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Via FedEx and Email

Natalie Mullis  
Director of Research  
Office of the Legislative Council  
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Re: Written Testimony of Liggett Group LLC - Proposition EE

Dear Ms. Mullis:

On behalf of our client, Liggett Group LLC, please find enclosed a copy of the written testimony of Liggett Group LLC, totaling four (4) pages, regarding Proposition EE – Taxes on Nicotine Products, in advance of the Legislative Council’s blue book hearing this Thursday. We also submitted this testimony earlier today via the General Assembly website, per Legislative Council instructions.

Very truly yours,

*/s/ Leonard A. Feiwus*

Leonard A. Feiwus

Encl.

## **Written Testimony of Liggett Group LLC Proposition EE: Taxes on Nicotine Products**

This written testimony is respectfully submitted on behalf of Liggett Group LLC (“Liggett”) by its counsel, Kasowitz Benson Torres LLP and Jones & Keller. We submit this testimony to ask that the Legislative Council add certain content relating to HB20-1427 (the “Bill”), styled as Proposition EE – Taxes on Nicotine Products, to the draft ballot information booklet (the “Blue Book”). Specifically, we ask that the Legislative Council add content regarding: (1) the anti-competitive and anti-consumer effects of Section 10 of the Bill, which sets a fixed minimum price for cigarettes, and (2) the allocation of revenue generated by the Bill as it pertains to education funding.

The inclusion of this content, which we describe in detail below, will increase the accuracy and transparency of the Blue Book language and is necessary to comply with the Colorado Constitution. The Constitution requires that the Blue Book include, “[a] fair and impartial analysis of each measure, which shall include a summary and the major arguments both for and against the measure, and which may include any other information that would assist understanding the purpose and effect of the measure.” Colo. Const. art. V, § 1. As it currently stands, the Blue Book fails to meet these requirements, causing confusion on the part of voters and increasing the probability that voters will misunderstand or be unaware of important components of the Bill that will directly affect them.

We would like to focus the Legislative Council on two key points that should be included in the Blue Book in order for it to be accurate and transparent, which we describe below. We also provide specific proposed amendments to the second draft of the Blue Book for each of these issues.

### **I. Information Demonstrating That The Minimum Price Provision Is Both Anti-Consumer And Anti-Competitive**

The current draft of the Blue Book fails to convey to voters that the fixed minimum price provision in Section 10 of the Bill (that sets the minimum price at which retailers can sell a pack of cigarettes at \$7.00 initially and ultimately at \$7.50) is both anti-consumer and anti-competitive. A fixed minimum price law like the one contemplated by the Bill **has never been used by any other State**. All 28 States that have previously decided to legislate higher cigarette prices have done so proportionally, so that price differences across the many cigarette brands sold by competitors are preserved. This is accomplished by raising the tobacco manufacturer’s list price by a fixed percentage, not mandating a uniform minimum retail price. These laws preserve competition, whereas the Bill’s minimum price provision hinders it.

**The minimum price provision will drastically increase prices of discount cigarettes, which are primarily consumed by low-income adult smokers**, and would regressively extract a larger percentage of income from these individuals. Coloradans who have already been hardest hit by COVID-19 will be the same people most negatively affected by the minimum price provision, yet the Blue Book language indicates that the Bill will *assist* the citizens of Colorado who have been impacted by COVID-19. This counter-view must be included in the section of

the Blue Book that presents arguments against the Bill. *See* Colo. Const. art. V, § 1 (requiring inclusion of major arguments against a ballot measure in Blue Book).

These propositions are substantiated by current and accurate data. Our estimates demonstrate that the increase in cost for Coloradans who smoke a pack a day of premium cigarettes would be approximately \$400 per year. However, **the impact on Coloradans who smoke a pack a day of discount brands could be as high as \$1,200 per year**. For example, a smoker who currently smokes one \$4 pack of cigarettes each day would pay an additional \$1,278 per year if the price of that pack is increased to \$7.50 (365 days x \$3.50 = \$1,278). Thus, Section 10 has a disproportionate negative effect on lower-income adult cigarette smokers who currently smoke cheaper brands of cigarettes.

**The minimum price provision is also fundamentally anti-competitive, as it favors larger premium-brand focused tobacco manufacturers over smaller discount-brand focused manufacturers.** If the Bill becomes law, the price of discount brands at retail will be substantially increased, thereby impeding the discount manufacturers' ability to market and sell their products competitively. Due to the fixed minimum price provision, discount brand manufacturers will be forced to nearly double the prices of their products, while premium brand manufacturers will only face price increases associated with the proposed State Excise Tax increase. This drastically reduces the price differentiation between discount and premium cigarettes. Thus, the fixed minimum price provision will disproportionately harm small discount brand manufacturers and help premium tobacco companies eliminate their discount brand competition, while imposing larger costs on lower-income Colorado cigarette consumers.

## **II. Proposed Amendments Related To Anti-Consumer and Anti-Competitive Aspects Of The Bill**

The current draft of the Blue Book mentions the minimum price provision specifically in four locations in only a cursory manner without explaining the true impact of the provision.<sup>1</sup> These limited statements are insufficient to adequately inform voters about the impact of the minimum price provision.

### **In order to provide voters with this critical information regarding the minimum price provision, we propose the following amendments to the Blue Book:**

- Page 1, line 7 (What Your Vote Means – NO): After “[a] ‘no’ vote means taxes on cigarettes and other tobacco products will stay the same” add “cigarette prices will not increase.”

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<sup>1</sup> Page 3, lines 12-13 (“sets a minimum after-tax price of cigarettes for consumers at \$7.00 per pack beginning in January 2021, and \$7.50 per pack beginning in July 2024”); Page 4, lines 10-11 (“A portion of the additional sales tax revenue from the minimum cigarette price is also used for this purpose.”); Page 5, lines 12-14 (“A portion of the additional sales tax revenue from the minimum cigarette price is also used for general state spending.”); and Page 6, lines 25-26 (“Raising taxes and establishing a minimum purchase price hurts business owners.”)

- Page 3, lines 12-13 (**Summary and Analysis for Proposition EE**): Move to page 1, after line 3, “sets a minimum after-tax price of cigarettes for consumers at \$7.00 per pack beginning in January 2021, and \$7.50 per pack beginning in July 2024” and change “sets” to “set”
- Page 6, after line 18 (**Arguments Against Proposition EE**): Add “The minimum cigarette price will also impose a financial burden on cigarette users, particularly low-income users who smoke discount cigarettes that currently cost significantly less than \$7.00 per pack. Current consumers of discount cigarettes may pay as much as \$1,200 more per year for cigarette products, in addition to paying increased sales taxes on each pack of cigarettes.”
- Page 6, after line 32 (**Arguments Against Proposition EE**): Add “The minimum cigarette price also favors larger cigarette companies who sell more expensive cigarettes as price competition is effectively eliminated. This will result in fewer choices for consumers and impact low-income smokers the most.”

### **III. Information Regarding The Bill’s Allocation Of Revenue Generated By The Bill**

Section 22 of the Bill provides a specific structure for how revenue will be allocated. The Blue Book however presently does not make clear how certain revenue generated by the Bill will be allocated, particularly with respect to education funding.

The Bill states that the revenue raised will fill shortfalls in the existing housing and education budget and only seeks to meet the current funding levels for those programs. Specifically, for the first 2.5 years the revenue generated will go to the General Fund for the purpose of filling shortfalls in the current budget for K-12 education due, in large part, to the economic effects of the COVID-19 pandemic. The current focus of the Blue Book on preschool funding is misleading when virtually none of the increased revenue (excluding a small amount of sales tax revenue resulting from the minimum price provision) will be allocated to preschool funding until at least the 2023-24 fiscal year.

After the first 2.5 years, only if there is a surplus above and beyond what is set forth in the budget, and the K-12 general fund revenues have recovered, will any leftover revenue spill over to Pre-K early childhood education. Section 22 of the Bill specifically states that only the “remainder” of revenue will be distributed to the preschool programs cash fund after allocations to other funds. In short, the revenue generated by the Bill will help shore up the budget for the first 2.5 years, **but there is no guarantee that there will be any funding available for Pre-K early childhood education after those 2.5 years have elapsed.**

As it stands now, the Blue Book erroneously suggests that significant revenue is specifically being dedicated to a Pre-K program. However, Bill proponents have failed to provide any data, modeling or other information to substantiate that there will be a surplus sufficient to fund Pre-K or early education programs that are the subject of the Bill. **Colorado**

**voters deserve to know that the level of Pre-K funding provided by the Bill is uncertain in light of the significant budgetary constraints Colorado faces as a result of the COVID-19 pandemic and revenue shortfalls.**

**IV. Proposed Amendments Related To Revenue Allocation In Connection With Education Programs**

**We propose the following amendments to the Blue Book regarding revenue allocation:**

- Page 1, lines 4-6: Replace with “distribute the new revenue to K-12 education, rural schools, affordable housing, eviction assistance, tobacco education, health care, and, as of fiscal year 2023-24, preschool programs if there are leftover funds from required allocations to other programs”
- Page 4, after line 11: Add “Revenue from the new and increased taxes on cigarettes, tobacco products, and nicotine products will only be allocated to preschool programs beginning in 2023-24 if there is revenue remaining from allocations to other programs.”

**V. Conclusion**

We respectfully request that these proposed amendments be incorporated into the final version of the Blue Book to ensure that voters are fully and accurately informed when they decide to vote for or against the Bill.

Respectfully submitted,

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