

It's time for the FDA to crack down on menthol flavoring

SEP 3, 2020

Kevin B. O'Reilly

News Editor

What's the news: The AMA is joining a lawsuit to compel the Food and Drug Administration (FDA) to fulfill its mandate to take action on the agency's own conclusions that banning the sale of menthol-flavored cigarettes would benefit the public's health.

The AMA's joining as a co-plaintiff strengthens the case, which was initially filed by two groups, African American Tobacco Control Leadership Council (AATCLC) and Action on Smoking and Health (ASH). The parties are represented by Pollock Cohen LLP.

"For generations, tobacco companies have promoted menthol cigarettes to the African American community, preying especially on African American youth. The results are clear and grim," said AMA President Susan R. Bailey, MD. "We are proud to join AATCLC and ASH in this effort to compel FDA to meet its mandate and take action to ban menthol-flavored tobacco products. This action is long, long overdue."

Why it matters: Tobacco is the leading cause of preventable death worldwide. Smoking-related illnesses are the No. 1 cause of death in the African American community, and 85% of Black smokers use menthol cigarettes.

In 2009, the federal Family Smoking Prevention and Tobacco Control Act banned flavored cigarettes but excluded menthol, subject to further research, creating a massive gap in protection for African Americans. In 2011, the FDA Tobacco Products Scientific Advisory Committee concluded that "removal of menthol cigarettes from the marketplace would benefit public health in the United States."

If action to ban menthol cigarettes had been taken in 2010, about 17,000 premature deaths would have been avoided in the ensuing decade, based on estimates provided in the FDA advisory committee's report. About 4,700 premature deaths among African Americans would have been prevented. Meanwhile, nearly half a million Black people would not have started smoking.

Despite these conclusions, and several statements of support in the interim, the FDA has not begun the rulemaking process of removing menthol from combustible cigarettes. The plaintiffs are asking the court to direct the FDA to take action.

“The FDA has been derelict in their duties. Menthol-flavored tobacco products should have been removed from the marketplace a decade ago when all the other flavors were removed,” said Phillip Gardiner, DrPH, founder and co-chair of the AATCLC.

Learn more: The AMA has longstanding policies in support of banning menthol in combustible tobacco products and calling for the FDA to prohibit the use of flavoring agents in all tobacco products.

That opposition to flavoring agents extends to e-cigarettes and vaping, which the AMA has declared a public health epidemic.

Find out more about the cases in which the AMA Litigation Center is providing assistance and learn about the Litigation Center’s case-selection criteria.