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Testimony from:

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R Street Testimony in Opposition to S. 18 “An Act Relating to Banning Flavored Tobacco Products and E-Liquids.”

January 31, 2024

Vermont House Committee on Ways and Means

Chairwoman Kornheiser 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 S 18.

The R Street Institute has long-standing concerns about the health-related consequences of inhaling smoke from combustible cigarettes and have long been staunch advocates for limiting the sale of nicotine-related products to those who are 21 years of age and older. We believe S 18—which would prohibit the sale of flavored electronic nicotine delivery systems (ENDS), such as e-cigarettes and vapes—would curtail the positive movement towards reducing combustible cigarette usage by eliminating less harmful alternatives for adult consumers.

Abstinence is not a viable method to effectively combat combustible tobacco use, as evidenced by the 30 million adult smokers in the United States. Considering that ENDS do not burn tobacco, users of these products are not inhaling the 7,000 chemicals released in combustible cigarettes, including 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; Royal College of Physicians; and Public Health England all recognize that nicotine products have some level of risk, but those hazards should be viewed on a spectrum.<sup>2</sup> On the spectrum, non-combustible products like e-cigarettes, vapes,

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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 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>;

snus and chewing tobacco have the lowest level of risk, and products like combustible cigarettes carry the highest degree of risk.<sup>3</sup> 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.”<sup>4</sup> ENDS are a safe and effective alternative to help individuals attempting to stop smoking.<sup>5</sup> This fact has led the United Kingdom’s National Health Service to endorse e-cigarettes as a practical means to encourage smoking cessation.<sup>6</sup> Reports even indicate that they are more effective at curtailing smoking than other FDA-approved prevention tools—like the nicotine patch or gum—and are leading to a greater reduction in smoking than in previous years.<sup>7</sup> Prescribing limits on adult smoker access to a wide variety of products that provide nicotine while minimizing the harm brought by combustion will be largely counterproductive.

While the intent for banning the sale of flavored e-cigarettes is to prevent use by underage individuals, which is a noble goal, 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 cited curiosity as the primary factor for using e-cigarettes, and only about 22 percent indicated that flavors were the reason.<sup>8</sup> Additionally, with the passage of Tobacco 21 in 2019, access to any nicotine products has been curtailed for underage individuals and this law has led to significant reductions in youth use of tobacco and nicotine products, with only 10% of high school students reporting having

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

<sup>3</sup> Ibid.

<sup>4</sup> Ann McNeill et al., “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>.

<sup>5</sup> 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>6</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>7</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>.

<sup>8</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>.

used a ENDS product in the last 30 days.<sup>9</sup> Not surprisingly, the majority of vape products reported as used by these students were disposable vapes imported from China and distributed without a product marketing order from the FDA.

Adult smokers attempting to quit, not minors, are the ones that would be most impacted 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>10</sup> Another 39 percent of participants stated that limiting flavors would deter them from quitting smoking.<sup>11</sup> Another report found that 86.6 percent of individuals who were vaping to curtail cigarette use selected candy flavors and 86.2 percent chose fruit flavors.<sup>12</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>13</sup> Further, the Centers for Disease Control and Prevention (CDC) 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>14</sup> Moreover, when Massachusetts adopted a flavor ban in June 2020, it increased cross-border trade, with sales declining in Massachusetts, and growing by equal measure in surrounding states.<sup>15</sup> We anticipate a similar outcome if Vermont enacts a flavor ban.

The addition of illicit tobacco to the ever-growing list of banned substances that law enforcement will be responsible for policing is troubling and reminiscent of the war on drugs mentality that has neither reduced demand nor stifled supply. Rather than focusing on violent crime, robbery and other serious offenses, police will be handing out smoking violations to youth caught with illicit tobacco. Provisions in the proposal also lay out that if students are caught on school grounds, the charges could be more serious than the described violations. This is particularly problematic as increasing police interactions for juveniles has the potential to undermine their educational performance and increases the likelihood of

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<sup>9</sup> Birdsey, Jan. "Tobacco Product Use among Us Middle and High School Students—National Youth Tobacco Survey, 2023." *MMWR. Morbidity and Mortality Weekly Report* 72 (2023).

[https://www.cdc.gov/mmwr/volumes/72/wr/mm7244a1.htm?utm\\_source=chartr&utm\\_medium=newsletter&utm\\_campaign=chartr\\_20231208](https://www.cdc.gov/mmwr/volumes/72/wr/mm7244a1.htm?utm_source=chartr&utm_medium=newsletter&utm_campaign=chartr_20231208)

<sup>10</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>11</sup> Farsalinos et al. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3881166>.

<sup>12</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," Oxford Academic, *Nicotine and Tobacco Research*, May 25, 2020. <https://academic.oup.com/ntr/article/22/10/1831/5843872?login=true>.

<sup>13</sup> Roberta Freitas-Lemos, et al., "The Illegal Experimental Tobacco Marketplace I: Effects of Vaping Product Bans," *Oxford Journal, Nicotine and Tobacco Research* 23:10 (Oct. 23, 2021). <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8403238>.

<sup>14</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, 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).

<sup>15</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>.

potential lifelong consequences resulting from otherwise avoidable entanglement with the justice system at a young age.<sup>16</sup>

There are multiple tools to address underage use, from enforcement for purchasing to targeted prevention campaigns. Recently, school systems have even gone so far as to install vape detectors in schools.<sup>17</sup> In addition, other measures proposed in Vermont, such as H. 729, which would establish a directory of FDA compliant tobacco and nicotine products that can be sold in the state, would help curtail underage use of these goods. These directories, which have been adopted in several states, such as Alabama, have helped crack down on the sale of e-cigarette products most often used by youth, which tend to noncompliant with the federal law, and therefore the state's directory law.<sup>18</sup>

The R Street Institute urges you to consider all facets of this as you review S 18. In Vermont, the rate of adults who smoke is 15.1 percent, and it imposes a cost of \$400 million and 1,000 lives annually.<sup>19</sup> Although we are proponents of curtailing combustible cigarette consumption, this bill will impede efforts to discourage smoking. Stripping adult consumers of important harm reduction tools like flavored e-cigarettes and smokeless tobacco will do little to reduce underage use, and will contribute to the formation of an illegal market driven by cross-border sales. Moreover, there are other more targeted tools and approaches that Vermont can take to reduce underage use including the adoption of nicotine product directories and installation of vape detectors in schools. For these reasons, we ask you to oppose S 18.

Thank you,

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<sup>16</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>17</sup> Mia Nelson, "Lynchburg City Schools installs vape detectors in high schools," ABC 13 News, March 16, 2023. <https://wset.com/news/local/lynchburg-city-schools-installs-vape-detectors-ec-glass-heritage-high-school-vaping-tobacco-thc-weed-pen-dr-derrick-brown-director-student-services-lcs-virginia-march-2023>.

<sup>18</sup> CDC/FDA, National Youth Tobacco Survey, [https://www.cdc.gov/mmwr/volumes/72/wr/mm7244a1.htm?s\\_cid=mm7244a1\\_w](https://www.cdc.gov/mmwr/volumes/72/wr/mm7244a1.htm?s_cid=mm7244a1_w)

<sup>19</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>.

Vermont General Assembly, 2024 Legislative Session, Senate Bill 18, Last Accessed January 12, 2024: <https://legislature.vermont.gov/Documents/2024/Docs/BILLS/S-0018/S-0018%20As%20passed%20by%20the%20Senate%20Official.pdf>