



The African American Tobacco Control Leadership Council

March 16, 2023

To: House Committee on Behavioral Health and Health Care Members: Chair, Rob Nosse, Vice Chair, Christine Goodwin, Vice Chair, Travis Nelson, Representative Ben Bowman, Representative Charlie Conrad, Representative Maxine Dexter, Representative Ed Diehl, Representative Cyrus Javadi, Representative Lily Morgan, Representative Hai Pham, Representative Thuy Tran

From: The African American Tobacco Control Leadership Council

Re: Letter in Support of House Bill 3090 which would End the Sale Menthol and All Other Flavored Tobacco Products in the State of Oregon!

The African American Tobacco Control Leadership Council (AATCLC) strongly supports HB 3090 that would end the sale of Menthol and all flavored tobacco products in Oregon. We are glad to see that the House Committee on Behavioral Health Care is taking this matter up. Frankly, this couldn't come at a better time. We already know that 80% of youth, 12-17 start smoking using flavored cigarettes (Ambrose et al., 2015). According to the 2022 National Youth Tobacco Survey, more than 2.5 million kids across the country are using tobacco products. 85% of high school and 81% of middle school students use flavored products with fruit, candy/desserts/other sweets, mint, and menthol reported as the most popular flavors.

Indeed, in the aftermath and lingering impact of the COVID 19 pandemic's Omicron surge, nothing could be more important than getting these products out of our community. Unfortunately, we know that smokers are more susceptible to COVID infection (CDC, 2020). If the Behavioral Health and Health Care Committee truly wants a healthier Oregon, and we believe that you do, then it is imperative that you adopt HB 3090 and end the sale of menthol and all flavored tobacco products; it's passage will end the predatory marketing of these products that disproportionately impacts poorer communities, marginalized groups, youths, and communities of color.

Menthol the Ultimate Candy Flavor; It Helps the Poison Go Down Easier!

This is no minor matter. Menthol and flavored tobacco products are driving tobacco-related deaths and diseases nation-wide. While the use of non-flavored tobacco cigarettes has been decreasing, the use of menthol cigarettes is on the rise, among youth and adults; among Latinos, Blacks, and Whites (Villanti, 2016). Let's be clear, the majority of women smokers smoke menthol cigarettes; folks from the LGBTQ community disproportionately smoke these products; 47% of Latino smokers prefer menthol cigarettes, with 62% of Puerto Rican smokers using



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menthol; nearly 80% of Native Hawaiians; a majority of Filipinos; and a majority of smokers with behavioral health issues smoke menthol cigarettes. Frankly, the most marginalized groups disproportionately use these so-called “minty” products (CDC, 2010; Fallin, 2015; Forbes, 2013; Delnevo, 2011; Hawaii State Dept. of Health, 2009; Euromonitor, 2008; Hickman, 2015).

Be appraised that 85% African American adults and 94% of Black youth who smoke are using menthol products (Giovino, 2013). These striking statistics arise from the predatory marketing of these products in the Black Community, where there are more advertisements, more lucrative promotions, and most disturbing menthol cigarettes are *cheaper in the Black community* compared to other communities (Henriksen et al., 2011; Seidenberg et al., 2010). These predacious practices for the past 50 years have led to Black folks dying disproportionately from heart attacks, lung cancer, strokes, and other tobacco related diseases (RSG, 2014).

Take note that new research, shows that menthol cigarettes were responsible for 1.5 million new smokers, 157,000 smoking-related premature deaths and 1.5 million life-years lost among African Americans over 1980–2018. While African Americans constitute 12% of the total US population, these figures represent, respectively, a staggering 15%, 41% and 50% of the total menthol-related harm (Mendez & Le, 2021).

The Behavioral Health and Health Care Committee should be aware that menthol is an anesthetic by definition, and as if to add insult to injury, masks the harsh taste of tobacco and allows for deeper inhalation of toxins and greater amounts of nicotine. The greater the nicotine intake, the greater the addiction. Hence, it is no surprise menthol cigarette users find it harder to quit than non-menthol cigarette users (Ton et al., 2015; Levy et al., 2011). The “cool refreshing taste of menthol” heralded by the tobacco industry is just a guise; **ultimately, menthol and all flavors allow the poisons in cigarettes and cigarillos “to go down easier!”**

Non Menthol Newport’s! Not!

Even a cursory review of these new products reveals that the text, color, fonts and design of the packages and marketing looks just like the packages and marketing of the now-illegal menthol variants. RJ Reynolds and other members of the tobacco industry promote these products as having a “bold and assertive taste” similar to the “bold flavor” of the menthol variants. These packaging and marketing claims directed to consumers are used to explicitly and implicitly communicate that the products are menthol flavored. Don’t believe the hype. Even if it is “non-menthol” it is still a characterizing flavor and should be removed from the marketplace.

We Can’t Wait on the FDA

Today over 90 municipalities prohibit the sale of all menthol tobacco products including flavored e-juices; <https://no-smoke.org/wp-content/uploads/pdf/flavored-tobacco-product-sales.pdf>



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Indeed, in June of 2020, the State of **Massachusetts** became the first State to prohibit the sale of menthol and all flavored tobacco products state-wide and just this past November, **California** followed suit and became the second state to do so. And while **New York** is currently considering this, **Oregon** could be the 3rd! Be aware that the tobacco industry is flooding the California and Massachusetts market with new “non-menthol” products. At closer examination, these products are just new ways of delivering flavors; they must be banned too.

While it is important that the FDA announced that they will put forward a Rule outlawing the menthol as a characterizing flavor in cigarettes, we know that even this process will be fraught with disorder. First, the FDA says they will promulgate the rule in August of 2023. If past practices are any indication of future practices, then it is almost certain that the ruling won't come in August. Even if the ruling comes in August of 2023, it will probably give the industry a year to implement the rule, pushing the date to the summer of 2024 and once a final rule is made public and there is more public comment, the industry will **sue** to stop the process from going forward, thus extending the time period for years to come. **The bottom line is that: We Can't Wait on the FDA.** Oregon must take steps to protect the health of their citizens, lives are at stake.

Who Are the Racists: The Tobacco Control Advocates or the Tobacco Industry?

Some groups funded by the tobacco industry insist that removing menthol cigarettes and flavored little cigars would be taking away “our” cigarette; we'd be discriminatory; racist. This line of argumentation stands history on its head. As was pointed out earlier, it was and is the tobacco industry that predatorially markets these products in the Black Community. As mentioned earlier, the facts are these: there are more advertisements, more lucrative promotions, and most disturbing is that menthol cigarettes are ***cheaper in the Black Community*** compared to other communities (Henriksen et al., 2011; Seidenberg et al., 2010). This is how these flavored death sticks became “our” cigarettes, they pushed them down our throats!

Still other groups, spurred on and funded by the tobacco industry, have been spreading falsehoods, stating that restricting the sale of menthol and flavored tobacco products, including flavored e-juices will lead to the “criminalization” of particularly youth of color. Nothing could be further from the truth. All ordinances adopted around the country ***prohibit the sale*** of flavored products, ***they don't prohibit the possession*** of these products. Indeed, the FDA proposed rule states explicitly that there are no penalties for individual use or possession. The facts are that the adoption of menthol restrictions will not lead to police having any greater interaction with any youth; it won't be illegal to possess these products, just retailers cannot sell them.



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These same groups rail about “unintended consequences.” We respond: **Look at the Intended Consequences!** As mentioned before, Black folks die disproportionately from tobacco related diseases of heart disease, lung cancer, and stroke compared to other racial and ethnic groups. (RSG, 2014); menthol cigarettes and flavored little cigars are the agents of that destruction. It is estimated that 45,000 Black folks die each year from tobacco related diseases (RSG, 1998). In this regard, the House Committee on Behavioral Health and Health Care should remove all criminal penalties associated with the purchase, use and possession of all tobacco products. Decriminalize tobacco! Hold retail owners responsible, not clerks, don’t punish kids!

The AATCLC

Formed in 2008, the African American Tobacco Control Leadership Council is composed of a cadre of dedicated community activists, academics, public health advocates and researchers. Even though based in California, we are national in our scope and reach. We have partnered with community stakeholders, elected officials, and public health agencies, from Chicago, Boston and Minneapolis to Berkeley and San Francisco. Our work has shaped the national discussion and direction of tobacco control policy, practices, and priorities, especially as they affect the lives of Black Americans, African immigrant populations and ultimately all smokers. The AATCLC has been at the forefront in elevating the regulation of mentholated and other flavored tobacco products on the national tobacco control agenda, including testifying at the FDA hearings in 2010 and 2011 when the agency was first considering the removal of menthol cigarettes from the marketplace. In November of 2019 we testified on Capitol Hill in support of HR 2339 (The Pallone Bill), this bill would prohibit the manufacturing and sale of menthol and all flavored tobacco products throughout the United States. This Bill was passed in the House of Representatives in February of 2020 but went nowhere in the Senate. In June of 2020 the AATCLC along with its partner Action on Smoking and Health (ASH) filed a lawsuit against the FDA for dragging their feet by leaving menthol on the marketplace with overwhelming scientific evidence showing that it should be removed immediately. Subsequently and importantly the American Medical Association (AMA) and the National Medical Association (NMA) have joined the lawsuit as plaintiffs. It was this lawsuit that forced the FDA to act. And even though the lawsuit has been dropped, we are prepared to re-file if the FDA drags its feet again and doesn’t announce a rule in August of 2023.

Call to Action!

Now is the time to adopt strong tobacco control measures that can protect our families. We already know that menthol and flavors “makes the poison go down easier.” The House Committee on Behavioral Health and Health Care needs to put the health of Oregon Citizens in the forefront of their thoughts, not the interests and profits of the tobacco industry, the vaping



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industry, and their surrogates. This is not the time for half-steps, rather it is time to take a stand for the public's health and say: **No Selling of Menthol Cigarettes and All Other Flavored Tobacco Products, including Flavored E-Juices and Flavored Hookah in the State of Oregon!** Say "No" to the continued predatory marketing of menthol flavored tobacco products to our youth and say "Yes" to the health and welfare of our kids, who are the most vulnerable. In fact, say "Yes" to the protection for **all** residents of Oregon.

We respectfully ask for your support of HB 3090, a lifesaving proposal.

We are all counting on you!

Sincerely,

Phillip Gardiner, Dr. P.H. Co-Chair AATCLC www.savingblacklives.org

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Valerie Yerger, N.D., Co-Chair AATCLC