

**Maryland Senate Finance Committee**

**Testimony of Amy Barkley**

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**In Support of SB 233 –Business Regulation– Flavored Tobacco Products – Prohibition**

**Annapolis, MD**

**February 13, 2020**



The Campaign for Tobacco-Free Kids submits these written comments in support of SB 233: Business Regulation – Flavored Tobacco Products – Prohibition. This bill, which would ban the sale of all flavored tobacco products in Maryland, would have a dramatic impact on reducing tobacco among youth, and would help curb the long-term illness, disease and death caused by tobacco addiction across the state. The Campaign for Tobacco-Free Kids is the nation’s largest non-profit, non-governmental advocacy organization solely devoted to reducing tobacco use and its deadly toll by advocating for public policies that prevent kids from using tobacco, help smokers quit and protect everyone from secondhand smoke.

Maryland has long been a national leader in its commitment to reducing the death and disease from tobacco use, so it is heartening to see that you continue to take thoughtful, evidenced-based steps to reduce the number of kids who start using tobacco and help tobacco users quit. Even though Maryland has made great strides in reducing tobacco use, tobacco use remains the number one preventable cause of premature death and disease in Maryland and the nation, killing over 7,500 residents every year.<sup>1</sup>

Prohibiting the sale of all flavored tobacco products, including menthol cigarettes and flavored cigars and e-cigarettes, is a critical step that will help protect Maryland kids from the unrelenting efforts of the tobacco industry to hook them to a deadly addiction. Flavored tobacco products are designed to alter the taste and reduce the harshness of tobacco products so they are more appealing and easy for beginners, who are almost always kids. These products are available in a wide assortment of flavors – like gummy bear, cotton candy, peanut butter cup, cookies ‘n cream and pop rocks for e-cigarettes and chocolate, watermelon, lemonade and cherry dynamite for cigars. Tobacco companies are making and marketing deadly and addictive products that look and taste like a new line of flavors from a Ben and Jerry’s ice cream store. This growing market of flavored tobacco products is undermining Maryland’s progress in reducing youth tobacco use.

Recognizing the public health burden of flavored tobacco products, and the failure of the federal government to step in decisively, we are seeing states and localities starting to take action. San Francisco was the first city to ban the sale of all flavored tobacco products. Since then Oakland, Minneapolis, St. Paul, Sacramento, Los Angeles County, and Boston have enacted strong laws to tackle this problem. They have joined a growing number of smaller cities that have taken similar action.

In December of last year, Massachusetts became the first state to enact legislation to restrict the sale of all flavored tobacco products. Other states are poised to act this year, joining over 260 localities across the country that have passed legislation to protect their

residents from flavored tobacco. I urge you to join them. Maryland needs to be a leader on this issue and pass this legislation without delay.

The youth e-cigarette epidemic creates an immediate crisis that demands urgent action, but equally urgent action is needed to address a public health crisis that has gotten less attention, but over the years has done even greater harm: the marketing and sale of all other flavored tobacco products, including menthol cigarettes and flavored cigars. Banning the sale of all flavored tobacco products is one of the most important things you can do to protect the health of Maryland's kids, reverse health disparities in the State, and prevent the 7,500 deaths in Maryland each year that are due to tobacco use.

### **Menthol Cigarettes Increase Youth Tobacco Use**

While e-cigarette use justifiably gets a lot of attention, no other flavored product contributes more to the death and disease caused by tobacco use than menthol cigarettes. The scientific evidence leaves no doubt that menthol cigarettes increase the number of people, particularly kids, and especially African-American kids, who try the product, become addicted and die a premature death as a result. Banning menthol cigarettes addresses both a critical public health issue and a matter of social justice.

Tobacco companies have long known that menthol cigarettes reduce the harshness of their products and make them easier to use by new users, almost all of whom are under age 18.<sup>2</sup> Menthol delivers a pleasant minty taste and imparts a cooling and soothing sensation. These characteristics successfully mask the harshness of tobacco, making it easier for beginner smokers and kids to tolerate smoking. The FDA's Tobacco Products Scientific Advisory Committee (TPSAC) concluded that menthol cigarettes increase the number of children who experiment with cigarettes and the number of children who become regular smokers, increasing overall youth smoking. Further, they found that people who initiate smoking using menthol cigarettes are more likely to become addicted and become long-term daily smokers.<sup>3</sup>

Flavors hook kids and no flavor hooks more kids than menthol cigarettes. They are the single greatest entryway to cigarette smoking. Just like other flavored tobacco products, youth smokers are more likely to use menthol cigarettes than any other age group:

- Half (50.1%) of youth who have ever tried smoking initiated with menthol flavored cigarettes.<sup>4</sup>
- Over half (54 percent) of current youth smokers ages 12-17 continue to use menthol cigarettes, compared to less than one-third of smokers ages 35 and older.<sup>5</sup>

- Prevalence of menthol use is even higher among African American youth: seven out of ten African-American youth smokers smoke menthol cigarettes.<sup>6</sup>

### **Menthol Cigarettes Have a Devastating Impact on the Health of African Americans and Are a Major Cause of Tobacco-Related Health Disparities**

The reason that such a high percentage of African-Americans who smoke use menthol cigarettes is the direct result of a conscious and deliberate decision made decades ago by the tobacco industry to target the African-American community. The net result has contributed to African-Americans suffering unfairly and disproportionately from tobacco related diseases. Maryland is in a position to reduce tobacco caused disparities in this community by enacting legislation that bans the sale of menthol cigarettes. Opponents of banning menthol cigarettes like to talk about possible unintended consequences, but the undeniable consequences from menthol smoking are higher rates of death and disease, with a disproportionate impact among African-Americans

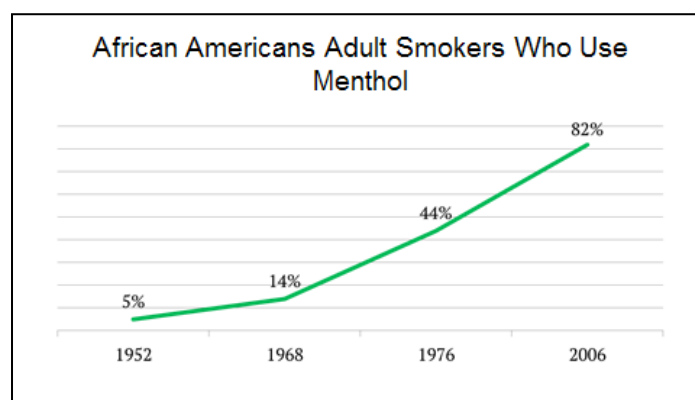
The continued availability of menthol cigarettes threatens the progress Maryland has made in reducing adult smoking, particularly among African Americans. Prevalence of menthol use is highest among African Americans - 85 percent of all African-American smokers smoke menthol cigarettes, compared to 29 percent of Whites.<sup>7</sup> Nationally, sales of menthol cigarettes increased from 2011 to 2015, at a time when overall cigarette sales have been gradually decreasing.<sup>8</sup> Data from the Federal Trade Commission (FTC) show that in 2018, menthol cigarettes comprised 36 percent of the U.S. market, the highest proportion on record since FTC began collecting this data in 1963.<sup>9</sup>

Both TPSAC's and FDA's own scientific analyses conclude that menthol cigarettes are associated with increased nicotine dependence and reduced success in smoking cessation.<sup>10</sup> The impact is greatest for African Americans, who predominantly smoke menthol cigarettes. African Americans generally have higher levels of nicotine dependence as a consequence of their preference for mentholated cigarettes.<sup>11</sup> While research shows that African American smokers are highly motivated to quit smoking and are more likely than White smokers to have made a quit attempt and used counseling services in the previous year, they are less likely than White smokers to successfully quit smoking.<sup>12</sup> Data from the 2015 National Health Interview Survey show that, among smokers who made a quit attempt in the past year, only 4.9 percent of African Americans remained abstinent after 6 months, compared to 7.1 percent of Whites.<sup>13</sup>

Smoking kills 45,000 African American each year.<sup>14</sup> Lung cancer is the second most common cancer in both African-American men and women, but it kills more African Americans than any other type of cancer.<sup>15</sup> While the gap has been narrowing, from 2011-2016 the average incidence rate of lung and bronchial cancers was still 15 percent higher in African-American men compared to white men and the average death rate was 18 percent higher in African-American men compared to white men.<sup>16</sup> If current smoking rates persist, an estimated 1.6 million black Americans alive today under the age of 18 will become regular smokers, and about 500,000 will die prematurely from a tobacco-related disease.<sup>17</sup> In 2011, TPSAC estimated that by 2020, 4,700 excess deaths in the African American community will be attributable to menthol in cigarettes, and over 460,000 African Americans will have started smoking because of menthol in cigarettes.<sup>18</sup>

### **The Tobacco Industry Targets African Americans and Youth with Menthol Cigarette Marketing**

The tobacco industry wants you to believe that African Americans have always smoked menthol cigarettes, but the use of menthol cigarettes among African Americans seen today is no coincidence and it doesn't reflect an inherent preference for menthol cigarettes by African-Americans. This disparity is a direct result of a decades-long marketing campaign by the tobacco industry. Just 5 percent of African-Americans smoked menthol cigarettes in the early 1950's; by 1968 the number had risen to 14 percent, and today the number is now well over 80 percent.<sup>19</sup> Make no mistake—this is a crisis that is the direct result of the conscious decisions of the major tobacco companies.



Slide Courtesy of Phillip S. Gardiner

[http://www.acbhcs.org/tobacco/docs/conference/Dr\\_Gardiner\\_Tob\\_Industry\\_AA\\_Me](http://www.acbhcs.org/tobacco/docs/conference/Dr_Gardiner_Tob_Industry_AA_Me)

Decades of research and the tobacco industry's internal documents demonstrate that the industry knowingly employed campaigns and strategies to aggressively target African Americans. Dating back to the 1950s, the tobacco industry has targeted these

communities with marketing for menthol cigarettes through sponsorship of community and music events, targeted magazine advertising, youthful imagery, and marketing in the retail environment. Many of these efforts, including the Kool Inner City Music Program and the Newport Van Program, which distributed free samples of menthol cigarettes, targeted African American neighborhoods in cities like Baltimore.<sup>20</sup>

The tobacco industry has also used popular African American magazines like *Ebony* and *Jet* to advertise menthol cigarettes to African Americans since the 1960s, and this practice continues today. From 1998 to 2002, *Ebony*, a magazine tailored to the African American culture, was 9.8 times more likely than *People* to contain ads for menthol cigarettes.<sup>21</sup> An assessment of menthol cigarette ads run from June 2012 to February 2013 found that the tobacco industry spent an estimated \$31 million on menthol cigarette direct mail, email, print and online advertisements in just a 9-month period. During this time, 61 percent of Newport print ads featured at least one African-American model. These ads ran in twenty publications including *Jet*, *Ebony*, and *Essence*, which have predominantly African-American readership.<sup>22</sup>



Images courtesy of Stanford Research Into the Impact of Advertising (SRITA) and TrinketsandTrash.Org.

In magazines and other marketing materials, the industry used advertisements characterized by slogans, relevant and specific messages, or images that have a great appeal among those in the black community or depict African Americans in an appealing light.<sup>23</sup> In 2004, Brown & Williamson started an ad campaign for their Kool brand cigarettes clearly aimed at youth—and African-American youth, in particular. The Kool Mixx campaign featured images of young rappers, disc jockeys and dancers on cigarette packs and in advertising. The campaign also included radio giveaways with

cigarette purchases and a Hip-Hop disc jockey competition in major cities around the country. The themes, images, radio giveaways and music involved in the campaign all clearly have tremendous appeal to youth, especially African-American youth. Attorneys General from several states promptly filed motions against Brown & Williamson for violating the Master Settlement Agreement.<sup>24</sup>

This targeting continues today: magazine advertisements continue to target African Americans and menthol cigarettes continue to be heavily advertised, widely available, and priced cheaper in certain African American communities, making them more appealing, particularly to price-sensitive youth.<sup>25</sup> Nationally, Newport cigarettes (the most popular menthol brand among African Americans) are significantly less expensive in neighborhoods with higher proportions of African Americans.<sup>26</sup> A wealth of research indicates that African-American neighborhoods have a disproportionate number of tobacco retailers, more price discounts for tobacco products, pervasive tobacco marketing, and in particular, more marketing of menthol products.<sup>27</sup>

### **Flavored Cigars Remain Popular Among Youth, Especially African Americans**

While youth cigarette smoking reached a record low (5.8%) in the U.S. in 2019, there has been no significant decrease in cigar smoking since 2014. More youth smoker cigars today than cigarettes and flavored cigars are a big part of the problem. Today, 7.6% of U.S. high school students smoke cigars. Rates are higher among boys (9.0%) and among African Americans (12.3%).<sup>28</sup> In Maryland, 10.9% of high school boys are current cigar smokers.<sup>29</sup>

A primary reason for the popularity of cigars among youth is the wide array of available flavors. In fact, 73.8% of youth cigar smokers smoked cigars “because they come in flavors I like.”<sup>30</sup> Flavored cigars have proliferated in recent years and now make up more than half the U.S. cigar market.<sup>31</sup> Sales of all cigars (i.e., large cigars, cigarillos, and small cigars) more than doubled between 2000 and 2017<sup>32</sup> and much of the growth is attributable to smaller types of cigars, many of which are flavored and inexpensive (e.g., 3 or 4 cigars for 99 cents). There are over 250 cigar flavors, including of “Banana Smash,” Brownie, and Strawberry Kiwi.<sup>33</sup> Cheap, sweet cigars can serve as an entry product for kids to a lifetime of smoking.



Similar to e-cigarettes, cigars are marketed using social media, hip hop and rap music event sponsorship, celebrity endorsements and point-of-sale promotions.<sup>34</sup>



FDA has concluded that “all cigars pose serious negative health risks” and that “all cigar use is harmful and potentially addictive.”<sup>35</sup> According to the National Cancer Institute, smoking cigars causes serious health consequences, including cancer of the oral cavity, larynx, esophagus and lung, and cigar smokers are also at increased risk for aortic aneurysms.<sup>36</sup> Each year, about 9,000 Americans die prematurely from regular cigar use.<sup>37</sup> Cigar smoke is composed of the same toxic and carcinogenic constituents found in cigarette smoke.<sup>38</sup>

### E-cigarette Use by Youth is Skyrocketing

We are at a critical juncture in our nation’s public health history. After making tremendous progress in reducing youth tobacco use over the past several decades, e-cigarettes, and Juul in particular, are undermining the declines in overall youth tobacco use. Youth e-cigarette use in the United States has skyrocketed to what the U.S. Surgeon General and the FDA have called “epidemic” levels.<sup>39</sup> It is a public health crisis and *it is getting worse*.



The increase in youth e-cigarette use is truly unprecedented. Researchers at the University of Michigan who conduct the Monitoring the Future Study found that the increase in youth vaping of nicotine from 2017 to 2018 was the single largest one year increase in youth use of *any substance* in the survey's 43-year history.<sup>40</sup> New data released in the *New England Journal of Medicine* show that this historic increase was followed by another increase in 2019. From 2017 to 2019, youth nicotine vaping more than doubled among 8<sup>th</sup>, 10<sup>th</sup> and 12<sup>th</sup> graders. Now, 9% of eighth graders, 20% of 10<sup>th</sup> graders and 25% of 12<sup>th</sup> graders are current vapers.<sup>41</sup>

Newly released data from the 2019 National Youth Tobacco Survey (NYTS) also showed that e-cigarette use among high school students more than doubled from 2017 to 2019, from 11.7 percent to 27.5 percent of students, or more than one in four high schoolers. Youth are starting to use e-cigarettes at younger and younger ages. Among middle school students, e-cigarette use more than tripled from 2017 to 2019, increasing from 3.3% to 10.5%. Altogether, over 5.3 million middle and high school students used e-cigarettes in 2019 – an increase of over three million users in just two years.<sup>42</sup> In Maryland, 13.3% of high schoolers used e-cigarettes in 2017—if Maryland follows national trends, this figure has likely doubled by now.<sup>43</sup>

Nationally, the rise in e-cigarette use has driven an increase in the use of any tobacco product among youth. In 2019, 31.2% of high school students and 12.5% of middle school students – 6.2 million kids altogether – were current (past-month) users of some type of tobacco product in 2019. This is the highest tobacco use rate reported by the NYTS in 19 years.<sup>44</sup> There is no doubt that e-cigarettes are reversing decades of progress that Maryland has made in reducing youth tobacco use and are addicting a new generation of kids.

### **Youth E-cigarette Users Struggle with Nicotine Addiction**

The number of youth now using e-cigarettes is alarming and the evidence is growing that e-cigarettes increases the susceptibility to long term addiction. The data are clear that youth who are using e-cigarettes are not just experimenting, but are becoming addicted at levels that have not been seen among kids who use cigarettes in decades.

- Among those who had used e-cigarettes in the past 30 days, 34.2% of high schoolers and 18% of middle schoolers were frequent users of e-cigarettes, using e-cigarettes on at least 20 of the preceding 30 days.<sup>45</sup>
- 21.4% of high school e-cigarette users and 8.8% of middle school e-cigarette users were daily users, a strong indication of addiction. This amounts to 1.6

million middle and high school students who were frequent users of e-cigarettes, including nearly 1 million (970,000) daily users.<sup>46</sup>

- Alarmingly, one in nine high school seniors (11.6%) report vaping nicotine on a near daily basis.<sup>47</sup>

Though there is insufficient research on the long-term effects of using e-cigarettes in general, there is a growing body of evidence of immediate harms, many of which are caused by the intense addiction caused by the high levels of nicotine these products deliver. Nicotine is a highly addictive drug and young people are especially vulnerable to nicotine addiction. Nicotine can have lasting damaging effects on adolescent brain development, because brain development continues until about age 25. According to the Surgeon General, “because the adolescent brain is still developing, nicotine use during this critical period can disrupt the formation of brain circuits that control attention, learning, and susceptibility to addiction.”<sup>48</sup> Because of these risks, the Surgeon General found that, “The use of products containing nicotine in any form among youth, including in e-cigarettes, is unsafe.”<sup>49</sup>

The observable immediate harms from e-cigarette use have increased since the introduction of Juul and Juul like products. Since the introduction of Juul, youth are now using products that effectively deliver very large doses of nicotine. Juul pioneered a new e-liquid formulation that delivers nicotine more effectively and with less irritation than earlier e-cigarette models. According to the company, the nicotine in Juul is made from “nicotine salts found in leaf tobacco, rather than free-base nicotine,” in order to “accommodate cigarette-like strength nicotine levels.”<sup>50</sup> A 2018 Surgeon General advisory on e-cigarette use among youth warned that nicotine salts allow users to inhale high levels of nicotine more easily and with less irritation than e-cigarettes that use free-base nicotine. As a result, it is easier for young people to initiate the use of nicotine with these products.<sup>51</sup> A single Juul pod can deliver as much nicotine as a pack of cigarettes.<sup>52</sup> One study estimated that youth could meet the threshold for nicotine addiction by consuming just one quarter of a Juul pod per day.<sup>53</sup> And yet, research has also found that many young Juul users often do not know the products they are using contains nicotine.<sup>54</sup>

Juul’s competitors, seeking to emulate the company’s success, have since flooded the U.S. market with similar pod-based e-cigarettes, including some that have nicotine levels even higher than Juul’s, resulting in what some researchers have referred to as a “nicotine arms race.” Many of these companies offer the devices and pods for cheaper than Juul and in a wider variety of kid-friendly flavors.<sup>55</sup> New NYTS data released in November 2019 show that Juul is overwhelmingly the most popular e-cigarette among youth (preferred by 59% of high school e-cigarette users), but other products like Suorin and Smok, are becoming popular as well.<sup>56</sup>

These statistics are confirmed by parents and pediatricians across the country. E-cigarette use, especially Juul, has permeated schools and the daily life of hundreds of thousands of youth. It is clear that large numbers of teen e-cigarette users are struggling with nicotine addiction and withdrawal. In November, the New York Times profiled Matt Murphy from Reading, MA who had his first Juul when he was 17. He described the euphoric head rush of nicotine as “love at first puff”. He quickly became addicted to Juul’s intense nicotine hits. He became so dependent on the Juul that he nicknamed the device his “11th finger.”<sup>57</sup> He is not alone. The problem is so bad that FDA convened a public hearing to gather input on how to help youth addicted to the nicotine in e-cigarettes. No one is quite sure how to help these youth quit. Banning flavored e-cigarettes will prevent these kids from ever getting hooked.

### **Youth E-Cigarette Users Are At Increased Risk of Smoking Cigarettes**

Alarming, evidence also continues to build that for young people, using e-cigarettes increases the likelihood of smoking cigarettes.

- In 2016, the Surgeon General concluded that while more research is needed, evidence from several longitudinal studies suggests that e-cigarette use is “strongly associated” with the use of other tobacco products among youth and young adults, including conventional cigarettes.<sup>58</sup>
- Last year, the National Academies of Science, Engineering & Medicine (NASEM) released a comprehensive report which found that there was substantial evidence that that e-cigarette use increases risk of ever using cigarettes among youth and young adults. The NASEM report also concluded, “There is moderate evidence that e-cigarette use increases the frequency of subsequent combustible tobacco cigarette use” among youth and young adults.<sup>59</sup>
- A recent study found that youth who used e-cigarettes were four times more likely to subsequently try cigarettes.<sup>60</sup>

Multiple studies have also demonstrated that many youth who use e-cigarettes are kids who are among those least at risk of cigarette smoking. For these kids, e-cigarettes are not replacing cigarettes, they are turning non-tobacco users into tobacco users.<sup>61</sup>

### **Flavored E-Cigarettes Have Fueled the Popularity of These Products Among Kids**

The evidence is clear that flavored e-cigarettes, like mint, mango and gummy bear, have fueled this epidemic. 2016 Surgeon General Report on e-cigarettes concluded

that, “E-cigarettes are marketed by promoting flavors and using a wide variety of media channels and approaches that have been used in the past for marketing conventional tobacco products to youth and young adults.”<sup>62</sup>

In recent years, there has been an explosion of sweet-flavored e-cigarettes. As of 2017, there were more than 15,500 unique e-cigarette flavors available online, including many kid-friendly flavors like gummy bear, cotton candy, and peanut butter cup.<sup>63</sup> Research shows that flavored products are not only popular among youth, but may play a role in initiation and uptake of tobacco products. The 2016 Surgeon General Report on e-cigarettes concluded that flavors are among the most commonly cited reasons for using e-cigarettes among youth and young adults.<sup>64</sup>

- Data from the 2016-2017 wave of the government’s Population Assessment for Tobacco and Health (PATH) study found that 70.3% of current youth e-cigarette users say they use e-cigarettes “because they come in flavors I like.”<sup>65</sup>
- The PATH study also found that found that 97% of current youth e-cigarette users had used a flavored e-cigarette in the past month.<sup>66</sup>
- 57.3% of high school e-cigarette users use mint or menthol flavors, an increase from 38.1% in 2018.<sup>67</sup> Among 10<sup>th</sup> and 12<sup>th</sup> grade Juul users, mint is the most popular flavor.<sup>68</sup>

If anything, these official government figures under report the percentage of youth who use flavored e-cigarettes. Talk to any teacher, school principal or high school student and they will tell you that virtually every kid who uses an e-cigarette, uses a flavored e-cigarette. It is the reason that banning flavored e-cigarettes is an essential step in reversing the youth e-cigarette epidemic. Anything less will fail.



The use of flavors in e-cigarette products is of even greater concern because e-cigarettes are the subject of extensive advertising campaigns, and there is evidence that young people are exposed to significant amounts of e-cigarette advertising. By

mimicking the tobacco industry's strategies, including celebrity endorsements, slick TV and magazine advertisements, and sports and music sponsorships, e-cigarette advertising has effectively reached youth and young adults. The 2019 NYTS found that 7 out of 10 middle and high school students—18.3 million youth—report being exposed to e-cigarette advertisements.<sup>69</sup>

When Juul was first launched in 2015, the company used colorful, eye-catching designs and youth-oriented imagery and themes, such as young people dancing and using Juul. Juul's original marketing campaign included billboards, YouTube videos, advertising in Vice Magazine, launch parties and a sampling tour. A report by Stanford University researchers concluded that Juul's launch marketing was "patently youth oriented" and closely resembled the themes and tactics used by the tobacco industry for decades.<sup>70</sup> Posts on social media platforms like Twitter and Instagram also fueled Juul's popularity among youth.<sup>71</sup> Social media promotion included influencers – social media stars with large numbers of online followings who were paid to recommend Juul and post photos with the product. These influencers created tremendous interest and enthusiasm for the product. E-cigarette companies market extensively on product websites and maintain a strong presence on social media sites popular among youth, like Facebook, YouTube, Instagram, and Twitter.<sup>72</sup> E-cigarette manufacturers have also placed ads on search engines and websites that focus on music, entertainment, and sports and which often have substantial youth and young adult audiences.<sup>73</sup>

Juul claims that it has "voluntarily" stopped marketing on social media, but Juul made that announcement only after it faced severe public criticism. There is nothing to prevent Juul from reversing its public position about where and how it will market its products as soon as public scrutiny fades. Indeed, in other countries Juul has continued to engage in the type of marketing and advertising that fueled the US youth e-cigarette epidemic so that its temporary decision in the US should be seen as nothing more than an effort to deflect public scrutiny and not even a corporate commitment to stop marketing to kids. Government action is the only way to protect our kids.

### **Trump Administration's E-Cigarette Policy Leaves Thousands of Flavored E-Cigarettes on the Market**

The Trump Administration's policy, announced on January 2, 2020, exempts all menthol and tobacco flavored e-cigarettes and only restricts flavors in some cartridge-based e-cigarettes, leaving flavored e-liquids in every imaginable flavor widely available. Only the elimination of all flavored e-cigarettes can end the worsening youth e-cigarette epidemic and stop e-cigarette companies from luring and addicting kids with flavored products. States and localities must act to ban all flavored e-cigarettes and eliminate the loopholes in the federal policy.

### 1. Disposable flavored e-cigarettes will remain widely available



The e-cigarette industry has already introduced the next new fad – cheap, disposable e-cigarettes in flavors such as strawberry, grape and mango.<sup>74</sup> These devices are appealing to youth due to their high nicotine levels, wide range of flavors, ease of use, and concealability.

### 2. 15,000+ flavored e-liquids will remain widely available



There are well over 15,000 flavored e-liquids available on the market today. These flavors often mimic candy, sweets and fruits and come in varying nicotine strengths, sometimes even higher than in Juul (a 5% Juul pod delivers the equivalent nicotine of a pack of cigarettes). Also, purchasing e-liquid by the bottle is often cheaper than purchasing Juul pods, making them even more appealing to price-sensitive youth.

### 3. Popular open systems will remain widely available, including refillable Juul-compatible pods



After Juul, Smok and Suorin are the most popular e-cigarette devices among high school students. More than one out of ten high school e-cigarette users report that their preferred brand is Smok or Suorin (7.8% for Smok and 3.1% reported for Suorin).<sup>75</sup>

These devices are sold empty and can be filled with any of the thousands of flavored e-liquids, and various nicotine strengths, that will remain on the market. In addition, empty Juul-compatible pods are already being sold and can be filled with any of the thousands of e-liquids that will remain on the market.

#### 4. Juul and other menthol-flavored pods will remain widely available



The tobacco industry has known for decades that menthol appeals to youth, since half of youth who have ever tried smoking started with menthol flavored cigarettes. There is no reason to believe that menthol e-cigarettes will not be equally appealing to kids – especially if they are the only available flavor for pod products. The Wall Street Journal even reported in September that JUUL was considering rebranding their best-selling mint flavor as menthol to keep it on the market,<sup>76</sup> and other brands are sure to follow suit given the loopholes in the guidance. Data from the 2019 National Youth Tobacco Survey show that over half (57.3%) of high school e-cigarette users use mint or menthol flavored e-cigarettes. This is an increase from just 16% in 2016.<sup>77</sup> The evidence indicates that if any e-cigarette flavors are left on the market, kids will shift from one flavor to another. In November 2018, Juul removed other flavors – but not mint and menthol – from stores. In response, youth easily substituted mango and fruit with mint and menthol. From 2018 to 2019, youth use of fruit flavors fell, while youth use of mint and menthol flavors increased by 50%.<sup>78</sup>

#### 5. Flavored e-cigarettes will remain widely accessible

Between gas stations, convenience stores and vape shops, there are well over a hundred thousand access points where youth can get these products and devices. Kids will be enticed by a wide range of options: flavored disposable e-cigarettes; sleek, open systems with unlimited flavor options; or menthol pods.

### Conclusion

We are facing an epidemic in youth e-cigarette use. Parents, school officials, and health care providers from across the country have recognized that a new generation of young people are becoming addicted to nicotine with potentially devastating long term consequences. In addition, largely because of the marketing of flavored cigars and

menthol cigarettes, higher rates of smoking and other forms of tobacco use persist among populations the tobacco industry has targeted, especially African-Americans, burdening these communities with higher rates of cancer, heart disease, and pulmonary disease attributable to tobacco use. These challenges will not go away absent strong, clear and decisive government action.

The scientific evidence leaves no doubt that flavored tobacco products, including flavored e-cigarettes and menthol cigarettes, increase the number of people, particularly kids, who initiate tobacco use and become addicted. Prohibiting the sale of menthol cigarettes and other flavored tobacco products is an essential step toward protecting our children and our community from the tobacco industry's aggressive efforts to hook children to these dangerous, addictive products.

This issue is quite simple—it is about common sense and protecting our kids and populations that tobacco industry has targeted and continues to target.

Eliminating health disparities and many of the factors that disproportionately impact many of our citizens can be complicated and difficult to solve. But we have the tools and ability to dramatically reduce the health disparities caused by tobacco use in our city.

Thank you for the opportunity to testify on this important issue.

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<sup>1</sup> National: U.S. Department of Health and Human Services (HHS), "The Health Consequences of Smoking – 50 Years of Progress A Report of the Surgeon General 2014. State: Centers for Disease Control and Prevention (CDC), *Best Practices for Comprehensive Tobacco Control Programs—2014*, [http://www.cdc.gov/tobacco/stateandcommunity/best\\_practices/](http://www.cdc.gov/tobacco/stateandcommunity/best_practices/).

<sup>2</sup> HHS, *Preventing Tobacco Use Among Youth and Young Adults, A Report of the Surgeon General*, 2012, <http://www.cdc.gov/Features/YouthTobaccoUse/>.

<sup>3</sup> TPSAC, FDA, "Menthol Cigarettes and Public Health: Review of the Scientific Evidence and Recommendations, 2011, <https://wayback.archive-it.org/7993/20170405201731/https://www.fda.gov/downloads/AdvisoryCommittees/CommitteesMeetingMaterials/TobaccoProductsScientificAdvisoryCommittee/UCM269697.pdf>.

<sup>4</sup> Ambrose, BK, et al., "Flavored Tobacco Product Use Among US Youth Aged 12-17 Years, 2013-2014," *Journal of the American Medical Association*, published online October 26, 2015.

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