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Suite 900
Washington, D.C. 20005
202-525-5717

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Testimony from:

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

R Street Testimony in Opposition of the Milton Board of Health Regulations Restricting the Sale of
Reduced Risk Nicotine Products.

January 6th, 2025

Milton, Massachusetts - Board of Health

Chair Richards and members of the board,

My name is Jeff Smith, and I am a senior fellow on the Integrated Harm Reduction team at 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, including harm reduction. Our efforts to promote tobacco harm reduction are why we are particularly interested in this proposed regulation before the Milton Board of Health.

The R Street Institute has been a committed proponent of limiting the sale of nicotine-related products to those who are 21 years of age and older, and supported national efforts in 2019 to raise the age to 21 to purchase such products. Additionally, R Street is also concerned with the health-related consequences of inhaling combustible cigarette smoke by adult consumers. 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 and Nicotine Pouches).

The proposed regulations aim to further reduce youth access by banning the sales of nicotine pouches unless purchased at adult-only stores. The Board's goal of preventing youth use of such products is admirable, and one we applaud; however, we are troubled by the unintentional issues that will arise from this proposal. While this seems like a reasonable strategy to limit youth access, these regulations are misguided for several reasons.

Massachusetts' attempts to reduce youth use of tobacco and nicotine products have been primarily focused on banning all flavored products, and levying a 75% excise tax on ENDS – commonly known as



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vapes. The prohibitionist practices have inadvertently increased illicit tobacco as documented in the 2023 Annual Report of the Multi-Agency Illegal Tobacco Task Force.¹

Snus and nicotine pouches are useful tools to combat the harms associated with smoking. Nicotine pouches, which are newer to the market, are growing in popularity in adult consumers. In 2021, 29.2% of adults who smoked had ever seen or heard of nicotine pouches, 5.6% had ever tried pouches, and 16.8% reported interest in using pouches in the next six months. Early research has suggested that nicotine pouches should curtail withdrawal symptoms and helping smokers reduce or stop combustible tobacco use—at rates similar to or better than nicotine replacement products (patches, gums, lozenges) that are approved by the FDA.² Also, when compared to other oral tobacco/nicotine products, nicotine pouches had lower levels of potentially harmful ingredients. In fact, these pouches are no different with respect to health risks when compared to FDA-approved nicotine replacement products.³

To edify the point, over the last thirty years, epidemiological evidence has shown that the uptake of snus by people who were smokers has led to a decline in the prevalence of tobacco smoking in Sweden, where the male smoking frequency is now among the lowest in the world.⁴ Snus use has also substantially reduced deaths from tobacco-related cancers in Swedish men and has done so without increasing the prevalence of cigarette smoking among young people.⁵ Though there have been recent concerns expressed by some individuals that new nicotine pouches are the next new risk for youth uptake, the evidence runs counter to this belief.⁶ Research has demonstrated that those who smoke can

¹Commonwealth of Massachusetts, “Annual Report of Multi-Agency Illegal Tobacco Task Force”
<https://www.mass.gov/doc/task-force-fy23-annual-report/download>

² Lunell, Erik, Karl Fagerström, John Hughes, and Robert Pendrill. “Pharmacokinetic Comparison of a Novel Non-Tobacco-Based Nicotine Pouch (Zyn) with Conventional, Tobacco-Based Swedish Snus and American Moist Snuff.” *Nicotine and Tobacco Research* 22, no. 10 (2020): 1757-63. <https://academic.oup.com/ntr/article-abstract/22/10/1757/5823724>

³ Azzopardi, David, Chuan Liu, and James Murphy. “Chemical Characterization of Tobacco-Free “Modern” Oral Nicotine Pouches and Their Position on the Toxicant and Risk Continuums.” *Drug and chemical toxicology* 45, no. 5 (2022): 2246-54. <https://www.tandfonline.com/doi/abs/10.1080/01480545.2021.1925691>

⁴ The Public Health Agency of Sweden. Use of Tobacco and Nicotine Products. Living Conditions and Lifestyle: Alcohol, Narcotics, Doping, Tobacco and Nicotine Products, and Gambling, <https://www.folkhalsomyndigheten.se/the-public-health-agency-of-sweden/living-conditions-and-lifestyle/andtg/tobacco/use-of-tobacco-and-nicotine-products/>

⁵ Daniel Roth, H, Adam B Roth, and Xiao Liu. “Health Risks of Smoking Compared to Swedish Snus.” *Inhalation toxicology* 17, no. 13 (2005): 741-48. <https://www.tandfonline.com/doi/abs/10.1080/08958370500224698>

⁶ CBS News, Schumer calls for federal action on Zyn nicotine pouches, <https://www.cbsnews.com/newyork/news/schumer-calls-for-federal-action-on-zyn-nicotine-pouches/>



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draw adequate nicotine from the pouches to overcome cravings for cigarettes.⁷ Implementing the proposed requirements will also impose additional barriers in front of members of your community who are on a journey to a cigarette-free life. If combustible cigarettes are still widely obtainable in gas stations and convenience stores, but access to reduced-risk products is only available at other establishments, the citizen will have to exert further effort to obtain products that, if they switched completely, have demonstrated as achieving dramatic improvements for one's health.⁸ While to some, this added effort may seem minimal, but to a smoker transitioning from combustible nicotine products, it could be the difference between continuing to smoke versus a safer alternative.

A more effective approach to curbing youth access is the implementation and enforcement of Tobacco 21. On Dec. 20, 2019, Tobacco 21 (also called "T21") was signed into law as an amendment to the Federal Food, Drug, and Cosmetic Act.⁹ 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.¹⁰

Nationally, the first line of defense against youth access to adult-only products has been retailers - primarily gas stations and convenience stores. For decades, these types of establishments have had practices to effectively manage the age verification process at point-of-sale for age-restricted merchandise such as alcohol, lottery tickets, and tobacco/nicotine products. These methods are state-of-the-art, and specific training and standard operating procedures are established and function well within the workflow of these vital community establishments.¹¹ Transferring these responsibilities to other businesses (adult-only retail establishments like vape shops and head shops) will limit the likelihood of success simply due to the lack of resources and standardized processes within these establishments.¹²

⁷ Stanfill, Stephen, Hang Tran, Robert Tyx, Carolina Fernandez, Wanzhe Zhu, Kristy Marynak, Brian King, et al. "Characterization of Total and Unprotonated (Free) Nicotine Content of Nicotine Pouch Products." *Nicotine and Tobacco Research* 23, no. 9 (2021): 1590-96. <https://academic.oup.com/ntr/article-abstract/23/9/1590/6285126>

⁸ Grandolfo, Erika, Henry Ogden, Ian M Fearon, Layla Malt, Matthew Stevenson, Sarah Weaver, and Thomas Nahde. "Tobacco-Free Nicotine Pouches and Their Potential Contribution to Tobacco Harm Reduction: A Scoping Review." *Cureus* 16, no. 2 (2024). <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10944327/>

⁹ U.S. Food & Drug Administration, "Tobacco 21", <https://www.fda.gov/tobacco-products/retail-sales-tobacco-products/tobacco-21>

¹⁰ CDC/FDA, National Youth Tobacco Survey, https://www.cdc.gov/mmwr/volumes/72/wr/mm7244a1.htm?s_cid=mm7244a1_w

¹¹ NACS, TruAge Verification, <https://www.mytruage.org/>

¹² CBS San Francisco, "Undercover Study: Half Of California Tobacco And Vape Shops Don't ID Teens," <https://www.cbsnews.com/sanfrancisco/news/undercover-study-tobacco-vape-shops-no-id-check-teens/>



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Currently, youth use of nicotine pouches is very low. The CDC recently published data from the yearly National Youth Tobacco Survey that reported that youth use of these products was less than 1.8%.¹³ These numbers have remained low and are likely to stay at these low levels due to stricter access laws (T21), enhanced enforcement measures, and significant penalties when retailers fail to enforce correctly. Additionally, if the proposed regulation is approved, the financial impact on these vital establishments (gas stations/convenience stores) will be significant. The losses from selling tobacco/nicotine products will put additional stress on the owners, requiring the reduction of staffing, reduced hours, and even the potential closure of these important small businesses.¹⁴ If these regulations are passed, the Milton community will suffer a public health and financial loss.

Continued access to reduced-risk products like nicotine pouches is critical to supporting Milton's adult smokers' transition to a healthier life. While further restricting youth access is an admirable goal that we share, the proposed regulation is a solution in search of a problem. It will only complicate the ability of adult smokers interested in cessation to obtain safer alternatives to combustible cigarettes. As such, the R Street Institute encourages you to consider how access to reduced-risk products impacts the health of all community members when considering important regulations such as the one being discussed by the Milton Board of Health. We strongly urge you to reject this misguided aspect of the regulations under review.

Thank you,

Jeffrey S. Smith, PhD
Senior Fellow, Integrative Harm Reduction
R Street Institute
jsmith@rstreet.org

¹³ FDA-CTP, Results from the Annual National Youth Tobacco Survey, <https://www.fda.gov/tobacco-products/youth-and-tobacco/results-annual-national-youth-tobacco-survey>

¹⁴ NACS, 3 Potential Futures for the Backbar, https://www.convenience.org/Media/Daily/2024/June/17/2-3-Potential-Futures-for-the-Backbar_CatMan