



**Testimony of Hilary Schneider, Regional Government Relations Director,
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In Support of LD 1215 "An Act to End the Sale of Flavored Tobacco Products"

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Senator Baldacci, Representative Meyer, and members of the Health and Human Services Committee. My name is Hilary Schneider, and I am the Regional Government Relations Director of the North Atlantic Region for the American Cancer Society Cancer Action Network (ACS CAN). In this role, I serve as the lead Government Relations Director for Maine. ACS CAN, the nonprofit, nonpartisan advocacy affiliate of the American Cancer Society, supports evidence-based policy and legislative solutions designed to eliminate cancer as a major health problem. As the nation's leading advocate for public policies that are helping to defeat cancer, ACS CAN ensures that cancer patients, survivors, and their families have a voice in public policy matters at all levels of government.

I would like to thank you for this opportunity to submit the following testimony in support of LD 1215. This bill would end the sale of all flavored tobacco products in Maine, including menthol cigarettes. Ending the sale of menthol cigarettes and all other flavored tobacco products would be a significant step in reducing tobacco use in Maine. Removing these flavored tobacco products from the market can be a critical component to a comprehensive strategy to reduce initiation and lifelong addiction. Laws aimed at ending the sale of menthol cigarettes and all other flavored tobacco products are most effective when they include all products, all flavors, and all retailers. These laws have the potential to reduce youth and young adult initiation of tobacco products.

Maine law currently prohibits the sale of flavored cigars, however, the way the law was written allows for exemptions and has created enforcement challenges. Current efforts to end the sale of all flavored tobacco products statewide build on and account for:

- lessons learned from more than a decade of experience with Maine's law and more recent experience with the implementation of laws and ordinances across the nation;
- an ever-growing body of evidence regarding tobacco use, including flavored products; and
- industry practices and new products introduced since the time when Maine's existing law was passed and last amended.

Tobacco use remains the largest preventable cause of disease and premature death in the United States and Maine. According to the U.S. Surgeon General, smoking is a known cause of a dozen cancers: cancer of the oropharynx, larynx, lung/trachea/bronchus, esophagus, stomach, liver, pancreas, kidney, cervix, bladder, colon, and acute myeloid leukemia.ⁱ In fact, smoking is responsible for nearly 34 percent of cancer deaths in Maine.ⁱⁱ Maine has the 9th highest rate of tobacco-related cancer deaths in the nation.ⁱⁱⁱ

In Maine, nearly 1 in 6 adults smoke cigarettes, the highest rate in the Northeast and the 16th highest rate in the nation.^{iv} You may be surprised to learn that Maine's adult smoking rate is higher than that of Georgia, Florida, North Carolina, and Texas.

In recent years, overall youth tobacco use in Maine has skyrocketed with nearly 1 in 5 high school students using some form of tobacco product in the last 30 days, including nearly 30% of 12th graders.^v More than one in 20 Maine high school students smoke cigarettes.^{vi} Nearly one in 20 male high school students, including more than 6 percent of high school male juniors and seniors, smoke cigars in Maine.^{vii} One in 3 Maine high school students and 1 in 10 middle school students have used e-cigarettes.^{viii} Nearly 20 percent of high school students are current users of e-cigarettes.^{ix} Maine youth tobacco use rates are highest among high schoolers who identify as bisexual or transgender, as well as Native American high schoolers. Overall, female high school use rates are higher than male use rates.

Studies have found that e-cigarette use increases the risk of youth and young adults using cigarettes^x and cigars.^{xi} The former Commissioner of the FDA during the Trump Administration, Scott Gottlieb, M.D., declared youth e-cigarette use to be an epidemic.^{xii} What is driving the massive surge in tobacco use among youth? Flavored tobacco. Fruit and candy flavored products like cotton candy, fruit punch, menthol and mint are driving Big Tobacco's comeback attempt.

Flavors are a marketing weapon the tobacco manufacturers use to target youth and young people to a lifetime of addiction. Altering tobacco products' ingredients and design, like adding flavors, can mask the harsh effects, facilitate nicotine uptake, and increase a product's overall appeal.^{xiii} Candy, fruit, mint and menthol flavorings in tobacco products are a promotional tool to lure new, young users, and are aggressively marketed with creative campaigns by tobacco companies.^{xiv} Products with flavors like cherry, grape, cotton candy, and gummy bear are clearly not aimed at established, adult tobacco users and years of tobacco industry documents confirm the intended use of flavors is to target youth.^{xv} Furthermore, youth report flavors as a leading reason they use tobacco products and perceive flavored products as less harmful.^{xvi,xvii}

According to the 2021 National Youth Tobacco Survey, 80.2% of high school students and 74.6% of middle school students who used tobacco reported using a flavored product.^{xviii} E-cigarettes continue to be the most commonly used tobacco product and the most frequently used flavored tobacco product among middle and high school students.^{xx} In fact, a 2022 CDC study reported the most used flavors of e-cigarettes among middle and high school students who were currently using e-cigarettes were fruit (69.1%), candy, desserts, or other sweets (38.3%), mint (29.4%), and menthol (26.6%).^{xx}

Long before cigarette companies started adding fruit, candy, and alcohol flavorings to cigarettes, they were manipulating levels of menthol to addict new, young customers. Menthol acts to mask the harsh taste of tobacco with a minty flavor and by reducing irritation at the back of the throat with a cooling sensation. Additionally, menthol may enhance the delivery of nicotine. Knowing that youth who experience less negative physiological effects of smoking are more likely to continue smoking regularly, the tobacco industry has spent decades manipulating its menthol brand-specific product line to appeal to youth.

The FDA's preliminary scientific investigation on menthol cigarettes concluded that menthol cigarette smoking increases initiation and progression to smoking, increases dependency, and reduces cessation success, particularly among African Americans who smoke.^{xxi} African Americans who smoke are more than 2.5 times more likely to smoke menthol than non-Hispanic White Americans.^{xxii} These disparities are no accident. Tobacco companies have aggressively targeted certain communities with their menthol products, leading to an unequal burden of death and disease. Internal tobacco industry documents show that the tobacco companies were intentionally targeting African Americans, other communities of color and the LGBTQ+ community through advertising in magazines with high readership by these populations, including youth, and by targeting specific

neighborhoods with higher Hispanic and African American populations with more advertising and promotions.^{xxiii} Ending the sale of menthol cigarettes will reduce long-entrenched health disparities and lead to greater equity in health outcomes.

In 2021, 70% of middle and high school students who used smokeless tobacco used a flavored smokeless tobacco product.^{xxiv} Chewing tobacco, snuff, dip, snus, and dissolvables are types of non-combustible tobacco products that are sold in a variety of flavors. Many dissolvables look like regular candy, cough drops, or toothpicks – however these products contain flavored nicotine. Smokeless tobacco companies have a long history of using flavorings, such as mint, cherry, apple, and honey, and other product manipulation to gradually get new, young users addicted to “starter” products, keep them using, and shift them on to more potent smokeless tobacco products. In 2019, 48% of middle and high school students who used smokeless tobacco had used a flavored product in the last month.^{xxv}

In 2021, almost 62% of middle and high school students who used a nicotine pouch, used a flavored nicotine pouch.^{xxvi} Nicotine pouches are an emerging type of non-combustible tobacco products that contain flavored nicotine powder, that tends to include nicotine salts. Users place the flavored pouches, that typically contain high concentrations of nicotine, in their mouth and the pouch dissolves. Since entering the marketplace in 2016, flavored nicotine pouch sales have steadily increased.^{xxvii} The National Tobacco Youth Survey first reported on youth use of nicotine pouches in 2021 and 61.6% of students who use flavored tobacco products reported using flavored nicotine pouches.^{xxviii}

Hookah, or waterpipe, smoking involves burning tobacco, passing it through a bowl filled with water or other liquids and inhaling the smoke through a long hose. Among middle and high school students that used a flavored product, 46.6% reported using a waterpipe or hookah in 2021.^{xxix} Particularly troubling is that the flavorings used in waterpipe tobacco, the sweet aromas and use of water give users misperception the practice as safer than cigarette smoking.^{xxx} In fact, hookah tobacco and smoke are as dangerous as cigarettes, and contain carcinogens and other substances that can cause cancer and other diseases.^{xxxi} In a typical 1-hour hookah smoking session, users may inhale 100–200 times the amount of smoke they would inhale from a single cigarette. In a single water pipe session, users are exposed to up to 9 times the carbon monoxide and 1.7 times the nicotine of a single cigarette.^{xxxii,xxxiii}

So-called “little cigars” have the look and feel of a cigarette, and are smoked like a cigarette, yet are often sold individually and are available in a variety of flavors. Large cigars and cigarillos, can resemble either “little cigars” or large cigars, are also available in multiple flavors. Flavored cigars, in particular, make up a substantial portion of the cigar market. In 2020, cigarillos constituted the largest market share (94.2%) of cigars sold in the U.S., followed by little cigars (3.1%), and large cigars (2.7%).^{xxxiv} The 2009 prohibition on characterizing flavors in cigarettes (excluding menthol), without a prohibition on characterizing flavors in cigars, opened the door for cigar manufacturers to recruit new users to its products.

On April 29, 2021, FDA announced its intention to issue two product standards: (1) to prohibit menthol as a characterizing flavor in cigarettes, and (2) to prohibit all characterizing flavors in cigars. This decision was based on the clear evidence of the harm and addictiveness of these products and that such actions will reduce youth initiation, support successful quitting, and reduce health disparities caused by the intentional targeting of these products by the tobacco industry to communities of color, particularly Black communities, LGBTQ, and low-income populations. On April 28, 2022, FDA issued a proposed rule on these product standards and began accepting comments on the proposed rule on May 4. Originally, the comment period was set to end on July 5, but on June 21, the comment period was extended through August 2. While the FDA’s announcement is an

important step forward, it is expected to take quite some time to be implemented as the process of finalizing the rules takes place, especially if they are subject to litigation by the tobacco industry. Moreover, the FDA's actions fall short of what is needed by not covering all tobacco products.

The aggressive use of flavors and marketing tactics by the tobacco industry rapidly increased the use of flavored products by youth and young adults and under regulation of these products requires the Maine Legislature to take action to protect youth and young adults and the public health at-large. The states of Massachusetts and California, as well as hundreds of municipalities across the country, including Portland, Brunswick, Bangor, South Portland, Bar Harbor and Rockland have acted to restrict the sale of flavored tobacco products. It's time for the Maine Legislature to take similar action.

Several studies published in peer-reviewed journals demonstrate that flavored tobacco product sales restrictions can reduce tobacco product availability, sales, retailer advertising, and use rates.^{xxxv} Equally important, the enforcement of these policies is critical to their effectiveness. This body of evidence and experience from other tobacco control policy actions also demonstrate that when products are excluded, the tobacco industry will do everything in its power to capitalize on loopholes and some people who are addicted to tobacco will switch to excluded products. If we do not ensure the policy solutions include all tobacco products, all flavors, and all tobacco retailers then the policy will directly fail to protect those who the tobacco industry has most aggressively targeted – our youth and young adults, communities of color, the LGBTQ community, low-income communities and people with mental and behavioral health conditions.

For the above reasons, we urge you to vote “ought to pass” on LD 1215. We appreciate your time and consideration of our comments. I would be happy to answer any questions about this testimony.

ⁱ U.S. Department of Health and Human Services. The Health Consequences of Smoking—50 Years of Progress: A Report of the Surgeon General. Atlanta: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2014.

ⁱⁱ Campaign for Tobacco-Free Kids. The Toll of Tobacco in Maine. Updated Feb. 17, 2023, https://www.tobaccofreekids.org/facts_issues/toll_us/maine

ⁱⁱⁱ Smoking-related cancer deaths data from the American Cancer Society.

^{iv} US CDC 2021 Behavioral Risk Factor Surveillance System (BRFSS) data available online

^v Maine CDC, 2021 Maine Integrated Youth Health Survey (MIYHS), <https://www.maine.gov/miyhs/2021-results>.

^{vi} Ibid.

^{vii} Ibid.

^{viii} Ibid.

^{ix} Ibid.

^x U.S. Department of Health and Human Services. E-Cigarette Use Among Youth and Young Adults. A Report of the Surgeon General. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2016. National Academies of Sciences, Engineering, and Medicine. 2018. Public health consequences of e-cigarettes. Washington, DC: The National Academies Press. Berry KM, Fetterman JL, Benjamin EJ, et al. Association of Electronic Cigarette Use With Subsequent Initiation of Tobacco Cigarettes in US Youths. *JAMA Netw Open*. 2019;2(2):e187794. Pierce JP, Chen R, Leas EC, et al. Use of E-cigarettes and Other Tobacco Products and Progression to Daily Cigarette Smoking. *Pediatrics*. 2021;147(2).

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^{xii} <https://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm620185.htm>

^{xiii} FDA Guidance for Industry and FDA Staff, “General Questions and Answers on the Ban of Cigarettes that Contain Certain Characterizing Flavors (Edition 2) (“FDA Guidance on Characterizing Flavors”).

^{xiv} Deinevo, C, et al., “Preference for flavoured cigar brands among youth, young adults and adults in the USA,” *Tobacco Control*, epub ahead of print, April 10, 2014. King, BA, et al., “Flavored-Little-Cigar and Flavored-Cigarette Use Among U.S. Middle and High School Students,” *Journal of Adolescent Health*

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^{xv} Carpenter CM, Wayne GF, Pauly JL, Koh HK, Connolly GN. New cigarette brands with flavors that appeal to youth: tobacco marketing strategies. *Health Affairs*. 2005; 24(6): 1601-1610.

^{xvi} Ambrose et al. Flavored tobacco product use among U.S. youth aged 12-17 years, 2013-2014. *JAMA*, 2015; 314(17): 1871-3.

^{xvii} Huang L-L, Baker HM, Meernik C, Ranney LM, Richardson A, Goldstein AO. Impact of non-menthol flavours in tobacco products on perceptions and use among youth, young adults and adults: a systematic review. *Tobacco Control* 2016.

^{xviii} Gentzke AS, Wang TW, Cornelius M, et al. Tobacco Product Use and Associated Factors Among Middle and High School Students — National Youth Tobacco Survey, United States, 2021. *MMWR Surveill Summ* 2022;71(No. SS-5):1–29. DOI: <http://dx.doi.org/10.15585/mmwr.ss7105a1>

^{xix} Gentzke AS, Wang TW, Cornelius M, et al. Tobacco Product Use and Associated Factors Among Middle and High School Students — National Youth Tobacco Survey, United States, 2021. *MMWR Surveill Summ* 2022;71(No. SS-5):1–29. DOI: <http://dx.doi.org/10.15585/mmwr.ss7105a1>.

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^{xxi} FDA. Preliminary Scientific Evaluation of the Possible Public Health Effects of Menthol versus Nonmenthol Cigarettes. <https://www.fda.gov/media/86497/download>

^{xxii} National Survey on Drug Use and Health 2020, 2019-2020, Substance Abuse and Mental Health Data Archive; <https://pdas.samhsa.gov/#/>

^{xxiii} U.S. Department of Health and Human Services. Tobacco Use Among U.S. Racial/Ethnic Minority Groups—African Americans, American Indians and Alaska Natives, Asian Americans and Pacific Islanders, and Hispanics: A Report of the Surgeon General. Atlanta, GA: U.S. Department of Health and Human Services, CDC; 1998

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^{xxxiii} World Health Organization. Tobacco Regulation Advisory Note. [Waterpipe Tobacco Smoking: Health Effects, Research Needs and Recommended Actions by Regulators](#). Geneva (Switzerland): World Health Organization, Tobacco Free Initiative, 2005 [accessed 2021 Feb 10].

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^{xxxv} See a summary of the highlights of some of the key studies here: <https://www.fightcancer.org/policy-resources/sales-restrictions-flavored-tobacco-products-are-effective>