

S.24 – Eliminating Flavored Tobacco Including Menthol

Testimony – Feb. 17, 2021
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American Heart Association



AHA supports eliminating the sale of all flavored tobacco products including e-cigarettes and menthol cigarettes

- Our organization supports the elimination of all characterizing flavors other than tobacco from all tobacco products. This is essential to reduce the appeal to youth.
- We strongly support the provisions of S.24 to end the sale of flavored e-cigarettes as well as menthol tobacco products and consider this legislation strong in that regard.
- However, we know the tobacco industry has aggressively targeted certain populations with its marketing, especially youth, and want to ensure that those suffering from addiction are not penalized twice by possession and purchase penalties. We support the provisions of the bill to eliminate penalties for possession and urge you to also eliminate penalties for purchase.
- We ask you to also consider penalties on retailers (owner/operators, not clerks) who violate tobacco sales laws as a much stronger enforcement measure.

Menthol is the only legal cigarette flavor still on the market.



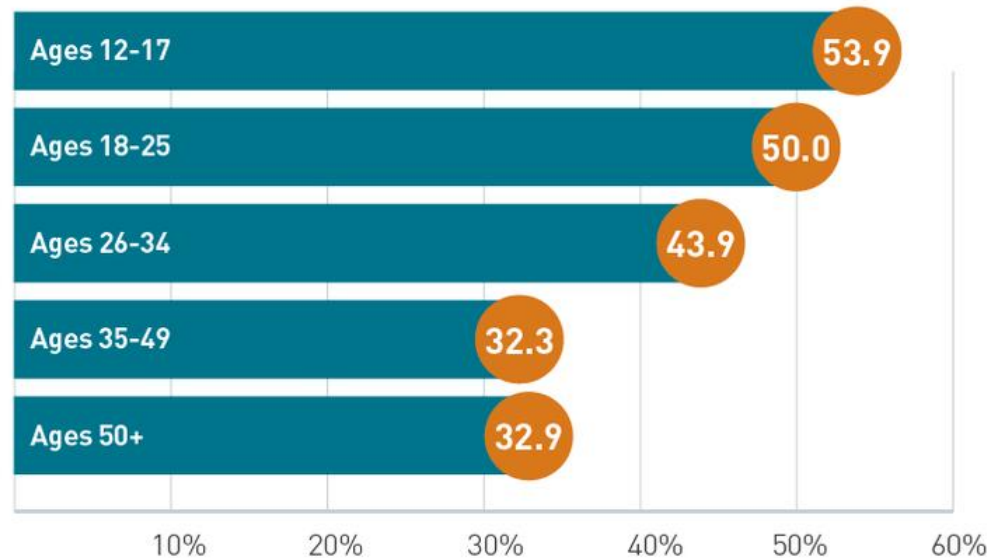
- In 2009, the Tobacco Control Act outlawed flavored cigarettes, but exempted menthol due to tobacco industry lobbying. This is troubling because menthol makes cigarettes easier to smoke and harder to quit.
- Industry documents consistently show companies manipulate menthol content to reinforce smoking behavior and increase the ease of smoking.
- A nationwide study showed that of young adults over 18 who smoked, a majority started with menthol cigarettes.
- Menthol now makes up 35% of the U.S. cigarette market.

Menthol hooks kids

Menthol creates a cooling effect, reduces the harshness of cigarette smoke, numbs the throat and suppresses coughing. Those effects make menthol cigarettes more appealing to youth and leads to nicotine addiction.

More than half (54%) of youth ages 12-17 who smoke use menthol cigarettes. For black youth who smoke, seven out of ten use menthols.

Menthol cigarette use among current smokers in the U.S. by age, 2012-2014



Source: Tobacco control

Menthol hooks kids

The Tobacco Products Scientific Advisory Committee was required by the Tobacco Control Act of 2009 to review menthol cigarettes' effect on youth.

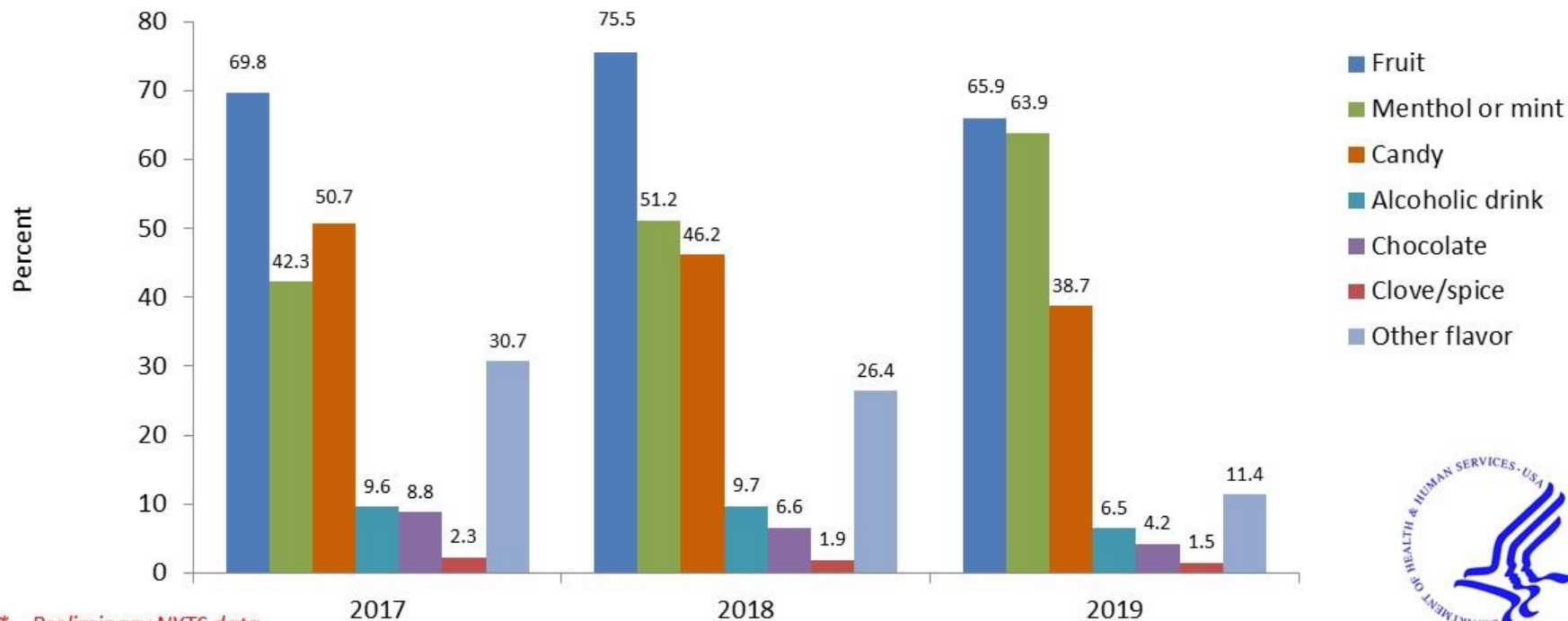
TPSAC noted that “menthol cannot be considered merely a flavoring additive to tobacco. Its pharmacological actions reduce the harshness of smoke and the irritation from nicotine.”

According to TPSAC's conclusions:

- Menthol cigarettes increase the number of children who experiment with cigarettes and the number of children who become regular smokers, increasing overall youth smoking.
- Young people who initiate using menthol cigarettes are more likely to become addicted and become long-term daily smokers.

With youth use of menthol e-cigarettes increasing, where do you think they'll turn if menthol cigarettes are left on the table?

FLAVORS POPULAR AMONG HIGH SCHOOL USERS OF E-CIGARETTES*



* Preliminary NYTS data

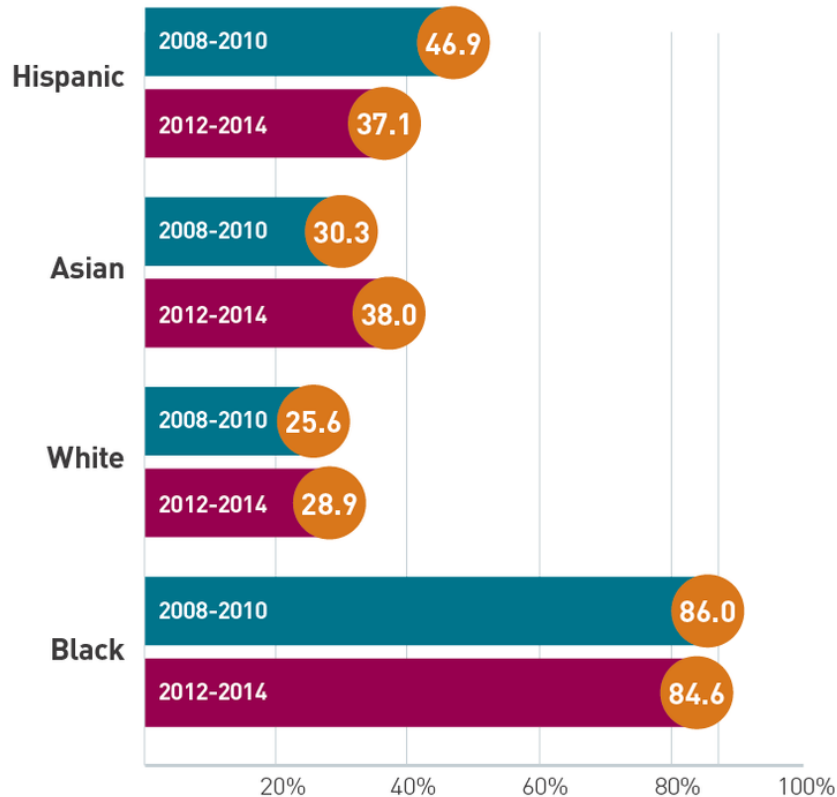


Menthol needs to be prohibited along with other flavors or addicted youth will gravitate to it.

- If menthol isn't restricted in all tobacco products, consumers who formerly used flavored e-cigarettes will be pushed toward other mentholated tobacco products.
- Youth will gravitate to the available flavor.
- **Youth use of mint and menthol e-cigarettes increased sharply in 2019 after JUUL restricted the availability of flavors, increasing from 42.3% in 2017 to 63.9% in 2019.**
- However, your action to restrict menthol in all tobacco products could steer youth in a more positive direction as nearly 65% of young menthol smokers as well as 39% of all menthol smokers and 45% of black smokers say they would quit smoking if menthol cigarettes were banned.

Eliminating the sale of menthol helps to ensure health equity.

Menthol cigarette use among current smokers (aged 12+) in the U.S. by race/ethnicity



Source: Tobacco control

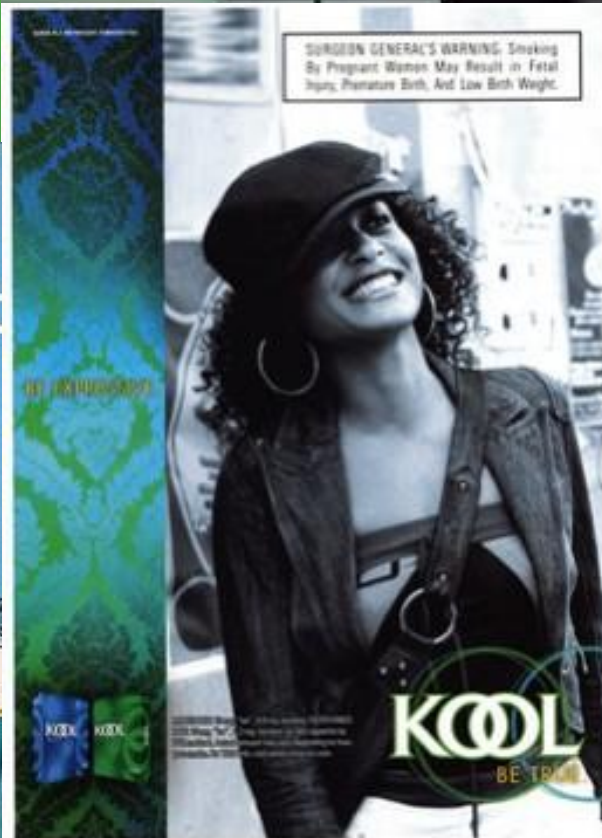
- Evidence from tobacco industry documents show a concerted effort to target blacks through specific advertising.
- Dating back to the 1950s, the tobacco industry has targeted African Americans with marketing for menthol cigarettes through sponsorship of community and music events, targeted magazine advertising, youthful imagery, price discounting and marketing in the retail environment.
- 85% of black adult smokers smoke menthol – higher than any other racial or ethnic group.
- A higher percentage of black adults who smoke started by using menthol cigarettes (93%) than white adults who smoke (44%).

**Newport
pleasure!**



**So good,
it's got to be KOOL!**

Nothing satisfies like
KOOL's smooth taste.
America's #1 Menthol.



Permitting the sale of menthol is supporting disparities, inequality and cycles of poverty.

- Tobacco industry documents highlight a long history of intentionally marketing mint and menthol products to vulnerable populations including those of low socioeconomic status, minorities, youth, women, LGBTQ and the less educated.
- More than 50% of youth smokers use menthol tobacco products.
- Individuals of lower levels of income or education are more likely to smoke menthol tobacco products than other tobacco products.
- Smokers with mental illness are more likely to use menthol cigarettes than those who do not have mental health conditions. 25% of those with mental illness live below the poverty line.

States can't wait for the FDA to act.

- The same federal legislation in 2009 that banned all other flavored cigarettes allowed the FDA to regulate or ban menthol.
- Despite taking public comment in 2013 and again in 2018, and its own report in 2013 that concluded that:

“removal of menthol cigarettes from the market would improve public health,” and

“menthol cigarettes lead to increased smoking initiation among youth and young adults, greater addiction and decreased success in quitting smoking...”

the FDA has repeatedly failed to act.

New FDA policy doesn't go far enough.

- The FDA released a new policy on January 1, 2020 but only on e-cigarettes, and it falls short in addressing flavored e-cig and menthol. Under the new policy:
 - Flavored cartridge- or pod-based e-cigarettes (other than menthol or tobacco flavored) must be removed from the market within 30 days.
 - Open tank e-cigarettes, such as those typically sold in vape shops, and the flavored e-liquids used to fill these can continue to be sold.
 - Flavored self-contained, disposable e-cigarettes would also still be allowed.
- By allowing menthol flavors and flavored liquid nicotine used in open tank systems to remain on the market, the administration would leave a wide pathway for continued e-cigarette use among our children.



Devices Sold with Empty, Refillable Pods are Exempt
Suorin and Smok can be filled with e-liquids of varying nicotine strengths and thousands of flavors



After Juul, Suorin and Smok are the most popular e-cigarette devices among high school students

CAMPAIGN
for
TOBACCO-FREE
Kids®

Disposable Products Are Exempt

“An example of products that would not be captured by this definition include completely self-contained, disposable products”



Guidance Prioritizes Enforcement of Pod Products, Leaving Thousands of Kid-Friendly E-Liquid Flavors on the Market



Our neighbors are ending menthol sales.

- Ontario, Canada banned menthol cigarettes as of January 1, 2017 and initial evaluation results suggest that the law led to increased quit attempts and smoking cessation among adult menthol smokers.
- The Canadian government subsequently banned menthol cigarettes nationwide in October 2017.
- The state of Massachusetts was the first state to end the sale of menthol along with all other flavored tobacco products. The ban on flavored e-cigs was immediate upon enactment in November. The effective date for the flavored tobacco ban was June 1, 2020. California became the second state to enact a ban on most flavored tobacco products Aug. 28, 2020 with the effective date set for Jan. 1, 2021.
- Please make Vermont the third state to end the sale of all flavored tobacco, especially menthol. Thank you.