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The Suffolk County Legislature
725 Veterans Memorial Highway
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Dear Suffolk County Legislator,

The R Street Institute is a national think tank devoted to free markets and limited, effective government. We are liberty-minded and non-partisan. As an organization we work for a smaller, less-intrusive administrative state, freer markets for financial services, reduced federal spending, easier access to birth control, effective police reforms intended to help achieve racial justice and market-oriented measures to manage the greenhouse gases that cause climate change. Since our founding in 2012, we have maintained a harm reduction program intended to reduce and, over time, eliminate the use of combustible cigarettes.

Our opposition to smoking is well known. We supported a 21-to-purchase age for all nicotine products five years before it became national law. We also stand for smoking bans in public places and strong measures to keep all nicotine products out of the hands of young people.

In this context, we were interested to see the legislature considering Introductory Resolution 1654. Although we rarely engage with local issues, because you are among the first legislative bodies to consider this type of legislation your decision to go forward (or not) will be of national significance. We commend and support the effort to explore new frontiers for tobacco control and think the debate is worthwhile. Because of the large number of unknowns, we do not take a position on this bill, but write simply to provide information and guidance that we hope will help inform the discussion. If the proposed bill is implemented, it will be an example that we and our professional colleagues will want to observe. In this spirit, we think that the legislature would be well advised to consider several questions before deciding whether or not to pass this bill:

Is the proposed law likely to be more effective than existing measures or new ones for which there is a stronger evidentiary basis?

All research on the topic—from government and private, authoritative sources—finds that the overwhelming majority of smokers—somewhere between 90 and 95 percent—begin the habit before age 21.¹ This is why we have supported 21-to-purchase laws. Whereas, the number of smokers who begin smoking between the ages of 21 to 24 is vastly smaller.² In looking at the proposal before you, the legislature should consider if resources likely to be devoted to enforcing this particular law would be more efficient and effective than other means of reducing the use of cigarettes. The proposed 25-to-purchase law is not a widely implemented policy elsewhere and, as such, evidence for it is limited. However, significant bodies of research exist on the impacts of tobacco taxes, tax stamp regimes, smoking cessation programs, pharmaceutical interventions, harm reduction efforts, enforcement efforts directed at retailers, educational programs, workplace smoking bans and other public place smoking bans. The legislature should consider the costs and benefits of enhancing enforcement or implementation of existing laws and programs (as well as new ones for which there is a stronger evidentiary base) and decide whether or not such efforts would be more effective than the experimental approach proposed by this bill.

How effective will the law be in limiting social sources of cigarettes for people between 21 and 24 years of age?

Young people who smoke overwhelmingly get cigarettes and other nicotine products from social sources.³ One major reason why 21-to-purchase laws are effective is that they cut off almost all legal, in-school social sources of cigarettes for high school students.⁴ It is plausible to think this law would have similar impacts for undergraduates on residential college campuses that 21-to-purchase laws have for high school students. For young adults in their early 20s living outside of their parents' homes and participating in the workforce, however, a reduction in the social availability of cigarettes would almost certainly be very small or non-existent. This factor should be weighted in considering the likely effectiveness of the law.

Is a higher purchase age likely to be an effective means of “denormalization” when the age-to-purchase for cigarettes remains 21 almost everywhere else and smoking itself remains legal?

¹ “Tobacco Use Initiation,” National Cancer Institute, March 2020.
https://progressreport.cancer.gov/prevention/smoking_initiation#:~:text=Because%20cigarette%20smoking%20typically%20begins,first%20smoked%20by%20age%2026.

² Ibid.

³ Paul Jansen et al., “Sources of cigarettes among adolescent smokers: Free or purchased?”, *American Journal of Health Education* 42:3 (2011), pp. 154-160.
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4613763>.

⁴ Teresa W. Wang et al., “E-cigarette Use Among Middle and High School Students—United States, 2020,” *Morbidity and Mortality Weekly Report*, Sept. 18, 2020.
https://www.cdc.gov/mmwr/volumes/69/wr/mm6937e1.htm?s_cid=mm6937e1_w.

Broadly, laws that denormalize smoking have done the most to reduce its prevalence and attendant disease burden.⁵ While public place smoking bans do have some positive impacts simply by limiting exposure to secondhand smoke, their biggest public health benefits come from the fact that they make smoking less common and socially accepted. A higher purchase age is most likely to be effective if it is effective in denormalizing smoking for those in their early 20s. Implemented on a national or state-wide level there would be reason to think that it might do this. If implemented on a county level—particularly in a place where a large percentage of people commute to work in other areas that will not have the same laws—it appears much less certain that such a law will have a denormalizing impact with regard to people in their early 20s. Further, the lack of an individual ban on smoking or possession of cigarettes by people in their early 20s (which we do not believe would be wise) makes long-term denormalization even harder to achieve.

What will the law enforcement implications of this law be?

While we are gratified to see that this proposed law does not include criminal penalties and leaves enforcement to the Department of Health Services, we believe that the potential criminal justice implications of it are still worthy of study and review. If the proposed law, when implemented, increases illicit sales of cigarettes—which it seems likely to do in the way that any ban does—it may require commitment of law enforcement resources. Because cigarettes will continue to be available elsewhere, however, this increase may not be significant. As such, the legislature should weigh any potential increases in the use of law enforcement resources devoted to slightly increased illicit trade likely to result from this law against other public safety priorities.

Final Thoughts

Exploring innovative approaches to tobacco control is always a commendable undertaking. We advise you to see if you can reach satisfying answers to the questions we have posed based on the information we have provided and what you learn from others. If you have further inquiries or need additional information about any of the points we have made, we are, of course, available at any time to answer questions or expand on these comments in any way you would find useful.

Respectfully submitted on behalf of the R Street Institute,

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⁵ Tamar M. J. Antin et al., “Tobacco Denormalization as a Public Health Strategy: Implications for Sexual and Gender Minorities,” *American Journal of Public Health* 105:12 (2015) pp. 2426-9.
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4638269>.