at the beginning of this millennium.

Raising taxes on all tobacco products with indifference toward the risk profiles of the products themselves is the equivalent of asking all smokers to abstain without offering them reasonable, acceptable, safer alternatives and it ignores both the concept of and the science behind effective tobacco harm reduction.

V. What Action Has Already Been Taken on Tobacco Harm Reduction in the U.S.?

In 2009, when the FDA began regulating the tobacco industry, it established a procedure through which a tobacco product could be authorized for marketing as a "modified risk tobacco product," or MRTP. Products authorized for MRTP marketing have been determined by the FDA to be "appropriate for the protection of public health."[7]

Since that time, a dozen non-combustible tobacco products have been approved by the FDA as modified-risk tobacco products. Some of these products are on store shelves in Maine today. And at least one state, Connecticut, has altered its tobacco taxation structure to recognize this innovative policy. In Connecticut, products authorized by the FDA as MRTP products are taxed at *half* of the rate of other tobacco products.[8]

Along with the MRTP process, manufacturers of "new" tobacco products, including nicotine-vapor products, were required to submit safety and public health benefit data to the FDA by September 9, 2020, or have their products removed from the market. This process (referred to as a Pre-Market Tobacco Application or PMTA) requires manufacturers to provide extensive and persuasive evidence that their products will provide tobacco harm-reduction benefits for existing adult smokers, while limiting their appeal to and access by youth – the exact combination of policy objectives addressed in the MRTP process for traditional tobacco products. Only those products that meet the FDA's definition of "appropriate for the protection of public health" will be approved for continued sale in the United States.

[7] https://www.fda.gov/tobacco-products/market-and-distribute-tobacco-product/tobacco-product-marketing-orders

[8] https://vaporproductstax.com/connecticut-will-apply-a-discount-when-taxing-modified-risk-tobacco-products/#:~:text=Legislators%20in%20the%20State%20of,%E2%80%9Cmodified%20risk%20tobacco%20product%E2%80%9D

To be clear, none of these tobacco products, either in the MRTP or PMTA process, seek approval from the FDA as drug or medical devices for smoking cessation, like nicotine gum or patches or other smoking cessation aids. Those who argue that these products should be restricted because they have not been "approved" by the FDA for smoking cessation entirely miss the point of tobacco harm reduction. Tobacco harm reduction offers alternative, less dangerous products for current smokers who want to continue to use tobacco or nicotine products. Although some smokers (as noted above) may find that these products are helpful to them in quitting smoking, they are not medical devices or reviewed as such by the FDA. The reality is that some smokers want to quit combustible cigarettes, but otherwise enjoy the taste and feel and other social aspects they associate with cigarette smoking. They want to do it their way. Maine's tobacco tax policy can be leveraged to encourage these tobacco users to make safer choices for their own health.

VI. What about Youth Use of Tobacco Products?

Prevention of youth initiation of tobacco use is a key aspect of the three-legged stool of tobacco control. Fortunately, there is encouraging news in surveys on teen use of tobacco products. Teen use of cigarettes is at the lowest level in history. And despite a dramatic increase in teen use of vapor products in 2018-19, recent surveys show not only that fewer than 5 percent of teens are daily vapers but also that the rate of experimentation with vapor products among teens (any use in the last thirty days) was cut in half to 13 percent in 2020.[9]

That success may be due in large part to the December 2019 change to federal law that banned the sale of any tobacco products to those under age 21. Maine enacted an identical law in July 2018, and it is imperative that the state use its tobacco settlement dollars and other tax revenue to aggressively enforce these laws. These strategies, which directly target youth access to tobacco products are the right tools for the right goal.

VII. Conclusion

The implications of raising tobacco taxes are complex. LD 1423 results in dramatic tax increases across all tobacco products and does not reflect a choice for today's adult smokers to reduce their health risks from smoking. Instead, using your taxing power to encourage cigarette smokers to use these lower risk products and less expensive products can drive a decrease in Maine's smoking rate and the associated healthcare and societal costs resulting from smoking-related illnesses.

[9] Journal of the American Medical Association, December 3, 2020 (JAMA Network Open), 2020; 3(12):e2027572.