

Testimony of the Competitive Enterprise Institute

Regarding: AN ACT RELATING TO HEALTH AND SAFETY – TOBACCO PRODUCT SALES RESTRICTIONS (H. 6396)

Position: Opposed

June 28, 2021

Chairman Casey and members of the Committee:

The Competitive Enterprise Institute (CEI) welcomes the opportunity to offer comments on the important issue of regulating e-cigarette products in Rhode Island. CEI is a non-partisan, non-profit public policy organization with a long history of research and advocacy with an emphasis on promoting evidence-based regulation and consumer choice. Throughout our decades of research and engagement with policy makers, we have frequently observed that well-meaning attempts to reduce consumers' exposure to certain risks often, if unintentionally, increase their exposure to other, often worse hazards.

In the case of reducing tobacco-related disease and death, alarmism over the unknown risks that new non-combustible products, like e-cigarettes, pose to youth has undermined efforts to make objective assessments of these products and of the effect that proposed regulation of this market may have on public health at large.

An overwhelming body of evidence indicates that, although youth e-cigarette use is worthy of concern, the more pressing—and often ignored—facts are that smoking kills hundreds of thousands of adults and that e-cigarettes can save the lives of adult smokers who switch to these lower risk products. Noncombustible nicotine products, like e-cigarettes, can help reduce the death and disease caused by combustible tobacco while reducing smoking prevalence in all age groups. The proposal to prohibit e-cigarette flavors will not only fail to protect adolescents from the relatively minor risks of nicotine, it will drive adults and youth toward smoking or into an illicit market with no age verification or safety controls. Furthermore, it will encourage more law enforcement action, which disproportionately impacts people of color. By prioritizing criminalization over harm reduction, further restrictions on e-cigarettes will exacerbate longstanding disparities in justice and health.

We urge you not to approve this measure.

Background

Despite years of public health campaigns, smoking continues to contribute to more than 7 million deaths worldwide each year.¹ In the U.S. alone, over 16 million Americans suffer from smoking-related diseases and half a million die each year as a result of health effects arising from their habit.² As with other public health crises, such as sexually transmitted infections and drug use, we ought to embrace *all* avenues of harm reduction rather than criminalize certain behaviors or adopt an ineffective “abstinence only” approach. As the harm caused by traditional cigarettes primarily stems from the inhalation of combusted materials, noncombustible nicotine delivery products, like e-cigarettes, are intrinsically less harmful than traditional cigarettes.³

Another Drug War

While we understand the Committee’s well-intentioned desire to discourage youth initiation of nicotine use and promote public health, this prohibitionist approach will serve as another point of law enforcement contact in over-policed communities.

Eric Garner, who was killed in 2014 by New York Police officers using excessive force, was initially approached for alleged selling “loosie” cigarettes. In 2020, a Rancho Cordova police officer was caught on video brutally beating 14-year-old Elijah Tufono for allegedly purchasing a Swisher cigar underage.⁴ Just this month, four teenagers were beaten, tasered, and arrested for vaping in Ocean City, Maryland, after violating a ban on smoking or vaping on the boardwalk.⁵

Cities and states across the country are actively engaged in debates about how best to unravel the catastrophic prohibition of cannabis by decriminalizing, legalizing, and regulating the cannabis market in a way that both discourages youth access, but also protects the welfare of adult consumers. Recognition of the disproportionate effects of cannabis prohibition on communities of color is a major driver of many of these efforts. Yet, Rhode Island—along with other states—is rushing headlong in the opposite direction when it comes to recreational nicotine use.

It is critical that such proposals weigh other unintended consequences that may cause harm to the health and welfare of Rhode Island’s residents, including pushing consumers toward illicit sources and discouraging harm reduction.

Despite the good intentions behind it, a menthol cigarette ban would disproportionately impact smokers of color by criminalizing a product they prefer. Among adult smokers in the U.S., approximately 80 percent of Black and 35 percent of Latinx smokers choose menthol.⁶ This will lead to a massive illicit market for menthol cigarettes. For example, in New York City, where cigarettes are legal but heavily taxed, illegal cigarettes comprise over 60 percent of all cigarettes sold.⁷ Furthermore, these illicit markets are particularly pervasive in low-income and minority communities.⁸ In the wake of a ban on menthol cigarettes, Black and Latinx smokers will either switch to non-mentholated cigarettes, with no meaningful benefit to their health, or pursue non-legal means of acquiring menthol cigarettes, potentially increasing their risks of contact with law enforcement or consumption of adulterated products.

Perhaps more importantly, by lumping all tobacco products together regardless of their varying levels of risk, the proposal will increase smoking and widen health disparities. The evidence is indisputable that non-combustible sources of nicotine, such as e-cigarettes, are not only significantly less harmful than combustible tobacco, but also highly effective for smoking cessation.⁹

This proposal also ignores the research documenting the critical role that vapor flavors play in helping adult smokers switch to these less harmful alternatives and avoid relapsing back to smoking.¹⁰ Already, White and high-income smokers are far more likely to switch to lower risk nicotine sources like e-cigarettes, while Black and Hispanic smokers are 73 percent and 74 percent less likely, respectively, to switch exclusively from smoking to e-cigarettes. Smokers living below the federal poverty line are 52 percent less likely to make the switch compared to those above.¹¹ Prohibiting adult smokers from accessing these potentially life-saving products will only exacerbate these racial health disparities.

E-cigarettes Are a Gateway out of Smoking

The evidence about the benefits of nicotine and potential benefits of lower risk alternatives for adult smokers has been overshadowed by highly publicized claims about the supposed harms of e-cigarettes to youth. This has impeded the necessary, dispassionate consideration of the facts about how the availability of e-cigarettes or prohibition of these products affects both adult and youth populations.

Despite the inherently smaller risk of non-combustible tobacco, the experiences of countries that have embraced e-cigarettes as a smoking cessation tool, and the numerous long-term trials showing their effectiveness at reducing smoking, some continue to dispute that e-cigarettes can have any public health benefit at all. Their concerns mostly center on the so-called “gateway” effect—the idea that e-cigarette flavors attract non-smoking adolescents to vaping, causing them to become addicted to nicotine, and then progress on to smoking traditional cigarettes.

Based on the data provided annually by the Centers for Disease Control and Prevention (CDC), such claims do not hold water. After nearly a decade of e-cigarettes being available on the U.S. market, smoking in all age groups is lower than it has ever been since records have been kept. In fact, despite increases in youth experimentation with vaping, declines in adolescent vaping have only accelerated over the past two years.¹²

The role of e-cigarettes in these declines is unclear, but the declines themselves at least tell us that the availability of e-cigarettes has not led to rising numbers of youth smokers. That ought to prompt a cautious approach to regulating the market in a way that might reduce or eliminate these gains.

There Is No Youth Vaping Epidemic

For two years, various news outlets have run myriad headlines about the so-called “epidemic” of youth vaping. The narrative originated with the release of the 2018 National Youth Tobacco Survey, an annual survey conducted by the CDC that found that the percent of high school students who reported any past-month e-cigarette use rose from 11.7 percent in 2017 to 20.8 percent in 2018. More detailed analyses of this data have found that, while this increase is concerning, it is not an epidemic.

By the CDC’s definition, an “epidemic” refers to a sudden increase in the number of cases of a disease in a given population, above what is expected in that area.¹³ E-cigarette *use* by youth, though certainly concerning, is not a disease. In fact, there is not a single case in the U.S. of a person—adolescent or adult—developing a disease as the result of inhaling the vapor produced by electronic nicotine delivery devices.

Even setting aside the fact that there is no evidence of e-cigarettes causing disease or illness in youth, the data regarding usage of these products by youth do not support the assertion that this is an “epidemic.” For example, analysis of the National Youth Tobacco Survey finds that the majority of youth who report vaping in the previous month were current or former users of tobacco products, which means that they are potentially benefiting from switching to a less harmful source of nicotine. Just 3.9 percent of high school and middle school students who reported any past-month e-cigarette had never used tobacco. Furthermore, of those never-tobacco

e-cigarette users, nearly two-thirds reported using e-cigarettes on fewer than five days in the past month, putting them at very low risk for developing nicotine dependence. In fact, just 0.6 percent reported never using tobacco and vaping 20 or more days in the last month.¹⁴

According to the latest CDC data, youth vaping declined even further in the year prior to the pandemic. In 2020, 19.6 percent of high school students reported any e-cigarette use in the last month, compared to 27.5 percent in 2019.¹⁵ Furthermore, the numbers have declined even further since that data were collected. Just last week, the National Institutes of Health revealed that among 12th graders surveyed during the pandemic, 20 percent reported using cannabis, 17 percent reporting “vaping,” and 13 percent reported binge drinking at least once in the past month.¹⁶

The current approach to youth vaping is outsized compared to the risk. The rates of youth experimentation with nicotine vapor products does warrant attention and strategies to discourage tobacco-naïve students from using e-cigarettes, but it is not an epidemic. It does not justify banning e-cigarettes or e-cigarette flavors. More importantly, even if there were an epidemic of youth vaping, a ban on flavored e-cigarettes does nothing to solve it and, in fact, may make it worse.

The 2019 edition of the CDC’s survey provides details about *why* adolescents vape. Though flavors have received the lion’s share of attention from the media and lawmakers, only 22.3 percent of students cited “flavors” as among the reasons they vaped. Meanwhile, 56 percent said they vaped because they were “curious” about e-cigarettes.¹⁷ Thus, banning flavors would not address the reasons youth experiment with e-cigarettes. It would, however, spur an illicit market where youth could obtain e-cigarettes without having to verify their age. And it would significantly reduce the effectiveness of e-cigarettes as a cessation tool for *adults*.

Flavors Save Adult Lives

The evidence is clear on the critical role that flavors play for adult smokers. The fact that e-cigarettes come in flavors that users find pleasurable is a major reason why e-cigarettes are attractive to adult smokers and effective for smoking cessation. In fact, the enjoyment of the vaping experience is likely a major contributing factor to why e-cigarettes are twice as effective as other smoking cessation methods.¹⁸ While most adult smokers start vaping with tobacco flavor, the majority move on to other flavors, with the vast majority of “switchers”—those who have successfully transitioned from smoking to vaping—using fruit-, dessert-, and candy-flavored e-cigarettes.¹⁹ The type of flavor may not even be as important as access to a variety of flavors, as research has also found that the number of flavors regularly used by switchers is independently associated with smoking abstinence.²⁰

Smokers’ enjoyment of vaping is not the only reason that flavors are important to smoking cessation. Research also finds that dissociating the consumption of nicotine from the flavor of tobacco plays a critical role in preventing smoking relapse. As a team of British researchers found in a 2018 academic study, vapers reported that temporary relapse back to smoking was perceived as negative and distasteful compared with the experience of vaping, reinforcing their commitment to stick with vaping as a mode of smoking cessation.²¹

Recognition of the value of flavors is why countries that have embraced e-cigarettes as harm reduction tools have chosen not to ban flavors. In the United Kingdom, for example, e-cigarettes come in every flavor imaginable, and there is no “epidemic” of youth vaping.²²

Eliminating flavors will do little to prevent youth uptake, but it will deter adult smokers from trying e-cigarettes, cause many of those who have already switched to return to smoking, or prompt people to seek out non-legal sources for the flavored e-cigarettes they desire. All of these are outcomes public policy should seek to avoid.

Fear-Based Policy vs. Evidence-Based Policy

For 13 years I have researched governmental approaches to managing consumer risk, and if I have learned one thing in that time, it is this: Prohibition does not work. It has *never* worked. Policies meant to save people from the perils of their own choices, whether through raising prices, taxation, restrictions on products, or outright bans do not make people healthier, wealthier, or wiser.

We have seen this over and over again, yet we never seem to learn. Alcohol prohibition did not save people from excessive alcohol consumption. Instead, it arguably led to more drinking, speakeasies, violent bootlegging criminal outfits, and thousands of deaths from tainted bathtub liquor.

Attempts to ban cigarettes through taxation have not worked in New York, where more than half of the cigarettes sold are smuggled from lower-tax states.²³ In New York City, where the tax is even higher, nearly 60 percent of cigarettes consumed come from illicit sources.²⁴ Furthermore, ham-fisted attempts to enforce the law have led to grievous injustices, like the notorious case of Staten Island resident Eric Garner, who was choked to death by police who believed he was illegally selling untaxed cigarettes.

Cannabis prohibition did not stop people from smoking pot, but it did help create an enormous black market, funneling billions of dollars to cartels and condemning mostly people of color to a life in the criminal justice system. It also put consumers in grave danger. Unlike legal, regulated products, the black market has no quality standards or testing and dealers do not check ID. It was this illicit market that caused the recent outbreak of so-called “vaping linked” lung injuries. Though initially linked by the media and some health agencies to “vaping,” it now has been well established that the injuries were caused by vaping *illicit* THC cartridges laced with vitamin E oil. Most of those injured were not yet of the age to purchase it legally or lived in states where recreational marijuana remains illegal. That did not stop people from vaping marijuana; it merely pushed them into the black market, where, sadly, 3,000 were injured and 60 died.²⁵

As Rhode Island is seeking to do with cannabis and has already done with alcohol, there are better ways to regulate the recreational nicotine market than prohibition, such as restricting adult products to age-gated licensees and emphasizing education and access to care for those populations most in need in order to reduce rates of smoking without putting criminal justice reform and the welfare of people of color at risk.

These types of health-focused policies have proven effective in helping to reduce smoking in both youth and adults to historic lows. **Underage smoking is down to 2.3 percent (from 13 percent in 2002) and adult smoking is now 13.8 percent among adults (down from 22.5 percent in 2002).**²⁶ Youth vaping, which has always been primarily restricted to experimentation, has also declined. But disparities continue to exist.

The desire to do something about youth nicotine use is understandable, but prohibition of e-cigarette flavors and higher nicotine liquids will not solve the problem. I sincerely urge you to reject knee-jerk proposals such as this, to resist the alarmism that has tainted the debate over products that can save lives, and to enact policies based on evidence that respect the autonomy and health of adults as well as that of children.

Thank you for your time,

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¹ World Health Organization, Tobacco Fact Sheet, updated May 2017, <https://www.who.int/news-room/fact-sheets/detail/tobacco>.

² Centers for Disease Control and Prevention, “Fast Facts and Fact Sheets: Smoking and Tobacco Use,” accessed September 8, 2017, https://www.cdc.gov/tobacco/data_statistics/fact_sheets/fast_facts/index.htm.

³ American Cancer Society, “Harmful Chemicals in Tobacco Products: Tobacco smoke,” accessed June 8, 2018, <https://www.cancer.org/cancer/cancer-causes/tobacco-and-cancer/carcinogens-found-in-tobacco-products.html>.

⁴ Jeremy Stahl, “Police Department Defends Grown Man Beating 14-Year-Old over Tobacco Purchase,” *Slate.com*, April 29, 2020,

<https://slate.com/news-and-politics/2020/04/rancho-cordova-police-department-elijah-tufono-beating.html>.

⁵ Abigail Constantino, “Investigations urged into videos of Ocean City police using force over vaping ban,” *WTOP News*, June 14, 2021, <https://wtop.com/maryland/2021/06/investigation-urged-into-videos-of-ocean-city-police-using-force-over-vaping-ban>.

⁶ Centers for Disease Control and Prevention, “Smoking & Tobacco Use: Menthol and Cigarettes,” May 18, 2020, https://www.cdc.gov/tobacco/basic_information/tobacco_industry/menthol-cigarettes/index.html.

⁷ Jon Campbell, “Smuggled, Untaxed Cigarettes Are Everywhere in New York City,” *The Village Voice*, April 7, 2015, <https://www.villagevoice.com/2015/04/07/smuggled-untaxed-cigarettes-are-everywhere-in-new-york-city>.

⁸ Donna Shelley et al., “The \$5 Man: The Underground Economic Response to a Large Cigarette Tax Increase in New York City,” *American Journal of Public Health*, Vol. 97, No. 8 (August 2007), pp. 1483–1488, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1931477>.

⁹ Brown University, “Pod e-cigarettes less harmful than regular cigarettes, new study finds,” news release, November 18, 2020, <https://www.brown.edu/news/2020-11-18/e-cigs>. “Updated Cochrane Review shows electronic cigarettes can help people quit smoking,” October 14, 2020, <https://www.cochrane.org/news/updated-cochrane-review-shows-electronic-cigarettes-can-help-people-quit-smoking#:~:text=Newly%20updated%20Cochrane%20evidence%20published,treatment%2C%20or%20electronic%20cigarettes%20without>.

¹⁰ 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*, Vol. 22, Issue 10 (October 2020), pp. 1831–1841, <https://academic.oup.com/ntr/article/22/10/1831/5843872>.

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- ¹¹ Alyssa F Harlow, Andrew Stokes, and Daniel R Brooks, “Socioeconomic and Racial/Ethnic Differences in E-Cigarette Uptake Among Cigarette Smokers: Longitudinal Analysis of the Population Assessment of Tobacco and Health (PATH) Study” *Nicotine & Tobacco Research*, October 2019, <https://academic.oup.com/ntr/article-abstract/21/10/1385/5050238?redirectedFrom=fulltext>.
- ¹² David T. Levy, Kenneth E Warner, K Michael Cummings, et al, “Examining the relationship of vaping to smoking initiation among US youth and young adults: a reality check,” *Tobacco Control*, Vol. 28, Issue 6 (November 2018), <https://tobaccocontrol.bmj.com/content/28/6/629>.
- ¹³ Centers for Disease Control and Prevention, “Principles of Epidemiology in Public Health Practice, Third Edition An Introduction to Applied Epidemiology and Biostatistics,” <https://www.cdc.gov/csels/dsepd/ss1978/lesson1/section11.html>.
- ¹⁴ Ibid.
- ¹⁵ Centers for Disease Control and Prevention, “Youth e-cigarette use is down, but 3.6 million still use e-cigarettes,” September 9, 2020, <https://www.cdc.gov/media/releases/2020/p0909-youth-e-cigarette-use-down.html>.
- ¹⁶ National Institutes of Health “Adolescent marijuana, alcohol use held steady during COVID-19 pandemic,” June 24, 2021, <https://www.nih.gov/news-events/news-releases/adolescent-marijuana-alcohol-use-held-steady-during-covid-19-pandemic>.
- ¹⁷ Centers for Disease Control and Prevention, “Tobacco Product Use and Associated Factors Among Middle and High School Students—United States, 2019,” December 6, 2019, <https://www.cdc.gov/mmwr/volumes/68/ss/ss6812a1.htm>.
- ¹⁸ Peter Hajek, Anna Phillips-Waller, Dunja Przulj, et al, “A Randomized Trial of E-Cigarettes versus Nicotine-Replacement Therapy,” *New England Journal of Medicine*, Vol. 380 (February 14, 2019), pp. 629-937, <https://www.nejm.org/doi/full/10.1056/NEJMoa1808779>.
- ¹⁹ Christopher Russell, Neil McKeganey, Tiffany Dickson, and Mitchell Nides, “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*, Vol. 15, Article 33 (2018), <https://harmreductionjournal.biomedcentral.com/articles/10.1186/s12954-018-0238-6>.
- ²⁰ Konstantinos Farsalinos, Giorgio Romagna, Dimitris Tsiapras, Stamatis Kyrzopoulos, Alketa Spyrou, and Vassilis Voudris, “Impact of Flavour Variability on Electronic Cigarette Use Experience: An Internet Survey,” *International Journal of Environmental Research and Public Health*, Vol. 10, No. 12, (December 2013), pp. 7272-7282, <https://europepmc.org/abstract/med/24351746>.
- ²¹ Caitlin Notley, Emma Ward, Lynne Dawkins, Richard Holland, “The unique contribution of e-cigarettes for tobacco harm reduction in supporting smoking relapse prevention,” *Harm Reduction Journal*, Vol. 15, Article 31 (2018), <https://harmreductionjournal.biomedcentral.com/articles/10.1186/s12954-018-0237-7>.
- ²² Action on Smoking and Health, “Use of e-cigarettes among young people in Great Britain,” June 2019, <https://ash.org.uk/information-and-resources/fact-sheets/statistical/use-of-e-cigarettes-among-young-people-in-great-britain-2020/>.
- ²³ Ulrik Boesen, “Cigarette Taxes and Cigarette Smuggling by State, 2017,” Tax Foundation, December 4, 2019, <https://taxfoundation.org/cigarette-taxes-and-cigarette-smuggling-by-state-2017>.
- ²⁴ Alberto Aziani, Jonathan Kulick, Neill E. Norman, and James E. Prieger, “Empty Discarded Pack Data and the Prevalence of Illicit Trade in Cigarettes,” BOTEK Analysis, LLC, January 26, 2017, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2906015.
- ²⁵ Centers for Disease Control and Prevention, “Outbreak of Lung Injury Associated with the Use of E-Cigarette, or Vaping, Products” January 28, 2020, https://www.cdc.gov/tobacco/basic_information/e-cigarettes/severe-lung-disease.html.
- ²⁶ National Survey on Drug Use and Health, 2019 data, <https://www.samhsa.gov/data/report/2019-nsduh-detailed-tables>.