Understanding Potential Menthol Tobacco Bans and their Impact on Communities of Color

July 21, 2021
Sponsors

ALLIANCE FOR HEALTH POLICY

Robert Wood Johnson Foundation
Join us online!

@AllHealthPolicy

Alliance for Health Policy

@AllianceforHealthPolicy

#AllHealthLive
Participating in the Webinar

To mute yourself, click the microphone icon. The icon will appear orange when muted.

To ask a question, click the ? icon and enter your question in the chat box below.
Learn More

Additional resources available online »

• Full speaker bios
• Resources list
• Expert list
• Presentation slides
• Recording

www.allhealthpolicy.org
Panelists

Carol McGruder, J.D.
Founding Member and Co-Chair
African American Tobacco Control Leadership Council
@aatclc

Matthew L. Myers
President
Campaign for Tobacco-Free Kids
@TobaccoFreeKids

Moderator

Kate Sullivan Hare, MHSA
Vice President of Policy & Communications
Alliance for Health Policy
@AllHealthPolicy

Joelle Lester, J.D.
Director of Commercial Tobacco Control Programs
Public Health Law Center,
Mitchell Hamline School of Law
@JoelleMLester
Carol McGruder, J.D.

Founding Member And Co-Chair
African American Tobacco Control Leadership Council
July 21, 2021

CAROL MCGRUDER, CO-CHAIR
AFRICAN AMERICAN TOBACCO CONTROL LEADERSHIP COUNCIL
Formed in 2008. We educate the African American community about tobacco use and cessation, partner with community stakeholders and public health agencies to inform and affect the direction of tobacco control policy, practices, and priorities, as it affects the lives of Black American and African immigrant populations.
AATCLC and ASH File Lawsuit Against The FDA

JUNE 19, 2020

The Complaint Highlights the Lack of Action to Protect Thousands of African Americans From Tobacco-Related Deaths

JUNE 17, 2020 – Today, The African American Tobacco Control Leadership Council (AATCLC) and Action on Smoking and Health (ASH) held a virtual press conference announcing their joint complaint against the FDA. The complaint requests that the court compel the FDA to fulfill its mandate to take action on FDAs own conclusions that it would benefit the public health to add menthol to the list of prohibited characterizing flavors and therefore ban it from sale.

Read the full complaint here.

“We stand before you today to announce that we are suing the United States Food and Drug Administration for their failure to implement public health policy that protects the health and
Plaintiffs vs. 
FDA

African American Tobacco Control Leadership Council
Action on Smoking and Health
American Medical Association
National Medical Association
FDA Commitment is only to start the “rule-making” process. No timeline given on when they will start. The “rule-making” process is long and will be fraught with tobacco industry interference including lobbying and potential lawsuits.**
Family Smoking Prevention and Tobacco Control Act, 2009

Granted the FDA the authority to regulate tobacco products to protect the public health
Initial Exclusion of Menthol from banned flavors wasn’t based on science.

Trickle Down Public Health Policy
WHO WILL PROTECT OUR CHILDREN
African Americans - Menthol

- Perniciously targeted by all major tobacco companies
- “Urban” programs included
  - Co-optation of Black leadership, heavy media campaigns, free giveaways to children, van programs, retailers programs, event sponsorship
- Over 80% of African Americans smoke mentholated cigarettes
- Over 90% of Black youth initiate with menthol cigarettes
- Addiction is about science and opportunity
- Menthol is a Human Rights and Social Justice Issue
The “Inner City” Youth
Marie Evans

• Grew up in Boston public housing
• Given free Newports at the age of nine
• Addicted to cigarettes at age 13
• Dead at 54
• Family awarded $152 million judgment
• Settled last year for $79 million
Local Municipalities Take Action to Protect Their Youth

2013
Chicago Led The Way

2017
San Francisco
Virtual Signing
August 28, 2020

Governor Newsom Signs Landmark Bill to End the Sale of Flavored Tobacco Products in Stores
Community Leaders Come Together Against Racism and Discrimination Protesting Senate Bill 793

By blackandmagazine - August 17, 2020
African Americans Used As A Tool To Blunt Public Health For Everybody
The Tobacco Industry Uses The Legitimate Concerns of the African American Community to Block Public Health Policies That Will Save Black Lives

Racism

Police Brutality

Officer Involved Killings
Social Injustice

- The Tobacco Industry targets everyone
  - But they are particularly pernicious in the Black community
  - We have so many other issues to deal with
  - Tobacco control gets pushed to the back burner
  - Police Brutality/Systemic Institutional Racism is REAL

- Priority Populations are often a bargaining chip in public health policy negotiations

- Doing NOTHING is not an option
PAVe is a national grassroots organization founded in 2018 by three New York City moms — Dina Alessi, Meredith Berkman, and Dorian Fuhrman
Juul to Pay $40 Million to Settle N.C. Vaping Case

The settlement is the first in a stream of lawsuits against the company, which has been accused of deceptive marketing practices that contributed to a wave of nicotine addiction in teenagers.
“Protected Class”

International Press Briefing: What’s Menthol Got To Do With It? Everything! (Still!)

The briefing will be live streamed, click here to register.

When
Thursday, May 23, 2019 from 9:00 AM to 10:30 AM EDT
Add to Calendar

Where
The National Press Club - Zenger Room
529 14th Street, NW, 13th Floor
Washington, DC 20045

***Media Advisory***

“What’s Menthol Got To Do With It? Everything (Still)!”
The Plight of African Americans and Mentholated Tobacco Products:
The Time Is Now

Full Media Advisory

Tobacco use remains the number one preventable cause of death for African Americans, claiming more than 45,000 lives annually. Due to decades of racialized targeting of mentholated tobacco products by the tobacco industry, over 80% of Black smokers use mentholated tobacco products. Targeted campaigns included manipulation of African American leadership groups, elected officials, Black media, ethnic specific advertising campaigns, and the free distribution of mentholated cigarettes to inner city children as young as nine years old. Many of these pernicious and racist
Joelle Lester, J.D.
Director of Commercial Tobacco Control Programs
Public Health Law Center, Mitchell Hamline School of Law
STATE & LOCAL MENTHOL TOBACCO SALES RESTRICTIONS
2009 FAMILY SMOKING PREVENTION AND TOBACCO CONTROL ACT

- Banned sale of most flavored cigarettes
- Exempts menthol
MENTHOL REGULATION
A DECADE OF PRESSING THE FDA
LOCAL FLAVORED TOBACCO RESTRICTIONS
THE EVOLUTION
LOCAL MENTHOL RESTRICTIONS

Most Active States
• Massachusetts
  – 168 localities
• California
  – 86 localities
• Minnesota
  – 12 localities

Many Big Cities
• Boston
• Chicago
• Minneapolis
• New York
• Oakland
• Philadelphia
• San Francisco
STATE FLAVOR RESTRICTIONS

Massachusetts

- In effect June 2020
- Limits sale of flavored cigarette and tobacco products, including menthol and e-cigarettes
- Exempts on-site consumption in licensed smoking bars

California

- Legislation passed August 2020
- Prohibits sale of flavored cigarette and tobacco products
- Exempts hookah and shisha, premium cigars, and pipe tobacco
- Tobacco industry response:
  - Gathered signatures to send to ballot
  - Sued in federal court
- Current status: stayed
Many tribes have restricted flavored e-cigarettes:

- Iipay Nation of Santa Ysabel
- Lac Courte Oreilles Tribe
- Muckleshoot Tribe
- Oglala Sioux Tribe
- Puyallup Tribe
- Saint Regis Mohawk Tribe
- Turtle Mountain Band of Chippewa Tribe
CONTACT US

651.290.7506

publichealthlawcenter@mitchellhamline.edu

www.publichealthlawcenter.org

@phealthlawctr

facebook.com/publichealthlawcenter
Matthew L. Myers
President
Campaign for Tobacco Free Kids
2017-2019 Average Black Adult Smoking Prevalence

Source: CDC, avg. 2017-2019 BRFSS online data; NJ data avg. 2017-2018 only; UT 2019 data only; ND 2018 data only; OR 2017 data only

Sample Size
- Too Small
- 12.0%-15.9%
- 16.0%-19.9%
- 20.0%-21.9%
- 22.0%-32.0%

October 2020
The Opportunity to Ban Menthol Cigarettes Nationwide

Following the lawsuit brought by AATCLC and others

On April 29, 2021 the U.S. Food and Drug Administration announced it’s intention to advance two tobacco product standards as follow:

• The FDA announced that it “is working toward issuing proposed product standards”
  • within the next year to ban menthol as a characterizing flavor in cigarettes and
  • ban all characterizing flavors (including menthol) in cigars.

It is the authority Congress gave FDA as part of the 2009 Family Smoking Prevention and Tobacco Control Act that enabled it to propose to ban menthol in cigarettes.
In 2009 Congress Told FDA to Act Quickly: It Didn’t

• 907 (e) (1) —Immediately upon the establishment of the Tobacco Products Scientific Advisory Committee, the Secretary shall refer to the Committee for report and recommendation, the issue of the impact of the use of menthol in cigarettes on the public health, including such use among children, African-Americans, Hispanics, and other racial and ethnic minorities.

• Not later than 1 year after its establishment, TPSAC shall submit the required report and recommendations.
By 2013 TPSAC and FDA Agreed:
Menthol Poses a Public Health Risk

• In July 2011 TPSAC issued its report and found

Removal of menthol cigarettes from the marketplace
would benefit public health in the United States.

• In 2013 FDA issued an independent report that found that
menthol in cigarettes is likely associated:

  o with increased initiation and progression to regular of
  cigarette smoking; with increased dependence; and
  with reduced success in smoking cessation, especially
  among African American menthol smokers.

  o that menthol cigarettes pose a public health risk above
  that seen with nonmenthol cigarettes.

BUT FDA FAILED TO MOVE FORWARD
Four Years Later - 2017

• July 2017, FDA Commissioner Gottlieb announced FDA’s intention to regulate the use of flavors in tobacco products, including prohibiting the use of menthol in cigarettes.

• March 2018 – FDA issues an Advanced Notice of Proposed rulemaking setting forth the facts about menthol cigarettes and seeking formal public comment.

BUT FDA FAILED TO MOVE FORWARD

• February 2020 - The U.S. House of Representatives voted in support of a bill to prohibit all flavored tobacco products, including menthol cigarettes, but the Senate never considered the bill
What To Expect Now

Next Step – FDA must issue a Notice of Proposed Rulemaking (NPR)

• FDA said it would act within one year—a long time—but there is no formal deadline

• Once FDA issues a NPR, there will be at least 60 to 90 days for formal public comment, perhaps more

• The tobacco industry will generate hundreds of thousands of comments to counter FDA and to counter comments from groups that support the Proposed Rule.

• Expect industry to argue—menthol does not make the product more toxic; a ban will lead to a black market; there are inadequate resources to help smokers quit; menthol does not lead to more smokers or more death
What Happens After the Comment Period Closes

• FDA must consider and address every different substantive comment it receives. Supportive comments are critical to support a positive decision.
• FDA does not face a legal deadline to finish – industry will push for delay; proponents must push for quick action and keep the issue in the spotlight.
• Once FDA issues a Rule, a ban will not take effect in less than One year.
• Supporters must then be prepared to help FDA defend a Rule because it is inevitable the industry will sue.

Action on menthol is closer than ever; but it is not certain and will require solid, sustained and strategic support.
Learn More

Additional resources available online »

• Full speaker bios
• Resources list
• Expert list
• Presentation slides
• Recording

www.allhealthpolicy.org
A straightforward, unbiased guide to the basics of health policy

AVAILABLE NOW!

allh.us/Handbook
Upcoming Events

July 27
Closing the Coverage Coordination Gap for Dual Eligibles
12:00 – 1:00 p.m. ET

July 29
Improving the Diagnostic Odyssey for Rare Disease Patients
12:00 – 1:00 p.m. ET

www.allhealthpolicy.org
We value your input!

Please fill out the evaluation survey you will receive immediately after this presentation, or via email this afternoon!

www.allhealthpolicy.org
Thank you for attending.