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**Testimony from:**

**Jeffrey S. Smith, Senior Fellow, Integrated Harm Reduction, R Street Institute**

**R Street Testimony in opposition to H 7225, "An act making appropriations for the support of the state for the fiscal year ending June 30, 2025."**

**March 5, 2024**

**House Committee on Finance**

**Chairman Abney and members of the committee,**

**My name is Jeff Smith, and I am a senior fellow on the Integrated Harm Reduction team at the R Street Institute, which 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 7225.**

**The R Street Institute has long-standing concerns about the health-related consequences of inhaling combustible cigarettes and has been a staunch advocate for limiting the sale of nicotine-related products to those who are 21 years of age and older. We strongly support varied pathways for quitting smoking, which include access to a wide array of alternative, reduced-risk nicotine products including Electronic Nicotine Delivery Systems (ENDS), Heated Tobacco Systems (HnB), and Oral Tobacco and Nicotine Products (Snus).**

**We believe H 7225 would greatly hamper adult smokers on their journey to a smoke-free life by reducing access to flavored reduced-risk products and increasing the costs associated with purchasing them. Along with varied product types, access to a wide variety of flavors has been shown to be a key attribute that helps adult smokers switch from cigarettes to less harmful products. However, removing access to flavored alternatives would greatly curtail the positive movement toward reducing the consumption of combustible products for Rhode Island's citizens.**

**Simply put, flavors help people quit smoking and stay smoke-free.**

**Though the Rhode Island Department of Health has proposed a rule that would ban all flavors other than tobacco, the Committee on Finance should advocate for exemptions to the Department of Health rule. These should allow for the legal marketing of flavors of reduced-risk products that receive marketing granted orders (MGO) from the FDA's Center for Tobacco Products. Without these exemptions, flavored products that the FDA has approved for sale would be prohibited. This would risk**



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putting significant health improvements for Rhode Island's adult smokers out of reach and undermine the rigorous FDA review that allows them on the market in the first place.

About a decade ago, scientific evidence emerged demonstrating the importance of non-tobacco-flavored reduced-risk products. In 2015, researchers reported that 66 percent of those who independently chose to switch to novel ENDS products were able to completely stop smoking cigarettes.<sup>1</sup> Most of the study's participants attributed their success, which was verified by exhaled carbon monoxide readings, to the availability of non-tobacco- and non-menthol-flavored ENDS products. The appeal and usage of multiple flavor varieties of ENDS among adult current, former, and never-tobacco users has also been investigated. Such studies have suggested that ENDS present potential benefits for current cigarette users without posing a substantial risk of initiation by tobacco non-users, including young adults.<sup>2</sup> In fact, in locations where flavor bans are put into place, smoking rates have risen (in both adult and underage consumers).<sup>3</sup>

Unfortunately, around the same time, the underage use of vapes (both nicotine and non-nicotine) began to increase.<sup>4</sup> All agree that reducing youth access to any nicotine product—flavored or not—must be a priority.<sup>5</sup> Because certain flavors, like fruit, candy, dessert, and menthol, are particularly appealing to young adults and adolescents, who are more likely to initiate and continue smoking flavored products, deterring and preventing use is critically important.<sup>6</sup> To help address this concern, on Dec. 20, 2019, Tobacco 21 (also called "T21") was signed into law as an amendment to the Federal Food, Drug, and

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<sup>1</sup> Tackett, Alayna P, William V Lechner, Ellen Meier, DeMond M Grant, Leslie M Driskill, Noor N Tahirkheli, and Theodore L Wagener. "Biochemically Verified Smoking Cessation and Vaping Beliefs among Vape Store Customers." *Addiction* 110, no. 5 (2015): 868-74. <https://onlinelibrary.wiley.com/doi/abs/10.1111/add.12878>

<sup>2</sup> McDowell, Elliott H, Lei Yu Yue, Jennifer T Lyden, and William R Bagwell. "Appeal and Likelihood of Use of Multiple Flavor Varieties of Bidi® Stick Electronic Nicotine Delivery Systems among Adult Current, Former, and Never Tobacco Users in the United States." (2022). <https://www.researchsquare.com/article/rs-1962398/v1>

<sup>3</sup> Friedman, Abigail, Alex C Liber, Alyssa Crippen, and Michael Pesko. "E-Cigarette Flavor Restrictions' Effects on Tobacco Product Sales." Available at SSRN (2023). [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4586701](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4586701)

<sup>4</sup> Farzal, Zainab, Martha F Perry, Wendell G Yarbrough, and Adam J Kimple. "The Adolescent Vaping Epidemic in the United States—How It Happened and Where We Go from Here." *JAMA Otolaryngology—Head & Neck Surgery* 145, no. 10 (2019): 885-86. <https://jamanetwork.com/journals/jamaotolaryngology/article-abstract/2748897>

<sup>5</sup> Farzal, Zainab, Martha F Perry, Wendell G Yarbrough, and Adam J Kimple. "The Adolescent Vaping Epidemic in the United States—How It Happened and Where We Go from Here." *JAMA Otolaryngology—Head & Neck Surgery* 145, no. 10 (2019): 885-86. [https://jamanetwork.com/journals/jamapediatrics/article-abstract/2592300?utm\\_campaign=scite&utm\\_source=scite&utm\\_medium=referral](https://jamanetwork.com/journals/jamapediatrics/article-abstract/2592300?utm_campaign=scite&utm_source=scite&utm_medium=referral)

<sup>6</sup> van der Eijk, Yvette, Xian Yi Ng, and Jeong Kyu Lee. "Cross-Sectional Survey of Flavored Cigarette Use among Adult Smokers in Singapore." *Tobacco Induced Diseases* 19 (2021). <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8173988/>



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Cosmetic Act.<sup>7</sup> This law made it illegal for anyone under the age of 21 to purchase any tobacco or nicotine product, and it has drastically decreased the use of such products among underage individuals. The existence of this law is a primary driver for the reduction of youth vaping across the country.<sup>8</sup>

Since the establishment of T21, youth ENDS use rates have dropped. In 2019, it was estimated that the current use of e-cigarettes by underage individuals in Rhode Island was 40.9% and has dropped to 30% as of 2021.<sup>9</sup> These decreases are unlikely due to Rhode Island's flavor ban but instead, due to Tobacco 21 laws being enforced. The decreases in youth use in Rhode Island mirror what is being observed at the national level.<sup>10</sup>

The overwhelming majority of e-cigarettes used by youth were products that are illegally in the marketplace, most of which have been imported illegally from China. These products have not filed applications for approval with the FDA or did and had their application denied. There are a wide variety of brand names associated with these illegal vapes, including Elf Bar, Kangvape, FUME, and Mr. Fog, but the packaging can also be changed by the importer to represent additional brand names and marketing imagery. Attempting to track and enforce all of the hundreds of potential brands of illegal products is a herculean task.

Current, federally-funded initiatives are attempting to better evaluate the role of flavors in smoking cessation at the population level by standardizing research measures. We should anticipate that there will eventually be FDA-authorized flavored reduced-risk products available for adult consumers to help support them on their journey toward a combustion-free life. A broad-reaching flavor ban, such as the one that H 7225 would implement, would act to block any future FDA-approved flavored product from being legally marketed in Rhode Island.

Additionally, applying an additional tax to alternative (non-combusted) nicotine products places an additional barrier in front of smokers looking to transition from cigarettes (combustibles). Increases in the cost of a reduced-risk product have been shown to decrease the likelihood of smokers switching to

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<sup>7</sup> U.S. Food & Drug Administration, "Tobacco 21", <https://www.fda.gov/tobacco-products/retail-sales-tobacco-products/tobacco-21>

<sup>8</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>9</sup> State of Rhode Island, Department of Health, Youth Behavior Survey (2021). <https://health.ri.gov/data/adolescenthealth/>

<sup>10</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)



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as high as 1% per \$1.65 per milliliter of additional costs.<sup>11</sup> The proposed 80% tax this bill supports may be great enough to dissuade smokers from switching and even lead to those that have switched to returning to buying cigarettes should they represent the cheaper alternative.

The R Street Institute urges you to consider all facets of how access to reduced-risk products impacts the health of Rhode Island citizens as you review H 7225. In 2012, the rate of smoking in Rhode Island was over 17.4%, which has dropped to only 11.8% in 2023.<sup>12</sup> ENDS use increased in adults from 4.6% to 7.7% during that same period.<sup>13</sup> These data are clear; adult smokers are migrating away from cigarettes toward less harmful ENDS products, and that is a clear public health win for Rhode Islanders. Broad flavor bans and higher tax rates on reduced-risk products will lead to more people smoking and that will end up costing the state a lot more financially as the costs associated with smoking-related health care costs in the state are already \$640 million.<sup>14</sup> We urge adjustments be made to HB 7225 that allow pathways for FDA-approved flavored products, and reduce the overly aggressive tax rates proposed for electronic cigarettes as they will curtail the positive health gains for your citizens in its tracks.

Thank you,

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<sup>11</sup> Pesko MF, Courtemanche CJ, Catherine Maclean J. "The Effects of Traditional Cigarette and E-cigarette Tax Rates on Adult Tobacco Product Use" *J Risk Uncertain* (2020 Jun), 60(3):229-258.

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7880200/>

<sup>12</sup> State of Rhode Island, Department of Health, <https://health.ri.gov/data/tobacco/smoking/>; America's Health Rankings, <https://www.americashealthrankings.org/explore/measures/smoking>

<sup>13</sup> America's Health Rankings, <https://www.americashealthrankings.org/explore/measures/eciguse>

<sup>14</sup> Tobacco use in Rhode Island 2021, Truth Initiative (2022). <https://truthinitiative.org/research-resources/smoking-region/tobacco-use-rhode-island-2021>