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Testimony from:

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R Street Testimony in Opposition to VT H 204 “An act relating to banning flavored tobacco products and e-liquids.”

March 2023

Vermont House Committee on Human Services

Chairwoman Wood 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. Our efforts to promote tobacco harm reduction are why we have a particular interest in H 204.

The R Street Institute has longstanding concerns about the health-related consequences of inhaling combustible cigarettes, and we have been staunch advocates for limiting the sale of nicotine-related products to those who are 21 years of age or older. We believe H 204—which would prohibit the sale of flavored electronic nicotine delivery systems (ENDS), such as e-cigarettes and vapes—would curtail positive movement to reduce the consumption of combustible cigarettes by eliminating less harmful alternatives.

As evidenced by the 30 million adult smokers in the United States, abstinence is not a viable method to effectively combat combustible tobacco use. Because ENDS do not burn tobacco, users of these products are not inhaling the 7,000 chemicals released in combustible cigarettes, including the more than 70 deadly carcinogens.<sup>1</sup> Leading public health authorities including the National Academies of Science, Engineering, and Medicine; the U.S. Food and Drug Administration; the Royal College of Physicians; and Public Health England recognize that nicotine products all have some level of risk and that those hazards should be viewed on a spectrum.<sup>2</sup> On the spectrum, noncombustible products like e-

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<sup>1</sup> 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>.

<sup>2</sup> 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



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cigarettes, vapes, snus and chewing tobacco have the lowest level of risk, and products like combustible cigarettes carry the highest degree of risk.<sup>3</sup> Given the challenges associated with quitting, a more effective strategy would be to encourage adult combustible cigarette smokers to make the switch to a less harmful alternative.

An examination of e-cigarettes by Public Health England has concluded that “e-cigarettes are 95 percent less harmful than traditional cigarettes,” making ENDS a safe and effective alternative to help individuals attempt to stop smoking.<sup>4</sup> This fact has led the United Kingdom’s National Health Service to endorse e-cigarettes as practical means to encourage smoking cessation.<sup>5</sup> Furthermore, reports indicate that e-cigarettes are nearly twice as effective as traditional FDA-approved nicotine replacement therapies—like the nicotine patch or gum—at helping individuals abstain from smoking and result in larger declines in smoking than previously reported.<sup>6</sup> Placing limits on adult access to a wide variety of products that provide nicotine while minimizing the harm brought by combustion will be largely counterproductive.

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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/Ecigarettes\\_a\\_firm\\_foundation\\_for\\_evidence\\_based\\_policy\\_and\\_practice.pdf](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).

<sup>3</sup> Ibid.

<sup>4</sup> “Evidence review of e-cigarettes and heated tobacco products 2018,” 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>; 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](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>.

<sup>5</sup> “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>.

<sup>6</sup> 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](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>.



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While the intent for banning the sale of flavored e-cigarettes is to prevent use by underage individuals, studies have found that adolescents do not start using vapes based on flavor availability. The U.S. Centers for Disease Control and Prevention reported that 55 percent of youths said that curiosity was the primary factor they used e-cigarettes, and only about 22 percent indicated that flavors were the reason.<sup>7</sup>

Adult smokers attempting to quit, not minors, are the ones who would be most negatively affected by a ban of flavored nicotine products. Flavor variety is crucial for encouraging the cessation of combustible tobacco use. One study of over 4,500 former and current smokers who used ENDS found that 48.5 percent of former smokers specified that restricting flavor options would increase their cravings for cigarettes.<sup>8</sup> Another 39 percent of participants stated that limiting flavors would deter them from quitting smoking.<sup>9</sup> Another report found that 86.6 percent of individuals who were vaping to curtail cigarette ingestion selected candy flavors and 86.2 percent chose fruit flavors.<sup>10</sup>

Legislation that prohibits the ability of consumers to access flavored e-cigarettes will unwittingly result in the proliferation of perilous products in an illicit marketplace.<sup>11</sup> The Centers for Disease Control and Prevention has found that the vaping-related illnesses seen several years ago were solely attributed to illicit products home-engineered to include THC, the psychoactive chemical in cannabis.<sup>12</sup> Moreover, when Massachusetts adopted a flavor ban in June 2020, it increased cross-border trade, with sales

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<sup>7</sup> 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>.

<sup>8</sup> 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>.

<sup>9</sup> Farsalinos et al. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3881166>.

<sup>10</sup> 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," *Nicotine & Tobacco Research* 22:10 (May 25, 2020), pp. 1831-1841. <https://academic.oup.com/ntr/article/22/10/1831/5843872?login=true>.

<sup>11</sup> Roberta Freitas-Lemos et al., "The Illegal Experimental Tobacco Marketplace I: Effects of Vaping Product Bans," *Nicotine & Tobacco Research* 23:10 (October 2021), pp. 1744-1753. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8403238>.

<sup>12</sup> 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," U.S. Centers for Disease Control and Prevention, Jan. 17, 2020. [https://www.cdc.gov/mmwr/volumes/69/wr/mm6902e2.htm?s\\_cid=mm6902e2\\_w](https://www.cdc.gov/mmwr/volumes/69/wr/mm6902e2.htm?s_cid=mm6902e2_w).



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declining in Massachusetts and growing by equal measure in surrounding states.<sup>13</sup> We anticipate a similar outcome if Vermont enacts a flavor ban.

Finally, the proposal also permits public school boards to refer violations to law enforcement authorities. This is particularly problematic, as increasing police interactions with juveniles has the potential to undermine their educational performance and increases the likelihood of potential lifelong consequences resulting from otherwise avoidable entanglement with the justice system at a young age.<sup>14</sup>

The R Street Institute urges you to consider all facets of this as you review H 204. In Vermont, the rate of adults who smoke is 15.1 percent, and it imposes a cost of \$348 million and 1,000 lives annually.<sup>15</sup> We are proponents of curtailing combustible cigarette consumption, and this bill would impede efforts to do so. Stripping adult consumers of important harm reduction tools like flavored e-cigarettes and smokeless tobacco would do little to reduce underage use, and would instead contribute to the formation of an illegal market driven by cross-border sales. For these reasons, we ask you to oppose H 204.

Thank you,

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<sup>13</sup> 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>.

<sup>14</sup> Joscha Legewie et al., "Aggressive Policing and the Educational Performance of Minority Youth," *American Sociological Review* 84:2 (Feb. 11, 2019). <https://journals.sagepub.com/doi/full/10.1177/0003122419826020>.

<sup>15</sup> Centers for Disease Control and Prevention, "Extinguishing the Tobacco Epidemic in Vermont," U.S. Department of Health and Human Services, Oct. 13, 2022. <https://www.cdc.gov/tobacco/stateandcommunity/state-fact-sheets/vermont>.