



February 13, 2020

TO: The Honorable Delores G. Kelley, Chair
The Honorable Brian J. Feldman, Vice Chair
Members of the Senate Finance Committee
3 East
Miller Senate Office Building
Annapolis, MD 21401

FROM: Jocelyn Collins, Maryland and DC Government Relations Director
American Cancer Society Cancer Action Network
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SUBJECT: SB 233 Business Regulation—Flavored Tobacco Products—Prohibition

POSITION: SUPPORT

The American Cancer Society Cancer Action Network (ACS CAN) is the nonprofit, nonpartisan advocacy affiliate of the American Cancer Society. We support evidence-based policy and legislative solutions designed to eliminate cancer as a major health problem. On behalf of our constituents, many of whom have been personally affected by cancer, we stand in strong support of **SB 233 Business Regulation—Flavored Tobacco Products—Prohibition**.

Data from the 2019 National Youth Tobacco Survey show youth use of e-cigarettes in high schools skyrocketed, with a 135% increase over the past two years. Survey results also show that 27.5% of high school students used e-cigarettes in the last 30 days.¹ Nearly 64% used mint or menthol flavored e-cigarettes, only 2% less than fruit flavored products and significantly more than candy flavors.² Research also shows that 97 percent of current youth e-cigarette users used a flavored product in the past month, and 70 percent cite flavors as a key reason for their use.

In Maryland, 18.2% of adults use any tobacco product, including 12.5% who use cigarettes.³ While 5.0% of Maryland high school students smoke cigarettes, 6.0% smoke cigars, 4.6% use smokeless tobacco, and 23% use electronic smoking devices.⁴ We know that most current smokers were enticed to begin this deadly addiction as youth, and most report beginning with a flavor.

¹ Office of the Commissioner, "Trump Administration Combating Epidemic of Youth E-Cigarette Use with Plan to Clear Market of Unauthorized, Non-Tobacco-Flavored E-Cigarette Products," U.S. Food and Drug Administration (FDA, September 11, 2019), <https://www.fda.gov/news-events/press-announcements/trump-administration-combating-epidemic-youth-e-cigarette-use-plan-clear-market-unauthorized-non>.

² Office of the Commissioner, "Trump Administration Combating Epidemic of Youth E-Cigarette Use with Plan to Clear Market of Unauthorized, Non-Tobacco-Flavored E-Cigarette Products," U.S. Food and Drug Administration (FDA, September 11, 2019), <https://www.fda.gov/news-events/press-announcements/trump-administration-combating-epidemic-youth-e-cigarette-use-plan-clear-market-unauthorized-non>.

³ Maryland Department of Health. BRFSS 2018. Unpublished. Local Health Department Tobacco Control Meeting, November 21, 2019.

⁴ Maryland Department of Health. YRBS/YTS 2019. Unpublished. Local Health Department Tobacco Control Meeting, November 21, 2019.

As a result of targeted marketing, while the use of traditional cigarettes have declined, the sale of menthol cigarettes have steadily increased, especially among young people and new smokers. Menthol makes it easier to start smoking by masking the harshness of tobacco smoke. As a result, over half of youth smokers use menthol cigarettes; among African American youth smokers, seven out of ten use menthol cigarettes. In addition, there are now over 250 different cigar flavors, and cigars surpass cigarettes in popularity among high school boys nationwide.

In addition to youth, African American, LatinX, and LGBTQ communities have been heavily targeted with menthol cigarette marketing. Quitting menthol cigarettes is particularly difficult, so those who initiate with menthol are more likely to become addicted and less likely to quit. Leaving menthol cigarettes in our communities is a matter of social justice and leaves those already most impacted by health disparities vulnerable to the aggressive marketing of the tobacco industry.

The 2020 Surgeon General *Smoking Cessation: A Report of the Surgeon General* released on January 23, 2020 noted that an “endgame” strategy that could further bolster tobacco cessation would be to **restrict the sale of flavored tobacco products, including menthol.**⁵

Cities across the country have already acted to prohibit the sale of all flavored tobacco products. Over 80 localities in California, Colorado, Minnesota, Massachusetts and New York, and the State of Massachusetts have done so. And many other communities and states are currently considering similar proposals. months and years. It’s now Maryland’s turn!

I strongly urge you to protect youth from all flavored tobacco products, including flavored cigars, menthol cigarettes, hookah, and smokeless tobacco and vote “favorably” for this legislation.

Thank you.













Sincerely,

Jocelyn Collins
Maryland and DC Government Relations Director
American Cancer Society Cancer Action Network

⁵ U.S Department of Health and Human Services (HHS). *Smoking Cessation: A Report of the Surgeon General- Executive Summary*. Rockville, MD. U. S. Department of Health and Human Services, Public Health Service, Office of the Surgeon General; 2020. Available at <https://www.hhs.gov/sites/default/files/2020-cessation-sgr-executive-summary.pdf>.

Support HB 3/SB 233

The Only Comprehensive Legislation That Protects Kids and Communities of Color from Tobacco Addiction

	Includes ALL flavored tobacco products	Prohibits manufacture, shipment, import, and sale of flavored tobacco products	Holds retailers liable for selling or offering flavored tobacco products	Prevents new flavored tobacco products from entering the market
HB 3/SB 233 (Del. Davis & AG Frosh)	 Covers all flavored tobacco products, including but not limited to e-cigarettes, menthol cigarettes, flavored cigars, hookah, and flavored smokeless tobacco	 A violation is a misdemeanor punishable by maximum penalties of a \$1,000 fine and/or 30- day imprisonment. This includes online sales	 A violation is a misdemeanor punishable by maximum penalties of a \$1,000 fine and/or 30- day imprisonment	 Banning all flavored products will stop new products that circumvent current regulations from reaching Maryland kids
SB 410 (Sen. Kramer)	 Covers only flavored electronic smoking devices (e-cigarettes) that come in “artificial or natural flavors”. Allows the sale of flavored tobacco products kids prefer, like menthol cigarettes *	 Prohibits the sale of certain flavored electronic smoking devices in the state. It does not address manufacture, shipment or import	 A violation is a misdemeanor punishable by maximum penalties of a \$1,000 fine and/or 30- day imprisonment	 Addresses only a portion of the flavors and products on the market (e-cigarettes). Would not prevent new products that target regulatory loopholes from reaching kids
SB 54 (Sen. Lam)	 Covers only flavored e-cigarettes that come in ‘artificial or natural flavors’. Allows the sale of other flavored tobacco products that kids prefer, like menthol cigarettes *	 Prohibits the sale, manufacture, shipment, import, or sale of some flavored e-cigarette products	 Does not have a fine enforcement structure; leaves it to the comptroller’s discretion	 Addresses a portion of the flavors and products on the market (e-cigarettes). Would not prevent new products that target regulatory loopholes from reaching kids

* More than half (54%) of all youth smokers ages 12-17 use menthol cigarettes



February 5, 2020

**The Honorable Delores G. Kelley, Chair
The Honorable Brian J. Feldman, Vice Chair
Members of the Senate Finance Committee
Miller Senate Office Building, 3 East Wing
11 Bladen St.
Annapolis, MD 21401**

**The Honorable Dereck E. Davis, Chair
The Honorable Kathleen Dumais, Vice Chair
Members of the House Economic Matters Committee
MD House of Delegates
6 Bladen St., Room 231
Annapolis, MD 21401**

**The Honorable Shane Pendergrass, Chair
The Honorable Joseline A. Pena-Melnyk, Vice Chair
Members of the House Government Operations Committee
6 Bladen St., Room 241
Annapolis, MD 21401**

Dear Chairman Kelley, Chairman Davis, Chairman Pendergrass, Members of the Senate Finance Committee, Members of the House Economic Matters Committee, and Members of the House Government Operations Committee:

It's not an accident that e-cigarette use by high school students increased by 135 percent from 2017 to 2019. In addition to selling and marketing products that come in kid-friendly candy and fruit flavors, tobacco companies together with the Vapor Technology Association and Maryland Vapor Alliance continue to lobby hard to ensure these products are not regulated by evidence-based tobacco control policies like HB 3/SB 233. Tobacco companies and their allies have created the problem, it would be foolish to trust them to fix it.

The use of flavored tobacco products by youth and young adults is high. In 2019, an estimated 4.3 million middle and high school students used a flavored product in the last 30 days.¹ Approximately 70 percent of students who used tobacco used a flavored product according to a Centers for Disease Control and Prevention (CDC) study.¹ Furthermore, another study found that more than 80 percent of teens who had ever used a tobacco product started with a flavored product.²

1. Centers for Disease Control and Prevention. Tobacco Use Among Middle and High School Students—United States, 2019. Morbidity and Mortality Weekly Report, 2019;68(12);1–22.
2. Ambrose et al. Flavored tobacco product use among U.S. youth aged 12–17 years, 2013–2014. JAMA, 2015; 314(17): 1871–3.

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Flavors are a marketing weapon the tobacco manufacturers use to target youth and young people to a lifetime of addiction. Altering tobacco product ingredients and design, like adding flavors, can improve

the ease of use of a product by masking harsh effects, facilitating nicotine uptake, and increasing a product's overall appeal.¹ Candy, fruit, mint and menthol flavorings in tobacco products are a promotional tool to lure new, young users, and are aggressively marketed with creative campaigns by tobacco companies.² Products with flavors like cherry, grape, cotton candy, and gummy bear are clearly not aimed at established, adult tobacco users and years of tobacco industry documents confirm the intended use of flavors to target youth.³

There are a number of tobacco products that come in a variety of flavors. Large cigars and cigarillos, which can resemble either "little cigars" or large cigars, can come in a variety of flavors. Cigars were the most popular product among black high school students. Among all teen cigar users, more than 41 percent had smoked a flavored cigar in the past 30 days in 2019.⁴ According to another study, in 2014, more than 70 percent of teens who have ever smoked a cigar smoked a flavored product.⁵

Additionally, long before cigarette companies started adding fruit, candy, and alcohol flavorings to cigarettes, they were manipulating levels of menthol to addict new, young smokers. Menthol acts to mask the harsh taste of tobacco with a minty flavor and by reducing irritation at the back of the throat with a cooling sensation. Additionally, menthol may enhance the delivery of nicotine. Knowing that youth who experience less negative physiological effects of smoking are more likely to continue smoking regularly, the tobacco industry has spent decades manipulating its menthol brand-specific product line to appeal to youth and, in particular, African Americans.

Cities across the country have already acted to restrict the sale of all flavored tobacco products, including menthol cigarettes and flavored cigars. Over 80 communities in California, Colorado, Minnesota, Massachusetts and New York, and the State of Massachusetts have done so. Maryland is a leader on combatting tobacco use, and I am asking you to continue that tradition now by protecting our youth and the public health in our State.

The American Cancer Society Cancer Action Network (ACS CAN) position has not changed: **we support several critical policy approaches to reduce youth e-cigarette use without inadvertently incentivizing the use of other tobacco products. We firmly support the need to end the sale of all flavored tobacco products, including but not limited to, menthol cigarettes and flavored cigars.**

The recent FDA guidance falls well short of protecting our kids and continues to allow many flavored e-cigarettes and other flavored tobacco products proliferate the market. **However, this guidance does not preempt strong, comprehensive state and local policies that regulate the sale of all flavored tobacco products.**

1. FDA Guidance for Industry and FDA Staff, "General Questions and Answers on the Ban of Cigarettes that Contain Certain Characterizing Flavors (Edition 2) ("FDA Guidance on Characterizing Flavors").
2. Delnevo, C, et al., "Preference for flavoured cigar brands among youth, young adults and adults in the USA," Tobacco Control, epub ahead of print, April 10, 2014. King, BA, et al., "Flavored-Little-Cigar and Flavored-Cigarette Use Among U.S. Middle and High School Students," Journal of Adolescent Health 54(1):40-6, January 2014.
3. Carpenter CM, Wayne GF, Pauly JL, Koh HK, Connolly GN. New cigarette brands with flavors that appeal to youth: tobacco marketing strategies. Health Affairs. 2005; 24(6): 1601-1610.
4. Corey, CG, Ambrose BK, Apelberg BJ, King, BK. Flavored Tobacco Product Use Among Middle and High School Students – United States, 2014. MMWR, October 2, 2015; 64(38): 1066-1070.
5. Ambrose et al. Flavored tobacco product use among U.S. youth aged 12-17 years, 2013-2014. JAMA, 2015; 314(17): 1871-3.



The aggressive use of flavors and marketing tactics by the tobacco industry, rapid increased use of flavored products by youth and young adults, and under regulation of these products requires the public health community to take action to protect youth and young adults, and the public health at-large.

ACS CAN calls on you to end the sale of all flavored tobacco products, including but not limited to menthol cigarettes and flavored cigars and support HB 3/SB 233 without any exemptions.

Sincerely,

Marissa Brown
Senior Vice President, State and Local Advocacy
American Cancer Society Cancer Action Network

CC:

Jocelyn Collins, Maryland and DC Government Relations Director at the American Cancer Society Cancer Action Network

Attorney General Brian Frosh

Restricting the Sale of ALL Flavored Tobacco Products in Maryland (HB 3/SB 233)

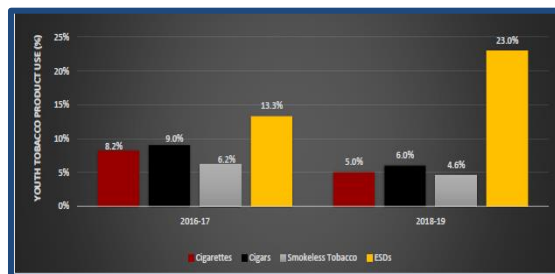


The American Cancer Society Cancer Action Network (ACS CAN) supports restricting the sale of all flavored tobacco products, including but not limited to menthol cigarettes and flavored cigars.

Protecting Maryland Youth from Tobacco

Maryland high school students currently use some form of tobacco:¹

- 5.0 percent currently smoke cigarettes
- 6.0 percent currently smoke cigars
- 4.6 percent currently use smokeless tobacco
- 23.0 percent currently use electronic smoking devices



Source: Maryland Department of Health. YRBS/YTS 2019. Unpublished.

Nationally, use of tobacco products by youth increased by 36 percent from 2017 to 2018, driven by a substantial increase in e-cigarette use.² Furthermore, the use of flavored tobacco products by young adults is nearly 73%.

Flavors Hook Kids

The dangers of flavored tobacco do not just start and end with electronic smoking devices. There are over 15,000 flavors including but not limited to cotton candy, gummy bear, mango, mint, and menthol.



80% of youth who have ever used tobacco started with a flavored product.³ According to the FDA, 70% of youth electronic smoking device users say these use electronic smoking devices because they come in appealing flavors.⁴

Additionally, the 2019 National Youth Tobacco Survey, **mint and menthol** flavored e-cigarettes were the second most popular flavor category among high school users.⁵

Furthermore, the tobacco industry has targeted the marketing of these products to youth—especially among communities of color and LGBTQ youth—as they attempt to lure kids into a lifetime of addiction.

Menthol and Flavored Cigars

Menthol in particular, is a flavor proven to be especially addictive and hard to quit. Allowing menthol flavored products to stay on store shelves disproportionately, negatively impacts communities of color, LGBT communities



¹ Maryland Department of Health. YRBS/YTS 2019. Unpublished. Local Health Department Tobacco Control Meeting, November 21, 2019.

² Centers for Disease Control and Prevention. Tobacco Use Among Middle and High School Students—United States, 2011–2018. *Morbidity and Mortality Weekly Report*, 2019;68(6):157–164.

³ 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 26 October 2015.

⁴ FDA, Guidance for Industry: Modifications to Compliance Policy for Certain Deemed Tobacco Products, 14 March 2019.

⁵ Cullen KA, Gentzke AS, Sawdey MD, et al. e-Cigarette Use Among Youth in the United States, 2019. *JAMA*. 2019;322(21):2095–2103. doi:<https://doi.org/10.1001/jama.2019.18387>

and lower socioeconomic communities and leads to higher unequal burden of disease and death.

Nationally, 42% of middle school students and 46% of high school students who use tobacco products smoke menthol cigarettes. Knowing that youth who experience less negative physiological effects of smoking are more likely to continue smoking regularly, the tobacco industry has spent decades manipulating its menthol brand-specific product line to appeal to youth, communities of color, and the LGBTQ communities.

Little cigars, cigarillos, and large cigars are offered in a variety of flavors including candy and fruit flavors such as sour apple, cherry, grape, chocolate and menthol. So-called “little cigars” have the look and feel of a cigarette, and are smoked like a cigarette, yet are often sold individually and have likely benefited the most from the cigarette flavor prohibition.



In fact, in 2016, the U.S. Food and Drug Administration (FDA) sent warning letters to four tobacco manufacturers stating that they were illegally selling flavored cigarettes labeled as “little cigars.”⁶ Cigars were the most popular product among black high school students.⁷ Among all teen cigar users, more than 60 percent had smoked a flavored cigar in the past 30 days in 2014,⁸ according to another study, more than 70 percent of teens who have ever smoked a cigar smoked a flavored product.⁹

Maryland must do more to protect kids

The U.S. Food and Drug Administration (FDA) released guidance in January 2020 that includes only a partial prohibition on flavors by allowing “vape shops” that sell open tank systems to continue to sell fruit, candy, mint and menthol flavors that have hooked a new generation of tobacco users. The guidance will also continue to allow the sale of menthol flavored e-cigarettes in all locations, abandoning previous commitments by the Administration to clear the market of all e-cigarette flavors in response to a growing epidemic of youth use.

This FDA guidance falls well short of protecting our kids and won’t meaningfully address the epidemic of youth tobacco use. **However, this guidance does not preempt strong, comprehensive state and local policies that regulate the sale of all flavored tobacco products.**

ACS CAN will continue to work in Maryland to advance and implement effective tobacco control policies that make up for the shortcomings of the FDA’s guidance, such as restricting the sale of all flavored tobacco products, including but not limited to menthol cigarettes and flavored cigars.

⁶ <https://www.fda.gov/newsevents/newsroom/pressannouncements/ucm532563.htm>

⁷ Centers for Disease Control and Prevention. Tobacco Use Among Middle and High School Students—United States, 2011–2018. Morbidity and Mortality Weekly Report, 2019;68(6):157–164.

⁸ Corey, CG, Ambrose BK, Apelberg BJ, King, BK. Flavored Tobacco Product Use Among Middle and High School Students – United States, 2014. MMWR, October 2, 2015; 64(38): 1066-1070.

⁹ Ambrose et al. Flavored tobacco product use among U.S. youth aged 12-17 years, 2013-2014. JAMA, 2015; 314(17): 1871-3.

Summary of FDA's January 2020 Guidance on Flavored E-cigarettes



On January 6, 2020 the U.S. Food and Drug Administration (FDA) released a new tobacco industry guidance on certain flavored e-cigarettes. The *"Enforcement Priorities for Electronic Nicotine Delivery Systems (ENDS) and Other Deemed Products on the Market Without Premarket Authorization"* states that the FDA will prioritize enforcement of only certain flavored e-cigarette products starting February 6, 2020 by removing these products from the market.

Under the Family Smoking Prevention and Tobacco Control Act (TCA), all *new* tobacco products that are currently on the market without FDA authorization are considered illegally marketed products. FDA may use its enforcement authority to order the removal from the market of all illegally marketed products. A new tobacco product is defined in the TCA that was not commercially marketed in the United States as of February 15, 2007. Almost all e-cigarette products and many cigars, hookah tobacco and smokeless products meet the definition of a new tobacco product.

Prohibited Flavored Products

FDA will use its enforcement authority to remove from the market some flavored cartridge-based e-cigarettes except for tobacco- and menthol-flavored products. Cartridge-based e-cigarettes are defined as those that consist of, include, or involve a cartridge or pod that holds liquid to be aerosolized. A cartridge or pod is any small, enclosed unit designed to fit with an e-cigarette. It can be sealed or unsealed.

In addition, the guidance states FDA will use its enforcement authority to order removal of products that target youth and young adults and products for which the manufacturer has failed to prevent youth access to the products. The guidance does not provide any specificity on how these provisions would be enforced and there is little certainty of their impact.

Flavored Products Still Permitted

FDA will not use its enforcement authority to remove from the market other kinds of e-cigarettes, including self-contained disposable products, and open, refillable systems, and e-liquids used to fill them. Nor will FDA use its enforcement authority to remove from the market other flavored new tobacco products, including flavored cigars, hookah tobacco, and smokeless. Therefore, e-liquids, open, refillable e-cigarette products, self contained disposable e-cigarette products, cigars, hookah tobacco, and smokeless tobacco in any flavor will still be permitted to be on the market. Tobacco- and menthol-flavored cartridge-based e-cigarettes will also still be permitted.

In addition, the guidance does not place any restrictions on where these products can be sold (for example, in "vape shops" or by retailers that only permit entry to individuals over the age of 21 at all times).

Menthol cigarettes are not and could not be addressed through guidance because they are not a new tobacco product illegally on the market. FDA would have to use other authorities, such as a product standard, to address menthol cigarettes.

FDA Authorization of New Tobacco Products

This guidance on the removal from market of only certain flavored e-cigarettes does not change the federal requirement that any new product must receive marketing authorization from the FDA. As a reminder, all

new tobacco products that are currently on the market without FDA authorization are illegally marketed products. As a result of a lawsuit brought by the American Cancer Society Cancer Action Network (ACS CAN) and other tobacco control organizations, the court has mandated deadlines for the marketing authorization process. Manufacturers of new products must submit their marketing authorization applications to FDA by May 12, 2020. If an application is not submitted, the product should be removed. If the application is submitted, the product can remain on the market for up to one year or until FDA determines whether to authorize the product; whichever date is earlier.

FDA states in this guidance that it will prioritize enforcement of the premarket review requirements for e-cigarettes prior to the May 12, 2020 deadline, but importantly, it is still up to individual manufacturers to submit their applications prior to the deadline. FDA also acknowledges it may not have the resources to remove every illegally marketed new tobacco product and therefore will use its enforcement discretion on a case-by-case basis after the May 12, 2020 deadline. Factors FDA could consider in prioritizing enforcement of market availability could include youth and young adult use of certain tobacco products, including the use of flavor products.

ACS CAN's Position:

The aggressive use of flavors and marketing tactics by the tobacco industry, the rapid increased use of flavored tobacco products by youth and young adults, and under-regulation of these products requires the public health community to take action to protect youth and young adults, and the public health at-large. The FDA's guidance on certain flavored e-cigarettes is woefully insufficient to address the current youth tobacco epidemic. ACS CAN supports several strategies:

- ❖ **Federal Restrictions:** Congress or the FDA should prohibit the use of characterizing flavors, including menthol, in all tobacco products. A manufacturer of a new tobacco product, as defined by law, should be required, through premarket review, to prove that the use of a flavor is appropriate for the protection of public health.
- ❖ **State and Local Sales Restrictions:** Many states and localities are moving forward and enacting restrictions on the sale of flavored tobacco products and winning legal challenges to its laws. The TCA does not permit a state or locality from requiring a product standard, such as the removal of a flavor, but the law does preserve the ability for states and localities to regulate the sales of tobacco products. States and localities should pursue policy options including restrictions or a complete prohibition of the sale of flavored tobacco products, including menthol cigarettes, while taking into consideration what is permitted in a specific jurisdiction.

Flavors in Tobacco Products

Attracting & Addicting Youth



Flavors are a marketing weapon the tobacco manufacturers use to target youth and young people to a lifetime of addiction. Altering tobacco product ingredients and design, like adding flavors, can improve the ease of use of a product by masking harsh effects, facilitating nicotine uptake, and increasing a product's overall appeal.ⁱ Candy, fruit, mint and menthol flavorings in tobacco products are a promotional tool to lure new, young users, and are aggressively marketed with creative campaigns by tobacco companies.ⁱⁱ Products with flavors like cherry, grape, cotton candy, and gummy bear are clearly not aimed at established, adult tobacco users and years of tobacco industry documents confirm the intended use of flavors to target youth.ⁱⁱⁱ Furthermore, youth report flavors a leading reason they use tobacco products and perceive flavored products as less harmful.^{iv}

The use of any flavored tobacco product among youth is concerning because it exposes them to a lifetime of nicotine addiction, disease, and premature death.

Flavored Tobacco Products

Overall use of tobacco products by youth increased by 36 percent from 2017 to 2018, driven by a substantial increase in e-cigarette use.^{vi} Furthermore, the use of flavored tobacco products by youth and young adults is high. In 2014, an estimated 3.2 million middle and high school students used a flavored product in the last 30 days, or 70 percent of students who used tobacco used a flavored product according to a Centers for disease Control and Prevention (CDC) study.^{vii} Furthermore, another study found that more than 80 percent of teens who had ever used a tobacco product started with a flavored product.^{viii} Characterizing flavors, except for menthol and tobacco, are prohibited in cigarettes by federal law, but other tobacco products have benefited from not being covered by a similar regulatory restriction (see Spotlight on p.3).

Flavored e-cigarettes have proliferated on the market, with one study identifying more than 15,500 distinct flavors available to consumers, up from 7,700 unique e-cigarette flavors in 2014.^{ix} Flavors offered including fruit, candy, and menthol flavors, and were often paired with flashy marketing campaigns to appeal to youth. E-cigarettes are the mostly commonly used flavored tobacco product among high school students overall.

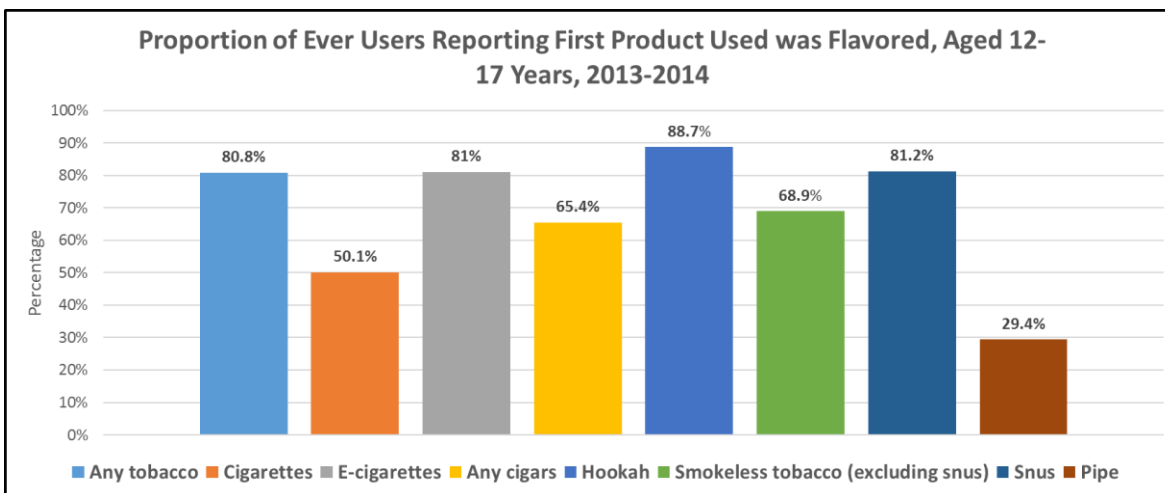
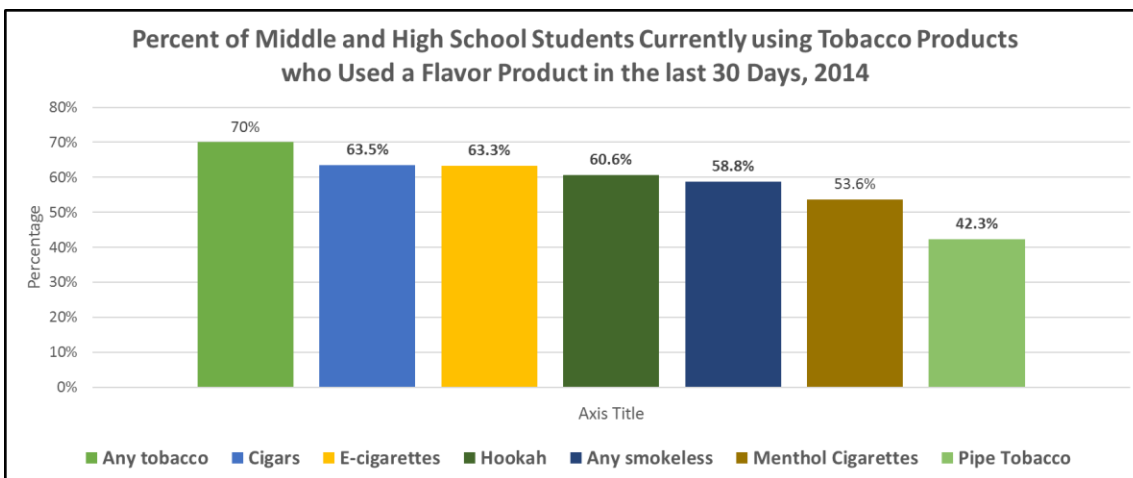
Data from the 2016-2017 PATH study, the largest national longitudinal study looking at tobacco use and its effects, found that among teens who use e-cigarettes, 97.0 percent regularly used a flavored product.^x Also, among those teens who had ever tried an e-cigarette, 96.1 percent used a flavor product for the first time. In 2018, among high school e-cigarette users, use of any flavored e-cigarette significantly increased from 60.9 percent to 67.8 percent and use of a menthol- or mint-flavored e-cigarette increased from 42.3 percent to 51.2 percent in just one year.^{xi} Among young adults who reported using e-cigarettes every or some days in 2013-2014 91.6 percent used a flavored product.^{xii}

So-called "little cigars" have the look and feel of a cigarette, and are smoked like a cigarette, yet are often sold individually and are available in a variety of flavors and have likely benefited the most from the cigarette flavor prohibition. In fact, in 2016, the U.S. Food and Drug Administration (FDA) sent warning letters to four tobacco manufacturers stating that they were illegally selling flavored cigarettes labeled as "little cigars."^{xiii} Large cigars and cigarillos, which can resemble either "little cigars" or large cigars, can come in a variety of flavors. Cigars were the most popular product among black high school students.^{xiv} Among all teen cigar users, more than 60 percent had smoked a flavored cigar in the past 30 days in 2014,^{xv} and

according to another study, more than 70 percent of teens who have ever smoked a cigar smoked a flavored product.^{xvi}

Smokeless tobacco companies have a long history of using flavorings, such as mint, cherry, apple, and honey, and other product manipulation to gradually get new, young users addicted to “starter” products, keep them using, and shift them on to more potent smokeless tobacco products. In 2014, almost 60 percent of middle and high school students who used smokeless tobacco had used a flavored product in the last month.^{xvii} According to another study, more than 70 percent of teens who had ever used smokeless tobacco used a flavored product the first time.^{xviii}

For waterpipe or hookah use, more than 60 percent of current middle and high school users used a flavored product^{xix}, and almost 90 percent of those surveyed who had ever smoked hookah used a flavored product the first time in 2014.^{xx} What’s troubling, is that the flavorings used in waterpipe tobacco, the sweet aromas and use of water make users misperceive this practice as safer than cigarette smoking.^{xxi} In fact, hookah tobacco and smoke are as dangerous as cigarettes, and contain carcinogens and other substances that can cause cancer and other diseases.^{xxii} An hour-long waterpipe or hookah session typically involves 200 puffs of smoke, whereas smoking a single cigarette typically involves 20 puffs of smoke.



SPOTLIGHT: Federal regulation of flavors in tobacco products

Recognizing the danger that flavors in cigarettes has in attracting and addicting new smokers, especially youth, the Family Smoking Prevention and Tobacco Control Act (TCA) of 2009 prohibited the use of characterizing flavors, except for menthol and tobacco, in cigarettes. Prior to the law, cigarette manufacturers aggressively marketed these flavored products, including “Twista Lime” and “Winter MochaMint,” with creative campaigns like “scratch and sniff” marketing tactics, DJ nights, ads in magazines with a high proportion of youth and young adult readers, and specially-themed packs to attract new young users.

To understand a consequence to limiting the flavor prohibition to only cigarettes and exempting menthol flavoring, an analysis evaluated youth tobacco use before and after the prohibition.^{xxvii} The analysis found a decrease in the likelihood of being a smoker (17.1 percent) and fewer cigarettes smoked (59 percent) associated with the flavor prohibition, but also a 45 percent increase in the probability that the youth smoker used menthol cigarettes.

Furthermore, the flavor prohibition was associated with increases in both cigar use (34.4 percent) and pipe use (54.6 percent). This suggests that youth smokers, in the absence of flavored cigarettes, are substituting with menthol cigarettes or cigars and pipe tobacco, for which the flavor prohibition does not apply.

As noted earlier, other tobacco product manufacturers are heavily promoting their flavored products, including e-cigarettes and cigars. FDA has since announced its intent to restrict the flavors in cigars and e-cigarettes, and prohibit menthol in cigarettes, but no action has been taken to date.

Menthol

Long before cigarette companies started adding fruit, candy, and alcohol flavorings to cigarettes, they were manipulating levels of menthol to addict new, young smokers. Menthol acts to mask the harsh taste of tobacco with a minty flavor and by reducing irritation at the back of the throat with a cooling sensation. Additionally, menthol may enhance the delivery of nicotine. Knowing that youth who experience less negative physiological effects of smoking are more likely to continue smoking regularly, the tobacco industry has spent decades manipulating its menthol brand-specific product line to appeal to youth and, in particular, African Americans. The FDA’s preliminary scientific investigation on menthol cigarettes concluded that the weight of the evidence supports menthol cigarette smoking with increased initiation and progression to smoking, increased dependency, and reduced cessation success, particularly among African American smokers.^{xxiii} Among youth in 2014, menthol use was high overall (53.6 percent), and even higher for non-Hispanic black students (70.5 percent).^{xxiv}

Adding insult to injury, tobacco manufacturers have aggressively targeted certain communities with their menthol products, leading to an unequal burden of death and disease. The overwhelming majority of all African-American smokers (70.5 percent) report smoking menthol cigarettes compared to about half of

white smokers (51.4 percent).^{xxv} Internal tobacco industry documents show that the tobacco companies were intentionally targeting African-Americans and other minorities through advertising in magazines with high readership by these populations, including youth, and by targeting specific neighborhoods with higher Hispanic and African-American populations with more advertising and promotions.^{xxvi}

ACS CAN's Position:

The aggressive use of flavors and marketing tactics by the tobacco industry, rapid increased use of flavored products by youth and young adults, and under regulation of these products requires the public health community to take action to protect youth and young adults, and the public health at-large. ACS CAN supports several strategies:

- ❖ **Federal Restrictions:** Congress or the FDA should prohibit the use of characterizing flavors, including menthol, in all tobacco products. A manufacturer should be required, through premarket review, to prove that the use of a flavor is appropriate for the protection of public health.
- ❖ **State and Local Sales Restrictions:** Many states and localities are moving forward and enacting restrictions on the sale of flavored tobacco products and winning legal challenges to its laws. The TCA does not permit a state or locality from requiring a product standard, such as the removal of a flavor, but the law does preserve the ability for states and localities to regulate the sales of tobacco products. States and localities should pursue policy options including restrictions or a complete prohibition of the sale of tobacco products with characterizing flavors, including menthol, while taking into consideration what is permitted in a specific jurisdiction.

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MARKETING MENTHOL: THE HISTORY OF TOBACCO INDUSTRY TARGETING OF AFRICAN AMERICANS

"Menthols in general do better among the very young, and among very young blacks, almost the entire market is accounted for by Kool, Salem and Newport."

-1974 research report prepared for Philip Morris¹

The tobacco industry has a long history of going to great lengths to target the African-American community. Decades of research and the tobacco industry's internal documents affirm that the industry employs multiple campaigns and strategies to aggressively target and reach African Americans. Dating back to the 1950s, the tobacco industry has targeted African Americans with marketing for menthol cigarettes through sponsorship of community and music events, targeted magazine advertising, youthful imagery, price discounting and marketing in the retail environment.

This aggressive targeted marketing has paid off. African-American smokers, both adults and youth, now overwhelmingly prefer menthol cigarettes. Overall, 85 percent of African-American smokers (ages 12+), including 71.3 percent of African American youth smokers smoke menthol cigarettes.² The popularity of menthol is also evident in the cigarette brand preferences of African American youth who smoke. According to data from the 2015 National Survey on Drug Use and Health, 69.1 percent of African-American youth ages 12-17 prefer Newport brand cigarettes.³ This preference for menthol cigarettes is the direct result of a decades-long marketing campaign by the tobacco industry.

The Early Days: Building a Market for Menthol⁴

The marketing of menthol cigarettes to the African-American community dates back to at least the 1950s. Salem led the menthol market in the 1950s and 1960s and is credited with establishing a popular market for menthols (menthols were initially a specialty cigarette, marketed for reducing throat irritability), but Kool overtook Salem in popularity in 1972.⁵ Brown & Williamson began targeting African-Americans with Kool cigarettes after a 1953 survey showed that five percent of African Americans preferred Kool compared to two percent of White Americans. Brown & Williamson seized the opportunity to capitalize upon this small preference margin, recognizing the marketing advantage of appealing to a newly urbanized and more concentrated population.⁶ The establishment of popular African American magazines like *Ebony* and *Jet* also provided marketing venues that had not previously existed for reaching African Americans.

Brown & Williamson took to the airwaves to market Kool, with an advertising budget exceeding that of the other tobacco companies in the 1960s. During this time, cigarette advertisements, many featuring famous black athletes, tripled in *Ebony*.⁷ The aggressive marketing campaign had a huge impact - from just 1968 to 1976, the percentage of African Americans smoking Kool jumped from 14 percent to 38 percent, with even greater preference for Kool among young African American males.⁸ An R.J. Reynolds analyst noted that, "Kool became 'cool' and, by the early 1970s, had a 56% share among younger adult Blacks—it was the Black Marlboro."⁹ Salem's successful initial promotion of the menthol category and Kool's



Kool advertisement, 1966
Image courtesy of Stanford Research into the Impact of Advertising (SRITA)

¹ Brown & Williamson merged with R.J. Reynolds in 2004, acquiring Kool. However, R.J. Reynolds and Lorillard merged in 2015, at which time R.J. Reynolds divested the Salem and Kool brands to ITG, while acquiring the Newport brand.

monopolization of the African American market played a significant role in the exponential growth of the menthol market, which grew by nearly 50 percent from 1956 to 1971.¹⁰

The “Menthol Wars”

Tobacco companies used multiple strategies to attract new customers in predominantly African American neighborhoods. When other tobacco companies realized Kool's growth initiated from targeting African Americans, they began competing for this market share with targeted marketing for Kool, Newport, Salem and Benson & Hedges. The companies contracted with “ethnic marketing firms” to conduct at least eight distinct campaigns targeting primarily African American populations: the Brown & Williamson Kool Van Program, the Brown & Williamson Kool Inner City Family Program, the Lorillard Inner City Sales Program, the Lorillard Newport Van Program, the Philip Morris Inner City Task Force, the Philip Morris Inner City Marketing Program, the R.J. Reynolds Black Market Program, and the R.J. Reynolds Black Young Adult Smoker Initiative (some of these programs continued into the 1990s).¹¹

Sampling and Mobile Van Programs

The tobacco companies considered sampling to be an important strategy for attracting new customers, and they employed mobile van programs in across the country to reach African Americans.

- Lorillard introduced the Newport Pleasure Van program in 1979 in New York, expanding to cities across the United States to distribute free samples and coupons. The Newport Pleasure Van program incorporated a plan to facilitate brand switching, by rewarding customers who provided the contact information of known competitive brand smokers. Newport continued the Pleasure Vans through 1994, by which time it had successfully gained dominance of the menthol market.¹²
- In the 1980s, as part of the Kool Market Development Program, vans (mimicking Lorillard's strategy) traveled through Houston to distribute free cigarette samples, a program which later expanded to 50 cities.¹³

“A total of 1.9MM samples will be distributed to targeted smokers in 1983. Sample distribution will be targeted to: housing projects, clubs, community organizations and events where Kool's black young adult target congregate.”

– Kool Market Development Program¹⁴

- R.J. Reynolds launched a van sampling program in Chicago that targeted nightclubs and neighborhood events with the Salem brand.

Retailer Programs

The tobacco companies developed specific strategies and specially designed product displays to adapt their point-of-sale marketing to smaller retailers that were more common in cities. Philip Morris implemented promotional programs and paid retailers to exhibit product displays and grow their inventory. Brown & Williamson launched its Kool Inner City Point of Purchase Program, later the Kool Inner City Family Program, with the explicit goal, “to reach the core of Kool's franchise (young, black, relatively low income and education),”¹⁵ with both retailer and consumer promotions.¹⁶



Kool advertisement, 1984
Image courtesy of Stanford Research into the Impact of Advertising (SRITA)

Music and Event Sponsorship

The tobacco companies also recognized the value of associating their brand with popular community events.

- Brown & Williamson used music as a way to target African Americans beginning in 1975 with the Kool Jazz Festival, and later the Kool City Jam, a free two-day concert.¹⁷
- R.J. Reynolds sponsored the “Salem Summer Street Scenes” festivals, during which they estimated reaching at least half of African Americans in Memphis, Detroit, Chicago, New York, and Washington, D.C.¹⁸
- Philip Morris sponsored “Club Benson & Hedges” promotional bar nights throughout the 1990s, targeting clubs frequented by African-Americans.¹⁹

Despite Kool and Salem’s dramatic rise and market share in the 1960s and 1970s, Newport’s aggressive marketing in the “Menthol Wars” era successfully doubled its share of the menthol market between 1981 and 1987, and in 1993 it became—and has remained—the market leader in sales of menthol cigarettes.²⁰

Appealing to Younger African Americans

Newport also grew its African American market share by purposefully attracting a younger consumer base.²¹ Industry documents show that the tobacco companies knew that while menthol cigarettes were attractive to younger smokers, novice smokers actually preferred cigarettes with a lower menthol content, whereas older smokers preferred more menthol content. With its lower menthol content, Newport had a market advantage with younger smokers, and the brand’s youthful advertising made it even more appealing.²²

Newport capitalized on the youth appeal of its product by employing youth-friendly marketing materials. In describing their Newport marketing strategy, Lorillard noted that, “Newport smokers perceive other Newport smokers as they do themselves—younger, outgoing, active, happy, warm, friendly, modern, extroverted.”²³ To this day, Newport cigarettes are advertised in magazines with imagery of young people—of various races—engaged in activities that look fun and social.

Recent Marketing Strategies

Menthol cigarettes continue to be heavily advertised to African-Americans in a variety of ways.

Point-of-Sale Targeting

Tobacco companies have taken advantage of the greater density of convenience stores and gas stations in lower-income and minority neighborhoods to heavily market and promote tobacco products. Their marketing strategies have included price discounts, promotional giveaways, heavy product placement and culturally tailored ad content at retail locations, both indoors and out. A wealth of research indicates that African American neighborhoods have a disproportionate number of tobacco retailers, pervasive tobacco marketing, and in particular, more marketing of menthol products.²⁴ In addition to being heavily advertised and widely available, certain tobacco products have been found to be priced lower in African American communities, making them more appealing, particularly to price-sensitive youth:

- A 2017 nationwide study found that stores in neighborhoods with the highest proportion of African Americans have more than double the odds of advertising price promotions for tobacco products, compared to stores in neighborhoods with the lowest proportion of African Americans.²⁵
- A 2011 study of cigarette prices in retail stores across the U.S. found that Newport cigarettes are significantly less expensive in neighborhoods with higher proportions of African Americans.²⁶
- A 2006 study of California smokers found that those who smoke menthol cigarettes are more likely to use promotional offers than non-menthol smokers.²⁷

The use of value-added or coupon promotions makes cigarettes more affordable to kids and those with less financial resources. In *U.S. v. Philip Morris* (the 2006 civil racketeering judgment against major cigarette manufacturers), the court specifically found that tobacco companies use strategic price reduction strategies such as coupons and multi-pack discounts to target young people.²⁸ According to the Surgeon General, “Because there is strong evidence that as the price of tobacco products increases, tobacco use decreases, especially among young people, then any actions that mitigate the impact of increased price and thus reduce the purchase price of tobacco can increase the initiation and level of use of tobacco products among young people.”²⁹



Price promotions for Camel cigarettes in Durham, NC. Photo courtesy CounterTobacco.Org

Disparities in advertising of tobacco products are particularly evident for menthol cigarette brands, which African Americans use more than any other racial or ethnic group:

- A 2013 study found that census tracts in St. Louis with a higher proportion of black residents had more menthol and total tobacco product marketing, and that census tracts with a higher proportion of black children had a higher proportion of menthol marketing near candy.³⁰
- The 2011 California Tobacco Advertising Survey reports that there were significantly more menthol advertisements at stores in neighborhoods with a higher proportion of African-American residents and in low-income neighborhoods.³¹
- Another 2011 California study found that as the proportion of African-American high school students in a neighborhood rose, the proportion of menthol advertising increased, the odds of a Newport promotion were higher, and the cost of Newport cigarettes was lower.³²
- A 2010 study that compared characteristics of storefront tobacco advertisements in a low-income, community with a large African-American population and a high-income, nonminority community found that the African-American community had more tobacco retailers and advertisements were more likely to be larger and promote menthol products.³³

Cultural Imagery

There is compelling evidence that tobacco companies not only advertise disproportionately in communities with large African-American populations, they also create advertising specifically targeted to these communities. Cigarette ads highly prevalent in African-American communities and publications are often 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.³⁴

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

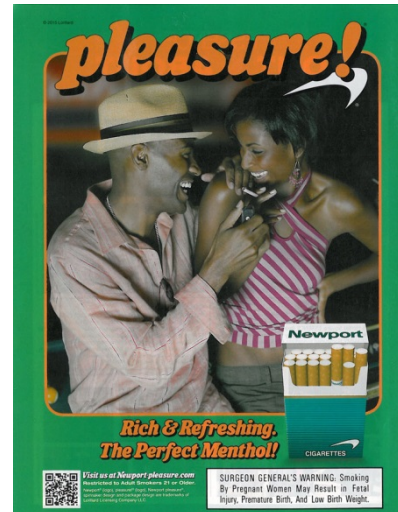


Kool Mixx cigarettes, 2004
Image courtesy of Stanford Research Into the Impact of Advertising

youth, especially African-American youth. Attorneys General from several states promptly filed motions against Brown & Williamson for violating the Master Settlement Agreement.³⁵ Simultaneously, Brown & Williamson promoted a new line of cigarette flavors like Caribbean Chill, Mocha Taboo, and Midnight Berry using images of African-Americans and themes attractive to African-American youth. These cigarettes were promoted through dance clubs and hip-hop music venues. In a similar vein, in the 1980s and 1990s, Uptown and “X” brand (emulating Malcolm X) cigarettes were also introduced, with the explicit aim of targeting African Americans, although these brand quickly failed due to community backlash.³⁶

Magazine Advertising

The tobacco industry’s strategy of targeting magazines with high African American readership, which began in the 1960s, continues. Expenditures for magazine advertising of mentholated cigarettes increased from 13 percent of total ad expenditures in 1998 to 76 percent in 2006.³⁷ During the two years after the Master Settlement Agreement (MSA) in November 1998, the average annual expenditures for Newport in magazines with high youth readership increased 13.2 percent (from \$5.3 to \$6.0 million).³⁸ 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.³⁹ 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.⁴⁰



Newport advertisement in *Essence Magazine*, February 2015
Image courtesy of TrinketsandTrash.Org

Tobacco Industry Philanthropy in the African American Community

The tobacco company’s decades long campaign to capture the African American market coincided with concerted efforts to forge ties with the African American community in an effort to build a positive brand identity. Since the 1950s, Philip Morris and Brown & Williamson have, at various times, been engaged with the National Urban League, the National Association for the Advancement of Colored People (NAACP), and the United Negro College Fund, and have provided funding and organizational support to a host of African American organizations.⁴¹ In addition, the tobacco industry has supported historically African American colleges and universities as far back as the 1890s when R.J. Reynolds helped to finance the founding of Winston Salem State University.⁴² However, industry documents reveal the companies’ true intentions in forming these relationships:

Brown & Williamson: “Clearly the sole reason for B&W’s interest in the black and Hispanic communities is the actual and potential sales of B&W products within these communities and the profitability of these sales...this relatively small and often tightly knit [minority] community can work to B&W’s marketing advantage, if exploited properly.”⁴³

Lorillard: “Tie-in with any company who help black[s] – ‘we help them, they help us.’”⁴⁴

Tobacco companies continue to contribute to African American organizations and political leaders.

- Recently, R.J. Reynolds funded the National Action Network, a civil rights organization founded by Reverend Al Sharpton, to conduct community forums to build opposition to local action to prohibit menthol cigarettes. These forums attempted to frame the issue as criminalization of the African American community, ignoring the devastating impact of the tobacco industry’s targeted marketing and the public health benefits of prohibiting menthol. In 2016 and 2017, these forums

occurred in Oakland, Los Angeles and Minneapolis.⁴⁵ In early 2019, a representative from NAN testified against proposed legislation in New York City to restrict the sale of menthol cigarettes.⁴⁶

- During the 2013-2014 election cycle, tobacco companies donated over \$100,000 to African American lawmakers and affiliated political action committees.⁴⁷
- As of 2017, Altria continues to contribute to the Congressional Black Caucus Foundation (CBCF), the California Black Chamber of Commerce Foundation, the California Legislative Black Caucus Policy Institute, and the National Black Farmers Association.⁴⁸ As of 2016, they also contributed to the National Black Caucus of State Legislators.⁴⁹ Both Reynolds and JUUL support the U.S. Black Chambers, Inc.⁵⁰ The President and Chief Executive Officer of CBCF from 2013-2018 was the former Vice President of Government Affairs Policy & Outreach for Altria Corporate Services, having worked for the tobacco industry for twenty years.⁵¹ In its 2016 Annual Report, CBCF reported receiving between \$100,000-\$249,000 from Altria and \$50,000-99,000 from R.J. Reynolds (RAI Services).⁵²
- Since the 1960s, the tobacco industry has supported the National Newspaper Publishers Association (NNPA), a trade association representing more than 200 African American-owned community newspapers.⁵³ The most recently available financials show that Reynolds gave over \$225,000 to the NNPA in 2017.⁵⁴ The President and CEO of NNPA has joined Rev. Al Sharpton of NAN in voicing opposition to local proposals to restrict the sale of menthol cigarettes.⁵⁵
- The National Black Chamber of Commerce (NBCC), the Congress of Racial Equality (CORE), the National Organization of Black Law Enforcement Executives (NOBLE), the National Black Police Association (NBPA) and Law Enforcement Action Partnership (LEAP), all of which have received industry funding, have voiced active opposition to proposals to extend the federal ban on flavored cigarettes to menthol.⁵⁶ NBPA even launched a campaign to encourage submission of public comments to FDA in opposition of extending the prohibition on flavors to menthol, resulting in over 36,000 comments submitted in opposition to the ban.⁵⁷ Representatives from LEAP and NOBLE have also presented at NAN's forums opposing local restrictions on menthol cigarettes.⁵⁸
- In 2014, Altria donated \$1 million to the Smithsonian's National Museum of African American History and Culture.⁵⁹

Other African American organizations have fought against the industry's targeted marketing. In 2016, the NAACP voted to adopt a resolution to support state and local restrictions on flavored tobacco products, including menthol (according to a spokesperson in 2016, the NAACP no longer receives tobacco industry funding).⁶⁰ Delta Sigma Theta, an African American sorority, approved a resolution in 2013 to urge FDA to prohibit menthol cigarettes.⁶¹ In 2018, both the NAACP and the National Urban League issued statements in support of FDA action to prohibit menthol cigarettes.⁶² In 2019, the NAACP testified in favor of proposed legislation in New York City to restrict the sale of menthol cigarettes.⁶³

Impact on the African American Community

Menthol cigarettes have had a profound negative impact on public health, and have had a particularly destructive impact on the African American community. In 2013, the U.S. Food and Drug Administration (FDA) released a report finding that menthol cigarettes lead to increased smoking initiation among youth and young adults, greater addiction, and decreased success in quitting smoking. The FDA and FDA's Tobacco Product Scientific Advisory Committee (TPSAC) concluded that African Americans are disproportionately burdened by the health harms of menthol cigarettes.⁶⁴ TPSAC, in its 2011 report to the FDA, estimated that by 2020, 4,700 excess deaths in the African American community will be attributable to menthol cigarettes, and over 460,000 African Americans will have started smoking because of menthol cigarettes.⁶⁵

African Americans suffer the greatest burden of tobacco-related mortality of any racial or ethnic group in the United States.⁶⁶ Each year, approximately 45,000 African Americans die from smoking-related disease.⁶⁷ Smoking-related illnesses are the number one cause of death in the African-American community, surpassing all other causes of death, including AIDS, homicide, diabetes, and accidents.⁶⁸ 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.⁶⁹

Campaign for Tobacco-Free Kids, February 28, 2019 / Laura Bach

More information on Tobacco and African Americans is available at
http://www.tobaccofreekids.org/facts_issues/fact_sheets/toll/populations/african_americans/.

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Tobacco Industry Targeting of Native Communities in the United States

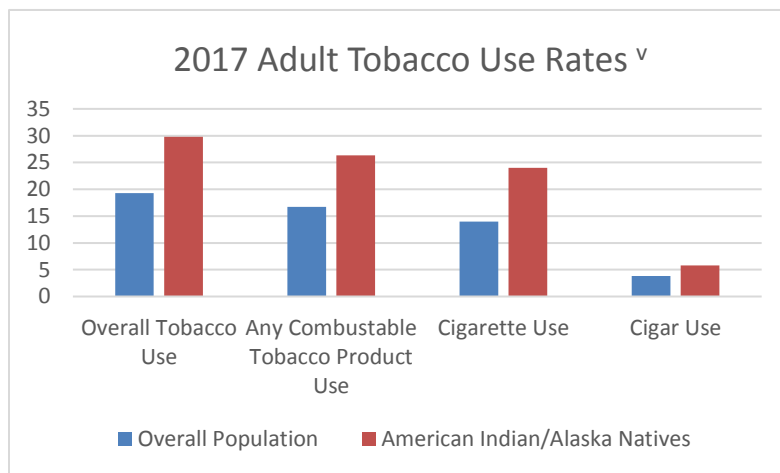


While overall smoking rates have declined in recent years, smoking rates remain higher among specific subpopulations. In the United States, tobacco-related health disparities persist within many Native populations, including American Indians, Alaska Natives, Native Hawaiians and other Pacific Islanders.ⁱ These differences are in large part due to the tobacco industry's targeting of vulnerable populations through targeted advertising, price discounting and other marketing strategies.ⁱⁱ

Tobacco Use and Its Health Effects Among Native Populations

Among adults in the United States, American Indians/Alaska Natives have the highest prevalence of cigarette smoking compared to all other racial/ethnic groups.ⁱⁱⁱ There are currently about 2.6 million American Indians/Alaska Natives in the U.S., or about 1% of the total population.^{iv}

Data from tribe-specific commercial tobacco surveys have found tobacco use rates as high as 63% for some Native populations.^v Similarly, recent data from Alaska indicates smoking prevalence rates for Alaska Natives is twice that seen in the non-native Alaska population.^{vi} Among adults nationwide, American Indian/Alaska Natives have the highest tobacco use rate of 29.8% compared to 19.3% overall among all adults.^{vii}



Youth tobacco use is also extraordinarily high among Native populations compared to other U.S. subpopulations. For the years 2014-2017, current use of any tobacco product by middle and high school students was highest among Native Hawaiians and other Pacific Islanders (23.4%) and American Indians and Alaska Natives (20.6%), both significantly higher than among all middle and high school students (14.3%).^{viii}

Lung cancer is the leading cause of cancer deaths among American Indians/Alaska Natives.^{ix,x,xii} American Indians/Alaska Natives also experience higher rates of other tobacco-related diseases.^{xiii,xiv}

Tobacco companies target American Indian/Alaska Native communities through extensive promotions, sponsorships, and advertising campaigns.

Tobacco Industry Targeting of Native Communities in the U.S.

Every year the tobacco industry spends \$9.4 billion marketing its deadly products in the U.S.^{xv} Tobacco companies target American Indian/Alaska Native communities through extensive promotions, sponsorships, and advertising campaigns.^{xvi} Some examples of tobacco industry behavior include:

- Aggressive sales and marketing strategies by major tobacco companies that exploit weaker commercial tobacco regulatory environments on many sovereign Tribal lands.^{xvii}
- Deep discounts on cigarette cartons sold on Native reservations.^{xviii}
- Free admission to Indian gaming facilities with tobacco product purchases, and also free tobacco product giveaways that are included with tribal casino event ticket purchases.^{xix}
- Free tobacco product samples offered at Native American rodeo events.^{xx}
- Free product samples of e-cigarettes offered to Tribal entities under the guise of a no-cost smoking cessation program.^{xxi}
- Industry alliances with Tribal leaders to help improve tobacco companies' corporate image, promote ineffective youth tobacco prevention programs, and block the adoption of strong tobacco control policies.^{xxii}
- Misappropriation of Native culture and misrepresentation of indigenous traditions, values and beliefs to sell more commercial tobacco products for profit.^{xxiii}

- ⁱ *Native Hawaiian or Other Pacific Islander* is defined as a person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands, as per the U.S. Government Printing Office's Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity, 1997. Accessed June 12, 2018.
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Tobacco Industry Targeting of the LGBT Community



While overall smoking rates have declined in recent years, smoking rates remain higher among specific subpopulations. These populations include individuals with lower educational attainment, lower socioeconomic status, from certain racial/ethnic groups, in the lesbian, gay, and bisexual community, with mental health conditions, and in the military particularly among those in the lowest pay grades. These differences are in large part due to the tobacco industry's targeting of vulnerable populations through advertising, price discounting and other marketing strategies.ⁱ Every year the tobacco industry spends \$9.5 billion marketing their deadly products in the United States.ⁱⁱ

“High rates of tobacco use within the LGBT community are due in part to the aggressive marketing by tobacco companies that sponsor events, bar promotions, giveaways, and advertisements.” – *Centers for Disease Control and Prevention*

Tobacco Use in the LGBT Community

In 2016 smoking rates among gay, lesbian, and bisexual individuals in the US are significantly higher than rates for straight individuals, 20.5 percent and 15.3 percent respectively.ⁱⁱⁱ Over one third (36 percent) of LGBT adults who smoke use menthol cigarettes, a higher rate than straight adults who smoke.^{iv} There is limited data available on smoking rates among transgender adults; however, one study found higher smoking rates among transgender adults than cisgender adults.^v

Every year more than 30,000 LGBT persons die from tobacco-related diseases.^{vi}

Tobacco Industry Targeting of LGBT Communities

Tobacco companies have utilized a variety of tactics to target LGBT communities. These have included:

- Developing marketing materials targeted at the LGBT community before most other industries.^{vii}
- Designing advertisements for LGBT publications that depict tobacco use as a “normal” part of LGBT life.^{viii}
- In 1995, one tobacco company created a marketing strategy known as “Project SCUM” or subculture urban marketing targeted at gay men and homeless individuals in San Francisco.^{ix}
- Using corporate philanthropy to demonstrate support of the LGBT community, another tobacco company settled a boycott by pledging a large donation to AIDS research, gaining them access to the LGBT market.^x
- Hosting promotions including LGBT bar nights featuring specific cigarette brands.^{xi}
- Sponsoring events at pride festivals. For example, one cigarette brand sponsored more than a dozen events at San Francisco’s pride festival alone in 2000.^{xii}
- Promoting menthol cigarettes which are easier to use and harder to quit.^{xiii}



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Tobacco Industry Targeting of Low-Income Populations



While overall smoking rates have declined in recent years, smoking rates remain higher among specific subpopulations. These populations include individuals with lower educational attainment, lower socioeconomic status, from certain racial/ethnic groups, in the lesbian, gay, and bisexual community, with mental health conditions, and in the military particularly among those in the lowest pay grades. These differences are in large part due to the tobacco industry's targeting of vulnerable populations through advertising, price discounting and other marketing strategies.ⁱ Every year the tobacco industry spends \$9.5 billion marketing their deadly products in the United States.ⁱⁱ

Tobacco Use Among Low-Income Communities

In 2016, 25.3 percent of individuals below the poverty level smoked compared to 14.3 percent of individuals at or above the poverty level.^{iv} Examining use of any tobacco product, 27.8 percent of individuals with household incomes below \$35,000 annually, compared to 20.1 percent of the population overall.^v

72 percent of people who smoke are from lower-income communities.ⁱⁱⁱ

Tobacco Industry Targeting of Low-Income Communities

Previously secret tobacco industry documents confirm the companies have utilized a variety of tactics to target low-income communities. These have included:

- Handing out free cigarettes to children in housing projects, particularly targeting low-income black children.^{vi}
- Providing tobacco coupons with food stamps by enclosing coupons for 25 cents off a pack of cigarettes in the envelope with food stamps.^{vii} This program was targeted at inner-city low-income African-Americans and Latinos.
- Targeting coupons at low socioeconomic status women.^{viii}
- Exploring giving away financial products.^{ix}
- Giving away gas cash cards and other rewards debit cards.^x

Tobacco industry influence on low-income communities continues today. Tobacco retailers are disproportionately located in low-income communities where tobacco retailers are more likely to be near schools than in other neighborhoods.^{xi} The more tobacco retailers, the more exposure to tobacco marketing individuals face. In fact, retail marketing, including in-store advertising, product displays, and discounts accounts for a large portion of the tobacco industry's marketing budget. In 2015 tobacco companies spent:^{xii}

- \$34.9 million on cigarette ads and \$33.4 million on smokeless tobacco ads posted inside retail locations.
- \$573.1 million on promotional allowances for cigarettes and \$72.8 million promotional allowances for smokeless tobacco.
- \$7.523 billion, or 91.3 percent of all cigarette company marketing in 2015 was spent on the combination of price discounts and promotional allowances paid to retailers and wholesalers as well as 73.2 percent of all smokeless tobacco marketing.

TOBACCO USE IS NOT AN EQUAL OPPORTUNITY KILLER.
SMOKING DISPROPORTIONATELY AFFECTS THOSE MOST IN NEED SUCH AS THE POOR, THE HOMELESS, RACIAL MINORITIES, LGBTQ PERSONS AND THOSE SUFFERING FROM MENTAL ILLNESS AND SUBSTANCE USE DISORDERS.

THERE ARE MORE TOBACCO RETAILERS NEAR SCHOOLS IN LOW-INCOME AREAS THAN IN OTHER AREAS.

DIANELO, D., AMMERMAN, A., GORDON-LARSEN, P., LINDAN, L., LITTLE, L., & RIBISI, K. M. (2016). SOCIOGEOGRAPHIC DISPARITIES IN PROXIMITY OF SCHOOLS TO TOBACCO OUTLETS AND FAST-FOOD RESTAURANTS. AMERICAN JOURNAL OF PUBLIC HEALTH, 106(9), 1554-1562.

ⁱ The Truth Initiative, Campaign for Tobacco-Free Kids, American Heart Association and American Stroke Association, American Cancer Society Cancer Action Network, American Lung Association, Americans for Nonsmokers' Rights, and Robert Wood Johnson Foundation. A report entitled *Broken Promises to Our Children: A State-By-State Look at the 1998 State Tobacco Settlement 19 Years Later*. December, 2017. Available on-line at: <https://www.tobaccofreekids.org/what-we-do/us/statereport>.

ⁱⁱ U.S. Federal Trade Commission (FTC), Cigarette Report for 2016, 2018, https://www.ftc.gov/system/files/documents/reports/federal-tradecommission-cigarette-report-2016-federal-trade-commission-smokeless-tobacco-report/ftc_cigarette_report_for_2016_0.pdf [data for top 5 manufacturers only].; FTC, Smokeless Tobacco Report for 2016, 2018, https://www.ftc.gov/system/files/documents/reports/federal-tradecommission-cigarette-report-2016-federal-trade-commission-smokeless-tobacco-report/ftc_smokeless_tobacco_report_for_2016_0.pdf [Data for top 5 manufacturers only].

ⁱⁱⁱ truth initiative. "Why Are 72% of Smokers from Lower-Income Communities?" January 24, 2018. <https://truthinitiative.org/news/why-are-72-percent-smokers-lower-income-communities>

^{iv} CDC. Current Cigarette Smoking Among Adults – United States, 2016. January 19, 2018. MMWR 67 (2); 53-59.

https://www.cdc.gov/mmwr/volumes/67/wr/mm6702a1.htm?s_cid=mm6702a1_w

^v CDC. Tobacco Product Use Among Adults — United States, 2015. MMWR Morb Mortal Wkly Rep 2017;66:1209–1215.

^{vi} Tobacco Control Legal Consortium. *Evans v. Lorillard: A Bittersweet Victory Against the Tobacco Industry*. Updated August 2016.

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^{vii} Brown-Johnson CG, England LJ, Glantz SA, et al. Tobacco industry marketing to low socioeconomic status women in the USA. *Tobacco Control* 2014;23:e139-e146.

^{viii} *Ibid.*

^{ix} *Ibid.*

^x *Ibid.*

^{xi} truth initiative. "Why Are 72% of Smokers from Lower-Income Communities?" January 24, 2018. <https://truthinitiative.org/news/why-are-72-percent-smokers-lower-income-communities>

^{xii} U.S. Federal Trade Commission (FTC), Cigarette Report for 2015, 2017, https://www.ftc.gov/system/files/documents/reports/federal-trade-commission-cigarette-report-2015-federal-trade-commissionsmokeless-tobacco-report/2015_cigarette_report.pdf [data for top 5 manufacturers only]; FTC, Smokeless Tobacco Report for 2015, 2017, https://www.ftc.gov/system/files/documents/reports/federal-trade-commission-cigarette-report-2015-federal-tradecommission-smokeless-tobacco-report/2015_smokeless_tobacco_report.pdf [Data for top 5 manufacturers only].

Invalidity of an Oft-Cited Estimate of the Relative Harms of Electronic Cigarettes

In July 2013, a group of 12 experts in decision science, medicine, pharmacology, psychology, public health policy, and toxicology rated the relative harm of 12 nicotine-containing products by using 14 criteria addressing harms to self and others.¹ The group concluded that combustible cigarettes were the most harmful and that electronic nicotine delivery systems (electronic cigarettes or e-cigarettes) were substantially less harmful than combustible cigarettes. These results have been characterized and repeated in the popular media as e-cigarettes are “95% less risky” or “95% less harmful” than combustible cigarettes. However, as the authors noted in a sweeping statement regarding the shortcomings of their own work, “A limitation of this study is the lack of hard evidence for the harms of most products on most of the criteria.”^{1(p224)}

Despite this lack of hard evidence, Public Health England and the Royal College of Physicians endorsed and publicized the “95% less harmful” assertion.^{2,3} Senior Public Health England staff emphasized the “evidence” underlying the 95% figure, despite the evidence being lacking. Much has been written about the dubious validity of the “95% less harmful” estimate in 2014 to 2016, especially about the

paucity of research on the health effects of e-cigarettes available in 2013. After six years of e-cigarette-focused research, which has yielded a growing body of hard evidence regarding harm (see Appendix A, available as a supplement to the online version of this article at <http://www.ajph.org>, for a nonexhaustive list), the time has come to re-examine that estimate.

TODAY'S ELECTRONIC CIGARETTES ARE DIFFERENT

There is ample evidence that the range of e-cigarette products available today is very different from that in July 2013. The differences are such that, even if the 2013 estimate was valid then, it can no longer apply today. For example, in addition to using different materials and more numerous heating coils, many e-cigarettes today can attain power output that exceeds that of most over-the-counter 2013 models by 10 to 20 times (i.e., up to and sometimes exceeding 200 watts). Greater power increases the potential harms of e-cigarette use because more aerosol is produced that exposes users to increased levels of nicotine and other toxicants. It also increases bystander exposure to any harmful aerosol constituents

because users exhale more aerosol. In addition, greater power increases the potential for malfunction (e.g., the device exploding), which could harm users and bystanders.

Also, e-cigarette liquids have changed considerably from 2013, with widespread availability of thousands of flavors that use chemicals “generally recognized as safe” to eat but with unknown pulmonary toxicity. Perhaps the most striking change has been the pervasive marketing of liquids with protonated nicotine.⁴ Protonated nicotine (“nicotine salt”) is made by adding an acid to free-base nicotine, thus introducing another potential toxicant that was rare in 2013. Relative to free-base nicotine, aerosolized protonated liquid is less aversive to inhale, allowing users to increase the nicotine concentration of the liquid and likely increase their own nicotine

dependence. Protonated nicotine e-cigarette liquids are available today in concentrations greater than 60 milligrams per milliliter, and these liquids have become very popular, sparking a “nicotine arms race.”⁴

ELECTRONIC CIGARETTES CAUSE HARM TO CELLS

There is ample evidence, unavailable in 2013, that e-cigarette aerosols contain toxicants and that these aerosols are harmful to living cells in vitro and in vivo. For example, thermal degradation of e-cigarette liquid constituents can produce volatile aldehydes, which, at concentrations generated by e-cigarettes, display a variety of cardiorespiratory toxic effects. E-cigarettes can produce carcinogenic furans in addition to other toxicants such as chloropropanols. Even at room temperature, e-cigarette liquids can be unstable, producing irritating acetal compounds carried over into the aerosol. Numerous studies demonstrate that cell function is compromised following exposure to e-cigarette

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aerosol. Similarly, animals that are exposed to e-cigarette aerosols show clear indication of adverse consequences, including in models related to cardiovascular disease.

ELECTRONIC CIGARETTES HARM USERS

Recent evidence reveals that e-cigarette users show evidence of harm. For example, in a sample of healthy young occasional cigarette smokers who used an e-cigarette with or without nicotine, airway epithelial injury was observed in both conditions, with the authors concluding, “Thus, [e-cigarette] aerosol constituents could injure the respiratory system or worsen preexisting lung disease through a variety of mechanisms.”^{5(pL716)} Consistent with this report, wheezing, a symptom of potential respiratory disease, has been associated with e-cigarette use. E-cigarette use increases heart rate, blood pressure, and platelet activation, and decreases flow-mediated dilation and heart rate variability, effects that are prognostic of long-term cardiovascular risk. Indeed, a preliminary report indicates that e-cigarette users may be at increased risk for myocardial infarction and coronary artery disease.⁶

ELECTRONIC CIGARETTES INCREASE SMOKING RISK

Since 2013, numerous surveys have demonstrated that e-cigarette use is increasing among individuals who previously were naïve to nicotine and that these individuals are at increased risk for initiation of combustible cigarette smoking. As the US National Academies of

Sciences, Engineering, and Medicine concluded, “There is substantial evidence that [e-cigarette] use increases risk of ever using combustible tobacco cigarettes among youth and young adults.”^{7(p532)} To the extent that initial e-cigarette use is a causal factor in subsequent combustible tobacco smoking for an individual who would have otherwise never initiated smoking, e-cigarette use could be considered to be as harmful as tobacco smoking for that individual.

ELECTRONIC CIGARETTE AEROSOL IS NOT HARMLESS

Differences in toxicant content between e-cigarette aerosol and cigarette smoke, by themselves, cannot convey lesser lethality because toxicity depends upon both the extent and mode of use. For example, propylene glycol (PG) is one of the primary constituents of e-cigarette aerosol and is generally recognized as safe when eaten but, when injected intravenously over a period of days, is toxic. E-cigarette aerosols containing propylene glycol and vegetable glycerin, another common constituent, cause inflammation in human lungs, suggesting differing safety profiles for inhaled versus ingested propylene glycol and vegetable glycerin. Furthermore, as the toxicants in e-cigarette aerosol sometimes differ from cigarette smoke, so might any resulting e-cigarette-caused disease states. There is little doubt that exclusive e-cigarette users are unlikely to die from lung cancer that is caused by carcinogenic tobacco-specific nitrosamines or polycyclic aromatic hydrocarbons, toxicants largely absent from e-cigarette aerosols. What diseases they may die

of—and if their deaths are hastened by their e-cigarette use—will be part of the much-needed evidence base upon which valid risk estimates can be built.

CONCLUSIONS

In sum, a 2013 evidence-lacking estimate of the harm of e-cigarettes relative to combustible cigarettes has been cited often. However, since 2013, e-cigarette devices and liquids have changed. Evidence of potential harm has accumulated. Therefore, the evidence-lacking estimate derived in 2013 cannot be valid today and should not be relied upon further. Future estimates of the harm of e-cigarettes should be based on the evidence that is now available and revised accordingly as more evidence accrues.

CALL TO ACTION

The “95% safer” estimate is a “factoid”: unreliable information repeated so often that it becomes accepted as fact. Public health practitioners, scientists, and physicians should expose the fragile status of the factoid emphatically by highlighting its unreliable provenance and its lack of validity today, noting the many changes in e-cigarette devices and liquids, the accumulation of evidence of potential harm, the increased prevalence of use, and the growing evidence that e-cigarette use is associated with subsequent cigarette smoking. **AJPH**

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CONFLICTS OF INTERESTS

T. Eissenberg and A. Shihadeh are paid consultants in litigation against the tobacco industry and are named on a patent for a device that measures the puffing behavior of electronic cigarette users. In addition, as of September 2019, T. Eissenberg is a consultant in litigation against the electronic cigarette industry. S. Jordt reports receiving personal fees from Hydra Biosciences LLC and Sanofi SA and non-financial support from GlaxoSmithKline Pharmaceuticals outside the submitted work.

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