



**Written Testimony of:**

**Meghan Kissell**

**Director of Advocacy – Maryland**

**Campaign for Tobacco-Free Kids**

**In Support of SB 177: Business Regulation - Flavored Tobacco Products - Prohibition**

**Before the:**

**Senate Finance Committee**

**Annapolis, MD**

**January 28, 2021**

The Campaign for Tobacco-Free Kids submits these written comments in support of SB 177: 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. Nationally, seven out of ten current middle and high school tobacco users—a total of over 3.2 million youth—have used a flavored tobacco product in the past month.<sup>2</sup>

### **Flavored Tobacco Products Are Pervasive**

A 2009 federal law, the Family Smoking Prevention and Tobacco Control Act, prohibited the sale of cigarettes with characterizing flavors other than menthol or tobacco, including candy and fruit flavors. While overall cigarette sales have been declining since the 2009 law, the proportion of smokers using *menthol* cigarettes (the only remaining flavored cigarette) has been increasing.<sup>3</sup> Menthol cigarettes comprised 35 percent of the market in 2016.<sup>4</sup>

The Tobacco Control Act's prohibition on characterizing flavors did not apply to other tobacco products, and as a result, tobacco companies have significantly stepped up the introduction and marketing of flavored non-cigarette tobacco products. In fact, the overall market for flavored tobacco products is actually growing. In recent years, there has been an explosion of sweet-flavored tobacco products, especially e-cigarettes and cigars. 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 you would expect to see at the candy display at Lucky's in Inner Harbor. (See Appendix for examples).

As of 2017, researchers had identified more than 15,500 unique e-cigarette flavors available online.<sup>5</sup> Flavors are not just a critical part of the product design but are a key marketing ploy for the industry. The 2016 Surgeon General Report on e-cigarettes concluded, "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>6</sup> The 2016 National Youth Tobacco Survey found that 78.2 percent of middle and high school students—20.5 million youth—had been exposed to e-cigarette advertisements from at least one source, an increase from 68.9 percent in 2014.<sup>7</sup>

Nearly one in four Maryland high school students currently use e-cigarettes — a rate five times higher than adults. Not surprisingly, 80 percent of young people who have ever used tobacco started with a flavored product. While tobacco companies claim to be responding to adult tobacco users' demand for variety, it's clear that flavored tobacco products play a key role in enticing new users, particularly kids, to

a lifetime of addiction. This growing market of flavored tobacco products is undermining Maryland's progress in reducing youth tobacco use.

### **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 smoke 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>8</sup> In Maryland, 10.9% of high school boys are current cigar smokers.<sup>9</sup>

A primary reason for the popularity of cigars among youth: flavors. In fact, 73.8% of youth cigar smokers smoked cigars "because they come in flavors I like."<sup>10</sup> There are over 250 cigar flavors, including of "Banana Smash," Brownie, and Strawberry Kiwi. Cheap, sweet cigars can serve as an entry product for kids to a lifetime of smoking.<sup>11</sup> The top five most popular cigar brands among 12- to 17-year olds who have used cigars – Black & Mild, Swisher Sweets, White Owl, Backwoods, and Dutch Masters – all come in flavor varieties.<sup>12</sup> These products are often sold singly or can be priced as low as 3 or 4 for 99 cents, making them even more appealing to price-sensitive youth.

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

Most insidious among flavored tobacco is menthol. 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. 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>13</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>14</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>15</sup>
- people who initiate smoking using menthol cigarettes are more likely to become addicted and become long-term daily smokers.<sup>16</sup>

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. After a thorough review of the evidence, TPSAC concluded that "Removal of menthol cigarettes from the marketplace would benefit public health in the United States."<sup>17</sup>

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

Tobacco industry marketing, often targeted at minority communities, has been instrumental in increasing the use of menthol products and in the disproportionate use of menthol products by minority groups and youth. TPSAC concluded that menthol cigarettes are marketed disproportionately to younger smokers and African Americans.<sup>18</sup> 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. This targeting continues today:

neighborhoods with predominantly African American residents have more tobacco retailers and Newport cigarettes are priced cheaper in those neighborhoods.<sup>19</sup> As a result of this targeting, 85 percent of African American smokers smoke menthol cigarettes, compared to 29 percent of white smokers.<sup>20</sup>

### **Menthol Cigarettes Led to a Disproportionate Health Burden for African Americans**

The tobacco industry's "investment" in the African American community has had a destructive impact. In 2013, the 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.<sup>21</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>22</sup> In Maryland, African American men are more likely to be diagnosed with and die of lung cancer than any other demographic group and suffer heart disease at a rate 56 percent higher than white Marylanders.

### **Conclusion**

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 action.

The scientific evidence leaves no doubt that menthol cigarettes and other flavored tobacco products increase the number of people, particularly kids, who try the product, become addicted and die a premature death as a result. Prohibiting the sale of menthol cigarettes and other flavored tobacco products is an important step toward protecting our children from the tobacco industry's aggressive efforts to hook children to a deadly, addictive product.

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. We implore you to do what is right for our kids, and to do what is right for Marylanders across the state and end the sale of all flavored tobacco.

## Appendix

### A1: Examples of Flavored Tobacco Products



### A2: Examples of Menthol Marketing

Source: TrinketsandTrash.org, CounterTobacco.Org

<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> Corey, CG, et al., "Flavored Tobacco Product Use Among Middle and High School Students—United States, 2014," *MMWR* 64(38):1066-1070, 2015.

<sup>3</sup> Villanti, A., et al., "Changes in the prevalence and correlates of menthol cigarette use in the USA, 2004–2014," *Tobacco Control*, 25(Suppl 2):ii14-ii20, 2016.

<sup>4</sup> U.S. Federal Trade Commission (FTC), Cigarette Report for 2016, 2018, [https://www.ftc.gov/system/files/documents/reports/federal-trade-commission-cigarette-report-2016-federal-trade-commission-smokeless-tobacco-report/ftc\\_cigarette\\_report\\_for\\_2016\\_0.pdf](https://www.ftc.gov/system/files/documents/reports/federal-trade-commission-cigarette-report-2016-federal-trade-commission-smokeless-tobacco-report/ftc_cigarette_report_for_2016_0.pdf) [data for top 5 manufacturers only].

<sup>5</sup> Zhu, S-H, et al., "Evolution of Electronic Cigarette Brands from 2013-2014 to 2016-2017: Analysis of Brand Websites," *Journal of Medical Internet Research*, 20(3), published online March 12, 2018.

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- <sup>6</sup> HHS, *E-Cigarette Use Among Youth and Young Adults. A Report of the Surgeon General*. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2016.
- <sup>7</sup> Marynak, K., et al., "Exposure to Electronic Cigarette Advertising Among Middle and High School Students—United States, 2014-2016," *MMWR* 67(10): 294-299, March 16, 2018, <https://www.cdc.gov/mmwr/volumes/67/wr/pdfs/mm6710a3-H.pdf>.
- <sup>8</sup> CDC, "Tobacco Product Use and Associated Factors Among Middle and High School Students—United States, 2019," *MMWR*, 68(12), December 6, 2019, <https://www.cdc.gov/mmwr/volumes/68/ss/pdfs/ss6812a1-H.pdf>
- <sup>9</sup> CDC, "Youth Risk Behavior Surveillance—United States, 2017," *MMWR*, 67(8), June 15, 2018. <https://www.cdc.gov/healthyyouth/data/yrbs/pdf/2017/ss6708.pdf>.
- <sup>10</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.
- <sup>11</sup> Delnevo, CD, et al., "Changes in the mass-merchandise cigar market since the Tobacco Control Act," *Tobacco Regulatory Science*, 3(2 Suppl 1): S8-S16, 2017.
- <sup>12</sup> SAMHSA's public online data analysis system (PDAS). National Survey on Drug Use and Health, 2015, [https://pdas.samhsa.gov/#/survey/NSDUH-2015-DS0001/crosstab/?row=CGR30BR2&column=CATAG2&weight=ANALWT\\_C&results\\_received=true](https://pdas.samhsa.gov/#/survey/NSDUH-2015-DS0001/crosstab/?row=CGR30BR2&column=CATAG2&weight=ANALWT_C&results_received=true).
- <sup>13</sup> HHS, Preventing Tobacco Use Among Youth and Young Adults, A Report of the Surgeon General, 2012, <http://www.cdc.gov/Features/YouthTobaccoUse/>.
- <sup>14</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
- <sup>15</sup> Villanti, A., et al., "Changes in the prevalence and correlates of menthol cigarette use in the USA, 2004–2014," *Tobacco Control*, published online October 20, 2016
- <sup>16</sup> TPSAC, FDA, "Menthol Cigarettes and Public Health: Review of the Scientific Evidence and Recommendations, 2011, <https://wayback.archiveit.org/7993/20170405201731/https://www.fda.gov/downloads/AdvisoryCommittees/CommitteesMeetingMaterials/TobaccoProductsScientificAdvisoryCommittee/UCM269697.pdf>.
- <sup>17</sup> Tobacco Products Scientific Advisory Committee (TPSAC), *Menthol Cigarettes and Public Health: Review of the Scientific Evidence and Recommendations*, July 21, 2011 <http://www.fda.gov/downloads/AdvisoryCommittees/CommitteesMeetingMaterials/TobaccoProductsScientificAdvisoryCommittee/UCM269697.pdf>.
- <sup>18</sup> TPSAC, *Menthol Cigarettes and Public Health: Review of the Scientific Evidence and Recommendations*, July 21, 2011.
- <sup>19</sup> See e.g., Rodriguez, D, et al., "Predictors of tobacco outlet density nationwide: a geographic analysis," *Tobacco Control* 22(5):349-55, 2013. Lee, JG, et al., "Inequalities in tobacco outlet density by race, ethnicity and socioeconomic status, 2012, USA: results from the ASPIRE Study," *Journal of Epidemiology and Community Health* 71(5):487-492, 2017. Henriksen, L, et al., "Targeted Advertising, Promotion, and Price for Menthol Cigarettes in California High School Neighborhoods," *Nicotine & Tobacco Research* 14(1):116-21, 2012. Moreland-Russell, S, et al., "Disparities and Menthol Marketing: Additional Evidence in Support of Point of Sale Policies," *International Journal of Environmental Research and Public Health*, 10: 4571-4583, 2013.
- <sup>20</sup> Villanti, A., et al., "Changes in the prevalence and correlates of menthol cigarette use in the USA, 2004–2014," *Tobacco Control*, published online October 20, 2016.
- <sup>21</sup> FDA, *Preliminary Scientific Evaluation of the Possible Public Health Effects of Menthol versus Nonmenthol Cigarettes*, 2013.
- <sup>22</sup> American Cancer Society, "Cancer Facts & Figures for African Americans, 2016-2018," 2016, <http://www.cancer.org/acs/groups/content/@editorial/documents/document/acspc-047403.pdf>.