

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

July 21, 2021

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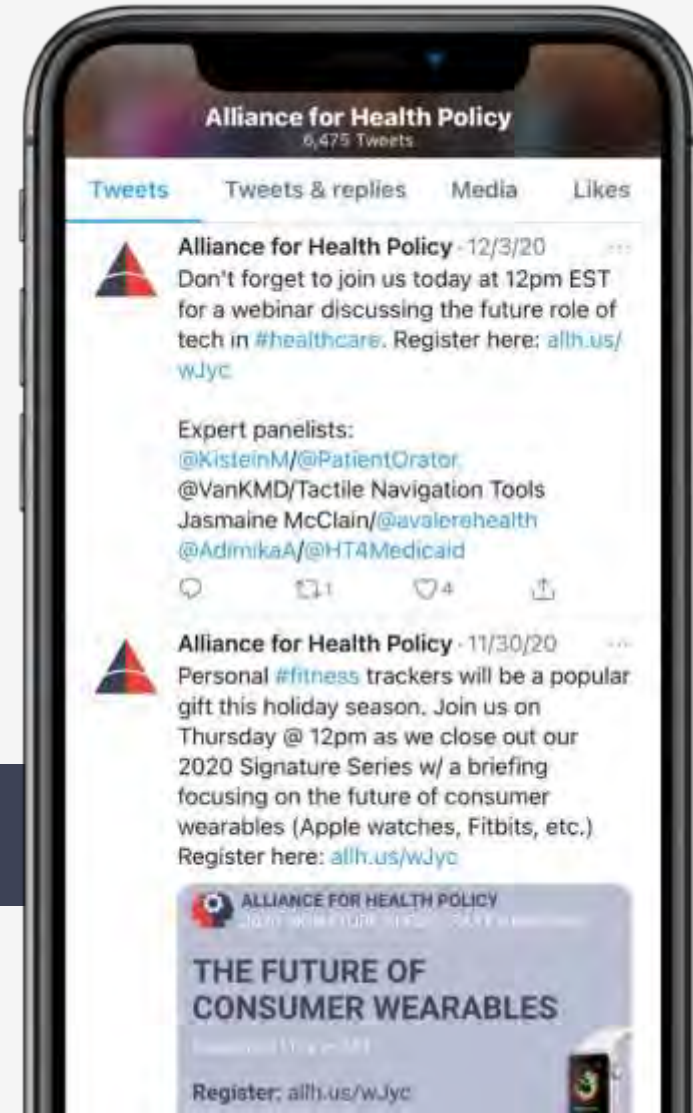


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Panelists



Carol McGruder, J.D.

Founding Member and Co-Chair
African American Tobacco Control
Leadership Council



Joelle Lester, J.D.

*Director of Commercial Tobacco Control
Programs*
Public Health Law Center,
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Matthew L. Myers

President
Campaign for Tobacco-Free Kids



Moderator

Kate Sullivan Hare, MHSA

Vice President of Policy & Communications
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Carol McGruder, J.D.

Founding Member And Co-Chair

African American Tobacco Control Leadership
Council





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



July 21, 2021 | 12:00 – 1:00 p.m. EST
Register: allh.us/KTdD

Support for this program was provided by the Robert Wood Johnson Foundation.

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 FDA's 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 Commits to Evidence-Based Actions Aimed at Saving Lives and Preventing Future Generations of Smokers

Efforts to ban menthol cigarettes, ban flavored cigars build on previous flavor ban and mark significant steps to reduce addiction and youth experimentation, improve quitting, and address health disparities



For Immediate Release: April 29, 2021

****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 LEAST OF THESE: U.S. TOBACCO CONTROL POLICY, MENTHOLATED CIGARETTES, AND AFRICAN AMERICANS

Carol McGruder, BA; Philip Gardiner, DrPH; and Valerie B. Yerger, ND
African American Tobacco Control Leadership Council, USA

World Conference on Tobacco or Health
Singapore 2012

Background

In June 2009, U.S. President Barack Obama signed the historic Family Smoking Prevention and Tobacco Control Act (The Act), which gave the U.S. Food and Drug Administration (FDA) the authority to regulate tobacco products in the United States. One of the provisions of the Act was the banning of all flavors in cigarettes, all flavors, that is, except menthol. Other flavors like chocolate, vanilla, cinnamon, strawberry and others were banned because it was widely recognized that these flavors attracted and encouraged young people to begin smoking.



And though 88% of young African American smokers initiate smoking with mentholated cigarettes, the health and welfare of these young people were not a priority of the initial legislation. Menthol's exclusion from the list of banned flavors prompted seven former Secretaries of Health, including Drs. Joseph Califano and Louis Sullivan, and a former Surgeon General to write a joint letter with the National African American Tobacco Prevention Network that vehemently opposed the exclusion of menthol from the list of banned flavors.

With Dr. Califano further stating that The Act as written relegated, "Black children to the back of the [public health] bus." This public outcry led to an eleven hour amendment (introduced and co-authored by Congresswoman Donna Christensen and the U.S. Congressional Black Caucus) being added to the legislation.

This amendment mandated that the issue of mentholated cigarettes be given top priority by the newly formed FDA Tobacco Products Scientific Advisory Committee (TPSAC).

Vigilance and Continued Action Led To Menthol Amendment

- African American Scholars and Researchers.
- National African American Tobacco Prevention Network
- National Print and Video Media Outlets (New York Times)
- Former Secretaries of Health/U.S. Surgeon General
- United States Congressional Black Caucus

Tobacco Products Scientific Advisory Committee Progress

- Convened Hearings
- Issued Report March 2011
 - "Banning menthol would be in the interest of Public Health."
- The FDA has decided to conduct further study on menthol

Predatory Tobacco Industry Targeting Overtaken: Menthol Smoking Prevalence Among U.S. African Americans

Predatory Tobacco Industry Activities Included

- Programs targeted at African Americans in inner cities
- FREE product giveaways
- Co-Opting Black Leadership Groups
- Targeted Media Campaigns



Starting in the late 1990's, Lorillard enticed Black children to smoke menthols by distributing free Newport cigarettes in urban neighborhoods. Marie Evans, one of those children, began smoking at age 12 and smoked for 40 years before dying of lung cancer at 54.




CONCLUSIONS

Though African Americans and other marginalized populations are the most burdened by tobacco-related diseases and the accompanying health inequalities, they are usually the last to benefit from public health policies that are designed to safeguard and/or improve public health. Public health policies that in theory should be designed to protect those who are the most affected, "the least of these." These policies often sacrifice the needs of minority populations to protect the needs of the healthier majority population. Sometimes the health interests of minority populations are used as a bargaining chip in the negotiations.

This becomes a social justice issue as minority populations must defend their community from the predatory activities of the tobacco industry, while at the same time they must fight for parity and inclusion of their health interests in the public health arena.

ACKNOWLEDGMENTS

National African American Tobacco Prevention Network

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

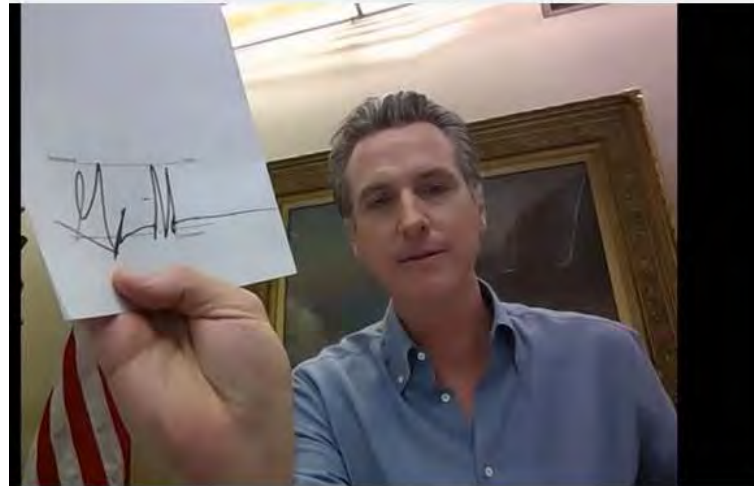
2013
Chicago Led The Way



2017
San Francisco



Virtual Signing August 28, 2020



Governor Newsom Signs Landmark Bill
to End the Sale of Flavored Tobacco
Products in Stores



News

Community Leaders Come Together Against Racism and Discrimination Protesting Senate Bill 793

By **blackandmagazine** - August 17, 2020

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Black & Magazine Newswire



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 Hearing



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.





The African American Tobacco Control Leadership Council



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. These 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

"Protected Class"

Speakers

Hon. Karen Bass, U.S. House of Representatives, 37th District (CA)

Hon. Malia Cohen, Fmr. President of San Francisco Board of
Supervisors, Chair, California State Board of Equalization

Carol McGruder, Co-Chair, African American Tobacco Control
Leadership Council

Dr. Phillip Gardiner, Co-Chair, African American Tobacco Control
Leadership Council

Dr. Valerie Yerger, Founding Member, African American Tobacco
Control Leadership Council

Sharon Eubanks, Former Lead Prosecutor, U.S. Department of Justice
Laurent Huber, Executive Director, Action on Smoking and Health
(ASH)

Natasha Phelps, Staff Attorney/Lead Minnesota Policy, Public Health
Law Center

Channte Keith, Director of Programs, National African American
Tobacco Prevention Network, Inc.

Flavia Senkubuge, President College of Medicine South Africa/VP
African Federation of Public Health Associations



www.savingblacklives.org

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STATE & LOCAL MENTHOL TOBACCO SALES RESTRICTIONS



PUBLIC HEALTH
LAW CENTER
at Mitchell Hamline School of Law

7/21/2021

35

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

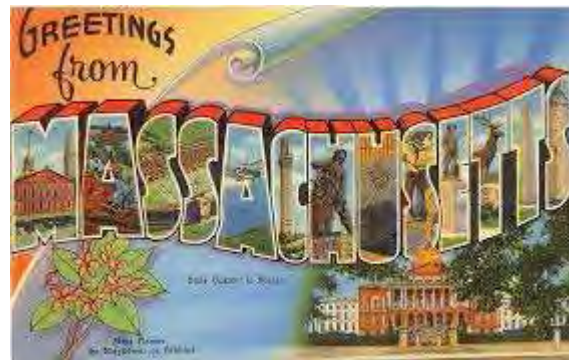
TRIBAL GOVERNMENT ACTION



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

TOBACCO INDUSTRY RESPONSE LITIGATION & REPEAL AT THE BALLOT



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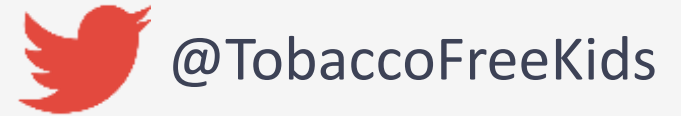
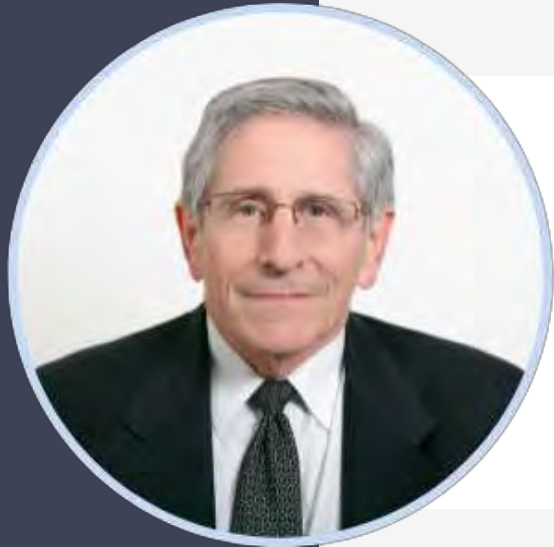
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Matthew L. Myers

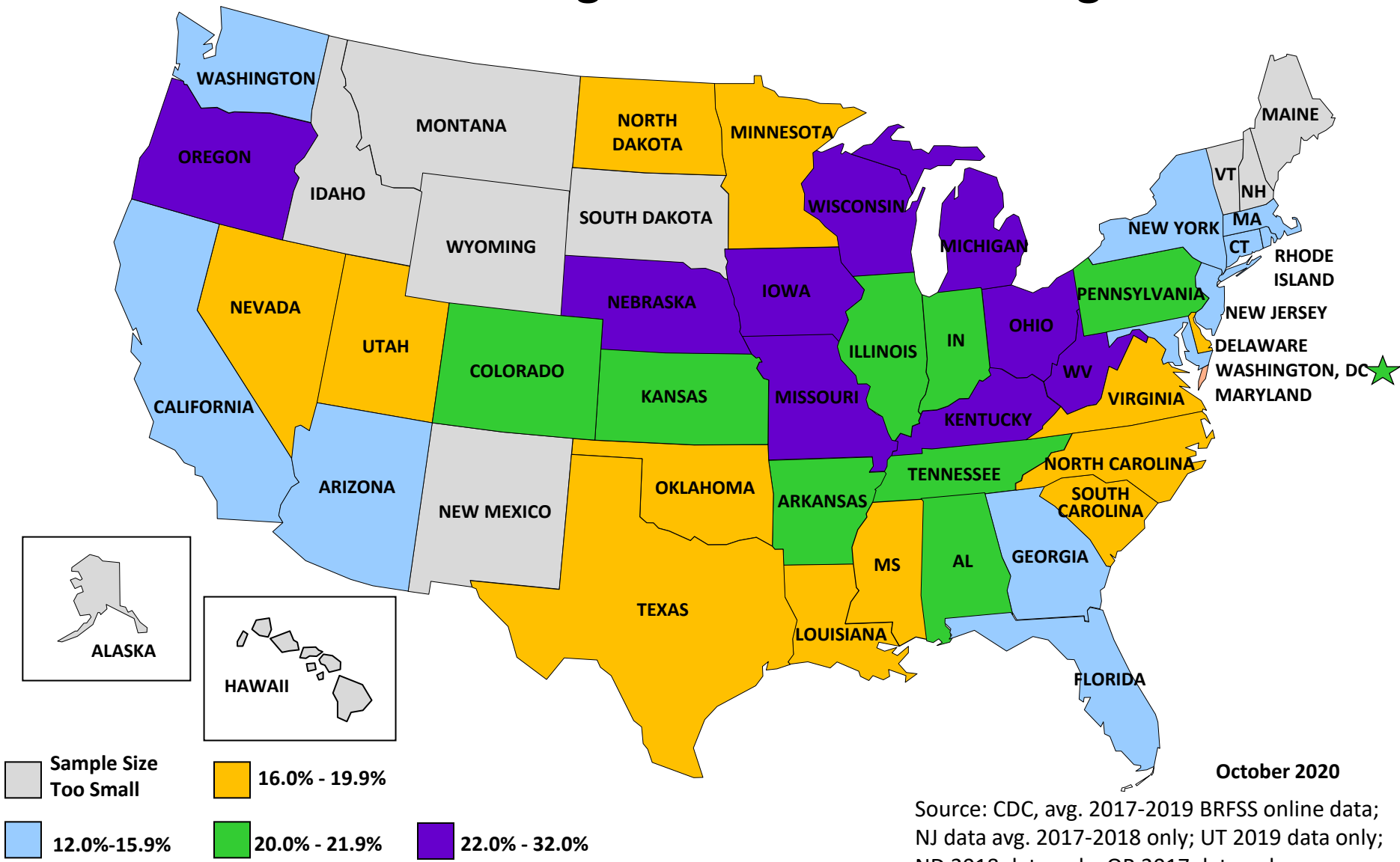
President

Campaign for Tobacco Free Kids





2017- 2019 Average Black Adult Smoking Prevalence



October 2020

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



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 :
 - 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.
 - 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

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and health care ecosystem



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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

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Thank you for attending.