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February 11, 2020 Testimony Re S. 288-An act relating to banning flavored tobacco products and e-liquids

Below is a synopsis of my testimony on S.288:

My name is Andrew MacLean and I work at MMR. I am here representing British American Tobacco, formerly RAI, formerly Reynolds Tobacco. Our major concern with S. 288 is that it adversely impacts adults who wish to use tobacco and vaping products. The issue of youth access has been addressed by the State of Vermont and the FDA.

As of February 6, 2020, the FDA has outlawed the sale of closed system vaping products containing flavors other than traditional tobacco and menthol. The FDA's actions specifically took flavored JUUL and other closed system products off the market. These products are the forms of nicotine delivery systems most used by people under the age of 21. The 2019 Vermont Youth Risk Survey specifies that of the high school students who vape, 80% use JUUL. The FDA has outlawed the sale of flavored JUUL products, and S. 86 has prohibited the sale of any vaping products to people under the age of 21. Passage of S.288 is not needed to remove closed system vaping products like JUUL and Vuse that contain flavors other than menthol from the Vermont marketplace.

Last year the State of Vermont passed S.86 and H.47. S.86 raised the age for the legal possession of tobacco products to 21. We supported that legislation. H. 47 doubled the cost of vaping products by imposing a 92% wholesale tax.

Many of the supporters of S.288 strongly supported the tax increase and increase in age as THE most significant actions the Legislature can enact to reduce youth smoking and vaping. The American Heart Association estimated that for every 10% increase in the cost of a tobacco product, usage would be reduced by 6.5%. Using their estimates, usage of vaping products should be reduced by 65% as a result of the tax increase. The American Heart Association testified 18-20 year olds were the major supplier of tobacco products to younger users. It is also interesting to note that during the discussion of these issues last year, the topic of menthol cigarettes or vaping products was barely mentioned by the advocates in support of the two bills.

S. 86 went into effect on September 1, 2019. The positive impacts of that legislation cannot be measured in 4+ months. All of the information regarding use statistics that have been provided by the advocates involve usage that occurred PRIOR to the passage of S.86 and H.47 last year.

The 2019 Vermont Youth Risk Behavior Survey indicates:

10% of Vermont high school students chose a particular tobacco product because of flavor;
27% of high school students had tried a flavored tobacco product;
40% of high school students had tried marijuana; and
55% of high school students had tried alcohol.

Despite these statistics no bans are being sought on marijuana or alcohol. In fact Vermont is seeking to “un-ban” the use and possession of marijuana.

Bans have been proven not to work. Prohibition was enacted 100 years ago this month, and it was a colossal failure. Vermont has banned marijuana since the 1930s and adult usage was high before Vermont legalized it. Tobacco is forbidden within the Vermont Department of Corrections. Despite significant impediments to entry, tobacco is the currency within Vermont’s prisons. If the ban outlined in S.288 is enacted, Vermont adults will still enjoy menthol products. The legislation may impact where they purchase those products and how they purchase those products. It may even negatively impact the quality of those products. However, Vermont adults will continue to use them.

Finally, I want to leave you with a few thoughts:

Wouldn’t it be ironic if the vaping illness outbreak that has driven this discussion, which the FDA and CDC has determined was caused by vaping products containing vitamin E acetate primarily linked to illicit cannabis oil, would result in the passage of legislation creating a ban which would drive Vermont consumers to seek the illicit products that caused the initial outbreak.

If this legislation passes, a Vermonter could legally smoke a joint but not a menthol cigarette. That circumstance does not make sense.

For these reasons we oppose the passage of S.288.