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Testimony from:
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In OPPOSITION to HB 134, “An act concerning Business Regulation – Flavored Tobacco Products – Prohibition.”

February 10, 2021

House Economic Matters Committee

Chairman and members of the committee,

My name is Marc Hyden, and I am the director of state government affairs for 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, including tobacco harm reduction. That is why HB 134 is of special interest to us.

The R Street Institute has long been concerned with the impacts of smoking combustible cigarettes. Years before it became law, we supported efforts to raise the age to purchase tobacco products to 21-years-old. Further, we believe that science-based harm reduction strategies are key to limiting the hazards facing people who use addictive substances but for whom abstinence approaches will not work. While I believe that HB 134 was drafted with the noblest of intentions, I believe that it could work against what I presume is the sponsor’s goal of reducing harm.

One of the most promising weapons used to combat the dangers of combustible cigarettes are e-cigarettes. The simple truth is that e-cigarettes are fast becoming one of the number one tools smokers use to quit and are a far better alternative to combustible cigarettes.ⁱ In fact, the venerated Public Health England stated that e-cigarettes are 95 percent less harmful than combustibles,ⁱⁱ and according to a recent study, they are a more effective cessation tool than nicotine replacement therapies, like the patch or gum.ⁱⁱⁱ Given this, the Maryland legislature ought to be pleased when more smokers consider switching to e-cigarettes.

However, e-cigarettes’ reduced harm profile may not be enough to encourage some smokers to quit smoking for good, but e-cigarette flavors give adults another reason to switch from combustible cigarettes. Indeed, studies show that adults greatly prefer non-tobacco flavors.^{iv} However, if all non-tobacco flavors are banned, then that greatly reduces the likelihood that current smokers will make the switch to less harmful products. This is something that Maryland cannot afford to risk. As it stands, around 480,000 Americans die from tobacco usage a year – many right here in Maryland – and roughly 12.5 percent of Marylanders smoke combustible cigarettes.^v

Beyond these matters, HB 134 would assign strict penalties for violating its terms, and this will be problematic. It will invite police interaction with alleged violators—such interactions sometimes turn deadly—and violations would be punishable with penalties of up to a \$1,000 fine and 30 days in jail. However, this seems unnecessarily severe especially considering that multiple peer-reviewed studies have concluded that short stints in jails—as little as a few days—increase the likelihood that an individual will commit future crimes. Thus, this bill could help drive up recidivism rates.^{vi}

The bottom line is that Maryland should not remove tools and incentives that help smokers kick the habit, nor should the state foster an environment that might lead to more crime. Rather, Maryland should ensure that the people have the opportunities and tools in place to make less harmful decisions. That is why it is critical for the legislature to re-think HB 134.

Thank you for your time.

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ⁱ Shu-Hong Zhu et al., “E-cigarette use and associated changes in population smoking cessation: evidence from US current population surveys,” *The BMJ*, July 26, 2017.

<https://www.bmj.com/content/358/bmj.j3262>

ⁱⁱ “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>

ⁱⁱⁱ 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*, Issue 10, Oct. 14, 2020. https://www.cochrane.org/CD010216/TOBACCO_can-electronic-cigarettes-help-people-stop-smoking-and-do-they-have-any-unwanted-effects-when-used

^{iv} Christopher Russell, et al., “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*, 15, Article 33 (2018). <https://harmreductionjournal.biomedcentral.com/articles/10.1186/s12954-018-0238-6>

^v “Tobacco-Related Mortality,” *Centers for Disease Control and Prevention*, April 28, 2020. https://www.cdc.gov/tobacco/data_statistics/fact_sheets/health_effects/tobacco_related_mortality/index.htm ; “Map of Current Cigarette Use Among Adults,” *Centers for Disease Control and Prevention*, Sept. 14, 2020. <https://www.cdc.gov/statesystem/cigaretteuseadult.html>

^{vi} Paul Heaton, et al., “The Downstream Consequences of Misdemeanor Pretrial Detention,” *Stanford Law Review* 69 (2017), p. 711. <https://review.law.stanford.edu/wp-content/uploads/sites/3/2017/02/69-Stan-L-Rev-711.pdf>.