

**Testimony of Elizabeth Hamlin  
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Good afternoon. My name is Elizabeth Hamlin and I'm the Director of Advocacy in New York for the American Lung Association. On behalf of the Lung Association, thank you for the invitation to speak today. The Lung Association works on behalf of the 33 million Americans living with lung diseases including lung cancer and COPD – which are primarily caused by tobacco use and exposure to secondhand smoke.

The American Lung Association has been raising the alarm about e-cigarettes for more than a decade *and warns against the use of all e-cigarettes* as the inhalation of harmful chemicals found in e-cigarettes can cause irreversible lung damage and lung disease. The developing lungs of youth may be more at risk. The American Lung Association supports ending the sale of flavored tobacco products, including flavored e-cigarettes, menthol cigarettes and flavored cigars, and strongly encourages a comprehensive approach to prevention and limiting access of all tobacco products.

We recognize, in the absence of strong federal action especially by the FDA, New York is being forced to make decisions to protect the health of children and adults from vaping-related public health emergency. We must not forget, we are fighting two public health emergencies. The lung injuries associated with e-cigarettes and the epidemic of youth usage of flavored e-cigarettes.

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The current outbreak of pulmonary injuries is deeply worrisome, especially as we see youth vaping skyrocketing. As of October 29, 2019, 1,888\* cases of e-cigarette, or vaping, product use associated lung injury (EVALI) have been reported to CDC from 49 states. Thirty-seven deaths have been confirmed in 24 states. While much remains to be determined about the reported cases of severe lung disease as well as the lasting health consequences of vaping, CDC and FDA have made clear that vaping and e-cigarette use is not safe. CDC has asked the public to refrain from using e-cigarette products, particularly those containing THC. The CDC has not seen a drop off in cases and expects more cases.

E-cigarettes are a tobacco product that produces an aerosol by heating a liquid that typically contains nicotine, flavorings, and other chemicals. E-cigarettes currently being sold have not been reviewed by the Food and Drug Administration. That means the company has not had to disclose the ingredients in their products to the FDA. But we do know that e-cigarettes include nicotine, as well as chemicals and toxins which are unsafe to inhale. Since 2016, we've had evidence that flavor additives in e-cigarettes – especially those that are based on natural plant-based extracts, are menthol-based and food-related additives such as cinnamaldehyde – are particularly toxic to lungs when they are inhaled. One study found that these additives significantly affect the lung cell viability and the respiratory barrier integrity<sup>1</sup>. Another study found that lower concentrations of these flavor additives in e-cigarettes caused inflammation and created symptoms consistent with endothelial dysfunction<sup>2</sup>. And the presence of chemicals such as diacetyl and acetyl propionyl, are associated with respiratory disease.<sup>3</sup> The FDA must use its authority to clear the market of products that have not undergone premarket review. Absent FDA

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<sup>1</sup> Fetterman, J.L., et al. (2018). Flavorings in Tobacco Products Induce Endothelial Cell Dysfunction. *Arterioscler, Thrombosis, and Vascular Biology*. Retrieved from <http://atvb.ahajournals.org/content/early/2018/06/13/ATVBAHA.118.311156>

<sup>2</sup> Fetterman, J.L., et al. (2018). Flavorings in Tobacco Products Induce Endothelial Cell Dysfunction. *Arterioscler, Thrombosis, and Vascular Biology*. Retrieved from <http://atvb.ahajournals.org/content/early/2018/06/13/ATVBAHA.118.311156>

<sup>3</sup> Farsalinos, K.E., et al. (2014). Evaluation of Electronic Cigarette Liquids and Aerosols for the Presence of Selected Inhalation Toxins. *Nicotine & Tobacco Research*. Retrieved from <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4892705/>

enforcing the Tobacco Control Act, local, state and federal policymakers must use every tool at their disposal to end this public health emergency.

The Lung Association is also troubled about the claims e-cigarette manufacturers are making. Let me be clear: the Food and Drug Administration has not found any e-cigarette to be safe and effective in helping smokers quit. If smokers are ready to quit smoking for good, they should call 1-866-NYQUITS or talk with their doctor about finding the best way to quit using proven methods and FDA-approved treatments and counseling. Although we have made tremendous progress in reducing adult and youth cigarette smoking rates to all-time lows, with 5.8 percent of high school students and 14.0 percent of adults smoking cigarettes, this success is under threat. In 2019, the use of e-cigarettes by high school students soared to 27.5%, up from 20.8% in 2018 and 11.7% in 2017.<sup>4</sup> More than a quarter (27.7%) of high school e-cigarette users are frequent users, using e-cigarettes on at least 20 of the preceding 30 days.<sup>5</sup> 1 in 9 of all high school seniors (11.7%) report that they vaped nicotine nearly daily, a strong indication of nicotine addiction.<sup>6</sup> Remember, the inhalation of harmful chemicals found in e-cigarettes can cause irreversible lung damage and lung disease. The developing lungs of youth are at risk. And we are setting up the youth of New York for a lifetime of nicotine addiction.

The availability of flavored e-cigarettes are a main reason why we are seeing such rapid use of this product by our youth. According to just-released preliminary results from the 2019 National Youth Tobacco Survey, 66% of high school students who use e-cigarettes have used fruit flavor e-cigarettes and 64% have used mint or menthol flavored e-cigarettes. Several years ago, one study estimated there were about 7,700 flavors of e-

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<sup>4</sup> FDA, *supra* note 2.

<sup>5</sup> CDC, *Use of Electronic Cigarettes and Any Tobacco Product Among Middle and High School Students—United States, 2011-2018*, Morbidity and Mortality Weekly Report (MMWR), 67(45): 1276-1277.

<sup>6</sup> Miech, R, et al., "Trends in Adolescent Vaping, 2017-2019," *New England Journal of Medicine*, published online September 18, 2019.



cigarettes on the market at that time. Once Juul came onto the market, it quickly became the most commonly used e-cigarette product through the sale of their cool mint, mango, fruit, creme and cucumber flavors. Other e-cigarette brands sell flavors tasting like Gummy Bears, Atomic Fireball, Captain Crunch and a wide variety of other fruit, candy and sweet flavors. There is no question that these flavors appeal to youth.

One of the most effective policies that New York can implement to address the youth e-cigarette epidemic is the restriction of the sale of all flavored tobacco products.

Recognizing that almost all tobacco users begin their use during their adolescence or young adulthood, tobacco companies have spent billions of dollars marketing their products and making them more attractive to young people. It is well established that flavors are attractive to children and young people. Both the US Surgeon General<sup>7</sup> and the National Academy of Sciences, Engineering and Medicine have written comprehensive reports on e-cigarettes that discuss the subject<sup>8</sup>. For decades, the tobacco industry has used flavors to attract youth. Indeed the industry's decades-long conspiracy to deceive the public includes many documents that demonstrate the industry's understanding of the role flavors play in tobacco use initiation.

While most flavored cigarettes are prohibited, menthol is not. The American Lung Association strongly supports menthol cigarettes being removed from the marketplace and has been calling for such action since 2011. In April 2013, the American Lung Association and our partners submitted a formal citizen petition to the FDA, requesting that the Commissioner "prohibit menthol as a characterizing flavor of cigarettes."<sup>9</sup> In it,

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<sup>7</sup> U.S. Department of Health and Human Services. (2016.) E-Cigarette Use Among Youth and Young Adults. Retrieved from [https://e-cigarettes.surgeongeneral.gov/documents/2016\\_sgr\\_full\\_report\\_non-508.pdf](https://e-cigarettes.surgeongeneral.gov/documents/2016_sgr_full_report_non-508.pdf)

<sup>8</sup> National Academies of Sciences. (2018). Public Health Consequences of E-Cigarettes. Retrieved from <http://nationalacademies.org/hmd/Reports/2018/public-health-consequences-of-e-cigarettes.aspx>

<sup>9</sup> American Lung Association and other health groups. (2013). Citizens Petition to the Division of Dockets Management at the Food and Drug Administration re Menthol in Cigarettes. Retrieved from <http://www.lung.org/assets/documents/advocacy-archive/menthol-citizen-petition.pdf>



our organizations cited the FDA's Tobacco Products Scientific Advisory Committee (TPSAC) report, which concluded:

1. Menthol cigarettes have an adverse impact on public health in the United States;
2. Menthol cigarettes offer no public health benefits.
3. Menthol cigarettes increase the likelihood of addiction and the degree of addiction in youth smokers.

*Menthol is not only a flavoring, but a chemical with complex, drug-like properties that can impact smoking initiation, addiction and cessation. Menthol has cooling and anesthetic properties which reduce the harshness of cigarette smoke for new smokers.<sup>1</sup> Menthol also reduces airway pain and irritation and can suppress coughing, which can mask the early warning symptoms of smoking-induced respiratory problems.<sup>2</sup>*

The health disparities the use of menthol cigarettes has caused is the most concerning. The sale and marketing of menthol cigarettes disproportionately burdens the African-American community as a result of decades of targeted marketing to the African-American community by the tobacco industry<sup>10</sup>. The use of menthol is more common among youth, female smokers, LGBT smokers<sup>11</sup>, those with mental illness and racial and ethnic minorities, especially African-Americans. Nearly 9 in 10 African-American smokers (88.5 percent) aged 12 years old and older use menthol cigarettes<sup>12</sup>. We appreciate the opportunity to join you this afternoon and your attention to addressing the crisis before us. With a vision of a world free of lung disease, the American Lung Association is working to eliminate the use of all tobacco products. We support strong

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<sup>10</sup> Too Many Cases, Too Many Deaths: Lung Cancer in African Americans, American Lung Association. <https://www.lung.org/assets/documents/research/ala-lung-cancer-in-african.pdf>

<sup>11</sup> Menthol cigarette smoking among lesbian, gay, bisexual, and transgender adults. Fallin A1, Goodin AJ2, King BA3. <https://www.ncbi.nlm.nih.gov/pubmed/25245795>

<sup>12</sup> <https://truthinitiative.org/news/6-key-takeaways-new-fda-plan-e-cigarettes-flavored-tobacco-products>



tobacco prevention policies that are proven to reduce tobacco rates. A comprehensive approach, including policies discussed today restricting the sale of flavored tobacco products is needed to realize this vision and address the youth e-cigarette epidemic.

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