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**Oregon State Legislature**  
**Senate Finance and Revenue Committee**  
**Testimony: SB 702**  
**Guy Bentley, Director of Consumer Freedom, Reason Foundation**

Chair Meek and members of the committee, thank you for the opportunity to submit testimony on Senate Bill 702.

My name is Guy Bentley, and I am the director of consumer freedom at the Reason Foundation, a 501(c)3 nonprofit think tank. The Consumer Freedom Project analyzes and promotes policy solutions that improve public health while avoiding unintended consequences and protecting consumer choice.

The intention behind this measure to limit tobacco use, especially among youth, is to be applauded. However, the track record of such prohibitions should raise significant concern that the proposed ban would promote further inequalities in the criminal justice system and increase the illicit tobacco trade while, at the same time, failing to improve public health.

**Case Studies: Massachusetts and Canadian Provinces**

Massachusetts became the first state in the nation to ban flavored tobacco products in 2020. According to the Tax Foundation, Massachusetts lost \$125 million in tobacco tax revenue in its 2021 fiscal year.<sup>1</sup> Massachusetts also has the third-highest rate of inbound cigarette smuggling. The state's Multi-Agency Illicit Tobacco Task Force is seizing so many flavored tobacco products that their most recent report requested more space to store them and asked for new criminal penalties to make it easier for them to crack down on smuggling and those possessing flavored tobacco products with intent to sell.<sup>2</sup> Smoking in Massachusetts declined less than one percentage point after the ban.<sup>3</sup>

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<sup>1</sup> Ulrik Boesen. "Massachusetts Flavored Tobacco Ban: No Impact on New England Sales." Tax Foundation. February 3, 2022.

<https://taxfoundation.org/massachusetts-flavored-tobacco-ban-sales-jama-study/>

<sup>2</sup> Common Wealth of Massachusetts. "Annual Report of Multi-Agency Illegal Tobacco Task Force." February 28, 2023. <https://www.mass.gov/doc/task-force-fy23-annual-report/download>

<sup>3</sup> National Association of Convenience Stores. "New data from NECSMA finds smoking are unchanged." January 13, 2025.

[https://www.convenience.org/Media/Daily/2025/January/13/5-Is-Massachusetts%E2%80%99-Menthol-Ban-Working\\_GR#:~:text=New%20data%20from%20NECSEMA%20finds%20smoking%20rates%20are%20unchanged.&text=Massachusetts%20enacted%20a%20statewide%20ban.among%20adults%20remain%20the%20same.](https://www.convenience.org/Media/Daily/2025/January/13/5-Is-Massachusetts%E2%80%99-Menthol-Ban-Working_GR#:~:text=New%20data%20from%20NECSEMA%20finds%20smoking%20rates%20are%20unchanged.&text=Massachusetts%20enacted%20a%20statewide%20ban.among%20adults%20remain%20the%20same.)

Flavored tobacco bans in other countries have yielded similar unintended results. According to a study published by the *Journal of Law and Economics*, Canadian provinces' menthol prohibition implemented from 2015-17 significantly increased non-menthol cigarette smoking among youths, resulting in no overall net change in youth smoking as they substituted products rather than quit.<sup>4</sup> "Difference-in-differences models using national survey data return no evidence that provincial menthol cigarette bans affected overall smoking rates for youths or adults," wrote the study's authors.

### **Food and Drug Administration Review and Tobacco Harm Reduction**

The Food and Drug Administration (FDA) recognizes there is a "continuum of risk" when it comes to tobacco products, with cigarettes being the most dangerous and alternatives such as e-cigarettes, smokeless tobacco, nicotine pouches, and heated tobacco products being less dangerous.<sup>5</sup> As such, when the FDA authorizes a new tobacco product for sale, it must be evaluated as to whether it is "appropriate for the protection of public health," meaning the product must provide a net benefit to public health.

SB 702 would ban the sale of several products that the FDA has deemed to be net beneficial to public health and authorized for sale, including flavored Zyn nicotine pouches, General Snus, and a menthol e-cigarette. If Oregon chooses to ban these products, it will ban products that reduce the harm and risk of tobacco-related diseases.

The FDA is also currently reviewing a host of product applications that contain reams of data on safety, efficacy, and potential threats to youth. If the FDA finds that any product is a net harm to public health, it will be removed from the market. But if the product is deemed net beneficial, it will be authorized for sale as appropriate to protect public health.

If Oregon passes SB 702 into law and bans these products before the FDA concludes its review, it would limit consumer access to products the FDA may deem as positive for public health. According to a survey conducted by the International Tobacco Control Policy Evaluation Project, 57 percent of vapers said they would continue vaping if flavors were banned, while half said they would find another way to get their preferred flavor. Of most concern to public health

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<sup>4</sup> Christopher Carpenter, Hai V. Nguyen. "Intended and Unintended Effects of Banning Menthol Cigarettes." *The Journal of Law and Economics*. August 2021.  
<https://www.journals.uchicago.edu/doi/abs/10.1086/713978>

<sup>5</sup> U.S. Food and Drug Administration. "FDA Authorizes Modified Risk Tobacco Products." May 2020.

officials and lawmakers should be the finding that close to one in five vapers said if their preferred flavor was banned, they would stop vaping and smoke traditional cigarettes instead.<sup>6</sup>

While prohibiting e-cigarette flavors other than tobacco may seem an attractive solution to reduce youth vaping, policymakers should recognize that according to the 2024 National Youth Tobacco Survey (NYTS) the number of high schoolers vaping has fallen by 76 percent.<sup>7</sup> Data released by the CDC also shows flavors are not the leading reason why youth initiate vaping. According to the CDC, the primary reason why young people say they start vaping is curiosity, followed by peer influence or family members. Availability in flavors, such as mint, candy, fruit, or chocolate, comes as a very distant third in the survey.<sup>8</sup>

Research suggests banning flavored tobacco products may also induce perverse outcomes contrary to the promotion of public health among adolescents. In 2018, San Francisco banned the sale of all flavored tobacco products, including e-cigarettes with flavors other than tobacco. Yale University's Abigail Friedman found that after the flavored tobacco ban was enacted, San Francisco area youth were twice as likely to smoke compared to young people in similar jurisdictions that had not enacted tobacco flavor bans.<sup>9</sup> "While neither smoking cigarettes nor vaping nicotine are safe per se, the bulk of current evidence indicates substantially greater harms from smoking, which is responsible for nearly one in five adult deaths annually. Even if it is well-intentioned, a law that increases youth smoking could pose a threat to public health," found Friedman. Prohibition of flavored alternatives to cigarettes, which are overwhelmingly the preferred choice for adult smokers trying to quit, risks worsening public health by keeping smokers smoking while also fueling illicit markets and hurting local economies.

Thank you for your time.

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<sup>6</sup> Gravely, Shannon et al. "Responses to potential nicotine vaping product flavor restrictions among regular vapers using non-tobacco flavors: Findings from the 2020 ITC Smoking and Vaping Survey in Canada, England and the United States." *Addictive Behaviors*. Volume 125. February 2022.

<https://www.sciencedirect.com/science/article/pii/S0306460321003373?via%3Dihub>

<sup>7</sup> Park-Lee E, Jamal A, Cowan H, et al. "Notes from the Field: E-Cigarette and Nicotine Pouch Use Among Middle and High School Students — United States, 2024." *MMWR Morb Mortal Wkly Rep* 2024;73:774–778. Centers for Disease Control and Prevention. September 5, 2024.

[https://www.cdc.gov/mmwr/volumes/73/wr/mm7335a3.htm?\\_cid=mm7335a3\\_w#suggestedcitation](https://www.cdc.gov/mmwr/volumes/73/wr/mm7335a3.htm?_cid=mm7335a3_w#suggestedcitation)

<sup>8</sup> Wang TW, Gentzke AS, Creamer MR, et al. "Tobacco Product Use and Associated Factors Among Middle and High School Students — United States, 2019." *MMWR Surveill Summ* 2019;68(No. SS-12):1–22. [https://www.cdc.gov/mmwr/volumes/68/ss/ss6812a1.htm#T6\\_down](https://www.cdc.gov/mmwr/volumes/68/ss/ss6812a1.htm#T6_down)

<sup>9</sup> Friedman AS. "A Difference-in-Differences Analysis of Youth Smoking and a Ban on Sales of Flavored Tobacco Products in San Francisco, California." *JAMA Pediatr*. Published online May 24, 2021.

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