

2019-107 HS PROTECTION OF YOUTH FROM NICOTINE PRODUCT ADDICTION

PUBLIC HEARING-OCTOBER 20, 2020

TRANSCRIPT

Mary E Brennan:

OK, good morning. Let's get started here. My name is Mary Brennan. I am the regulatory affairs officer for the Michigan Department of Health and Human Services. We are here on the record for rule set, 2019 Dash 107 HS, Protection of Youth from Nicotine Product Addiction.

I have had up a housekeeping document for those of you on the phone, I shall read out the housekeeping for today's public hearing. Number one, all phones will be muted about entry into the meeting. Number two, meeting will be recorded for purposes of transcription and transparency. One person shall speak at a time. Please wait to respond if needed until the other person has finished speaking. If more than one person speaks, it cannot be recorded and will not come out. Pardon me on the transcript.

Number three, DHHS understands at this hearing involves issues regarding personal and professional limitations for the continued use of a product's flavored nicotine and selling those products. While your comments are invaluable to the public hearing, we're asking you respect the public hearing process and keep comments respectable and not disrupt the hearing process for all. Number four, I will call out the last four numbers of your phone number and to my delight, there are a lot of names up here. I will call out your name and I will ask if you wish to make a statement. Everyone who wishes to provide testimony will get the opportunity to do so. If you do wish to make a statement, you will be asked your name, spell your last name for the transcript, and identify what organization, if any, you're speaking on behalf of. And if you do not wish to give your name, please let that be on the record as well. We refer to you as a participant.

Number five, there will be 2 15- minute breaks, one at 10:00 o'clock and one at 2:00 o'clock and one 30-minute break at 12 noon. Number six, comments for the public ends this Friday, October 23rd. If you have any further comments after this public hearing, please send them to MDHHS Dash admin rules,

ADMINRULES all one word, at Michigan dot gov. Finally, the rule status to follow the rules. Going through the public hearing process and the rule propagation process, you can find at the following link [HTTPS, colon, backslash, Backslash, ARS, period, APPS, period, Lara, period state period mi period US, period](https://backslash.ars.apps.lara.state.mi.us). And I will keep that up and scroll through it just as a reminder as people are coming in and then they can read the housekeeping rules as they get on the phone.

OK, so this morning I'd like to introduce our panel. I will start with Ms. Akia. Akia, could you please introduce yourself and your role at DHHS?

Akia Burnett:

Good morning everyone. My name is a Akia Burnett. I am a manager in the Tobacco Prevention and Control program at the Michigan Department of Health and Human Services.

MEB:

Thank you. Elaine?

Elaine Lyon:

Good morning, everybody. My name is Elaine Lyon. I'm a public health consultant for the Tobacco Control program at MDHHS.

MEB:

And, last but not least, Ms. Caroline.

Caroline Chaudbury:

Good morning, everyone. My name is Carolyn Chaudbury and I am a public health consultant for the Tobacco section at MDHHS.

MEB:

OK, thank you, Ladies. We are ready to take public comment. I will call out either your name or the last four digits of your phone number to get started. Thank you very much and let us begin. Let's start with Cynthia Guest. Would you like to make a comment?

Cynthia:

OK, now I'm, I'm here. I'm here, OK. Hi. I'm reading a testimony on behalf of a Michigan mom and teacher. My name is [unintelligible] Ivy. I'm the mom of a 16-year-old young lady who has fallen victim to the appealing flavors of vape products. I'm also one of the most critical influences on our youth. I'm a crowd here. I live here in Michigan, and I'm a concerned citizen as I watch a crisis overtake our children. So, crisis that has invaded my work and my home and led me to join parents against vaping or PAV. As a parent volunteer here in Michigan, I've been with my current district for six years and I've witnessed a huge change take place I'm going to walk you through.

I am proud and honored to spend every day with my school kids and my daughter is always been willing to share the title of my kids with every student I've ever had. Unfortunately, and sadly, they now share common problem: vaping the fruity flavors that infiltrated their school experience in creating an addiction that a time feels impossible to escape. High school is not easy for many students. Many paths are presented that can influence the direction of your future. Then into your teen years jumps watermelon, cherry, mango, but not the actual fruit vape flavors. The student now has been inducted into a new culture of rating flavors. Where to get the newest flavor, or how to find those hard to get flavors.

My day starts with students at 7:25 AM. The first question that's presented to me is can I be the first one for the bathroom? Are student bathrooms are referred to by the students as the Vape Lounge? The students will spend extended, will spend extended amounts of time in the bathroom sharing vapes and trying to see what other flavors they want to buy next. My students are unable to make it for an entire class period without requesting a visit to the bathroom. We have students that actually would like to use the bathroom for its intended purpose, but they feel intimidated to enter because they were approached by other students who are waiting in the bathroom for someone to come in with a vape that they can hit. Grades have been impacted for these vaping students because they spend so much of their time in the vape lounge and not in the classroom.

We've had students throwing up in the bathroom for over for overuse, not really realizing how much they were using. We also had a student collapse in the bathroom after ingesting the vape liquid titled Juice because he didn't think the bubble gum flavored juice would hurt him. I've noticed that vaping usages become more popular over the last few years, and I've noticed a change of behaviors as well. I would see my students displaying irritability like a focus. The need to leave the bathroom on a

consistent basis, mood swings, aggressiveness and then it hit me. My daughter was behaving the same way.

My daughter was active with her sport and always a student that was cooperative and conscious of her assignments and grades. Then I slowly noticed her grades slipping in her behavior changing. I would say to myself, boy, it's easier to teach teenagers than to live with one. Then I started to smell the same smell I would experience at work. So, my concern became stronger. I investigated it through her text messages and my heart sank. Meet me in the bathroom. I need to fix. My daughter was now part of her own, very own vape lounge.

I went through her belongings. I discovered a white bottle with bright, almost neon colors with cartoon-like glittering saying Sour Patch. It was confirmed they got my kid too. I would dispose of any vape products away from my home and then more would reappear. My home was invaded with strawberry, watermelon, cherry, and minty vape flavors. This is a battle that should never have entered my home, but my, my daughter believed its only flavors and it doesn't do anything.

I hope these words have captured your attention and that you agree we should come back this crisis as a team because our children have been gravely affected. This is a crisis that we are allowing to happen. We can save our children by banning flavored vape products targeted to our youth. Thank you.

MEB:

Cynthia, thank you very much. OK, how about Julie Hitchingham? Did I pronounce that right?

Julie Hitchingham:

Hi, I don't have a comment at this point.

MEB:

OK, thank you Julie. OK, Dragon. Adrian Casal?

No comment from Adrian. OK, moving down.

Alice Engelmann?

No comment from Alice. OK, Amanda?

Amanda:

Hello, this is Amanda and I am health promotion coordinator with the Washtenaw County Health Department and this statement is made on behalf of them. Thank you for considering the proposed rules, accepting public comment and for MDHHS is commitment to public health.

The Washtenaw County Health Department is in support of the current rule and supports expanding the rule to include a prohibition of all flavors including mint and menthol. The products in all products like E-cigarettes, cigarettes, cigars, cigarillos and more. And at all locations. Nicotine is a highly addictive substance that can harm brain development in young adults. Using nicotine and adolescents can affect parts of the brain that are responsible for attention, learning, mood, and impulse control. Young people love flavors and a new generation of young people are already addicted to nicotine. As a result of the flavored products being on the market, limiting the location of sales does not stop young people from getting access to these products. If that were true, we wouldn't hear from local principals that they have confiscated entire drawers worth of flavored vaping products from their students.

Limiting some flavors or other flavors and certain products only leads to young people switching the product or the flavor that they're using. We have seen this locally as youth have switched to using more disposable E-cigarettes as Juul flavors have been removed from the market. This is Michigan's chance to stop youth from using tobacco products to save lives and protect our children from an addiction to nicotine. We urge you to approve the current rules and to improve them by adding and expanding them to include all flavored tobacco products and also require on line sales to be shipped to a license retailer for age verification to eliminate youth access. Thank you.

MEB:

Amanda, thank you very much. OK, next, we have Angela Johnson, Angela, would you like to make a statement?

OK, moving down, I'm going to it. Olike. Would you like to make a comment?

Olike:

No comment for me, thank you,

MEB:

Thank you. Next, we have Barb Farah. What, are you people shy? Next, we have, oh, I'm sorry Barb. Did you want to make a comment?

Barb:

No, good morning, thank you.

MEB:

OK, next we have Bridget Mullen.

EL:

Mary, Mary, this is Elaine Lyon speaking. I'm wondering if people don't realize they have to unmute themselves.

MEB:

OK, you have to unmute yourself. Thank you, Elaine.

Bridget Mullen:

Good morning, thank you. This is Bridget Mullen from the American Heart Association. Thank you very much for having this hearing. The American Heart Association and the Michigan Chapter, American College of Cardiology appreciate the opportunity to submit comments and to speak today.

We support the rules, but we would also like to see the rules strengthened and for your consideration, we'd like to see the rules apply to all flavored vaping products and all flavored tobacco products. Also, for the penalties for sale, there are three primary areas that were interested in strengthening these rules. Well, the proposed rules should include language to address penalty for sale of all tobacco and E cigarette products without a license. We encourage the elimination of the term reseller as it's confusing and lacks definition for how it appropriately applies. Penalties for sale must be levied on the owner, operator of the retail establishment. We recommend that the penalty is only on the business owner. We do not support penalties on clerks or youth, and then we'd also like to see the removal of the provision that allows for jail time. Thank you very much for allowing me to speak today.

MEB:

Thank you, Bridget. OK, next we have Carly Buell. Please unmute if you would like to make a comment.

Thank you again only. OK, how about Chris Franklin? Corey Beckwith?

Corey Beckwith:

Hi there, thank you very much for holding this hearing. My name is Corey Beckwith. I've worked in the tobacco prevention program at Access in Dearborn, MI. And it is a nerve you overdo that these flavors that are attracting young people to vaping be banned in the state of Michigan. So, thank you very much for holding this hearing.

MEB:

Thank you, Corey. How about Dan Lehman MVSA?

Dan Lehman:

Good morning, we have no comment at this time. We'll be submitting written testimony. Thank you.

MEB:

Thank you, Dan. We'll go back up to Dave Hancox.

Dave Hancox:

My name is Dave Hancox. It's spelled H-A-N-C-O-X and I'm speaking on behalf of RJ Reynolds Tobacco Company. I am the former director of state audits in the Office of the New York State Comptroller, and I was also the Director of State expenditures in that office. I've had over 37 years of service with the state of New York, and I've written and taught extensively on a wide array of issues focused on government performance auditing which relates to an assessment of planning, implementing, and managing government programs and policies, such as that before you now.

As I said, RJ Reynolds Tobacco Company has compensated me for my time preparing these comments, but I'd like you to know that the opinions expressed are my own and I am also not an advocate for using tobacco and I. Use of traditional cigarettes should quit.

The goal of the proposed rules to prevent minors from using tobacco products is laudable, and it is a goal of RJ Reynolds, Tobacco Company itself. They do not want minors smoking. My analysis, though, of the substance of the proposed rules and the department's accompanying regulatory impact statement and cost benefit analysis suggests several things.

First, the rules are duplicative of a federal law which already limits the sales of any tobacco products to persons under the age of 21 and they exceed the federal law proposed because the rules outlaw the sales of those products to adults. Second, their unique among all states in the country as the types of products banned third. They are so broadly written that don't deprive your states residents access to

tobacco and nicotine products deemed by the FDA to benefit the public health and also likely forced adult consumers of the ban products to return to smoking traditional combustible cigarettes. Fourth, they seem dismissive of the damage in impact they'll have on small businesses who rely on the sale of these products to keep their doors open. And finally, they seem unconcerned about the already active black market for vaping products in your state.

And I heard Cynthia, the teacher, who's plea concerning her students, and I understand, and I agree with her, that with that. But I think if you recognize the federal law that's already in place, the students somehow are getting a product that they already should not have, according to the federal law. So, I think we have to think about this. The proposed rules will negatively impact public health in Michigan. They will hurt small businesses and they will drive an increase in illicit, adulterated black market vaping products in your state.

While the impact statement reports that the proposed rules do not exceed a federal standard, that is not true. On December 20th, 2019, the federal government raised the minimum age for selling tobacco products to 21. Today, selling any tobacco product, including E-cigarettes, and vaping products, to anyone under 21 is against federal law. These rules also exceed the boundaries of that law. The proposed rules banned the sale of flavored nicotine vaping products to youth and adult consumers. Some of you may recall that the federal government in the wake of the vaping health related crisis of 2019 considered banning the sale of all flavored vaping products nationwide when it considered the costs and the benefits of acting. Such a ban would be determined that the cost of such a move restricting access to flavored vaping products to adults did not outweigh its benefits.

The Impact statement also incorrectly reports that most states have adopted similar standards that prohibit the sale of flavored tobacco and vaping products. No other state in the Union has enacted a ban of only flavored vaping products that contain nicotine as proposed here in Michigan. The proposed rules effect will be to leave unregulated flavor of nicotine vaping products on the market in Michigan inaccessible to both youth and adult consumers. The Impact statement reports that Massachusetts, New Jersey, New York, and Rhode Island all have enacted permanent bans on sales of nicotine flavored vaping products. But this is not precisely true. Just earlier this year, Massachusetts became the first state in the nation to ban all flavored tobacco products, along with all flavored vaping products, whether or not those vaping products contain nicotine. And it has recently begun the process to assess the impact of that sweeping ban on the commonwealth's illicit tobacco markets, it's small businesses, and the state's overall physical well-being. Likewise, New Jersey, New York, and Rhode Island just this year

outlawed all sales of all flavored vaping products, and the verdict is still out on the impacts those bans will have on the state's public health and economies. Even more critical is that the proposed rules include no exception for new to market tobacco products approved through the FDA's premarket tobacco application process or the PMTA. The MTA, the FDA's PMTA's process is designed to ensure only those tobacco products that align with the FDA's goal of protecting public health are allowed on the market. The first deadline for filing PMTAs for vaping products with the FDA passed six weeks ago and hundreds of applications were filed. And considering the applications, the FDA assesses whether current tobacco users will be more or less likely to switch from current tobacco products to the new product.

They also assess the likelihood that the new product will entice non-tobacco users to begin using products with the goal to ensure that they will not. The MP, the PMTA process is an effective, responsible way administered by the federal government for tobacco product manufacturers to market innovative, tobacco-based products that align with public health priorities. Many pending applications and most of the applications already are approved for more traditional tobacco products involved flavored products. The likelihood is high that the FDA will approve some flavored nicotine vaping products. Why would Michigan want to limit its residents' ability to purchase and use those products here at home when the FDA concludes they will benefit the public health? This may be the most significant negative of these proposed rules.

The rules also negatively impact public health in your state because they limit adult users of the affected product from choosing tobacco products that are less harmful than traditional tobacco burning cigarettes. The Impact statement is clear that some adults may revert to combustible cigarette use if the rules become effective. However, forcing a segment of the adult population of your state back to use of traditional cigarettes negates the department's position, as required by law, that the rules are necessary and suitable to accomplish their purpose. Creating a new, unnecessary, unduly broad regulation that will impede the ability of tobacco users to purchase products that may significantly reduce risks to their health cannot be what this Department intends for Michiganders.

Next, this Department is well aware in the second half of 2019, many people in our country, including people in Michigan, died or experienced severe lung illnesses associated with vaping illicit THC products, primarily products blended with vitamin E acetate. This crisis demonstrates that a robust market for illegal vaping products already exists in Michigan by making the sale of commonly used, federally regulated flavored vaping products unlawful. The effect of the proposed rules will be do fuel in increase in sales of adulterated black-market products that pose serious health risks. Furthermore, criminal

elements which now include terrorist organizations, control the black market of products such as illicit vaping products in cigarettes. Even today, Michigan faces an active cigarette black market. Its cigarette smuggling rate is ranked 15th in the country.

Finally, the impact statement addresses and then ignores the small business owners who will be negatively impacted by the ban. These products are sold most frequently by independently owned tobacco vaping shops and convenience stores alongside more traditional products. According to the Impact statement, there are 8590 tobacco retailers in Michigan who will all face decreases in business should these rules become effective. An owner of several small tobacco vape businesses in New Jersey interviewed months after the ban became effective there reported that he had to shutter one of his retail outlets weeks before the ban went in effect, while his other retail outlet lost about 35 to 40% of its business in the wake of the ban. His business would not have been so seriously damaged, he said, had New Jersey said increased enforcement of the federal laws that ban the sales of flavored vaping products to those under the age of 21.

So, in conclusion, history has taught us that consumers resent, and they ultimately circumvent laws and regulations that restrict their ability to access goods they want to purchase and use legally. High taxes, excessive regulations, and an outright ban like the one you consider today have driven consumers to turn to an alternative new source to supply the goods they are accustomed to using. There is simply no evidence that the proposed rules will be more effective than the existing federal ban on selling these products to minors. Instead, the proposed rules effect will be to limit adult Michiganders' ability to access innovative tobacco products that protect public health, force adult users of vaping products to return to combustible cigarettes, and fuel an already flourishing back, black market for these products.

These cannot be acceptable cost of overly broad and unnecessary state regulation. Now is the time to halt the rulemaking process banning the flavor nicotine vaping products to avoid these foreseeable and inevitable consequences. Thank you for your time.

MEB:

Thank you very much, Mr. Hancox. Um, I think I already asked for Dave Hotchkins. Did you change your mind there, Dave, or am I moving on?

Dave Hotchkins:

No comment, thank you.

MEB:

Thank you. How about Mr. David Newman?

David Newman:

Can you hear me? Good morning and thank you for the opportunity to present our comments. My name is David Newman. I'm the associate director of Policy and Government Affairs for the Michigan Primary Care Association. Our Association is the voice for the 44 community health centers that serve as a health home for more than 715,0000 medically underserved Michigan residents at 330 sites throughout the state. The majority of our patients live below the federal poverty level and face multiple social environmental factors which impact their need for health care in their ability to access care. We appreciate the opportunity to provide comment in support of the Michigan Department of Health and Human Services proposed policy, Protection of Youth from Nicotine Product Addiction.

I'll be brief in our comments. As I said, we are supportive as we view that this proposed policy goes above and beyond what the federal government laid out in their regulations under Tobacco 21. In particular, we are encouraged that this proposed policy prohibits the sale of tobacco products and or excuse me, vaping products, that contain menthol or other mint flavor type of products. We encourage that the proposed rule which strengthens the federal policies and remove when I had mentioned regarding menthol and mint flavored products.

Our organization is unique in terms of that the areas we serve are the vulnerable communities that have been most disproportionately affected by COVID-19. These are minority communities in urban areas, but the thing is that you need to look at is that, as the COVID-19 pandemic spreads, it goes out to rural areas as well. Studies have shown that this horrible pandemic has very increased effect on those individuals that utilized tobacco products. Our center sites are, as I mentioned, are located in areas and we've been on the front lines before this pandemic, during the pandemic, and after the pandemic and we think we've set ourselves up in the position where, as users of tobacco, E-cigarettes and other tobacco products come forward, we were able to treat this population, service this population, currently provide, um, smoking secession programs and that, you know, offering opportunities for those individuals to learn about the harmful effects on these type of tobacco products, especially upon our youth.

In closing, we appreciate the opportunity to provide our comments in support of this proposed policy. Our members already supporting the future health programming that may evolve from this proposed policy. Thank you very much for your time.

MEB:

Mr. Newman, thank you very much for your comments. Before we get to Ms. McCready, there was a question asked with regard to whether this is being recorded and will that be available, and I'm assuming that that is a transcript. It is being recorded. I do have the housekeeping rules up that I am scrolling through.

If you desire a copy of the transcript, say public record and you should send a request to our FOIA email box. I will put that address at the bottom of the housekeeping rules for your information if you want to take that down. Good question. Thank you very much. Now, let's move to Donna McCready.

Donna McCready:

Good morning, I'm Donna McCready Bartlett. Thank you for allowing me the opportunity to speak with all of you this morning. I am a parent volunteer for PAV, which is Parents against Vaping and I support the ending of sale of all flavored vaping products.

My son started vaping nicotine back in October of 2019. He started with the flavors. Obviously, that's what drew him into vaping. He was a 17-year-old junior in high school. He was taking AP and honors classes and he was also a dual sports athlete, both on varsity soccer and lacrosse. Jacob, eventually he did try the THC vaping as well, but he went back to the flavors. He favored those flavors, cherry being his favorite. He had said that it was easy to hide should an adult question him as to what the odor and he would simply say he was eating candy.

That candy odor and so many other things were signs that I did not see it. The flash drives that were actually vaping devices, the cords, the USB cords that were stripped and used to charge those devices. The empty pod cartridges the empty juice containers. There were so many signs, but as a parent, I did not know what I was seeing, but these kids all knew what it was and how to get a hold of it and what to do with it.

It wasn't until months later, actually three months later when I realized that my son was addicted to vaping. My son was now vaping five times a day, every day, for three months. I could not believe it. It was a shock to me. My son and I, we had these conversations numerous times about vaping and the

importance of not vaping and what the health, of what it would do to his health, and he swore he would never do it because he was an athlete and he didn't want to ruin his lungs. But here we were dealing with this. We were dealing with my son being addicted because of flavored vapes and how good they tasted.

How did this happen? Especially when the age was 21 and over? How is my son getting a hold of these flavored vapes? But he did, and now he couldn't stop. He craved it every day, all day. Every day, all day, in it out of the bathroom at school. His mood swings, his panic attacks, his failing grades. His troubles in school, detention, suspension. His lack of motivation, his depression, his lies, and his desperation. They were all there, including nights I won't soon forget when I had to watch my 17-year-old son crying through gut wrenching sobs because he couldn't figure out how to stop, he couldn't figure out how to get rid of these cravings. It's all he could think about. And then the next minute he would be angry and punching his dresser because he was so angry and yelling. Why can't I stop? Why can't I stop?

This promising, healthy, strong young high school boy with a grade point average of 4.13 with the athletic abilities beyond the average student. He was no longer the boy I knew; he was no longer the son that I recognized. Vaping was now rolling his life both mentally and physically. The addiction took over and it had complete control of him. Sadly, the physical effects of vaping were just as great as the emotional ones. Jacob was a starter player for varsity. He usually will play the entire game. He would only have a break during halftime. But now he gets to halftime, he couldn't even get that through the first half of the game because he couldn't breathe. My son couldn't even go out and play a friendly community game of basketball because he couldn't breathe. My son couldn't get through an entire gym class because he could not breathe. It was taking over his life, both mentally and physically.

We're hoping, over time, that his breathing will rectify itself. And at that too, along with this addiction, will just be a bad memory. Once I finally became aware of what was going on and after many family meetings, counselors, doctors, schools, vice principals, we finally started to put life back together. We pray every day that it continues to stay on the right track as he continues to fight this addiction.

I was really hoping that with school being online at this point, maybe some of that the cravings and the urges would be gone because it was at the point at school he couldn't even use the bathroom without being asked if he wanted to vape, or if he wanted to try a new flavor. And we're not talking once a day. We're talking every time he stepped into the bathroom. He would be asked if he wanted to vape. This is

truly an epidemic with our children. When a child can't go to the bathroom in school without being tempted or persuaded to try vaping and try different flavors, there is a problem.

Our kids are getting ahold of these flavored vapes. Jacob is working hard. As I said, every day he's working hard to stay in control. The addiction, he recognizes how it was his life felt like it was spiraling out of control. He recognizes that he has breathing problems as a result. He regrets the day that he ever tried it. But despite all this, he still finds himself to this day craving the nicotine. The nicotine has him addicted. And those cravings still come after him every day and he tries his best to fight them. But he does breakdown and says just one more time, just one more time. We keep praying that this is behind him and we keep praying that physically he will get better with his lungs and that he will be able to get past this.

I will tell Jacob's story as many times as I have to if it means that I can reach one child and help them to either stop vaping or to not to try it. I will tell every parent I know what to look for and how to help their child if I can help one parent not to have to go through what I had to see my son go through as an , as being addicted to this flavored nicotine. Every bit of my time will be well spent if I can save one child. I don't want any parent to have to ever see their child crying uncontrollably because he can't understand why he can't control something. I don't want any parent to ever have to get that phone call from school because my son sitting in the bathroom stall panicked, because he can't leave the stall and fear that he's going to try vaping and he's going to try the new flavors because they're all passing them around in the bathroom right now. I don't want any child to have to go through with my son goes through every time he steps foot on a field, and he can't breathe, the field that he used to dominate.

But more importantly, this needs to stop. People need to understand how quickly addictions happens. They need to understand how hard it is to break this addiction. People need to realize the negative effects of vaping is having on our children, both mentally and physically. Flavors draw children into vaping. The nicotine addicts them. And it keeps them coming back for more. The epidemic is not going away. As long as our kids are able to buy and sell flavor nicotine among each other, they will continue doing flavored nicotine. It doesn't matter that the age limit is 21 and over. Some of the kids are still getting it. They're getting these flavors, they're filling the cartridges, and they're reselling it to those that are not able to obtain the product. This is going to continue as long as flavors are available.

The only way to end this is to remove all flavored, all flavors. This is the only way. We need to stand up and we need to protect our children from this deadly habit. Thank you for your time.

MEB:

Thank you very much, Ms. McCready. Moving on, Clifford Douglas. If you want to unmute yourself. OK, just so folks know you might have to press Star 6 to unmute. Thank you. Emily Henderson?

OK, how about Eric Campbell. Eric Ruhl.

Erin Mills?

How about George? Heidi Denton?

Jerrod Burkhardt?

Jerrod Burkhardt:

Hello. Can everybody hear me? Hi. Thank you, thanks for allowing me to testify today. I really appreciate it. My name is Jerrod Burkart. I'm the executive director of the Michigan chapter of the American Academy of Pediatrics. I'm also the co-chair of the Keep Michigan Kids Tobacco Free Alliance. On behalf of our over 1400 members of the Michigan chapter of the American Academy of Pediatrics, we are in strong support of this rule.

We also strongly support the state expand this rule to prohibit all flavors in all tobacco products. Vaping has been increasingly becoming an epidemic in our high schools and now, unfortunately, our middle schools. The number of children coming into their pediatrician with nicotine addiction has been increasing exponentially over the last few years. This addiction is been so prevalent that there's, now teen sayings that the kids are Nic-sick. It's getting to the point where they're making up making up comments on how sick they are and how addicted they actually are to nicotine.

40% of our kids actually consider themselves frequent users of a products. Studies have shown that flavors increase team usage. The United States Surgeon General, Jerome Adams, who was nominated by President Trump and he's been in office since September of 2017, released an advisory on E-cigarette use among our youth and it stated, besides increasing the possibility of addiction and long-term harm to brain development and respiratory health, E-cigarette use may also lead to the use of regular cigarettes that can do even more damage to the body.

We've already heard a little bit today about how E-cigarettes are helpful and safer, but there are been numerous studies that have concluded that E-cigarettes are harmful, especially to children. You know the saying that safer has been based on flawed research. There have been articles that have set a bump,

any kind of findings that cigarette cigarettes are safer. It's clear that eliminating flavors within vape products and all tobacco products generally will be able to help promote the health of kids in our state. This action will allow kids to be more productive and have more opportunities for their future and at the very least it will lessen the health care needs of our future adults. So that's why we support this rule and ask that it be expanded to all tobacco products and thank you for your time today.

MEB:

Thank you, Doctor Burkhart, appreciate it. OK, moving down. Jennifer?

Participant:

Excuse me, can you hear me?

MEB:

I can hear you.

Erin Mills:

Oh, hi. Actually, this is Erin Mills and I missed the opportunity. I don't know. I was having an issue getting connected so whenever you can come back to me would be great. I just want to let you know I'm here.

MEB:

I was going to swing back around. Why don't you, while you're here, why don't you take it from here, Erin?

EM:

OK, so I just wanted to, first of all, thank you for the opportunity to testify and share my brief story. My son was 14 when, he's now 18, when he brought home Juul and it was something that every kid had. We would pick the kids up to go skiing and they all had it. And what's the flavor? And it became a very social thing to do at the time. We had no idea, you know, we said, what is this? And he would say, Mom. It's I'm not drinking, I'm not smoking, this is just water vapor. Everybody's doing it. We saw everybody was doing it and that's when I started really doing my research and so that he so he started 14 and there was nothing on line that said, sort of what, what is this?

Cut to now, he's 18. My son is addicted to nicotine 100%. He admits it. He then developed an eating disorder due to the nicotine. I do believe it impacted his brain and as it does as we know nicotine

impacts the developing brain of a teenager and the virgin lungs. So he went from he went from one addiction, which was the was Nick is nicotine, to an eating disorder, to alcohol, and, most recently, he, I saw him smoking and I looked and I was like you know what's going on and he said, well I, I'm not able to get vape products at this store so and I haven't nicotine addiction habit so I need to get my nicotine fix somehow. And now he is smoking cigarettes.

The, the trajectory of how quickly this happened is, is baffling for a parent who's, who's very consc-, were conscientious parents, were, you know, but it's the story of every parent who is dealing with their child having a nicotine addiction. I think Michigan's opportunity here is to ban flavors. Menthol is the original flavor of nicotine addiction, and we have done so much to get away from that and to protect your kids. And this flavor ban would do with the FDA has not done, which is protect children from nicotine addiction. The loopholes that the FDA starting in 2009, 2016, 2020, those were all key opportunities to shut the door so kids would not have access to nicotine and, for whatever reason, lobbying at the, you know , and loopholes were created and that is the reason Juul came on the market and that is the reason now, and that was 2015-16. That is the reason that Puff Bar and now all of these copycat E cigarette companies, they've been able to come on the market.

Now the market is turning into pouches and gum, and it is, it is now so uncontrollable, there's no way that that that parents, because it's everywhere, people say, what are you talking about? It's not legal anymore, we're in New York. Well, I'll tell you that I know my son gets it. He goes to a seedy gas station or bodega or a seedy smoke shop, or convenience store where the owners don't care that they're selling dangerous products, illegal products, counterfeit products, two kids, and then they charge them more because their flavors, and so now the kids are willing to go and pay for the flavors that have been banned, and because there's no enforcement.

So, until the FDA , we need, we need regulation to protect our children. We need legislation and enforcement. And until we have these things, we're going to continue to see this nicotine addiction spiral out of control and I feel fiercely about protecting our children's public health and the way to do that is what Michigan is doing and it would be to ban flavors and do what the government has not done. And I think that is a tremendous opportunity and such a leader-, it would be such a leadership position that every state should do the same, so thank you for the opportunity to talk.

MEB:

Thank you, Ms. Mills. Ok, for those of you who joined us a little bit later, we will get back to you. I am scrolling housekeeping rules, everyone will get to make a statement.

I'm going down a list and then I will circle back. If you could raise your hand, then we can discuss the next person to make the public comment. Thank you.

Next, we have Jeremiah Hall. How about Jeremiah Friedly? I'm sorry, Jeremy, Jeremy Friedly?

Jeremy Friedly:

Hello, my name is Jeremy Friedly. I do not smoke. I do not vape. I, however, I do support businesses in the state of Michigan. The government does not pay my salary, so I rely on private business. I work for, for a living.

Here's how, I'm hearing a lot of how these minors were able to acquire these products well below the age that they are clearly allowed to purchase them. I don't see how a ban is going to prevent them from procuring them from other unscrupulous means or purchasing them out of state.

The majority of the state lives in Southeast Michigan. That's not far from Ohio. And so unless Ohio and all the other states ban it, expect to see a lot of tax revenue and jobs pop up in Ohio as opposed to our state, so will just fall further behind and see other states infrastructure benefit from something that doesn't really stop the problem. I wouldn't expect in this day and age to see adults be able to purchase cannabis products, but not flavored E-cigarette or vape products. Thank you.

MEB:

Thank you, Mr. Friedly. How about Jodi Radtke?

Jodi Radtke:

Mary, can I hold my comment until a little bit later in the hearing?

MEB:

Absolutely. OK, how about Josh Stevenson? Joshua? JS Pruitt?

Let me see, the next one is Cami. Ends with a [unintelligible].

Patrick:

How's it going? My name is Patrick. I'm on the record. Thank you for having this meeting today so everyone could share their opinions on this. Just want to go over a small, brief story. You know, I'm pretty much a nobody in here in Michigan. It's not like I hold a public office or work at a school or have children of my own, so, yeah, growing up, I started smoking roughly around the age of 14, right? It was pretty easy to get, go to the store and bought some. Rules back then were simple, don't sell to minors. Still bought them on my own. It didn't really matter.

Growing up, I was told coffee was bad for you. I never drink coffee, got my first cup, you know, black, no sugar, no cream, nothing fancy. Didn't like it. So, I put it off until I was about 18 before I started drinking more coffee. As time progressed, I came more addicted to cigarettes and I've smoked up until the age of 26 when I was finally able to quit. Wound up vaping as a substitute for that. But I always drank coffee from the age of 16. Didn't matter, what I like the flavors, you know, hazelnut, pumpkin spice. Didn't matter, it was pretty good. Growing up, I was told that was worse for you than cigarettes. Just how my parents taught me at that point. I mean, now in days you don't see a lot of high schoolers or middle schoolers coming in the school with flavored coffees. But you see them coming in with vapes. I pretty much assumed that most of the flavors for vaping and stuff, yes, they're highly saleable to kids. But it could be more managed correctly. When I see a comparison between this and, oh, it should be banned, OK, then go ban flavored coffees. They're just as bad for you in some cases. Might as well just go ban those too 'cause that doesn't make any sense. There's tons of other flavored stuff out there. Vodka, rum. All these could be flavored, yet we don't sell them to minors on purpose.

Proper regulations of this needs to be in place. First of all, you can add tracking codes to all the URLs, all the barcodes from what store that came from and how they got them. Start tracking these things. I wish you could figure out what places selling them to minors. Target businesses with fines. Charge the adults with fines instead of dealing with the children. Education and information about this kind of stuff needs to be more implemented in public settings. Speaking to adults from the school about how to mandate, you know, addiction, and how to deal with addiction at home. Just as if you would do for some heroin uncle of yours or a brother who happens to love THC products.

Education is more important than this than just outright banning it. I think that covers my points, so go ahead and move on.

MEB:

Thank you very much for your comment. OK, how about Karen Tommalus?

Karen Tommalus:

No comment on at this time.

MEB:

Thank you, Karen. I've been asked to remind people when your name is called, if you wish to make a comment If you could unmute yourself and then give your comment, that would be great.

Now, let me see, Kate, Kate Ankenbauer.

Kate Ankenbauer:

Hi. I'm just in as an observer for my coalition so I'll just continue to listen.

MEB:

Thank you, thank you, Kate. Ken Fletcher.

Ken Fletcher:

Good morning everybody. Thanks for this opportunity to present. I'm Ken Fletcher, Director of Advocacy with the American Lung Association in Michigan and we appreciate the opportunity to submit comments this morning. The Lung Association strongly supports a comprehensive and evidence based rule that would prohibit the sale of all flavored tobacco products, including flavored E-cigarettes, menthol cigarettes, and flavored cigars.

With the Protection of Youth from Nicotine Product Addiction rules to be effective, the Lung Association recommends expanding the proposed rule to include these other flavored tobacco products, in addition to flavored E-cigarettes. The need for Michigan to take bold action to protect our youth from E-cigarettes became abundantly clear after the US Surgeon General declared E-cigarette use among young people to be an epidemic in 2018, due to a 78% increase in high school E-cigarette use, according to the results from the Centers for Disease Control and Prevention, National Youth Tobacco Survey.

E-cigarettes are not safe and can cause irreversible lung damage in lung disease. They contain chemicals harmful to lung health when inhaled, such as heavy metals, carcinogens, vegetable glycerin, and propylene glycol. The developing lung of youth may be more at risk making what the Surgeon General refers to as a youth E-cigarette epidemic even more alarming.

No one should use E-cigarettes or any other tobacco product. While the 2020 National Youth Tobacco survey showed an overall decline in youth E-cigarette use, it also underscores that kids follow the flavors. The use of menthol Juul increased the main flavor left on the market, and disposable E-cigarette skyrocketed 1000% among high school students and 400% among middle school students.

Whatever flavored tobacco products that are left on the market will become the new youth flavor, favorite. 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 anesthetic properties which can reduce the harshness of cigarette smoke for young new smokers, making the poison go down easier. While overall cigarette sales have been declining, 91% of the decline is due to non-menthol cigarettes and proportion of smokers using menthol cigarettes has been increasing. In addition, over half of kids who smoke cigarettes used menthols.

To exclude menthol cigarettes from this rule would create a two tiered system of public health inequity, disproportionately protecting predominantly white communities, where E-cigarettes are more popular, while banding in kids in predominantly black, Latino, and LGBTQ communities where menthol cigarettes are more popular.

To protect public health and end the youth E-cigarette epidemic, we strongly support the enactment of a comprehensive rule ending the sale of all flavored tobacco products, including flavored E-cigarettes, menthol cigarettes and flavored cigars. Thank you again for this opportunity to comment this morning.

MEB:

Thank you, Mr. Fletcher. OK, the time is now 10:02. We will be taking a 15-minute break. We will be back on the record at 10:17. Thank you.

MEB:

OK, Good morning. We're back on the record for 2019 -107 HS, Protection of Youth from Nicotine Product Addiction. My name is Mary Brennan. I am the regulatory affairs officer for the Michigan Department of Health and Human Services.

During this public hearing, I will be scrolling through housekeeping rules for those who join later on. The highlights-This meeting is being recorded for purposes of transcription and transparency. All phones will be muted upon entry into the meeting.

If you would like to make a statement, I will call your name or the last four digits of your phone number. If you do wish to make a statement, make sure that you take your phone off mute to provide your statement.

Comments for the public ends on Friday. There is an email box to provide further comment, MDHHS-AdminRules, AdminRules all one word, at Michigan dot gov, and yes, the transcript will be available. Please give two weeks and then send to the MDHHS-Subpoena at Michigan dot gov email box for a copy of the transcript.

Ok, I believe we left off on, oh, next in line we have KK. Any statement?

KK:

No comment at this time.

MEB:

Thank you. How about K-y-m, Kym?

Noel Larkin

Noel Larkin:

Hello, sorry apologies. Folks hear me?

MEB:

Yes, we can hear you.

Noel Larkin:

So, my name is Noel Larkin, I'm the director of office of Cancer, Health Equity and Community Engagement at Karmanos Cancer Institute. I'm also a parent to three children, so that's why you may hear some background noise, and a member of the transgender and queer communities here in Michigan.

I'm here today to speak out in support of the proposed ban on all flavors, including menthol, from the perspective of the LGBT community. So, youth are getting addicted to nicotine via vaping at unprecedented rates and rates of the public health world has never seen before. With risk behaviors, over a third of queer youth are currently getting addicted to nicotine via vaping and the average age that youth come out is, you know, around age 11 to age 13 and it's really the same age that they first would try tobacco. And as a member of the LGBT community and someone who mentors and supports queer youth, I see firsthand how particularly vulnerable under-resourced youth are at risk. As someone

who came out myself at age 13 and started using tobacco at age 14, this really closely mirrors my experience and thankfully I was able to stop using tobacco in my early 20s, but not everyone is so lucky.

We know that LGBT and communities of color are as proportionately affected by tobacco, and this is especially true with flavored tobacco. Vaping is not the answer to the LGBT smoking disparity. It's about protecting youth and community members who are most impacted by the negative impacts of flavored tobacco. And I believe that many LGBT community members also understand, like myself, that banning flavors is a health equity and a social justice issue for us. Thank you for the opportunity.

MEB:

Thank you, Kym, I appreciate it. OK, I believe we are on Lindsay Stroud.

Lindsey Stroud:

Hello, can you hear me?

MEB:

I can indeed.

LS:

Awesome, thank you. I thank you again for letting me present this testimony. My name is Lindsay Stroud. I'm a board director with the Smoke Free Alternatives Trade Association, or commonly known as SFATA. SFATA has teamed up with the Michigan vape shop owners to create video testimonials of adult E cigarette users, and we've submitted those, and I didn't want to go play them or anything because there's about 35 video testimonials. They're all between 30 seconds to one minute and 30 seconds long.

We wanted to really show how adults use these products to quit smoking and remain smoke free. Often times you're seeing the so-called youth vaping epidemic on when these rules come into place. Through these video testimonials, the average age of our participants is 53.1 years old and the average year smoked is 32.4 years. I just want to give some examples of what you'll see.

Jerry Donahue. He lives in District 4. He's 74-years-old. He's been smoking since he was twelve. He quit vaping and he's been vaping about eight years now and he's currently vaping raspberry and three milligrams nicotine. Lori is 63 years old and she's from Midland, MI. She smoked for about 47 years and she gave up eleven years ago using flavored vapor products and her flavor that she likes is pomegranate, blackberry, blueberry. She's got a really cool comment that she makes. I grew up in a smoker's home.

My children grew up in a smoker's home, but my grandchildren have not grown up in a smoker's home because their parents vape.

Peter Rocky lives in Painsdale, Michigan. He's 51-years-old. He smoked for over 20 years. He tried many, he tried to quit many times like many other adults who suffered from smoking addiction and couldn't until he started vaping and he actually started vaping under his doctor's advice. He's been vaping now for about 6 years and he uses a watermelon flavored vape juice. And as he says I pretty much stay with watermelon, bubble gum, things like taste like fruit because I don't want to be reminded that I ever smoked.

Alice, she lives in Midland, MI. She's 56-years-old and she smoked for 33 years and she got up to three packs a day. She quit smoking using vapor products, and she's been using them for over 9 years. She's currently vaping a champagne punch and one milligram of nicotine.

Mike Isaacson, he's from Dollar Bay, Michigan. He's 69-years-old. He smoked for approximately 53 years and he's been vaping for about seven years now. He uses caramel, mint, butterscotch, and other cream flavors, and he thanks vaping for quitting a pack and a half day, a pack and a half per day habit.

Kim is 59 years old. She smoked for 38 years. She actually lost her husband 18 years ago due to lung cancer and believes that he would still be around if these products were still available. She's vaping a black coffee and three milligrams nicotine, and she's been vaping for about seven years.

While we understand this use of age-restricted products is a laudable goal and we fully support that, banning flavors unfairly punishes adult smokers who have used vaping products long before the so-called youth vaping epidemic, as evidenced in these video testimonials that we have submitted. Not only are E-cigarettes a useful cessation tool, they are unlikely to exceed 5% of the harms of combustible cigarettes as noted by the Royal College of Physicians, which is the same agency that the United States relied on for its 1964 Surgeon General's report. We hope that the MDHHS takes consider, takes into consideration these video testimonials of adult smokers that are now vapors. As you will see, many of these individuals were unable to quit smoking until they started using flavored vaping products and it would be a shame for them to return to smoking as you're seeing and some of the testimonial, testimonies that were presented this earlier today about kids who no longer vapor now smoking.

Thank you for letting us to make these comments.

MEB:

Thank you very much, Lindsey. Before we go to the next person, I would like to make a correction for the record. Apparently, I had said a copy of the transcript is available by subpoena. Please do not send me a subpoena. I meant FOIA and the FOIA address is in the scrolling document that I have up for housekeeping. OK, next we have Maham Akbar.

Maham Akbar:

Hi, my colleague Stacy goes, you know actually be doing it. She can either go now or if you'd like to call her.

MEB:

I'm sorry, for who?

AA:

Stacy Gaussian.

MEB:

OK, if Stacy would like to go.

Stacy Gaussian:

Sure, thank you so much. I am very happy to be here today and appreciate this opportunity. I'm here to speak on behalf of Truth Initiative. We are, our mission is to make tobacco a thing of the past.

I'm here in support of Michigan's regulatory action. Prohibiting the sale of E-cigarettes would go a long way to end the youth E-cigarette epidemic. However, we strongly encourage the Michigan Department of Health to take this action even further to protect the states youth an extend this sales prohibition to flavors of all tobacco products, including menthol cigarettes. We know that nationally 3.2, 3.02 million high school students report current use of E-cigarettes and 22% of those report using E-cigarettes on a daily basis. In Michigan, 20.8% of high school students reported current use of E-cigarettes in 2019. That's simply far too many youth using these products that contain nicotine, which we know is harmful to the adolescent brain.

In fact, evidence that E-cigarette use among young people can lead to cigarette smoking. Some of the previous spoke, speakers testified to that earlier today. A recent Truth Initiative study found that US youth and young adults are up to seven times more likely to start smoking cigarettes if they previously used E-cigarettes.

Truth initiative has long supported the removal of flavors and cigarettes, cigars, and smokeless tobacco products. We know that flavors have overwhelmingly been used to attract those who have not previously used nicotine or tobacco products. Recent data from CDC shows that flavored tobacco use among youth is on the rise. Other studies show that adults are much less likely to use flavors than young people.

Unfortunately, the Food and Drug Administration has not taken strong action on unflavored E-cigarettes. The actions they have taken are totally inadequate because they're not comprehensive and recent sales data bears that out. They show that E-cigarette users, including young people, simply flock to the flavors that are available instead of quitting. Our written testimony will provide more detail on all of these studies, but the upshot is that more comprehensive policies need to be put into place. The proposed rule we're discussing today is a strong measure that Truth Initiative strongly supports, and we hope that Michigan will take the next step and work to prohibit the sales of all flavored tobacco.

Finally, I want to speak on a more personal level. As a Michigan native, I am proud that the state is taking this bold action. I have young nieces who live in Michigan and this action can protect them from nicotine addiction. Thank you.

MEB:

And thank you Stacy. Ms. Akbar, did you want to make a statement as well?

AA:

No, thank you.

MEB:

OK, moving on. Carly May. Would you like to make a statement on mute?

OK, how about Marty?

Mary Kay.

Michael Mead

Michael Mead:

Not at this time, thank you.

MEB:

Thank you, Michael. Michael Zimmer.

Michael Zimmer:

We will be providing written comments later, Mary, thanks.

MEB:

Thanks, Mike. Mona?

Nathan Lehman

Paul Steiner.

Paul Steiner:

Thank you. I am Paul Steiner. I'm the executive director of Tobacco Free Michigan. We are a statewide organization whose membership is made up of frontline health care providers, school counselors, public health organizations across Michigan that deal with the impact that tobacco has on our public health on a daily basis. We strongly support these rules, and as we supported the emergency rules. The Surgeon General, we believe, was absolutely correct when he indicated that vaping is an epidemic and we believe these rules will make Michigan's public health better.

Flavored products, as others have said, are an attractive pathway into smoking. An FDA study found that 81% of youth, 86% of young adults, and even over 50% of adults report that their first tobacco usage was with a flavored product. These are not products that are primarily designed to help people quit as some other people have talked about. They are shown to actually increase the length of time with which people smoke.

Uh, the same FDA study found that, for those that initiated with flavored products, they were 13% more likely to continue smoking a year later if they were youths and they started with a flavored product than if they had started with a traditional non-flavored product. It was even more striking for adult users who saw a 32% increase in their usage a year later. The antidotes of adults quitting are absolutely that they are, well, it's definitely helpful for some, but these are not cessation products. None of them have been approved and it is our understanding that if one were to be approved, they would not be covered under these rules.

We believe that that banning vapor flavored vaping products in Michigan will have immediate and long-term effects, but these aren't enough. Um, as others have indicated, these, we would encourage the state to expand these rules to all flavored tobacco products. We know that over half of young adults start with menthols. They're generally considered less harsh on the throat, so they are easier to start, and these are specially targeted at minority communities where 93% of new African American youth start smoking with menthols. It's not a coincidence that the top five cigar brands used by teenagers all sell flavored cigars. And over half of smokeless tobacco sold is flavored.

We do agree with the industry representative earlier, Mr. Hancox, that these rules have the potential for increasing black market sale. We would also encourage the state too strongly shut that down by requiring that all on line sales, which is where most youth are able to get it and studies have indicated that they can be successful up to 94% of the time, that online sales not be allowed to be shipped to

homes but be shipped to a retailer where the retailer can then check the product to ensure compliance with these rules as well as age limits. We strongly urge the state to strengthen these rules by expanding them to all flavored tobacco. whether it's vaping, combustible, smokeless or any other form, as well as requiring that online sales go to a brick and mortar retailer and together these the proposed rules with those additions we believe will make an immediate and long lasting impact on the public health of Michigan And we would just like to thank MDHS, MDHHS for considering these rules and watching out for the health of the state of Michigan. Thank you.

MEB:

Take you, Paul. Appreciate it. OK, moving on, Rheem Ahmed?.

Robert Schirmer? I said that right?

Robert Schirmer:

You said that right.

MEB:

Very good.

RS:

My name is Robert Schirmer. I'm a physician of internal medicine specialist dealing with older adults. I'm also the former medical director of the Barry/Eaton District Health Department. I am writing in support of the permanent rule that would ban the flavor, ban the sale of flavored E-cigarettes and all flavored tobacco products in the state of Michigan.

Um, E-cigarettes and tobacco are nicotine delivery systems. Nicotine is addicting and nicotine addiction is a pediatric disease. Youth E-cigarette use is rampant in our rural county, Barry County of population about 60,000. 2017 to 2018, with the most recent available data available to us, about 25% of 9th

graders and 36% of 11th graders have used E-cigarettes in the last 30 days. This has created quite a burden for our schools with our schools and local police. They spend a lot of time and effort enforcing bans on E-cigarette in schools and helping kids break the habit.

In the 2019-2020 academic year, the Hastings Area School system, assisted by the Barry County Substance Abuse task force had 21 students and 24 parents attend the Catch My Breath Program as an alternative to suspension fines or misdemeanor charges for youth who are vaping on school property.

As mentioned, nicotine addiction is a pediatric disease and current daily nic-, tobacco users initiate nicotine youth use as youth, and you heard that from some of the testimony when people talk about being on tobacco for 50 years and starting when they were 14 years old. A person who has not started using nicotine as a teenager is unlikely to ever become a regular user. 21% of current daily smokers try their first cigarette by age 12 and 44% by age 14, 73% by age 16 and 90% of current daily smokers began smoking by 18 years of age.

So, it's very important to keep youth from getting started on nicotine. Because nicotine addiction begins in teenagers and younger children, the former Food and Drug Administration Commissioner David Kessler, back in 1995, referred to nicotine addiction as a pediatric disease. And it's very difficult to overcome nicotine addiction. Of adolescent smokers, one third are unable to stop, and one third will die of their tobacco use and a third will survive their nicotine addiction.

One author by the name of Doctor Francis says that nicotine addiction is the most common fatal condition that presents during childhood in developed nations. Adolescents, as you heard from some of the testimony, become dependent, become dependent on nicotine very rapidly and at lower levels of consumption than adults. In a study of 13-year-old's, signs of nicotine dependence developed within two months of the onset of smoking.

The median frequency of use of cigarettes at the onset of nicotine dependence was two cigarettes, one day a week. And two third of teens report loss of autonomy over smoking prior to the onset of daily smoking. In addition, adolescents greater impulsivity and risk-taking leads them to discount the consequences of experimentation with nicotine delivery systems. As a result, adolescents who begin to use combustible tobacco are more likely to become dependent, to progress to tobacco, progressed to

daily smoking, to continue to smoke into adulthood, to smoke for a greater number of years, and to smoke more heavily as adults. And you also heard adolescents are less responsive to smoking cessation therapies. This means that for some adolescents, their fate has been cast with their first few cigarettes, first few electronic nicotine delivery systems.

So in conclusion, I would ask you to protect Michigan kids, keep kids from starting and getting hooked on nicotine, get flavored tobacco and flavored E-cigarettes off Michigan shelves permanently, and ban the sale of flavored E-cigarettes and all flavored tobacco products in the state of Michigan. Thank you.

MEB:

Thank you Doctor Schirmer, appreciate it. OK, moving on, Ron Khory?

How about -?

Ron Khory:

I'm sorry, I'll wait for comments at the end.

MEB:

Thank you, Ron. OK, how about Russ Swanson?

Sean Sorensen?

If you have a comment to make, please unmute.

OK, next we have Shane Wisniewski?

Shane Wisniewski:

Hi, can everyone hear me?

MEB:

Yes.

SW:

OK, let me just get enough, situation with more light so I can turn on my camera too. OK, so I'm not, I'm just a regular vaping consumer. I'm here in opposition to this rule.

Basically, when I was a child, 14-years-old, I started smoking cigarettes. And, you know, my parents were smokers as well. I smoked for well over 15 years until I found vapor products. I've been six years smoke-free due to flavored vaping. Now these, um, sorry, I'm a little nervous, these...

MEB:

You're doing fine.

SW:

Thank you. These products are not about children using them, they're about adults that need them. So basically, in regards to some of these numbers that you've heard, uh, you know, paid interest? That basically come up with, you know, there, when they come up with these numbers, these numbers are based on, you know, they say youth use is this percentage. Their basing that on somebody using something for one time and they consider them a full-blown user and that's not, that's not very accurate.

Uh, I'm, when I was, before I actually started fully smoking, I tried cigarettes and I was not a full-blown user. So, though those numbers are extremely inaccurate. I also wanted to speak to the flavors themselves. Basically, in my mind, even when I first started vaping, I didn't want to use tobacco flavor because I wanted to reprogram my mind away from that nasty taste, that nasty smell, and, and therefore, using those flavors are what basically retrain my mind to where I don't have to have that nastiness to be able to still get my nicotine and not smoke. And through traditional nicotine replacement

therapy such as patches, gums, lozenges, I wasn't unable to get that. Tried those about nine different times, failed every single time because it isn't, it isn't satisfying to a smoker.

Now, some people may be able to use those and quit successfully. But it doesn't, it only lasts a certain amount of time for most people, and then they go right back to smoking, which is what I ended up doing. Eliminating these flavors for the adults that need them is a detriment to the smokers in the state. It's also a detriment, which I haven't heard this yet, to the tens of thousands of workers that work in these vapor shops in the state of Michigan. Without flavored products, these shops will close down. And you could take a look at the places like New York for example. Jobs are just gone now because of what they've done to eliminate vapor products in that state. So, I, I've not paid. I'm just a regular person and I could tell you from the bottom of my heart that we need these flavors. As Lindsey mentioned, you know, these are, you know, 30, 50, 70-year-old adults that need these flavors. Now, children, um, I'm, you know, I don't care what you do, you could eliminate flavors. They're still going to use these products because it has nothing to do with flavors. It's to get the nicotine buzz from the product, just like they would with a cigarette, just like they would get a buzz with alcohol. Just like any, any other drug, or any other substance.

So, eliminating flavors would do nothing but expose people to harmful black, black market products that are untested by the FDA because all these products that we've heard of today have been not approved by the FDA, per se, but these products are made in the same labs that doctors and scientists use to make medicine. These aren't made in somebody's basement in a bathtub. These products are made in extremely expensive, cleaner rooms that are certified by groups like the FDA to maintain cleanliness, and to maintain that proper procedures are being done.

I don't want to take up too much of your guys' time, but basically, in closing, I'm completely opposed to this rule. And it's these flavor, flavored vaping products saving peoples' lives. And I'm one of them. So, thank you very much for letting me speak and I appreciate it.

MEB:

Thank you very much, Shane. Appreciate it.

Elaine Lyon DHHS:

Mary, I'd like to make just one comment if I may?

MEB:

Sure.

EL:

And I do want to say thank you again for your comment, I will say...

MEB:

Could you introduce yourself for the record?

EL:

Apologies, yes, my name is Elaine Lyon. I'm a public health consultant with the Tobacco Control program at MDHHS and I do thank you again for your comment. This is a public health epidemic that was actually declared by the US Surgeon General. E-cig use by youth is a public health concern and flavors are the driving force that are allowing our children to take another look at these products, to initiate use of these products, and we actually know that the adult rate of E-cigarette use is much, much lower in Michigan, it's around 6.1% based on 2018 data. The youth rate's in Michigan are far higher at 20.8% in 2019, according to the Youth Risk Behavior survey. The data is very solid. It is done in scientific ways. And we're really seeing that there are so many fewer adults who are using E-cigarettes than kids. It's the kids who are really using these, and the flavors are driving them in that direction.

The other thing I'll say is that, while there are surveys showing that many adults enjoy using flavored products, and there are definitely anecdotal reports of smokers who say that flavored E-cigarettes help them quit, there is no evidence that smokers could not have quit without non-tobacco flavors. In fact, there hasn't been a single randomized controlled trial to assess the impact of flavored versus non-flavored or tobacco-flavored E-cigarettes and smoking cessation outcomes. In back in 2014-15, among

US daily smokers who quit cigarettes, use of E-cigarettes in those attempts compared to approved cessation aids or no products showed similar abstinence, abstinence rates one to two years later.

This isn't a battle between our children and adults. We are simply responding to a public health epidemic of use of E-cigarettes, and in particular, flavored E-cigarettes by our children. Thank you for letting me comment.

MEB:

Thank you, Elaine. Shane, any comment?

SW:

Oh sorry, I had to... Can you hear me now? OK, so, um, in regard to the number of adults that don't use these products, I don't know where those numbers came from, but that's false. I cannot, you know, when you see people that smoke, you, you either know a smoker, you were a smoker, you had family, that family members that were smokers. Basically, with vaping it's the same thing. Now, every time I'm out it doesn't matter where it is in the public, at work, at the grocery store, I always see people that use these products and nine times out of 10 when I ask them what it is, it's not tobacco. It's a flavored product so I would say that that I don't know where those numbers came from, but and I'm not trying to call that person a liar, but those are strange numbers there.

I also wanted to mention, I don't think I mentioned this before, that when using these flavored products. You know, I, I mentioned, you know, reprogramming your brain. Someone made a comment about how children are more likely to use, to go back to smoking based on flavor products. that couldn't be further from the truth. So, to me, that's like going from, you know, licking an ashtray to wanting to, you know, drink fruit punch. You know that that doesn't, that doesn't equate to any reality. Again, I'm, I'm just a consumer and a vaping advocate. Honestly, I wasn't a fan of these products when I first started them, I just wanted to quit smoking. But when I saw the impact on people's lives and people's jobs and what these products did for the economy, which, in fact, speaking in Michigan, these companies small, but these are all small businesses aren't Big Tobacco companies. These are mom and pop individuals that, you know, got some money together, started a business because they feel like me that this product is saving lives and they are paying millions and millions of dollars in taxes to the state of Michigan per year.

I don't know I'm, I'm sure the numbers have went down and the amount of businesses that are in Michigan. But still, they're paying a lot of money in taxes towards our state and again, these are small business owners. These aren't people that are rich. So, that, that's all I had on that comment. I'm going to yield my time to somebody else.

MEB:

Thank you, Shane.

OK, how about Skip Murray?

Kim Murray:

Good morning, can you hear me? Good morning, my name is Kim Murray. Skip is my nickname. I'm previously served on the board of directors of Tobacco Harm Reduction for Life, and I currently serve as a volunteer with THR 101. We're a grassroots advocacy group trying to educate the public on ways to reduce the harms from smoking for people who won't or can't quit smoking.

Every year, about a half a million Americans die from smoking. Daily, that averages out to about 1300 people. Many of those people are amazing citizens of Michigan and it's a tragedy that we're losing our focus on the death and disease caused by smoking. I work overnights at a group home and this morning when I left work, there were two teenagers standing on the corner waiting for the bus, sharing a cigarette. I pulled my car over and walked up to these kids and started a conversation and I asked them, why are you smoking? And the young lady said, well, I used to smoke, and I started vaping to quit smoking and we get in trouble for vaping. So, I went back to smoking.

Now, I don't support children in doing any adult activities and I nicely informed the young people that they were breaking the laws because that's what grandmas do. And she said, well, we learned in school that the nicotine in vapor products will harm our brains, and I asked her, don't you realize there's nicotine in cigarettes and she said it's a different nicotine. Well, they all come from tobacco products, you know, from the tobacco plant. It's the same nicotine. The nicotine in a vapor product is the same nicotine patches and gum and lozenges used by smokers to quit smoking.

I don't understand why this has to be a battle between youth and adults who are trying to quit smoking. People who are trying to save their own lives and to quit exposing their family and friends to the dangers of secondhand smoke. Why is the only solution being offered for kids who are experimenting and breaking the law is prohibition?

History has taught us in the past that prohibition doesn't work. We learned in school for every action there's an equal, and opposite reaction, and nobody's having a conversation here about the unintended consequences of banning flavored vapor products. Not only are people not going to try to quit smoking, many are going to go back to smoking. And, as the numbers of kids who smoke go down as vapor products or bans, studies are showing that your smoking rates are going up. Kids aren't dying from vaping, they're dying from smoking, they're dying from alcohol, they're dying from texting and driving. There's all kinds of things our kids do that they shouldn't do.

So how do we solve this problem? You can go online and find several products that can be installed in bathrooms. They are artificial intelligence. They will detect vapor, smoke, and the sounds of bullying and send notification to school officials. That would be one way to stop our kids. We need to educate our parents what these products are so the parents know what they look like, so they know what to watch for. We need to enforce age restrictions. The legal age is 21. If anyone under 21 is vaping, smoking, chewing, or drinking for that matter, they're breaking the law. Why are we punishing adults? Because children are breaking the law. Let's enforce the law. So, if it if a store sells an adult product to a Child, a lot of times the owner of the store or the company gets fined. There should be an equal fine for the employee and it really shouldn't matter who puts these products in the hands of kids, they're all responsible. So, if I were to make a straw purchase and provide it to a minor, I should have to pay the same fine that a business pays because it's wrong to give these things to kids. I think we should use more of our funding for more compliance checks to make sure that companies are obeying the law. And there are products out there. One of them is called trace verify that can actually be attached to vapor products and when that product is sold, it's registered and then we know who bought that product and who got it in the hands of kids. All of these would be ways to curb the use, youth use of tobacco products without punishing adults who are trying to quit smoking.

I have a tendency to go on Twitter a lot and there's a group on there called Not for Kids, and they were started because of some parents found their children vaping. And one of the parents said they found out

that their child bought a Juul on eBay and their kid claimed they couldn't quit vaping because they were addicted. So, the parent did a 30-day punishment, 30 days, no cell phone, no car, and no Internet unless it was for homework. Guess what? Miracle cure. That addiction ended and the child quit vaping. So, I think we need to work together as a community to curb youth use without pushing adults back to deadly cigarettes. Thank you.

MEB:

Thank you, Kim, appreciate it.

Shelly Bressler:

Hi Mary, it's Shelly Bressler. For some reason I was skipped.

MEB:

You sure were, Shelly, I apologize.

SB:

No, I think it was on my end on uneven Internet today.

MEB:

Well, you can't speak. No, I'm kidding. OK, yes, I did call you earlier. Go ahead.

SB:

Alright. I apologize. Again, my name is Shelly Bressler and I am speaking today as a parent. I'm a member of the advocacy group, Parents against Vape, Vaping, but I'm also a mother of two teenage twin boys who are both students at the University of Michigan. Although the campus is designated as smoke and vape free, we all know that is far from the case. There are plenty of students vaping.

As part of a PAV campaign, we started earlier this year called Vapes are Trash. I have become acutely aware of seeing and documenting disposable vapes and pod cartridges literally littering the streets. I found many examples in August when we drop the boys off in Ann Arbor for their sophomore year.

Vaping isn't something that just happens once these kids go to college. When they were in high school in Michigan, and all over the country, these kids were introduced to a product called Juul, and other E-cigarettes. Social media influencers and ad campaigns told them that these products were cool and were not harmful. These products were just flavored water vapor, they were told, and what really enticed them and got them hooked were the cool flavors such as cotton candy, bubble gum, gummy bear, mango, and mint. They, these kids would get a little bit of a head rush from taking a pop without smelling like cigarette smoke or having their mouths feel like they licked an ashtray. And they got in the habit of passing the devices around often to taste the different flavors that their friends were vaping, which now also puts them even at a greater risk of testing positive for COVID.

Thanks to years of education, countless public awareness campaigns, and groups that are working together as part of that Keep Michigan Kids Tobacco Free coalition in which PAV is a part, these teenagers are part of a generation that would never have ever started smoking, but now Big Tobacco, who owns Juul and number of the other E cigarette companies, have figured out how to get these kids as customers.

As a parent herself last year, Governor Whitmer recognized that youth vaping is at epidemic levels and banned E-cigs. We thank her for taking that action, but, as we know, this ban has not been able to go into effect. The delay in implementing the regulations has not gotten rid of the problem. In the past year, studies have shown that kids are moving towards disposable E-cigarettes because they're cheap, often a couple of dollars apiece, come in a variety of enticing flavors, and are easier to hide because they can just throw them away after they use them.

Vaping is an epidemic that Governor Whitmer, the US Surgeon General, and other public health officials now know how to control-ban the sale of flavored E-cigarettes, including mint and menthol flavors. Keeping these flavors out of the hands of Michigan children will be the driving force to get them to stop. Or better yet, not to start in the first place. The time to act is now. The longer we wait to implement

these regs and clear the shelves of these products, more young people will be risking their health by continuing to use the products. Until we clear the market of all flavored products, including menthol, and mint, we will not see a break in this epidemic of youth vaping.

On behalf of my children and their classmates, please finalize these regulations. Thank you.

MEB:

Thank you very much, Shelly.

Guy Bentley:

Hi Mary, it's Guy Bentley here. Sorry to step on somebody's time, but I believe you skipped me as well at the beginning.

MEB:

You know what I called out your name and there might have been a problem with the...

GB:

I'm sorry, sorry I must, I must admit that my fault.

MB:

I was going to get around in the raising of the hand soon, so ... Guy, take it from here.

GB:

Thank you so much. Really appreciate it. Well, everyone, my name is Guy Bentley. I'm director of Consumer Freedom at the reason foundation were a Public Policy Research and Education Institute and delighted to be speaking at this hearing today. And while we share many of the department's concerns around youth vaping, we believe that the evidence strongly suggests that banning flavored vapor products will have a detrimental impact on public health, shutter small businesses, and fails to address

the underlying causes of youth vaping. We certainly hope that, this, you will take into account evidence, and this will be in evidence based process in policy making and I'm afraid some of the claims that have been made today by some of the speakers, such as that E-cigarettes are not safer than traditional combustible cigarettes, show that we really do need to be working with the same baseline of basic facts.

Denying that E-cigarettes, which do not contain leaf tobacco and do not involve any process of combustion, which is how most of the costs integins in tobacco smoker created, I'm afraid does sort of border on climate change denial and anti-vaxxerism. Now, many people have made comments that vaping is also a possible gateway to youth smoking. Fortunately, there is very little evidence to support this hypothesis. According to a study of 12,000 middle and high school students published in July of this year in the Journal of Nicotine and Tobacco Research, E-cigarette use does not appear to be associated with current and continued smoking, but instead the relationship between E-cigarette use and smoking is, quote, fully explained by shared risk factors, thus failing to support claims that E-cigarettes have a causal effect on concurrent conventional smoking among youth, end quote. And we see, indeed see this in Michigan, where youth smoking rates have dropped to their lowest level on record, even as there has been an increase in use making over the previous few years. Another study published in the Journal of Addiction, again in this year of April 2020, shows using data from the National Youth Tobacco survey shows that, quote, electronic cigarettes may have offset conventional smoking among US adolescents between 2010 and 2018 by maintaining the total nicotine use prevalence and diverting them from more conventional harmful smoking. It also must be noted that according to the latest data, very, very fortunate news from the Centers for Disease Control and Prevention, shows that this year youth vaping fell 28%. So, this does show that we can have large reductions in youth vaping without mass prohibitions.

It is also been commented on the flavors are the central driver and cause of youth use of E-cigarettes. I'm afraid this is actually incorrect, and it's a common misperception. It confuses a central factor, that is, while it is true that the majority of youth who vape use flavors, that can, is confused with the reason why they vape. According to a study conducted by the Centers for Disease Control and Prevention in 2019, more than 75% of youth vapors gave reasons other than flavors for why they used vapor products. The leading reason was curiosity and peer and parental influences, and these are well established risk factors for other substance use, including alcohol and marijuana.

It is also been claimed that flavors do not help adult smokers quit. Again, I'm afraid this is just not the case. According to a Yale University study published by Abigail Freedman examining the role of E cigarette flavors in subsequent smoking initiation and cessation by both youth and adults', flavors were associated with positive cessation outcomes for adults but were not associated with increased youth smoking initiation. And just last week, the prestigious Cochrane Review, which is one of the world's leading bodies for the review of medical evidence, provided its latest update on E-cigarettes and smoking cessation. And the review concluded that it has moderate certainty that E-cigarettes are more effective than traditional nicotine replacement therapies for helping smokers quit. To quote Professor John Britton, an emeritus professor of respiratory medicine, he says that quote this comprehensive review of all data on the efficacy of electronic cigarettes in helping people to quit provides definitive confirmation that electronic cigarettes offer smokers an effective means of quitting and perhaps even more so than some licensed stop smoking medicines. E-cigarette flavors make up the vast majority of the market for adult vapors trying to quit smoking According to an established study published in the Journal of Harm Reduction, 72% of those who switched completely from smoking to vaping were using nontobacco flavors at the time of the survey.

Referring to the regulatory impact statement that was made on this rule, a reference is made to, I believe, in support of the rule, to a University of Michigan analysis from their School of Public Health which found that the most likely of several simulations they ran examining the role of E-cigarettes and smoking cessation and its effect on public health, found that nearly 3.3 million life years could be saved by the year 27, by the year 2070, and that accounts for both the role and smoking cessation and initiation. This is providing strong evidence of the harm reduction potential of E-cigarette products. Also, in the RIS, there is a statement made that the rule will improve the state's economy because reducing use of flavored nicotine products will increase productivity, but that is using evidence based from a campaign for a Tobacco Free Kids study, which is examining productivity losses caused by smoking.

Now, as I've explained, E-cigarettes are not the same as smoking. They are dramatically safer. So, the claim that productivity would be increased by banning flavored nicotine products would be exactly the reverse. If you ban flavored nicotine products, you will have fewer people quitting, smoking, fewer people quitting smoking means more productivity losses, so I'm afraid the reference is exactly backward. As many have already pointed out, prohibition of these products will lead to a black-market Last year, with the outbreak of vaping-related lung illness, Governor Whitmer went forward with a, in

large part, with her ban on flavored vapor products due to this outbreak of illnesses. However, what we've seen is these illnesses were not caused by nicotine vaping products but by illegal THC products, often cut with vitamin E acetate and according to an analysis conducted by Reason Foundation, which is subsequently been replicated in two journals. the concentration of lung injuries is highest in states which prohibit marijuana.

Michigan has quite rightly moved forward with the policy of marijuana liberalization and legalization. Prohibiting E cigarette flavors moves exactly back from the progressive direction Michigan has taken towards marijuana to, for both criminal justice concerns and for harm reduction concerns. A study by the Yale School of Public Health examining the impact of flavor, of various tobacco flavor ban scenarios, found that, quote, a ban on flavored E-cigarettes would drive smokers to combustible cigarettes, which have been found to be the more harmful way of getting nicotine. San Francisco has banned the sale of flavored tobacco products and unfortunately the result has been an increase in smoking in the 18 to 24 age group. The costs of prohibition far exceed those that are made in the regulatory impact statement and it does not adequately account for the large potential of current vape, adult vapers who will switch back to combustible cigarettes if these flavors are banned.

Youth vaping absolutely can and should be reduced without the blunt instrument of prohibition. More than 16,000 Michiganders die of smoking every year. By banning the most popular or, and far safer alternative to cigarettes, that will only ensure that that number remains unacceptably high. Thank you so much.

MEB:

Thank you very much, Guy. I appreciate it.

I'm going to add in here a comment. If you wouldn't, ple-, if you'd like to make a comment, please make it oral so the transcript captures it, or please send it to the MDHHS dash admin rules box so we can cover it as well. We're not really looking at the chat box right now and we prefer that all comments made are formal with regard to orally, so the transcript covers it or through the email box. Thank you.

Alright, I know she's been waiting patiently. How about Sue Franklin?

Sue Franklin:

Hello, we are submitting our written comments, our comments in writing.

MEB:

Thank you, Sue. Um, Ms. Wiesnewski, would you care to make a statement today?

OK, moving on, now we're into phone numbers. 6, area code 616 ending in 1701. Would you like to make a statement?

Please unmute if you'd like to make a statement.

OK, how about area code...

616-1701:

Participant:

I'm sorry.

MEB:

No, it's OK.

616-1701:

Just to say we're going to submit our testimony in written form. Thank you very much.

MEB:

Very good. Thank you very much. How about to area code 618 ending in 1607?

I see you lit up here, but I don't hear anything.

OK, how about area code 989 ending in 7566?

989-7566:

Yes, I'm here.

MEB:

Hello, would you like to make a comment?

989-7566:

Good morning, can you hear me?

MEB:

Yes.

Kim Price:

OK. My name is Kim Price. I'm proud to be a small, family owned and operated wholesale distributor business in Michigan serving the local and surrounding communities, as well as cash and carry customers. In my line of work, we supply daily essentials to hundreds of convenience stores across the state. We take pride in ensuring Michiganders have access to the products they need, day or night.

It's not easy being a wholesaler/supplier. Margins are thin, and our logistics network is very expensive to maintain. That's why I'm so concerned about your proposal to ban the sale of flavored nicotine vapor products. J Marine Company has been in business for over 80 pridedful years and employs approximately

15 people. We actively support several charitable organizations, including child abuse, cancer, college athletic association's, Toys for Tots, local golf courses, local schools and many more.

If your rule proposal is enacted, you would contribute to an illegal black market where there is a steady supply of smuggled vapor tobacco products, including E-cigarettes. Many of these black-market products can contain unsafe and untested ingredients. Our government likes to ignore this information, but just last year the Mackinaw Center estimated nearly 21% of cigarettes in our state were smuggled here illegally. MDHSS should not enact a rule that would promote more crime in Michigan.

MDHSS should allow retailers and wholesalers to continue to sell electronic products in a law-abiding manner, rather than creating a regulated market. Not only would this rule pose a danger to Michigan residents, but would do so at a time when much of her state remains shut down due to Governor Whitmer's response to the COVID-19 pandemic. Governor Whitmer's uncon-, unconstitutional, shutdown has shuttered retailers across their state. Some estimates show sales loss as high as 40%. Without the usual morning...Can you still hear me? Hello?

CC:

Hello, yes, we can still hear you.

KP:

OK, my phone, I'm trying to run my business and still contribute here. OK. So, a morning commute, convenience stores are missing out on customers who come in daily for coffee, donuts, and other snacks. All of this at the same time as fuel prices plummeted due to lack of demand. How is a retailer supposed to survive when they're making 3% fuel margin and must deal with a 40% decline in sales?

The assistance of our governor has offered is minimal and instead of supporting these community lifelines, you choose to take away more revenue. What's more, is that there is no science behind this proposal. State retailers have been widely successful in keeping tobacco-, tobacco products out of the hands of minors. In fact, since 2018 we have a statewide 95% compliance rate as determined by the FDA. Why not continue upon the success and keep these products on our shelves for legal sale?

What's more, regulation needs time to work. According to a study by the University of Michigan, the number six university in America for public health that was published in May of this year, shows that only 5% of teens cite fruity flavors as the reason they've vaped. Further, an evaluation outbreak of 2019 has been directly linked by the CDC with black market THC products. None of these legal products contain THC, it's just the black-market ones, so.

Within the past year, the federal government raised the legal age to purchase for tobacco products to 21 years old. In January, the FDA finalized enforcement polic-, policy against unauthorized flavored E-cigarettes that appeal to children, including fruit and mint. In July, the FDA ordered the removal of fruity disposable vapes and on September 9th. 2020 manufacturers were required to submit their pre-market tobacco applications. Why not give these measures the chance to work before implementing a hasty statewide flavored nicotine ban?

Thank you for the opportunity to submit this testimony. I hope you'll take into consideration with an objective and open mind and support small businesses In Michigan. There is no reason to further harm businesses when the science simply isn't there. I do not support minors vaping or smoking cigarettes. It's against the law for anyone to do so and I thank you for your time. Thank you.

MEB:

Thank you very much, Kim. OK, how about area code 586 ending in 1350?

Please unmute if you'd like to make a comment.

OK, I have one Anonymous. Would Anonymous like to make a comment?

Participant:

Anonymous or not, I have my hand raised, but it isn't clear to me if I'm Anonymous.

MEB:

Ok, Meredith, give it a shot. When would you like to say for the record?

Meredith Berkman:

Sorry, thank you so much. I appreciate the opportunity to speak. My name is Meredith Berkman and I am a co-founder, proudly, of Parents against Vaping E-cigarettes or PAV, a national organization created by three moms as a grassroots response to the youth vaping epidemic and the predatory behavior of Big Tobacco. The catalyst was our discovery in April 2018 that a Juul representative had entered our sons' high school through an outside anti addiction group and, without the schools knowledge and without teachers present, told a group of 9th grade students that Juul was quote totally safe and would receive FDA approval, quote, any day. Our congressional testimony and that of our sons about this disturbing incident in 2019 has been cited by FDA as evidence that Juul marketed to minors.

And, I'm here today representing the 3.6 million families across this country, including here in the Great state of Michigan, whose lives have been upended by the youth vaping epidemic, and you've heard from many of them today. And I want to express the paid support for the approval and improvement of the proposed rules to include all flavored E-cigarettes and all flavored tobacco products, including menthol cigarettes, products that tobacco companies have used for decades to target African American consumers. And we also hope you'll consider a ban on online sales that go directly to the consumer because we know that so many kids are able to secure these products, unfortunately, online.

We're facing an adolescent public health crisis that is being made even more urgent by the COVID pandemic. A recent Stanford study has shown that teens who vape are five to seven times more likely to contract COVID. Like vaping and smoking, COVID attacks our teens precious developing lungs. According to the 2020 National Youth Tobacco Survey, one in five high school students are vaping on a regular basis, one in five, and yes, while the overall number has declined since last year from 5.4 million, the three point, three point forward number is the same number that it was in 2018 when FDA, the Surgeon General, and the US Health Secretary declared this at epidemic levels.

So, we are still at epidemic levels and this year, teens are using these flavored products with more frequency than before, which is a sign of greater nicotine addiction that we know is harming their

developing brains and lungs. And every day there is more scientific evidence that these vaping products cause cardiovascular harms. These numbers track with what we're experiencing here in Michigan. In 2019, the National Youth Risk Behavior survey showed that 50% of Michigan high school students have tried vaping products and 20% of Michigan high school students are active users.

I'm a mom of four teens and I find these numbers horrifying and I'm sure, and I hope, that everyone on this call does as well. But most important of all are the numbers proving that flavors hook kids. Eight out of 10 E-cig users are choosing flavored products according to the latest National Youth Tobacco survey, and 30% of these users, teens, are now choosing menthol flavor. Flavors are hooking Michigan teens on E- cigs, and flavors are hooking them on other tobacco products, including menthol cigarettes.

As a mom, as a volunteer advocate or mom-vocate, as co-founder of PAV here in Michigan and at the national level, I urge you to strengthen the proposed rule by banning all flavored E-cigarettes and other flavored tobacco products to protect the public health of children in Michigan. We can't, for young people, become a generation of nicotine addicts and Big Tobacco's next lifetime customers. I just want to end briefly by referring to a Mr. Hancox, a couple of hours ago, who was paid as he said by RJR by Reynolds, the tobacco company, and he spoke at great length about the cost benefit analysis [unintelligible] nerve to mention a statement given on behalf of [Chinese black], a Michigan mom and teacher, a PAV volunteer who couldn't deliver prone statement because she's out doing the heroic work of educating Michigan's kids. There is no cost benefit analysis in society between the public health of children and the blood money of a tobacco company like RJR Reynolds, a company, by the way, that is a huge player in the vaping market with wildly popular flavored Vuse Alto, that dropped its price to \$0.99 because, as they know better than anyone, kids are very price sensitive consumers. In fact, Vuse, again, owned by RJR Reynolds, the company that paid Mr. Hancox to speak, targets kids with rap music and wild colors and flavors on TV ads that show undulating vaporizers in wild colors, actually dancing to rap music. And in fact, RJR Reynolds is now having those marketing practices for Vuse, they're under investigation by a congressional subcommittee. So, while there is no proof labels are helping adults quit, they may use flavors, and want flavors, that there's no scientific evidence that these flavors helping them quit. There is proof that they are looking at our kids and would urge you to ban those flavored products.

That's not a full prohibition, by the way, because this is not for tobacco products, tobacco flavored products for adults. But we urge you to protect Michigan's children so that they will have a healthy future which kids in every community and in every city in every state across this country deserve. Thank you so much for your time.

MEB:

Thank you, Meredith. I appreciate it.

Nancy Crawford:

Excuse me, my name is Nancy Crawford and I think I got skipped over. I've had my hand up.

MEB:

Um, I am going to be getting to the hands up after one more phone number that's called in, and I'll get to you right away, Nancy, ok?

NC:

OK, thank you.

MEB:

Thank you. 517 ending in 1400. Would you like to make a comment?

Comment? Alright, I'm now I'm returning to those with their hands up. We'll start with Nancy and then we'll move to Clifford Douglas.

NC:

Thank you, my name is Nancy Crawford. I'm a parent volunteer with Parents Against Vaping , PAV, and I support ending this tale of all flavored vaping products as well as all other flavored tobacco products. Flavors draw kids into vaping and nicotine addicts them and keeps them coming back for more. This issue is deeply personal to me. Before our son was born, I was a smoker. I grew up in a family of smokers. I witnessed my grandmother struggle for years with COPD and congestive heart failure and other related illnesses and family members, including various cancers and heart disease.

I started smoking when I was just 12 years old and was finally able to quit at the age of 25 after five serious attempts. My lungs and health remain compromised to this day from the lasting effects of smoking, even though I was able to quit after many attempts 38 years ago. My son never knew three of his grandparents because they died of cancer due to addiction to nicotine. This is a tremendous loss for my family.

And if that's not enough, our son was introduced to flavor vaping in high school. Now, at the age of 20, my son is a dual user, a flavored vape, and cigarettes. He wants to quit, but he's having a lot of difficulty. He has a smoker's cough that's getting worse every day and he's not feeling well. He's getting less active. I am worried. But just as Big Tobacco targeted my extended family by marketing cigarettes to me, my siblings, and cousins when we were young, they are targeting our youth right now with flavored E-cigarettes and flavored vaping products. Nationwide, four out of five kids who used tobacco started with flavored products. They are using their same old playbook, updated for a new generation. They use deceptive social media marketing to downplay the risks. High tech products that are stealth by design and they lure kids in right under their parent's noses with sweet fruity flavors and minty menthol to mask the harsh taste of nicotine salts that vaping companies use to deliver enormous and more potent amounts of nicotine to entice kids to pick up a deadly habit. Please take all flavored tobacco products off the shelves that harm our Monte-, our Michigan kids. Thank you.

MEB:

Thank you very much. Nancy. Clifford Douglas, please.

Clifford Douglas:

Hi, I'm just making sure you can hear and see me OK.

MEB:

Yes Sir,

CD:

OK very good. Thank you. I appreciate it. I am very pleased to have this opportunity to provide some input on the proposed flavor ban for vaping products and want to thank you as well for your thoughtful management of this public hearing. I serve as the director of the University of Michigan Tobacco Research Network and as an adjunct professor at our School of Public Health. Until recently, I served for five years as the national vice president for tobacco control at the American Cancer Society, where I led the development of ACS' public health statement on eliminating combustible tobacco use in the United States. Also led the National Partnership on Behavioral Health and Tobacco Use where we focused and continue to focus on increasing cessation and reducing mortality and illness and smokers with mental health conditions and I also guided ACS is national campaign to reduce youth vaping and to educate the public about the impact of smoking on COVID-19. Previously, I served as tobacco control policy advisor for the US Assistant Secretary for Health and the US Surgeon General, and, way back in the day, coordinated the national campaign to prohibit smoking on all commercial airline flights.

Today, I'm speaking in my individual capacity. The analysis that I'm going to provide briefly is drawn in part from an article that I co-authored last year with former Assistant Secretary for Health, Howard Coh, in the Journal of the American Medical Association. And, while supporting this aggressive effort to protect our kids, I'm also going to briefly try to provide a broader evidence based look at the issues before us, because you know, the struggle that we're witnessing, including here today between the interests of protecting kids and supporting adults is extraordinarily difficult, and we've heard a lot of heartfelt statements today. These issues should, to the extent we can find possible, not be mutually exclusive.

Eliminating access to flavors by youth makes tremendous sense. Let's be clear about that. For all of the reasons that have been articulated by my public health and medical colleagues, youth are particularly

susceptible to nicotine addiction. They're vulnerable to the aggressive marketing appeals from certain segments of the industry targeted at young people through imagery and enticing messaging. We must take equally aggressive steps to protect our kids. And as the dad of a 17-year-old high school senior, this is also personal to me.

It's also fair to take into consideration at the same time, as some have noted, that Michigan and the nation must also stay focused on the tobacco control bullseye, which is ending all combustible tobacco use, that is smoking, which is responsible for no less than 98% of all tobacco related deaths. Nearly 30% of all cancer deaths. We shouldn't lose this in the discussion. Our kids have actually done a better job than adults in de-normalizing cigarette smoking which is at record lows in youth. And while vaping remains a significant concern and we're addressing it today, we can and should take aggressive action to address it, but also rightly celebrate the improvement that kids have made in cigarette smoking. All of this points to the importance of expanding the flavor ban for vaping products to also eliminate menthol in cigarettes and other combustible tobacco products.

While eliminating underage vaping, we must not increase adult cigarette smoking. It remains the leading preventable cause of death in our society. It takes the lives of nearly half a million adult smokers every year, and we shouldn't inadvertently incentivize youth potentially to switch to smoking mentholated cigarettes in the event they can no longer obtain flavored vaping products, are hooked on nicotine and are not quitting immediately. Some of my colleagues have noted this and they are right. We should take aggressive steps to prevent youth initiation while advancing the broader goal of eliminating combustible tobacco use.

So, let me just finish with these few words. Against this backdrop, our state and the nation as a whole must stay focused on ending smoking by furthering evidence-based interventions such as maximizing access to and utilization of FDA approved cessation medications and counseling. Those adults who smoke need good options that they can get cheaply. We should be increasing tobacco product taxes, expanding and enforcing clean indoor air policies, enforcing Tobacco 21, and robustly funding counter marketing and cessation coverage as recommended by the Centers for Disease Control and Prevention. Funding for such efforts has for decades, sadly, wallowed near the bottom in Michigan compared to other states, as we all know, which undoubtedly leads to higher smoking prevalence and higher health care and lost productivity costs that otherwise would occur. Thanks again for your attention to this

critical issue and provide-, providing this opportunity to speak and I'll look forward to the rest of the testimony.

MEB:

Thank you, Mr. Douglas, appreciate it. OK, how about Anne Swintala?

Anne Swintala:

Hello, can you hear me?

MEB:

Yes, we can.

AS:

OK, perfect. I would like to thank you for this opportunity to speak. I am in the vape industry. I am first and foremost, though, a mom that comes from a family of smokers. My most recent death in my family was my cousin at 52 years old. She died last summer from lung cancer.

So, this is near and dear to me. I'm very passionate about it. I have attended the summit in Washington DC., I have listened to all the scientific research, and I'm a mom that's concerned more for my children. I have a third 38-year-old son and a 41-year-old son who were also pack a day smokers who've been vaping for seven years along with myself.

This has been broken now by vaping because their children no longer are around cigarette smoke. Our industry was born because of people, not unlike myself, were all moms and dads shop owners across the country, that, because it worked for us, we offer it to the public and I'm so glad that my sons vape and I'm so glad my grandchildren aren't around cigarette smoke.

The science is clear. This is 95% percent safer than smoking and as a business owner, I can send you all my invoices for my E-liquid and show you my sales that most of them are flavors like watermelon, Fruit

Loops, there's all kinds of good flavors that were born out of customers coming into our stores, asking for them and developing flavors early on. We all in the industry have responded to adult smokers, and this is why this was brought about. It was not brought about for teens. Like I said, I'm a mom before I'm a shop owner and if my employees would have sold to a teen or someone underage, they would, they would have been reprimanded and we would have worked with it. Luckily that hasn't happened, and we've had a sign on her door since we opened.

Most of the vape industry is not Juul. I've heard a lot today about Juul and Vuse and our industry though, is vape shops who do sell flavored E liquid that is not salt nicotine, that is freebase whole molecule nicotine. There is a difference.

[Background voices]

Hello. Hello. Can you hear me?

MEB:

Yes, I can still hear you.

AS:

Yes, OK? So, I would like to say to that this flavor ban would hurt adult smokers. There is a solution, there really is. Let's treat it just like we treat alcohol. The flavors of vodka include, but aren't limited to lemon, lime, lemon lime, orange, tangerine, grapefruit, raspberry, strawberry, blueberry, tea berry, vanilla, black currant, chili pepper, cherry, apple, green apple, cinnamon, coffee, chocolate, cranberry, peach, pear, passion fruit, pomegranate, plum, mango, white grape, banana, etc.

Since vaping has been around since 2007, there's not one death from vaping nicotine. The only deaths documented are from THC cartridges, which include lipids in vitamin E that they used to cut it with. So, with no documented deaths or hospitalizations from vaping nicotine, and 55,900 teens in this, this country have died in that same time frame, yet the zero deaths from vaping are worldwide. The 55,900 kids that died from alcohol are in the United States alone, and those are the only ones, those are only

the ones that died ingesting the alcohol from alcohol poisoning. It does not include those who died in car accidents and are now dead in the grave.

Those flavors that we sell, we stock in our store over 100 flavors. We've never marketed them to children. We don't have cartoon characters on our product, and this makes up most of the vape industry. There's a simple solution, treat it like alcohol, enforce the law, slap my hand, but also give me a fine if I sell to youth. And also, the major players, bad players, that are selling to youth are the C stores in this country. Convenience stores, tobacco stores, gas stations, 7-11s, and the like. That's all, that's all documented right on the FDA site in the warning letters. Vape shops have not. Only about 5% of the warning later-, label warning letters are due to [unintelligible]. So, a simple solution would be to take the flavored pod systems and prefilled out of the C stores and leave it in the vape shops where adults only use it. We have age verification in our store. We practice selling only to adults. I'm 64. I come from a family of smokers. And I want this product available for my grandchildren if they ever smoke. I don't want youth to use this product, it's not designed for them. It's not made for them.

Thank you for your time.

MEB:

Thank you very much, Ann, for those comments. OK, how about, our next person is Scout, to be followed by Jim McDonald.

Scout:

Everybody, thank you very much. I appreciate it. I've now been on for two hours and 44 minutes waiting for my moment so I'm very happy to be able to testify today. My name is actually Doctor Scout. I'm the executive director, well that's, that's my full title name. I'm the executive director of the National LGBT Cancer Network. My PhD expertise area is an LGBTQ Public Health and I also probably went to this college in Michigan, and I've done a lot of work with many of the Michigan LGBT community centers, specifically with concerns related to tobacco use in our communities.

I also just want to say that, like many of us, my history with the impacts of nicotine on my family goes back a long ways. I actually come from a very small family, in part, because my grandmother had five abortions as she was encouraged to smoke by her doctors. Several of my grandparents died of tobacco related causes, but now what I see is that that's coming down and it's in the generation that is contemporaneous with me, and, unfortunately, it's with my kids as well. The mother of my kids, who is also queer-identified, has been smoking cigarettes her whole life, and I keep joking that I'm going to stop this work whenever she quits, but unfortunately, she has little motivation to and good tools in order to actually combat one of the most insidious and strongest addictions that we have in our world. And then one of my own kids started first vaping using flavored tobacco products. And now he's moved to Marlboro.

But, more importantly even, as a public health professional, I'm extremely worried about the historic spike in vaping among youth, not just with the one kid that I know personally that it happened to, and what that means for the extra vulnerable youth like the other LGBTQ people in our communities. To be clear, monitoring our future is a long term survey that talks about public health risks and in the 40 years at that survey has existed, it has never seen a spike in health risks in the US population like it has seen related to vaping. The change in vaping in this country right now is more of a logarithmic scale as far as how quickly it is heading up. And as someone who represents and talks about LGBTQ people who are using tobacco and nicotine products and things like that years ago, I used to say that we had a disparity where we were smoking cigarettes at rates that were 60% higher than the general population. That's what we saw from surveillance evidence. Over the years that started to drop. It started to be 50% and then it was 40%. Still profound, still a big problem for our communities, but at least it was moving downwards.

Unfortunately, I'm here to say now it's moving back up again. Why? Because we're not just measuring cigarette use now, we're measuring vaping as well. So, now I have to say that we're using tobacco products that are rates that are not 40%, but again up to 50% higher than the general populace.

And I'm also particularly concerned because, as one of the things I did recently actually for FDA, is that I was staffing focus groups for queer youth. And while we were supposed to be talking about cigarettes, almost all the youth were reporting vaping too. As one of the queer people on the, on the call, said it is always vape o'clock at school.

And of course, why is there this huge growth, right? We're talking a lot about flavors here, but let's just remember, the types of names are not just names of fruit, as one of the other people said, but I'll just give you some examples of some bait flavors, lava flow, blue razz lemonade, strawberry blonde, Custer's last stand, very, very good to me, Bali paradise, fistful of fruit, candy crush, cherry starburst. If you listen to the tobacco industry like several of the reps have spoken earlier and the vape shop reps also, making some induction to adult smokers trying to quit. But just we know most combustible cigarette smokers are trying to quit are middle age. As a middle-aged guy, you can trust me that when you're labeling things candy crush and blue razz lemonade, you may have a few middle age guys who use it, I'll agree, but you're not marketing to me as a demographic. The people like me have stopped using like that sugar-flavored cereal long, long ago. You're marketing to a very much younger demographic. Another thing remember is that no one is restricting vaping. You're only planning to restrict these candy-esque flavors that youth are using. So, people can continue to vape if that helps them avoid combustible cigarettes.

Another thing that tobacco industry rep brought up earlier, this is also banned at a federal level, and that's not true. It is only banned for E-cigarettes, and menthol is not included, which is particularly important as menthol disproportionately hits the Latin X populations, the African American populations in the LGBTQ plus communities as well.

What we've seen as a result of this partial ban which doesn't include other vaping products like the Michigan one does, and I appreciate that, is that there's been a huge increase in youth who've moved towards the other vaping products and move towards menthol, the one flavor that still allowed. Literally as one of the other people mentioned earlier, 1000% increase on their most recent survey, reporting students are youth using alternative tobacco products other than the E-Cigs where the flavors were banned. So, the federal ban does not cover this and does not plug the hole that Michigan is attempting to plug.

Also, if you listen, this won't stop youth getting these products because people will be able to get around it. Well, I do think that it is very true that if this was to include mail order products as well, it would be a much stronger ban, no question. But just because youth are able to get things in the black

market does not mean that we follow public policy measures that allow them to get them legally. No one's suggesting we then sell cigarettes to kids. So why in the world would we suggest sell something else that again harms them to kids. But for the queer population specifically, I want to be very clear that right now, over one out of three of our youth are getting addicted to nicotine via vaping. As with other populations, this is a huge upsurge and over 80% of those people are doing so via flavors such as those mentioned earlier, and this isn't surprising considering the additional vulnerability that these youth experience. We know that the suicide rates are incredibly high for this population. The mental health issues are incredibly high for this population. We are really looking for ways to fit in in a world that doesn't teach us that we have many options for fitting in. I actually am one of the peer youth who did attempt suicide, but oddly considering that's the case, I also consider myself lucky because I didn't start smoking as so many of my other contemporaneous and even current day youth did as well.

One of the things that has been mentioned, but is not frequently noted, is that these products offer much higher rates of nicotine that you usually get in cigarettes, so this accelerates the addiction process. And we know that when we have some product step still in the market, like menthol or mail order flavors and things like that, like I said, there's the end runs that people do for them, so I applaud the fact that you are making this broad enough that you're banning other nicotine delivery products, but I would again encourage you to make sure that mail order is something that you continue to expand to.

So, I would encourage us to not only pass, keep this regulation in place, go through license real-, retailers so, so mail order is not an option. Expand the ban of combustible products, take away the jail time penalty as well, that's not something that's motivational, and remember that for the LGBTQ Plus, plus population, ending all flavors in all tobacco products is a social justice issue for us.

Thank you very much.

MEB:

Thank you, Sir. Appreciate the comments. OK, Mr. McDonald, thanks for your patience. You will be followed by A. Clark.

Jim McDonald:

Hi, can you hear me OK?

MEB:

Yes, I can.

JM:

Excellent. My name is Jim McDonald. I'm a resident of Ypsilanti. I write for a website called Vaping 360 and I'm a volunteer board member of the Consumer Advocates for Smoke Free Alternatives Association or CASAA, which represents more than 1/4 million users of low risk nicotine products. Today, I'm just speaking on behalf of myself, though. I oppose the proposed MDHHS flavor ban.

I started smoking when I was 15 and I smoked for 38 years. After 20 years of trying to quit in every possible way, I tried a vaping product on a whim in 2012 and quit cigarettes forever in two weeks. It was flavored products that made vaping work for me. My favorite current flavor is lemon vanilla cake.

Vaping is not a tobacco industry plot to ensnare children. It was invented in 2003 by a Chinese pharmacist whose father had died of lung cancer. The tobacco industry really took no interest on vaping for many years. And even now, tobacco companies control less than half of the vaping market, and no part of the vape shop market.

When vape shops are shut down by a flavor ban, which they will be, tobacco companies will be happy to continue selling deadly cigarettes without any competition. E-liquid flavors are key feature of the product. It's an advantage vaping has over smoking, and most successful switchers from cigarettes to vaping use nontobacco flavored products. Surveys of adult vapers who have quit smoking show that successful experienced vapers prefer fruit, dessert, and candy flavors above all others.

Vaping is a consumer product, not a medical one. But despite not being designed or sold as a medical therapy, a 2019 randomized controlled trial published in the New England Journal of Medicine found vaping twice as effective as pharmaceutical nicotine products as a quit smoking aid. This was confirmed

by a recent Cochrane review. The most recent survey that asked teenage users about flavors, the 2019 National Youth Tobacco survey, found that just 22% of middle and high school students listed flavors as a reason that they vaped. The most common reason at 56% was curiosity.

Preliminary results from the more recent 2020 National Youth Tobacco survey show a 29% drop in past 30-day vaping among middle and high school students. That's down to 19.6% from 27.5% in 2019. To be clear, past 30-day use includes even just one puff off of somebody else's vape. It doesn't indicate regular use. Last year, NYTS also showed the largest single year decline ever in the rate of teenage smoking, and that was a decline over what had already been the lowest rate in history.

Clearly, the epidemic of vaping experimentation hasn't led to increased use of the deadliest nicotine product, combustible cigarettes. But the CDC didn't release smoking results with the early 2020 numbers. Did it, did those numbers increase from the historic low? Are cigarettes going to make a comeback when school age vaping declines when, sorry, when school age vaping declines because of the new restrictions? Adolescents initiated nicotine use for a century with the harshest, most unpalatable flavor of all: burning tobacco. Why is the state so confident that eliminating fruit flavored vaping products will end nicotine experimentation? There's no evidence that it will.

If a flavor ban is implemented, adult only vape shops which sell FDA regulated products will close and be replaced by a messy black market. There will be no manufacturing or ingredient standards and no state or federal age compliance checks. E-liquid is easy to make. I know, I make it myself. The ingredients are widely available. It will be impossible to control in an underground market. If the state thinks the complete ban on vaping unflavored vaping products is the only way to prevent underage use, it's admitting a complete inability to enforce minimum age laws.

Why is the state government able to enforce age laws to its satisfaction with respect to alcohol and cannabis sales but not nicotine products? The effects of a flavor ban will be many vapers switching back to cigarettes. Current smokers prevented from easily accessing a safer alternative to cigarettes. Legal small businesses shut down during a recession. The tobacco industry and cigarettes themselves protected. And a large, uncontrolled illicit market created. Just like what happens during any prohibition, no drug prohibition is ever worked before. It didn't work for alcohol or cannabis. Why will this prohibition be successful when no other has succeeded? Thank you.

MEB:

Thank you. OK, moving on. A. Clark. Thanks for your patience. You'll be followed by Lloyd Patton.

A Clark:

Alright, thank you, just checking to see that you can hear me.

MEB:

I can indeed.

AC:

Wonderful, thank you. My name is Alex Clark. I'm the CEO of the Consumer Advocates for Smoke Free Alternatives Association. Largely, I'll just be echoing the comments of my colleague, Jim, so I will keep this short and we will provide a written comment later before the deadline of October 23rd. But I do want to say, this just cannot be repeated enough. I think it's vital to sort of reset the table here. A lot of the vim and vinegar directed at vaping is sort of predicated on this narrative that it is another Big Tobacco plot to recruit a younger generation of nicotine consumers. But as Jim and others have pointed out, these products were actually passed over by tobacco companies in early 2000s and it wasn't until consumers in the United States took apart and put back together products that were coming in from abroad that were unsatisfying, they did not taste good, they did not perform very well in terms of delivering nicotine. It was only after we consumers took them apart put them back together again and made them better, that people started adopting these products more and more and more as an alternative to smoking. I, like a lot of other speakers, quit smoking by accident just by trying vapor products. I had been trying for several years to quit with nicotine gum. I had actually experienced some success. I had managed a weekend without smoking at all, just using the nicotine gum. But as soon as I went back to work and experienced life on life's terms, I had to go back out and buy a pack of cigarettes just to be able to get through my workday. And so, I realize that the hurdles were a lot higher than simply just replacing nicotine. And I think there's been some response to those observations with the quit lines and support that people can find but still it is falling short for many, many people.

I voluntarily experimented with vaping and I was very pleasantly surprised that, within 24 hours, actually within 8 hours, I was convinced that I could switch completely from smoking to a smoke free option, in that was in 2013. Since then, I've completely transitioned to using a smoke free oral tobacco product, Swedish Snus. I am about to be 45 years old and I very much enjoy flavors. One of the reasons I've actually never had a sweet tooth, but in switching to a different diet, I don't consume sugar anymore, but I really do love sweet things. My breakfast is actually a waffle with some sort of flavored cottage cheese or cream cheese and strawberries on it, every day. I love all of these flavors and the flavors played a vital role in helping me move away from the experience of combustible tobacco. And with six years under my belt, sorry, it's almost seven years under my belt, the smell of a cigarette passing by through a car or someone walking down the street still inspires cravings to smoke an actual cigarette. But I have an option now. I can switch to a different nicotine or tobacco product and work through the cravings whenever I need that. And so, for as much as this is about helping switch to a safer alternative, it can also play a role in relapse prevention, which again is vital because a lot of the over-the-counter products that are available to people do actually have very dismal success rates.

And so, I want to make the last point is that. you know , as consumers develop, these products actually made the ground fertile for other for bigger companies to start introducing their own products, which by the way are not particularly special or necessarily more enjoyable, they are an alternative. People enjoy them as opposed to smoking, and they are ideally sold in the same places where cigarettes are sold. By taking this upon ourselves to improve and innovate the products we have, in a sense we democratized nicotine. We're no longer reliant upon cigarette manufacturers or pharmaceutical companies to access this drug.

It is still very easy for people to, as Jim pointed out, make these products at home, order all of the supplies that they need, and continue living smoke free. The concern is not that people will be doing this at home, the concern is careless or greedy people who will scale up operations to meet the new demand. The lung injury cases that we saw last year are prime example of what happened in an underground, unregulated market. There, there are no standards in an underground market. There is no motivation to follow safety protocols, it's just an added expense. And there's no accountability for when people do receive bad or tainted products. So, obviously the Consumer Advocates for Smoke Free Alternatives Association would urge the Department of Health and Human Services to reconsider this

proposal and ultimately reject it. And also, we are, we are opposed like, like many others to the purchase, use and possession criminalization. There's really no, no sense in adding insult to injury for young people who are simply experimenting with these products. That said, thank you very much for your time.

MEB:

Thank you, Mr. Clark. I appreciate it. OK, it is 12:04. However, we have four people remaining and they've been waiting a long time. I would like to continue to move forward. Perhaps we can take a break at 12:30 or quarter to one after these four, uh who have testified. So, after Lloyd Patton, Michael Meade, Gabrielle, and Lori Switala testify, we will break.

Mr. Patton. Thank you for your patience. You will be followed by Michael Meade.

Lloyd Patton:

OK. Well, thank you very much. Can you hear me?

MEB:

I can indeed.

LP:

OK, thank you. My name is Lloyd Patton. I am one of the board members of the Michigan Vape Shop Owners Association, more so known as the MVSO. I'm coming here today to express our organizations to oppose the above proposed rule that was advanced by Governor Whitmer's administration and the Michigan Department of Health and Human Services.

These proposed rules, um, are not constitutionally authoritative to impose a rule because it is bypassing the legislative function. The Michigan Vape Shop Owners Association represents over 400 small, independently owned vape shops. These are not stores that are owned by Big Tobacco. We have

contributed or attributed to a \$600 million economic impact here in the state of Michigan. We have over 1500 employees and another additional 2000 indirect employees of manufacturing. We service over 600,000 adult consumers that were all previous smokers.

These are not people that just pick this up on a whim. These are people who had a problem and sought a community that was able to take in replace that deadly habit and switch to harm reduction. What vaping is, is not harm elimination. It is called harm reduction. Nicotine harm reduction. A way to get nicotine delivered in a safer manner without the, the contributions of combustion which creates a deadly car, tar, and carcinogens that combustible cigarettes do. My colleagues Skip Murray, Lindsay Stroud, Guy Bentley, Jim McDonald, Mr. Clark, who just spoke a minute ago, has covered most of the items that I was going to bring to you today. So one, I'd like to say thank you to them for also speaking up for the industry.

So, going from there, I'd like to cover one other fine point that a lot of this, nobody in this hearing and stuff, even thinks about and that's the MSA agreement. Back in 1998, the MSA agreement was formed between the States and the Big Tobacco companies. They agreed to pay each state a yearly supplemental payment based on the number of cigarettes that they sell in each state. OK? So, the state itself imposes sin tax on every pack of cigarettes in the amount of \$2 per pack of cigarettes or 32%. So, the state already collects \$800 million in sin tax. OK? On top of that they receive an additional approximately \$400 million from the master settlement agreement. That equates to \$1.2 billion in income to the State. Does the state use this money to appropriately fund and pay for tobacco awareness? Youth prevention? The CDC recommends spending at least 10% of that money acquired by the taxes and by the master settlement agreement. Last year in 2019, the state only, only spent \$1.6 million on Youth Prevention. That's less than 10% of 1% of the money that they collected. Where is the rest of that money going? Is it used to take and prevent youth prevention? The MVSO is in full support of preventing youth from getting ahold of this product. That's why we have the laws that we have. The state is not using that collected money to pay for um, taking in monitoring the stores that are selling these, these products to minors, they're not doing proper enforcement. They're not doing proper education. That money could be well spent in many other areas when it comes to tobacco control, so that alone in itself is an injustice of the state of Michigan. Where did the rest of that \$1.2 billion go? Where did they spend it? It wasn't spent in the right areas.

MVSO is going to be filing and submitting electronically our full comments that will take and be against this and explain how those things are being affected to our community, our businesses, and the people who rely on this product to say, stay cigarette-free.

So, in closing, I'd like to thank you for your time and hopefully you can make a proper set of regulations that are well needed for this industry, but also protect the adults who want to use this product. Thank you.

MEB:

Thank you very much, Mr. Patton.

OK, let's hear from Michael Meade, followed by Gabrielle.

Michael Meade:

Good morning and thank you. This is going to be sort of a two-part statement. First off, I am a vape shop owner here in the state of Michigan and I want to make it clear that we scan check every ID that comes into our facility. And we control, you know, not allowing straw sales. And I've been, I've caught it and I've thrown people out of my facility in the past because I can see somebody standing outside of the window and such of that matter. I also would like you to know that I have a very large customer base. I've heard a lot of people talking about the LGBL-, LBGTO community. I have a very large customer base of that community.

Now, with that being said, I'm also going to give a personal statement here. I started smoking when I was 12 years old. Non menthol cigarettes. I didn't need a flavor to start tobacco. I needed peer pressure. And I, and I smoked for 25 years. I have been clean for. I'm 43 now , so I've been clean for about 6 years now tobacco free. And I'm going to tell you my health is far greater. I can, I can breathe, and it was all thanks to flavored, flavored odd vapor products.

I, as a store owner, I sell maybe one bottle of tobacco every six months. As a personal vapor, I choose not to use tobacco because the moment I do, it starts putting that tobacco flavor back in my mouth and makes me remember what it was like to smoke cigarettes and I want to separate myself from that.

Now, one other statement that I wanted to make personally is that we're stating that, that flavored tobacco, flavored nicotine vapor products is, is a way to draw kids. And yet our governor supports and endorses a beer that is orange flame, orange tangerine flavored, and this is OK because it's for adults. Well, so are vapor products. She supports that product, but not, not the vapor product that saving people's lives.

Um, I want accountability for youth vaping. I want youth to be held accountable. I want the parents to be held accountable. I want the, the facility who sold the product to be held accountable. I am tired of being the whipping boy for the faults of others. They want to take this product to save my life away from me and make me the whipping boy for the faults of others, and I'm, and I'm over that. This, this ruling is. I, I don't support it.

I thank you for your time and have a great day.

MEB:

Thank you very much Mr. Meade. OK, Gabrielle. Gabrielle, would you please spell your name for the record, your last name, please?

Gabriel Szchlenkier:

Certainly. It's S-Z-C-H-L-E-N-K-I-E-R.

MEB:

Thank you very much.

GS:

Thank you, I will keep my comments brief. Hello, my name is Gabriel Szchlenkier. I am the executive director of the Washtenaw County Medical Society. WCMS supports the rulemaking efforts to ban flavored tobacco free cigarettes. As physicians and public health leaders, WCMS members are actually aware of the danger and health risks these products posed to Michigan's children, their families, and our communities. WCMS appreciates the Michigan Department of Health and Human Services' commitment to public health and the opportunity to comment on the proposed rules.

Since 1827, WCMS has been the leading physician medical association for legislation, action, and community outreach in Washtenaw County. We are comprised of approximately 1000 physicians and medical students of various specialties working at major medical and teaching institutions, including the University of Michigan, St Joseph Mercy- Ann Arbor, Chelsea Hospital and IHA community health centers and small or private practices. WCMS members care for patients across all ages from a wide range of socioeconomic backgrounds, representing various health needs.

The most recent 2018 data from the Michigan profile for healthy youth for Washtenaw County reports that nearly 20% of 9th through 11th graders used E-cigarettes, and that number has likely grown over the past two years. Washtenaw teens' usage is higher than Michigan's overall value by nearly 5% and shows a growth of 11% since the last available statistics. We know that time is of the essence, particularly in this COVID-19 pandemic, when we should all be protecting lung health. Kids like flavors. Flavors are an attractive gateway and flavors increase long-term smoking rates.

WCMS strongly urges MDHHS to both approve the rules as currently proposed, and work to improve them by banning all flavored tobacco products and requiring online sales to be shipped to a licensed retailer for age verification. WCMS will be submitting written comments. We welcome the opportunity to work together to develop reasonable solutions in pursuit of our mutual goal of optimizing patients help and community safety. Thank you.

MEB:

Thank you, Gabrielle. Appreciate it and last but not least, Lori Switala.

Lori, I think you're on mute.

There we go.

Lori Switala:

Can you hear me now?

MEB:

Yes, I can.

LS:

Great. OK, I would like to echo what Jim said a little earlier. He was right on the money and I'd like, um, I'm with the MVSO, Michigan Vape Shop Owners. I found that over 55,000 kids have died every year from just drinking alcohol. Flavored alcohol entices them, but there were zero hospitalizations or deaths because of nicotine and vaping in the 13 years it's been here. This I believe you may find worldwide. If I'm wrong, I would like to see those statistics. I haven't been able to find any.

If they are OK with regulating alcohol, and they think their system is, is it, and they are OK with the regulations that they put on marijuana and they think that's great, that's it, then what's wrong with Michigan? Why can't they accept the regulations, especially that the FDA has put in place with us? If the FDA is running this and saying it's OK, what's wrong with Michigan?

I smoked for over 40 years. I've tried everything. The only thing that helped me was a fruit flavor [unknown]. I have been using pommels black in blue for the 11 years that I've been vaping. I've never touched another cigarette. I think they should take candy away from all of the registered store because it causes youth obesity and diabetes. I think they should remove flavored alcohol because after all bubble gum flavored vodka and sloe gin are teenagers' favorites. So, if we're going to go the route were pulling flavors off of our E-Cigs us adults use then they need to do the same thing for candy and alcohol.

Thank you.

MEB:

Thank you very much, Lori. I appreciate it. OK, it is almost 12:20. We're going to break for 30 minutes. We will reconvene at 12:50. You're welcome to hang on, you're welcome to call back in, whatever your pleasure is. I look forward to hearing more public testimony going forward. Thank you very much.

[Back on record at 12:20 p.m. Introductions of panel removed]

MEB:

Thank you very much, Ladies. Again, I'd like to briefly run through the housekeeping rules for those of you on the phone that all phones will be muted upon entry into the meeting. Meetings will be ready... Hello, Hello.

OK, meetings will be recorded for purposes of transcription and transparency. One person shall speak at a time. Please wait to respond if needed until the other person is finished speaking. If more than one person speaks, it could not be recorded and will not come out on the transcript. DHHS understands that this hearing involves issues regarding personal and professional limitations for the continued use of vape products and selling those these products. While your comments are invaluable to the public hearing, we are asking that you respect the public hearing process and keep comments respectful and do not disrupt the hearing process for all.

I will call your name or the last four numbers of your phone number and ask if you wish to make a statement. Everyone who wishes to provide testimony will get the opportunity to do so. If you do not wish to make a statement, if you do, I'm sorry, do wish to make a statement, you'll be asked your name, spell your last name and identify what organization, if any, you are speaking on behalf of.

There will be another 15-minute break at 2:00 o'clock. Comments for the public ends Friday, this Friday, October 23rd. If you have further comments, please send them to MDHHS Dash Admin Rules, ADMINRULES one word, at Michigan dot gov. You can check the rule progress on this particular rule by logging into [HTTPS, colon, backslash, backslash, ARS dot APPS dot LARA dot state dot MI dot US](https://backslash.backslash.ars.apps.lara.state.mi.us). The copy of the hearing transcript will be available at MDHHS Dash FOIA, F-O-I-A , at Michigan dot gov.

Please wait two weeks before requesting a copy of the transcript. And finally, if you'd like to make a comment, please unmute your computer or your phone and provide your public statement.,

Ok, at this time I'm going to, I know we went through quite a few people this morning. If anyone would like to continue to make statements, please raise your hand. Otherwise my question to you is do you have any questions for our panel today?

Participant:

Hello, can I be, can you hear me?

MEB:

Is this area code 609.

Participant:

Yes, it is. I was hoping to give testimony.

MEB:

Oh, perfect thank you. Please state your name and give it a go.

Gregory Conley:

Thank you very much. My name is Gregory Conley. I serve as the president of a nonprofit pro vaping advocacy group called the American Vaping Association, which advocates for public health policies that lead to the largest declines in the use of the product that are killing hundreds of thousands of people each year, combustible cigarettes. As a preliminary matter, we do not believe this unelected body has the authority to ban an adult consumer product from being sold. Michigan residents elect lawmakers to make laws, not bureaucrats. For that reason, even if you as a member of this panel believe that banning flavors is smart policy solution, we respectfully urge you to vote no and instead run for a state house or state Senate seat two years from now on, a platform of enacting a legislative ban on these products.

Many previous speakers have used the words tobacco, nicotine, and smoking interchangeably. This is a deceitful communications tactic as Cliff Douglas, formerly of the American Cancer Society, noted in his testimony, 98% plus of all tobacco related disease and death is attributable to cigarettes, not just tobacco or nicotine. And so , what have we seen as vaping has increased in Michigan and across the

country? What you've seen is an increase in adults quitting. Any dramatic, never before seen, decline in teen smoking, and we just saw a 20% plus decline in use by middle and high school students.

Before you make any decision, I would encourage you to use some of your research budget and purchase Nielsen sales data from Massachusetts Rhode Island, New York and New Jersey, as well as states that have not banned flavors. What you will see in that sales data is that when you ban the sale of flavored vaping products, cigarette sales increase relative to neighboring states. Let me say that again, if you ban flavors in vaping products, the end result will be more cigarettes being sold in the state of Michigan.

In the near future, the FDA is going to make decisions on what are known as PMTAs, premarket tobacco applications. The standard the FDA will use is judging all of the evidence [unintelligible] individual product [unintelligible] population level health so very, in the very near future you could have products that the FDA says are appropriate for the protection of public health, yet they'll still be banned in Michigan, while Marlboros will continue to be available for sale.

Many decades ago, people spoke in favor in front of bodies like this on the topic of banning marijuana with nonstop campaigning on the backs of children. If you took many of the speeches of the proponents who spoke today and replace the words tobacco or nicotine with marijuana, you'll find much of their rhetoric is undistinguishable from those who pushed for black and brown people to go to prison for selling and using marijuana as part of the failed racist war on drugs. We should not have another war on drugs. And I'll say, as my final point, I would request that if you please, if you release this as a final rule, please state unequivocally that the Department of Health accepts that businesses like the one run by the 64-year-old woman you heard earlier will close and also accept that the data is indicating from New York, New Jersey, Massachusetts, Rhode Island, that if you put this ban into place, more cigarettes will be sold.

Don't hide it, don't deny it. Just say we are OK with smoking going up as a result of our proposal. Thank you very much and thank you. I will submit written comments as well.

MEB:

Thank you very much. If you'll indulge me, I'd like to go through the phone numbers again because there is no little raise your hand button on those phones. And forgive me if I've already asked, 517 ending in 1400?

Participant:

Hello. Oh hi, I'd like to give testimony please

MEB:

Are you area code 530?

Participant:

Yes

MEB:

Please go ahead. State your name.

Lisa Chamber:

My name is Lisa Chambers. I am a parent volunteer with Parents against Vaping. And I support ending the sale of all flavored vaping products as well as all other flavored nicotine product. The flavor ban imports [unintelligible] started vaping using flavored vapes. He come home smelling sickly sweet. He vaped for a year before I found out. He was well aware of the danger of vaping, but he tried it to be cool. He was addicted before he knew it. It was over a year before he quit completely. It caused tremendous upheaval, tension, and unhappiness in our family and adversely affected his health.

Teens vape at school, in class, when the teacher isn't looking. Flavors draw kids into vaping and the nicotine addicts them and keeps them coming back for more. Menthol and candy flavors entice kids to pick up a deadly habit. Please, let teens know we adults care about them and don't want them vaping by taking all flavored tobacco products off the shelves. Thank you very much.

MEB:

Thank you for making your statement. Anyone else on the phone that would like to make a statement?

OK, I see Ann. Ann, you have another comment for us?

Ann Switala:

OK, can you hear me?

MEB:

Yes, I can.

AS:

OK, I did neglect to say one thing earlier that I was just reminded of. 75% of the teens on the CDC site cited other reasons than flavors for vaping. Flavors is not the reason teens vape. Flavors don't hook teens. Flavors aren't capable of hooking teens. Only nicotine can do that. So, to ban flavors, all you're doing is stripping adults from their ability to stop doing cigarettes with vape products,

Again, flavors are subjective. Not every adult can vape the same flavor. And many vapers switch off flavors week by week, month by month. And some vape the same flavor their whole career. This is vital for adults. It is vital for the upwards of 70% success rate we have getting people off cigarettes and foreshadows all other smoking cessation products combined. I've seen it in my business for seven and a half years. I have seen it in other vape shop owners' businesses over the years. The very variety of the flavors is instrumental to having so many adults be successful getting off cigarettes. Many do not want a tobacco flavor because they don't want to be reminded of what they're leaving behind. Many do, but not enough.

We will, I'm convinced, if we only have tobacco available for our guests, for our ex-smokers, I believe our success rate will drop to that of Nicorette or Chantix. Look at the six-month rating on Chantix. It drops significantly because people go back to smoking. Using those products for me, all it did for me was give me a break from smoking. I always went back with vaping. I haven't and I vape three different flavors, green Apple, pear, and a tobacco flavor. I have to switch it up because, otherwise, one flavor doesn't taste as good as it did last week. I switch it up and it tastes better. That's me and every vapor is different.

I'm 64. Most of my customers are over 50 years old. I have a survey that proves that. And I would urge you to vote no on this as it puts adults at risk. We can save the teens as well as we can by doing all we can with making good regs, good laws that make sense to give fines to the businesses and fines to the teens too. You'd have the best anti-vaping patrol of parents if you fine those kids. Maybe checking lockers in school. They better be checking book bags.

I don't agree with teens vaping either, but I think we can solve this problem with laws. Thank you.

MEB:

Thank you, Ann, for you comment.

Elaine Lyon:

Mary?

Participant:

I wanted to speak if I could.

MEB:

I heard Elaine and I heard a gentleman. Elaine...

Shane Wisnewski:

This is Shane Wisnewski.

MEB:

Oh, OK. I believe that Elaine from our panel, she wanted to respond and then I'll get to you Shane, OK?

Shane Wisnewski:

OK, thank you.

EL:

Yes, thank you Mary. I just wanted to respond just to the comment about flavors not being enticing to kids, and that's not the reason [unintelligible] products do and I do thank you for your comments on that. I do want to remind the audience that the US Surgeon General declared youth E-cigarette use a public health epidemic, and the US Surgeon General has also declared that states have a responsibility to act.

Please remember that our goal is to protect children by reducing the appeal of and access to flavored E-cigarettes so that the kids don't initiate use. We actually have a PATH study, the FDA's Population Assessment of Tobacco and Health study that found that 97% of current youth E-cigarette users had used a flavored E cigarette in the past month. And 70.3% say that they use E-cigarettes in, quotes. flavors I like. More recently, the 2020 National Youth Tobacco survey found that an increasing proportion of middle and high school E-cigarette users reported using flavored products in 2020. It was up to 82.9% from 68.8% in 2019.

In a recent study, 81% of youth E-cigarette users reported using a flavored E-cigarette at first use. This study concluded that flavored tobacco products may attract young users and serve as starter products

to regular tobacco use. This epidemic, therefore, can be attributed in large part to the appeal of nicotine flavored E-cigarettes to youth. Thank you.

MEB:

Thank you, Elaine. Appreciate it. Shane? What did you want to say?

SW:

OK, once again my name is Shane. I'm an adult vapor former smoker. I was, just this past September, over six years smoke free thanks to flavored vaping. I wanted to speak to a couple of the comments.

You know, some people mentioned Chantix. Chantix is known for over 500 suicides and over 1000 attempted suicides, and that supposedly, that's an FDA approved method, but that that just goes to show you that just because it's FDA approved doesn't mean it's safe as a quitting smoking aid. Also heard a lot of talk about how youth are addicted to these products but, in a lot of problems, but I haven't heard any solutions from any of the people that were [unintelligible] products.

A solution would be to, and again, as people have mentioned the vapor shop owners, keep these products in shops that are adult only, such as vaping shops, where if you look under 40 years old, they don't even allow you in the store. They don't allow people outside, you know, an adult to come inside and purchase for a child outside. They have cameras all around. They have strict ID policies. If you don't have an ID, even myself, being 35, I've been denied purchases because I didn't have my ID on me.

So those people are the ones, the responsible ones, that are doing things right unlike convenience stores, and 7-11s, and gas stations that will sell to anyone and anyone and they don't care because it's a minimum fine. So, instead of trying to ban something, because of studies have shown prohibition doesn't work, why don't we work on laws that have stricter penalties for these convenience stores and these bad players in this game that are contributing to these minors use. And I also heard something from some parents of teens who use these products. What were the parents doing to prevent their children from using these products? It seems like there's no, there is no action from them, but to try to ban these products instead of having adult conversations with their children just like they would about drugs or anything else and make it known that these products are for adults only. If there was more that we'd be, honestly, we'd be a lot better off, but to, uh, you know and my comment here, as I mentioned, these products are for adults. They save adults, lives like my own. I was truly, when I got to the point of after nine attempts of trying to quit smoking with traditional pharmaceutical products, I was at the point

to where I thought I was just going to die as a smoker, much like my parents, although they didn't die directly from smoking, they had congestive heart failure from smoking for multiple years. And I thought I was going to go down the same route until I found flavored vaping products. So, in closing these products are for the adults that need them, and I don't think we should kill adults to save children because of bad parenting and bad business practices that these stores have shown, these convenience stores and these non-adult shops. That's all I had to say. Thank you.

MEB:

Thank you, Shane. Appreciate it. Amelia Howard? Did you want to make a statement and you'll be followed by Clara James? Clara James will follow you.

Amelia Howard:

Hello?

MEB:

Hello, Amelia

AH:

Hi. I'm sorry I couldn't raise my name. My name is Amelia Howard and I'm a PhD candidate.

MEB:

Did we lose you? You're on mute again, Amelia.

AH:

Can you hear me now? Can you still hear me?

MEB:

Yes.

AH:

So, I'm, I'm commenting today as an individual with expertise in the history of E-cigarettes, the state of evidence on their risks and benefits, and the controversy and moral panic over vaping in the United States. I'll be submitting reference version of my comments today in writing to the Department of Health and Human Services.

So, the historical context of the development of vaping flavors is too often ignored, and proposals to ban them from the marketplace. Flavored E-cigarettes were not invented by Big Tobacco, nor are they an unscrupulous marketing plot from the thousands of small, independently owned vape companies in the United States to addict kids. Non-tobacco vape flavors are user innovation developed by and for people with the need to stop smoking. In my own research, I examined the substantial contribution of users to vaping innovation, including the development of a commercial flavor market. From examining thousands of early E-cigarette forum posts, I've learned that fruit, candy, bakery, mint, and beverage flavors were introduced to vaping in 2008 by pioneering users of the technology who were desperate to use E-cigarettes to replace smoking. Just dissatisfied with the taste of products from online Chinese vendors at that time, these users began experimenting with flavors traditionally used in confectionery applications from specialty flavor houses. So, flavors like cotton candy, bubble gum and the many other examples opponents claim are obviously targeted to youth are, in fact, flavors someone trying to quit smoking wanted to vape and originally mixed themselves. These early innovations in home mixing resulted in the commercial flavor market Michigan Department of Health and Human Services is attempting to ban.

This market does not target youth. It emerged to meet the demands of early adult users who wanted to switch away from smoking and grew along with this demand. Calls to ban flavor ignore this context and rely on a myth that flavors are little more than an industry marketing tactic aimed at luring youth to nicotine addiction via E-cigarettes. This myth is an appeal to seeming common sense that discourages us from questioning its flawed basis. This myth is believable because it's intuitive. It targets our natural emotional concern for kids and exploits the fact that most people know little about vaping or the role of flavors and [unintelligible] central important public [unintelligible].

One, or 10.8 million adults in the United States vape and the vast majority are current or former smokers. The preponderance of evidence indicates that non-tobacco flavors, including fruit, dessert, and candy, are essential to vaping as an effective way to quit smoking. Importantly, flavors play a key role in the prevention of relapse to cigarettes. In 2018, the largest flavor preference survey of adult vapers in the United States found fruit and dessert flavors to be the most popular by far. That same survey found that only a minority of the nearly 70,000 participants used tobacco flavors, and this use decreased overtime. These results are consistent with several large-scale consumer studies and peer review studies were adults, adults who vape overwhelmingly reported that non tobacco flavors and flavor variability, matter to them to help keep them off tobacco.

It's worth noting that youth vaping didn't peak at the same time flavor options did. The vape flavor market expanded until 2016, after which the FDA prohibited new products from being introduced without marketing approval. There were an estimated 7764 flavors available on E-cigarette brand websites in 2013. But, by 2016, that estimate had more than doubled to 15,586. If flavors cause youth to vape, we'd expect youth vaping to have increased steadily with the proliferation of flavors.

CDC data showed that vaping rates among these increase every year between 2011, when, when the behavior was first altered to 2015. But in 2016, right when the United States vaping market reached peak flavor, national data showed youth vaping declined for the first time. This low rate remains stable in 2017. Increases in 2018 and 19 happened when the flavor market was frozen in its 2016 state.

While national surveys of youth do show that youth experiment with flavors, these surveys should not be interpreted as evidence that flavors are the main driver of youth vaping. These surveys certainly do not offer anything in the way of evidence that flavors are especially popular with youth as opposed to adults. Instead, what youth report on these surveys is quite likely a reflection of what is popular overall. Given the morally and politically charged contexts of the E cigarette debate and the genuinely concerning recent epidemic of lung poisoning believed to be caused by contaminants in illicit THC oil cartridges and not nicotine vaping products that are targeted by this ban, it is easy to forget the big picture and then enact laws that, while well intentioned, end up causing harm. Adults who use vaping products to quit or prevent relapse to smoking face obvious harms from a flavor ban, but the idea that we must choose between allowing harm reduction for adults or protecting youth is a false dichotomy. The novelty of vaping can make us forgetful of the fact that tobacco use is endemic among youth, that teenagers still smoke cigarettes, and at 5.6 million kids under the age of 18 who are alive today in the United States, will ultimately die prematurely as a result of smoking. No youth should use nicotine, but the reality is that teenagers experiment with adult things.

There is overwhelming evidence that the adult things that are experimenting with now are vastly and demonstrably safer than cigarettes, which killed nearly 500,000 Americans annually. Allowing vaping to replace smoking at the population level has enormous benefits for future generation. Flavors in vaping rep-, reflect the preferences of the people who use these products to avoid smoking. E-cigarettes don't work when people don't like them, and flavors are what people who need E-cigarettes like about them. A ban on the sale of flavored vaping products in Michigan offers literat-, little, if any, protection to the youth population overall and also stands to harm youth that are at risk from cigarettes specifically.

Eliminating a legal market, a viable alternative to cigarettes, will displace sales to the black market or drive people back to smoking. This would be disastrous for public health in Michigan.

Thank you.

MEB:

Thank you, Amelia, I appreciate your commentary. Area code 952. Did you want to make a statement?

OK. Hello?

952:

Yes, I'd like to speak if possible.

MEB:

Um, I have you in line [unintelligible]. Then after you, we'll be followed by Jim McDonald.

So, Claire, do you want to give your statement?

Claire:

Yes, so I'd like to give a statement as a coaching mother in an educator of youth in my community. I would just like to say that I work with a lot of teens in very, various capacities. I know how hard it is for them to quit using vaping products once they've started. I look at the epidemic proportions of what we're seeing our youth go through right now, and I think that if we don't take a serious look at all of the data that's being thrown around and not say OK, common sense tells us if we have this many problems with these many kids becoming addicted to vaping products, that we have to look at a different solution. There's a lot of confusion out there I think with the general public and with the youth, and I think that they're looking at decisions that lawmakers and policy makers are making right now to say whether a product is in fact, safe to use or not to use and with the dangers of being brought into, and I will tell you they all tell me that the introduction to the vaping came with flavorings, that the enticement of trying it was due to the different flavors that were offered by friends or by marketing people. And that the impact that I think the decision that you guys make today is going to send a clear message to the public and teens about the dangers of the use of any flavored products.

And, as far as I'm concerned, we're losing a valuable population to vaping that are no longer in band because they can't support the air strength for it. They're are no longer in sports because it becomes too difficult. We are losing them through the education system because once the nicotine leaves their

system, they can't sit through our class, hour long classes, so the struggle continues for 8 hours every day. I think that if we don't look at the online safety, that it's simply a click that says yep, I'm 21, and we've had kids go on and try it to look at it all they have to do is click and say I'm 21, but there's no verification needed to purchase these products.

That if we don't do something than what they're hearing is the silence is permission, that it is OK that it's safe that we really don't care enough to issue any warnings or any product responsibility in this. And that perhaps if these people that we keep hearing testifying that they've quit smoking because of vaping, in my opinion, if you're vaping, you haven't quit smoking, you've just traded a product and perhaps if they had had safer messaging when they were younger, they wouldn't need those products when they were adults. Thank you.

MEB:

Thank you, Claire. I appreciate your comments. OK , area code 952. You're up, followed by Jim McDonald and then number 427 etc.

Hello?

Thomas Bryant:

Hello. Hello, this is Thomas Bryant.

MEB:

Hello, is this Mr. 952?

TB:

Yes, it is.

MEB:

Very good, please proceed.

TB:

Thank you, my name is Thomas Bryant. I am the executive director and legal counsel for the National Association of Tobacco Outlets, which is the National Retail Store Association with member stores in

Michigan. And I submitted today a legal comment letter to the Michigan Department of Health and Human Services. I'll be very brief.

The Michigan Legislature determines the roles and responsibilities of the Department. No state statute provides express authority for the Department to make rules regarding flavored nicotine products or any tobacco product for that matter. In fact, in 2019, the Michigan Legislature amended the statutes regulating vapor products. Yet in the process did not confer any role on the Department of Health and Human Services to regulate by rule flavored vapor products. The state of Montana's Department of Public health also proposed a statewide rule earlier this year to ban the sale of flavored vapor products. But just like this case, the Department of Public Health in Montana did not have the statutory authority to make a statewide rule, and they withdrew that rule.

This proposal will also have a significant financial impact on retailers. If all flavored nicotine products are banned, retailers would sales of those as customers is simply drive to the next state to purchase their products or purchase them over the Internet.

For these reasons, we urge you to withdraw the rule as there's no statutory authority to make the rule, nor because of the financial impact on retailers. Thank you.

MEB:

Thank you, I appreciate it. OK, Jim McDonald.

JM:

Hi, can you hear me?

MEB:

I can.

JM:

Excellent. I, I wanted to respond to somebody who made a comment earlier. It seems like a long time ago now, I'm not sure who it was. It may have been a panel member who referred to the 2015 study that quoted 80, the number was actually 81.5%. I believe she said 70 something. 12-year old's who said they vape because quote, they come in flavors I like. That was from 2013-14 PATH data. That was supposedly the top answer on the survey, which was a multiple-choice survey you could answer as many reasons as you wanted to.

University of Pittsburgh addiction researcher, Saul Schiffman, went and aggregated that data in a different way, so he combined the four separate answers that related to harm reduction. And when you put those together, harm reduction jumped well past flavors as the top reason given for vaping by teens in 2013-14. It was 88.2%. And of those 81.5% who chose flavors as a reason they vaped, 92% of them also chose a harm reduction answer and just 1.8% of all the youth surveyed only chose flavors as a reason.

Yes, kids do like the flavors of vape, so do adults. The trick is, you need to find a way as the state, to restrict sales to adults as you do with alcohol, as you do with cannabis, and reduce the number of kids who have access to this stuff without affecting adults who depend on the flavors. That's all, thank you.

MEB:

Thank you, Jim, for your follow up. OK number beginning 427.

Erin:

This [unintelligible] parents. Can you hear me?

MEB:

Yeah, go ahead. You're OK.

Erin:

OK, thank you. So, I just wanted to follow up on a couple of comments from a couple of people who have made the comment where the parents and the, you know, it seems to be a criticism and I just want to go back to sort of the big picture. The reason that we're here testifying is to protect kids from a lifetime of nicotine addiction. This discussion should really, shouldn't be about youth versus adults, as somebody had already said, this hearing is responding to the public health epidemic of youth vaping. And parents obviously don't condone E-cigarette use by their kids. [Unintelligible].

The vaping community should be faulting Juul, not the parents, because Juul is the one who came on the scene and now the disposable vape companies and they design these E-cigarette products to be stealthy under the radar of parents, caregivers and educators. So, you know, flavors hook kids and they mask the awful flavor of tobacco. This started back in the 20s when Big Tobacco added menthol to mask the flavor, and addict their, um, addict citizens and they're very successful at it. They've addicted generations.

Bottom line, nicotine addicts kids, it addicts adults, and nicotine, especially the flavors, are what hooks the kids. Kids would not be smoking tobacco flavor because it's gross and you know, point being that the flavors are the reason these kids are using the products and no parent, just like , I'd like to end with no parent condones their kid vaping E-cigarettes or anything illegal. Thank you.

MEB:

Thank you, I appreciate it. OK, Greg Troutman.

Greg, I think you're still on mute.

OK , Greg's having a little technical difficulty. While we wait for Greg, are there any more questions, questions of the panel?

Stan Meyers:

This is, this is Stan Meyers. I'd like to speak .

MEB:

Sure, Stan, go ahead.

SM:

Thank you for this time and letting me speak. I'm behind the scenes. For many years I used to sell marijuana and other THC products. But since Michigan has now legalized recreational marijuana, I'm looking at other options.

I'm not a bad guy. But I need to make ends meet. And I have a friend that you may have heard about in a vice article up in New York, where there is already a flavor ban who makes money and I quote hand over fist selling nicotine and flavored vapor products out of his car in parking lot, behind building, in alleyways. I'm looking forward to this opportunity where I can continue to pay my bills while exercising ID checks with people because I'm not a monster, I'm not your run of a mill average drug dealer. However, I know many will. They will sell these products to anyone simply to make money.

You have vape shops right now that check IDs. You have shops that are knowledgeable and experienced in the product that they sell. This is the reason that people go to these shops to begin with. What you're going to do with this flavor ban is you're going to send people who are desperate not to smoke cigarettes and want to continue to use their vape products to the black market. You may remember a

time when EVALI was around and people were ending up in the hospital due to contaminated THC cartridges used with vitamin E acetate which is an oil that is not supposed to be inhaled into the lungs. You're going to have hundreds of these companies pop up overnight in basements, in bathrooms, mixing in unsanitary conditions, putting them in bottles and selling them on the street. And people will buy them. And what you will see is a large number of people getting sick and potentially dying because they don't want to go back to smoking. They'll continue to vape.

I urge you. But I really shouldn't, because you're going to offer me money hand over fist by me doing this, as my friend is in New York. Do not do this flavor ban because you are just going to drive people to the black market where the drug dealers there, they don't ID. They don't care who they sell to. I may be one of 1000 people that will actually care and continue to help people stay off of combustible tobacco. Thank you.

MEB:

Thank you, I appreciate your comment. Greg?

Greg Troutman:

Can you hear me now?

MEB:

Is this Greg?

GT:

Yes.

MEB:

We can. You go ahead.

GT:

Perfect, my name is Greg Troutman. I'm a national industry advocate for the open system segment of the vaping industry and I've got just two points to make today. As far as comments, one is the constitutionality of this proposed rule. Every state, including Michigan, has a separation of powers provision in their constitution. And that means that each branch of government has their own functions and their own duties. And the legislative function is vested solely in the Legislature. The Executive

Branch is not entitled and is not authorized to usurp legislative authority. The kind of decision that you all were considering here whether to ban a whole class of products is a quintessential legislative function. In my opinion, this would violate the separation of powers under the Michigan Constitution. It would be unconstitutional. As proof, pending right now before the legislature is a bill that would address flavored vape products. Also, last year the Michigan Legislature went in, modified the Youth Tobacco Act to regulate vapor products, gave the Department of Health and Human Services a very specific and limited role that was to manufacture, print signage, distribute signage that was required by this law for the retail stores.

The second thing, and looking at the regulatory impact statement, DHHS discusses proposed alternatives but it doesn't identify what those were. There are at least two things from listening to the discussion today that should have been considered as alternatives and, and should be considered in lieu of a full ban of all products. One is limiting the sale of flavored tobacco products to adult only retail locations that require specific age identification. Do not let minors in, much as you see in liquor stores like at a Meijer's or Walmart, will have a separate entrance for liquor. You have to be 21 or over to enter that facility.

The same could be done with flavored tobacco products. The second, and from listening to discussion today too, is the product that the kids tend to use the most are the products that have the highest nicotine content, Juul's in particular. I've heard a lot of discussion about Juul today. We really didn't have a youth vaping problem, per se, like we do now until Juul hit the market. Yes, kids were using products but not with the regularity that they began when the Juul products, hitting the disposable products, later hit the market is to limit the quantity of nicotine that can be sold in products in Michigan to a level that it was on the marketplace before Juul came on the market, which was below 30 milligrams per milliliter. The Juuls come in either 30 grams per milliliter, milliliter, are 50, and the ones that the kids are using most are the 50s.

So, if you reduce the nicotine content of products that can be sold, you're going to make them less enticing to kids. If you put them in adult only stores, you decrease the opportunities for kids to get their hands on these products. By doing those two things you do not take the product away from adults who have a legitimate right to use them. You reduce the opportunity and the frequency of, of kids using them. And the third thing is, you enforce the current laws. You've got Tobacco 21 that's in place right now. Disposable products are illegal already. They're illegal because they came on the market after August 8th, 2016. And as a matter of fact, the FDA is aggressively enforcing that law, that regulation

against those products and, matter of fact, there was a seizure just last week in the port of Philadelphia of \$1.7 million worth of disposable products came in from China that were labeled as LED lights. So that the FDA and the Customs and Border Patrol agency are interdicting these products. That are targeted towards use that do not have a legitimate basis to be on the market because they are illegal.

So, enforce the law, help the feds enforce the law. Don't restrict the legitimate rights of adults who want to use these products as smoking cessation. Thank you.

MEB:

Thank you, Greg for your comment. OK, let's hear from Jodi Radke. Michael, you are on deck.

Jodi Radke:

Good afternoon, Mary. Can you hear me OK?

MEB:

Yes, I can.

JR:

OK, great. My name is Jodi Radke. I have the privilege of serving as the co-chair for the Keep Michigan Tobacco, Kids Tobacco Free Alliance, along with my counterpart you heard from earlier, Jerrod Burkhardt. I am also the regional director for the Campaign for Tobacco Free Kids. We are the nation's largest nonprofit nongovernmental advocacy organization that is solely devoted to reducing tobacco use in its deadly tool by advocating for evidence based public policies that prevent kids from using tobacco, help smokers quit, and protect everyone from secondhand smoke.

We applaud Michigan for taking this, the permanent rulemaking process, as a landmark step to protect Michigan's kids and urge swift implementation. With implementation of this proposed rule, Michigan will join California, Massachusetts, New York, New Jersey, Rhode Island, and nearly 300 localities across the country that have enacted restrictions to protect kids from flavored E-cigarettes and who have done so successfully, without the exaggerated claims of illicit markets that you've heard today made by the industry as a scare tactic to prevent public health measures that would protect Michigan's kids.

Governor Whitmer was right to call the youth E-cigarette use a public health emergency in September 2019 when she issued the emergency rules. At the time, the US Surgeon General and the FDA had determined that youth E-cigarette use had reached epidemic levels, and at that time, the FDA

Commissioner, Scott Gottlieb, made the very specific comment that the FDA won't tolerate a whole generation of young people becoming addicted to nicotine as a trade-off for enabling adults to have unfettered access to these same products.

Since those comments, concerns have only grown as trends largely continue in the wrong direction. Amidst the current COVID-19 pandemic, it's clear that protecting lung health is more critical than ever, and there's no time to waste and reversing the youth E-cigarette epidemic. The coronavirus attacks the lungs and behaviors that harm the lungs put individuals at greater risk. The CDC recently concluded that being a current or former cigarette smoker increases your risk of severe illness from COVID-19. The harmful impact of smoking on the lungs is well documented, and there is growing evidence that youth E-cigarette use can also harm lung health.

National data released last fall showed an unprecedented increase in youth E cigarette use. From 2017 to 2019, E-cigarette use more than doubled among high school students and more than tripled among middle schoolers. In Michigan, that new data released this summer showed that 20.8% of high school students are current E cigarette users, which is an increase from 14.8% in 2017. Daily use of E-cigarettes in Michigan has more than tripled since 2017. It was 7.2% of Michigan students who vape daily. It is clear that youth are not just experimenting with these cigarettes, they're using them frequently and becoming the tobacco industry's pipeline for profit. This comes as no surprise given that Juul and other E-cigarettes deliver a powerful dose of nicotine. Many kids who are cartridge-a-day users don't realize they're using the nicotine equivalency of a pack of cigarettes per day. Many kids are suffering from addiction and withdrawal symptoms as you've heard from multiple parents.

Of great concern is that youth who vapor at higher risk for trying and then transitioning their use to combustible products. Make no mistake, this epidemic is the direct result of deliberate actions, despite what you've heard today, that have been taken by E-cigarette and tobacco companies. First, the E-cigarette industry flooded the market with flavored products, of which there are now over 15,000 available on the market. These flavored products have fueled the youth epidemic.

You've heard various stats, 82.9% of current users report they use flavored product, 70% users cite flavors as the reason why they use. Second, they marketed these devices that deliver unprecedented doses of nicotine as privileged, previously mentioned, leading to rapid, intense addiction. New data which is incredibly alarming shows that our kids are using on a more frequent of a basis as what we've seen before, which show demonstrated signs of addiction. 38.9% of high school users report frequent

use, meaning more than 20, use of 20 or more days in the last 30 days is 22.5% who are reporting daily use. In total, there over 1.3 million youth are using E-cigarettes on a frequent basis, including 730,000 daily users.

Third, they package these as sleek, high tech devices that enable youth to use them without being discovered by parents, teachers, or adults they interact with. And finally, they marketed on social media sites popular with youth, using the same imagery and themes as the cigarette industry, to attract generations of kids. So, the E-cigarette companies may argue their product is designed to help adult smokers, but these actions paint a very different picture. It is important to note that while use, the E-cigarette use remains at epidemic levels, there has been no significant uptake among older adults with only 3.2% of adults reporting E-cigarette use nationally, and, as mentioned by previous commenter, 6.1% in Michigan. So again, with little or no variation, an adult use rate over time, despite industry claims, adults are the primary end user of these products.

Factually, the data does not support that, and it is untrue. And if it were true, we, instead of a drastic uptick in use among kids, we would see a drastic reduction and adult use rates and combustible products over time, which is not what we're seeing in Michigan and the data does not support that claim. Moreover, there is no conclusive evidence that flavors, underscore flavors, in E-cigarettes, play any role in smoking cessation. In fact, you've heard from the testifiers from the vape shop owners, citing that their consumers are using seven years, nine years, and they're using because of flavors, and their citing these are adults who wish to quit. So not only are they serving as a catalyst for use amongst our kids, they're preventing our adult users who wish to finally rid themselves of tobacco use the inability to do so.

The 2020 Surgeon General Report on smoking cessation released earlier this year concluded there is presently inadequate evidence to conclude that E-cigarettes, in general, increase smoking cessation. The asserted benefits of E-cigarettes have not been proven, while the risk of E-cigarettes, including nicotine addiction and other harms are well documented and real. To date, no E-cigarette manufacturer has submitted an application to the FDA or approval as a device that successfully assist people with their quit attempts. While the Trump Administration made some strides towards addressing flavored E-cigarette use by taking some products off the market in February, the policy left thousands of kid-friendly products, including menthol E-cigarettes, disposable E-cigarettes, despite what you've heard, and E-liquids in every flavor imaginable on the market. While 2020 data showing national decline in overall use, rates remain epidemic. In kids, what we're seeing as product shifting to the products that

are exempted from the federal policy and among high school E- cigarette users, use of disposable products increased by 1000% from 2019 to 2020. These draft rules will close these loopholes to fully protect Michigan's kids. Prohibiting flavored E-cigarettes is the action needed to reduce the appeal of E-cigarettes and protect Michigan's youth. Loophole ridden policies and youth access laws are insufficient to control this epidemic. The evidence is clear that if any flavored E- cigarettes remain on the market, kids will find a way to get them. And, despite age of sale laws as mentioned by industry representatives as a policy solution, a study from the University of Michigan found that nationally, over 2/3 of 10th graders say it's easy to get vaping devices in E-liquids. Kids can rely on social sources or ask strangers to byproducts for them, we agree with the vape shop owners, this happens.

In 2018, 72.6% of E-cigarette users reported they got E-cigarettes from social sources. Aside from the sources, it is also noteworthy that Michigan is one of only a handful of states which doesn't require tobacco retailer to be licensed to sell nicotine products in the state, and Michigan currently leads the nation in no sales orders for noncompliance by stores in illegal sales to kids. Eliminating the sales of these products at both brick and mortar locations and through online ordering ensures that retailers, tobacco companies, and vape shop owners don't find loopholes and ways to circumnavigate the rule. And if Michigan were to consider this, Michigan would join multiple states in doing so, states like Arkansas, Maine, South Dakota, Vermont, and Utah. And if you don't believe me that it's easy to get, easy for kids to access these products online, I'm happy to send you a link to legislative testimony provided in another state by a 9 year old who successfully demonstrated a tutorial for elected officials of how she was able to successfully purchase nicotine and vaping Products via the Internet.

To protect kids from all forms of tobacco use and reduce health disparities, we also would like to add that Michigan should consider a concerted ban that includes all flavored tobacco products and not just vaping products. Menthol cigarettes and flavored cigars make it easier for kids to initiate smoking and are especially popular amongst African American communities. Prohibiting the sale of menthol cigarettes and flavored cigars addresses both the critical public health issue and a matter of social justice. Prevalence of menthol use is highest among African Americans. 85% of African American smokers smoke menthol cigarettes compared to 29% of their white counterparts. The tobacco industry wants you to believe that African Americans have always smoked menthol cigarettes, but these high rates are no coincidence. They are the direct result of a decades long marketing campaign by the industry which killed 45,000 African Americans each year.

Cigars, the second most popular product amongst youth, also disproportionately are used by African Americans at much higher levels. Cigars are sold in over 250 flavors and are as cheap as three for \$0.99. Cheap, sweet cigars serve as an entry product for kids to a lifetime of smoking. We know that analyzing tobacco use trends in Michigan, that kids within the LGBTQ community, those within communities of color, our Native American communities, and Arab Americans have higher use rates of varying flavored products which resulted from targeted and direct marketing strategies towards these cultures, specifically. In order for health equity to be achieved with this rule, and for all of Michigan's kids to be protected from the harms of tobacco, we strongly recommend that the scope of this rule and the prohibition on the sale include all flavors, that include all tobacco products, and that it applies to all locations. This would ensure equal protection for all of Michigan's kids within all communities.

The US Surgeon General, in declaring the epidemic amongst their nation's kids, said we must take action now to protect the health of our nation's young people. That time has come, and this is our opportunity to ensure we do not undo 30 years of progress within the tobacco control community. And despite what you've heard, prohibition of flavored tobacco is effective, and in fact, in 2009, flavors, with the exception of menthol, were legally removed from cigarettes across the market. Nationally, we did not see that result in an illicit market, and we've seen some of the lowest use rates of combustible products in our kids historically.

The rule is a protective measure that will save lives and money. Annual cost for smoking related illness to the state of Michigan total \$4.59 billion annually, with \$1.36 billion in Medicaid alone. 213,000 kids under 18 will die prematurely due to smoke addicted illnesses in Michigan. The rule will intersect that process and these trends to ensure the kids of today will not become the addicted adults of tomorrow. Michigan should not wait for the federal government to protect Michigan's kids. Michigan has waited since 2009 when the Family Smoking Prevention and Tobacco Control Act was passed. And since that time, the tobacco and the vaping industry, parts of that legislation had been embroiled in litigation by the industry and attempts to delay its implementation.

Michigan has a responsibility to protect Michigan's kids before they become addicted adults. The time is now, and Michigan kids are depending on our collective leadership. We thank you so much for the opportunity to offer comment on the importance of this important public health consideration. Thank you so much.

MEB:

Thank you, Jodi, for that commentary. OK, Michael, you're up.

Michael:

Yeah, hi, can you hear me?

MEB:

I can.

Michael:

Cool. I'm a male in my 40s. I quit smoking in 2016 thanks to Juul. I quit smoking combustible tobacco after years of trying other methods, including an incredibly horrible experience with Chantix. With Juul, I found something that worked. Within a week, I no longer had combustible tobacco products on my person, and I haven't since.

Last year, Michiganders went through a knee jerk reaction due to a teen illness epidemic. Our executive government or executive branch caused us exec-excessive time and money by blocking products that were not directly involved with this illness. Thankfully, within a month the order was blocked, but it still caused us unneeded time, energy, and money. We had our state top position at the time, during a congressional inquiry, who did not actually know the difference between multiple nicotine delivery products, stating that adults do not consume flavored products, that they are only marketed toward children. That is incorrect.

The fact is that tobacco menthol flavors are pretty bad, and if I if those had only been the only flavors available to me, I would have never quit combustible tobacco. As a result of the negative attention on Juul, losing the mint flavor meant I had to switch to something else. I've tried their tobacco. I tried their menthol; it just wasn't for me. A recent study showed that 70,000 adults who were surveyed, over 80% of them chose flavor. 70,000 adults, 80% of them chose flavor. Other recent studies also show that flavor bans increase illicit products and move consumers back to combustible tobacco use. We have flavored alcohol, flavored marijuana, yet we pick on this one product that doesn't, that provides more benefits than negatives to adults.

Let last year's new laws that were signed in to prevent child access, as we trust with cigarettes, alcohol, and pot, do their job. Let the fud-, federal government own the field and regulations for this market. Do not impose new knee jerk reactions on products that I like to use and that I want to use. I will travel out

of state and do anything I need to do to acquire these products. I do not want to switch back to combustible tobacco because of this. Thank you.

MEB:

Thank you very much Michael. Do we have any more desire to make public testimony? Or do we have any questions of the panel? OK.

With regard to how long this public hearing will be, I plan to be on this call until 4:00 PM this afternoon. If you would like to stay on with me, that would be great. If you think of any questions we come up with in the next couple of hours, that would be great as well. Failing that, again, written testimony can be provided to the MDHHS dash admin rules box by Friday.

It's almost five to two. Let's take 15 minutes. Come back at 2:10 and maybe we'll have some more questions or maybe we'll have more testimony. So, let's take 15. We're off record.

OK, thanks for waiting. We're back on the record. It is 2:10 PM Tuesday, October 20th for administrative rules, 2019 dash 107 HS, Protection of Youth from Nicotine Product Addiction. I understand Sharon would like to make a comment?

Sharon Swindell:

Yes, thank you. Can you hear me? OK, my name is Sharon Swindell. I'm a general pediatrician and I'm also the immediate past president of our Michigan chapter of the American Academy of Pediatrics, and I'd like to speak in support of the proposed rule set.

The best and most successful tobacco cessation plan for youth is never to start using the products in the first place. At present, we are failing in a big way. After decades of steadily declining tobacco product use in youth, the years since 2017 have shown a striking and alarming increase in rate of use in adolescent and young adult Michiganders, almost entirely attributed to electronic vapor products.

We are now creating a new generation of nicotine addicted individuals. Bad news for healthcare providers. Bad news for the future healthcare costs in the state and above all, bad news for those addicted. Three primary factors influenced youth uptake of tobacco products : flavors, advertising, and nicotine. Flavors have long been known to attract youth uptake, harkening back 50 years to the experience with combustible cigarettes. Currently, close to 85% of high school students who use E cigarettes use a flavored product. The most commonly used flavors are fruit of some variety, mint, and

menthol. In the 2019 to 2020 time period, the youth, the National Youth Tobacco survey, has shown a revealing trend in youth. Disposable E-cigarettes use has increased approximately 1000%. This is likely due to flavor restrictions of prefilled pod or cartridge-based E-cigarettes, though these restrictions have notably excluded menthol flavor.

Disposable products are widely available in a broad spectrum of flavors, including the most popular category in youth, fruits. Youth are rapidly adaptable and resourceful in finding the delivery system, providing the most appealing flavors and appearance. Menthol warrants special mention. Menthol flavor is appealing to youth users of E-cigarettes and other tobacco products. More than 1/3 of youth users use menthol flavored products. Of concern is a rise in menthol flavored products as a proportion of total E-cigarette unit sales in the last year. Further, menthol is a flavor that has historically been used disproportionately in communities of color due to targeting advertising practices. Menthol flavors should be included in prohibitions of the sale of flavored products. This is a key to both improving health equity, and prevention of youth nicotine addiction.

Finally, I'd like to mention several other important points related to youth nicotine addiction. First, research shows that significant youth E cigarette users compared to non-users are significantly more likely to become combustible cigarette users in the future. Second, the delivery of aerosol, aerosolized nicotine as nicotine salts in vapor products, as opposed to freebase nicotine in combustibles, allows for significantly higher levels of nicotine to be inhaled. While there is much research to do, concern about the unique vulnerability in youth and youth brains to addictive properties, and more recalcitrance to addiction treatment, should be cause for putting all measures in place to protect youth until the long term risk and health effects are better understood for these relatively new products.

And last, pediatricians and other health care providers for youth do not have the training or tools to manage the surge of youth nicotine addiction, and FDA approved tobacco cessation medications and nicotine replacement therapy, do not exist for youth less than 18 years of age. In sum, I'm in strong support of the proposed rules, and further, I advocate to extend these rules to all tobacco products. Moving forward as a state and country, we owe it to our youth to make their needs our priority. Thank you.

MEB:

Thank you, Doctor Swindell. Is there anyone who is called in on the telephone who would like to make a comment? Are there any questions for the panel? OK, as I had indicated I will be on this call until 4:00

o'clock PM when it will end. if you'd like to remain on the line to see if any more public testimonies taken, you're more than welcome to.

Has anyone joined the hearing that would like to make a comment at this time? OK. I understand some people have joined us and have indicated that they can't hear anything. Would you like to make a comment for those who have just joined us? OK. I'll check again about 3:15. Thank you.

The person who just entered the meeting, would you like to make a comment with regard to the administrative rules on Protecting Youth from Nicotine Product Addiction? OK, I'll check back.

Sam, I see your message. If you would like to make her comment, you're more than welcome to

Sam Hahn:

Can you hear me?

MEB:

Yes, I can.

SH:

Right, my name is Sam Hahn. I'm an employee [unintelligible] vape shop. I'm also 32 years old. I don't, I don't know how to go about this, I'm not good at this stuff. But, alright, so the COVID hit, right? And, you know, my hours were affected. I'm not good at this, holy crap, excuse my language. I guess we'll get, I'll get to the main point here.

I was a 20-year smoker. I use flavors to get off cigarettes. My issue is, I like the flavor of tobacco. So, if they ban all the, like, the flavors we have now, I will go back to smoking cigarettes. There is no ifs, ands, or buts about that. And then if the ban goes through, the company I work for goes under. I lose my job and all the customers that I cared dearly for.

What's gonna happen to them? They're gonna go back to cigarettes? Get cancer? Or, or worse, although I don't know, well, no, yeah, I'll stick with that. Hearing the comments or like the last speakers, I will state respectfully as well as I can, the way they're talking, you know, banning the flavors, like, they don't care about our customers. You know, like we took time to get to know them, to help them get off the cigarettes. And what are we supposed to do? So, I'm sorry we can't tell you what you need to stay off the cigarettes. Sorry, that's, that's all I needed to say. Thank you for listening.

MEB:

Thank you, Sam. You did well.

SH:

Didn't feel like I did.

MEB:

You did fine,

SH:

OK, thank you.

MEB:

The person just admitted into the meeting. Would you care to make a public comment? OK.

Allie:

Hello, Allie just joined the meeting.

MEB:

Would you like to make a comment?

Allie:

Yes, I would.

MEB:

You want to give your last name as well and go ahead.

Allie Engelmann:

My name is Allie Engelmann. I own a vape shop here in Midland, MI. I also quit smoking by vaping products after 30 three years in up to three packs a day and you do have a video from me. I just want to say that, you know, flavors are, it's not a one size fits all with this. Everybody has a certain flavor that keeps them away from cigarettes. When I started, I didn't want anything that reminded me of a tobacco type of flavor. I wanted away from that. I started with a white grape. Um, with kids were 21 and up,

if you don't have a valid ID, you don't even get in my store. Not only am I a vape shop owner, I'm a manufacturer. I'm registered with the FDA. I have submitted my premarket tobacco applications. This is a dog and pony show. We are constantly going through hoops for the FDA to stay compliant. Do you think that we would give that up to sell to minors?

Let me tell you, kids will be kids. We were all kids. If you want it, you're gonna get it. No matter what. Now, they can, if somebody comes into my store and they have valid ID that proves they're 21 or older, they get sold the product. What happens to that product when it leaves my store? I don't have any control of. So that's what you need to think about. We don't have that control. We do have the control to not sell to anybody under the age of 21, but we don't have any control of what happens to it when it goes out that door.

I'm tired of this. I've been in business for seven years. I'm tired of fighting. I'm tired of fighting for my life that this product has given back to me. It is given back to my daughter who is 36 years old. It has given back to my son in law. It is given back my four grandchildren's life because they are not exposed to secondhand cigarette smoke. And they will not smoke, and they will not vape because they were raised around it. They have respect for the product and what it does and what it can do.

For all those people that we haven't had the, the ability to touch yet that are still smoking cigarettes out there. It's ridiculous, and the thing is, all you do is you keep scaring people, keep, keep scaring people. This, this thing from last year with the lung illness, the industry knew it wasn't us. We didn't know what it was, but if we knew it wasn't us here. It was the black market. Do you hear me? Black market drug dealers. THC cut with vitamin E acetate, which is the oil that coats the lungs so you can't breathe. That is not the vaping products we use to get people off of combustible cigarettes. Stop this insanity. Don't take peoples' lives away from them because it's not right. We don't want kids on these things either. But they're getting them, and you know what? Kids are going to get it no matter what, just like they do alcohol, just like they do pot.

You know what these kids want? They want to get high. That's all they want to do is they want to get high, no matter how they have to do it. Remember huffing? Hey, there we go. Let's go behind an air conditioner in huff freon. There you go. They lay up dead on the floor, but you're taking a product that is not mind altering, does not incapacitate you in anyway. But you want to ban that, but you want to go ahead and let me drink and you want them on do drugs? Heroin. There you go, opioids, there you go. There's so much crap out there that this should be the last thing on your mind to ban. So, give that a

thought, all you people that want to hinder our industry for doing nothing but wanting to save peoples' lives. And you know what? There is one judge, jury, and executioner. And everybody will meet him up on time. So, remember that when you're taking people's lives away. Thank you.

MEB:

Thank you , Allie, for your comment.

Is there anyone at this time who wishes to make another comment? Anyone new to the call that would like to make a comment? Anyone on the phone that would like to make a comment? OK, I'll be checking back. Thank you.

It's 3:18 pm. Do I have anyone who joined us who would like to make a comment? Thank you.

Hi Nick, I see you just joined the public hearing. Would you like to make a statement today? If you want to take your phone off mute, or if you don't want to, that's great. Thanks.

OK, everyone is 3:45 PM. I'm afraid I'm going to have to go deal with my other day job and have a meeting in 15 minutes. It's been a pleasure having all of your commentary for today and I do really appreciate the thoughtfulness of all of the statements given.

I will have the recordings of the transcripts ready in about two weeks. If you would like to FOIA them, I can provide those to you. Do not forget comments for this hearing ends on Friday. You may still provide any comment you would like or a continuation thereof at MDHHS Dash Admin Rules, one word, at Michigan dot gov. And you could follow the rule status at [HTTPS, colon, backslash, backslash ARS dot APPS dot LARA dot state dot MI dot US](https://colon-backslash-backslash-ARS-dot-APPS-dot-LARA-dot-state-dot-MI-dot-US).

Again, thank you. It has been a pleasure and I will be signing off. It is 346 PM. Public hearing 2019 dash, 107 HS, Protection of Youth from Nicotine Product Addiction has ended. Thanks again.

END OF TRANSCRIPT