

July 22, 2022

Food and Drug Administration  
5630 Fishers Lane  
Rm. 1061  
Rockville, MD 20852

RE: Public comment on Docket No. FDA-2021-N-1349 and FDA-2021-N-1309

Howard Brown Health was founded in 1974 and is now one of the nation's largest LGBTQ+ community health centers. Rooted in LGBTQ+ liberation, Howard Brown provides affirming healthcare and mobilizes for social justice. We envision a future where healthcare and transformative social policies actualize human rights and equity for all. Howard Brown serves more than 40,000 adults and youth in its diverse health and social service delivery system focused around seven major programmatic divisions: primary medical care, behavioral health, research, HIV/STI prevention, youth services, elder services, and community initiatives. As a federally qualified health center, Howard Brown provides services regardless of a patient's ability to pay or insurance status. **We are writing today in strong support of the two proposed rules [Docket Nos FDA-2021-N-1309 and 1349] and urge the FDA to move ahead with finalizing them to end the sale of both menthol cigarettes and flavored cigars, without exceptions.**

In 2020 sales of menthol-flavored cigarettes made up 37% of all cigarette sales in the U.S.<sup>1</sup> Certain populations, including Black people, LGBTQ+ people, young people, cisgender women, and low-income individuals are more likely to smoke menthol cigarettes than other populations. In 2019, 1.5 million people became new smokers using menthol cigarettes. Individuals who begin using tobacco by smoking menthol cigarettes report being more likely to continue smoking compared to those who smoke non-menthol cigarettes.<sup>2</sup> In terms of cigars, research shows that 45% to 55% of cigarillo and filtered cigar users reported using flavored cigars.<sup>3</sup> Over 50% of flavored cigar users reported

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<sup>1</sup>"Menthol and Cigarettes." Centers for Disease Control and Prevention, Centers for Disease Control and Prevention, [www.cdc.gov/tobacco/basic\\_information/menthol/index.html?CDC\\_AA\\_refVal=https%3A%2F%2Fwww.cdc.gov%2Ftobacco%2Fbasic\\_information%2Ftobacco\\_industry%2Fmenthol-cigarettes%2Findex.html](https://www.cdc.gov/tobacco/basic_information/menthol/index.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Ftobacco%2Fbasic_information%2Ftobacco_industry%2Fmenthol-cigarettes%2Findex.html).

<sup>2</sup> "Menthol: Facts, Stats and Regulations." Truth Initiative, [truthinitiative.org/research-resources/traditional-tobacco-products/menthol-facts-stats-and-regulations](https://truthinitiative.org/research-resources/traditional-tobacco-products/menthol-facts-stats-and-regulations).

<sup>3</sup>Rostron, Brian L, et al. "Prevalence and Reasons for Use of Flavored Cigars and Ends among US Youth and Adults: Estimates from Wave 4 of the Path Study, 2016-2017." American Journal of

having flavors were a direct reason for their use.<sup>4</sup> These flavored tobacco products are often used specifically to entice young people into becoming smokers. Nearly 8 in 10 youth reported using tobacco products, especially those of flavored varieties.<sup>5</sup>

Among tobacco users, there is a higher concentration of menthol cigarette and flavored cigar use among LGBTQ+ individuals and Black Americans. Menthol cigarette use is significantly higher among LGBTQ+ smokers, with 36% saying they usually smoked menthol cigarettes compared to 29% of heterosexual smokers.<sup>6</sup> In 2019, 85% of non-Hispanic Black or African American smokers used menthol cigarettes.<sup>7</sup> Even though African Americans represent just 12% of the US population, an estimated 40% of excess deaths due to menthol cigarettes between 1980-2018 were among African Americans.<sup>8</sup>

These disparities aren't surprising given the tobacco industry's intrusive and predatory marketing of menthol and flavored cigarettes to LGBTQ+ and Black communities. Tobacco companies will adjust their advertising based on demographics and for LGBTQ+ communities, they will advertise heavily in queer-friendly spaces such as bars, festivals, and Pride parades.<sup>9</sup> This advertising will usually include representatives providing free merchandise or coupons for discounted tobacco products. Tobacco companies also concentrate advertising for menthol products in Black neighborhoods.<sup>10</sup> A study conducted an analysis of 901 billboards in an urban setting and found that Black

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Health Behavior, U.S. National Library of Medicine,  
[www.ncbi.nlm.nih.gov/pmc/articles/PMC6918456/#:~:text=Among%20cigar%20users%2C%2045%25%20to,were%20a%20reason%20for%20use](http://www.ncbi.nlm.nih.gov/pmc/articles/PMC6918456/#:~:text=Among%20cigar%20users%2C%2045%25%20to,were%20a%20reason%20for%20use).

<sup>4</sup> *Ibid*

<sup>5</sup> "Menthol Smoking and Related Health Disparities." Centers for Disease Control and Prevention, Centers for Disease Control and Prevention,  
[www.cdc.gov/tobacco/basic\\_information/menthol/related-health-disparities.html](http://www.cdc.gov/tobacco/basic_information/menthol/related-health-disparities.html).

<sup>6</sup> Fallin, Amanda, et al. "Menthol Cigarette Smoking among Lesbian, Gay, Bisexual, and Transgender Adults." American Journal of Preventive Medicine, U.S. National Library of Medicine, Jan. 2015, [www.ncbi.nlm.nih.gov/pmc/articles/PMC4454462/](http://www.ncbi.nlm.nih.gov/pmc/articles/PMC4454462/).

<sup>7</sup> The Tobacco Industry & the Black Community - Public Health Law Center.  
[publichealthlawcenter.org/sites/default/files/resources/Tobacco-Industry-Targeting.pdf](http://publichealthlawcenter.org/sites/default/files/resources/Tobacco-Industry-Targeting.pdf).

<sup>8</sup> "Menthol Smoking and Related Health Disparities." Centers for Disease Control and Prevention, Centers for Disease Control and Prevention,  
[www.cdc.gov/tobacco/basic\\_information/menthol/related-health-disparities.html](http://www.cdc.gov/tobacco/basic_information/menthol/related-health-disparities.html).

<sup>9</sup> Lee, Joseph G L, et al. "A Systematic Review of Neighborhood Disparities in Point-of-Sale Tobacco Marketing." American Journal of Public Health, American Public Health Association, Sept. 2015, [www.ncbi.nlm.nih.gov/pmc/articles/PMC4529779/](http://www.ncbi.nlm.nih.gov/pmc/articles/PMC4529779/).

<sup>10</sup> *Ibid*

neighborhoods are two times more likely than White neighborhoods to contain billboards for menthol cigarettes (22% versus 11%).<sup>11</sup>

Finalizing these proposed rules and ending the sale of menthol cigarettes and flavored cigars is vital for addressing tobacco-related health disparities, especially in Black and LGBTQ+ communities. Each year an estimated 443,000 people die from smoking or secondhand smoke while 8.6 million Americans will live with a serious illness caused by smoking.<sup>12</sup> Smoking increases mortality from cardiovascular diseases, hypertension, and respiratory diseases including bronchitis and emphysema.<sup>13</sup> Smoking is also a risk factor for various cancers including lung cancer.<sup>14</sup> The American Cancer Society estimates around 30,000 gay and transgender individuals die each year of tobacco related disease while tobacco use resulted in 157,000 premature deaths among Black Americans between 1980 and 2018.<sup>15</sup> Menthol cigarettes were responsible for around 41% of smoking-related deaths between 1980 and 2018.<sup>16</sup>

The sale of menthol cigarettes and flavored cigars disproportionately affect the lives and health of LGBTQ+, Black, and youth communities. Finalizing these proposed rules would go a long way in addressing these long-standing health disparities.

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<sup>11</sup> Rising, Joshua, and Lori Alexander. "Marketing of Menthol Cigarettes and Consumer Perceptions." Tobacco Induced Diseases, BioMed Central, 23 May 2011, [www.ncbi.nlm.nih.gov/pmc/articles/PMC3102901/](http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3102901/).

<sup>12</sup> "Tobacco-Related Mortality." Centers for Disease Control and Prevention, Centers for Disease Control and Prevention, 28 Apr. 2020, [www.cdc.gov/tobacco/data\\_statistics/fact\\_sheets/health\\_effects/tobacco\\_related\\_mortality/index.htm](http://www.cdc.gov/tobacco/data_statistics/fact_sheets/health_effects/tobacco_related_mortality/index.htm).

<sup>13</sup> "Health Effects of Cigarette Smoking." Centers for Disease Control and Prevention, Centers for Disease Control and Prevention, 29 Oct. 2021, [www.cdc.gov/tobacco/data\\_statistics/fact\\_sheets/health\\_effects/effects\\_cig\\_smoking/](http://www.cdc.gov/tobacco/data_statistics/fact_sheets/health_effects/effects_cig_smoking/).

<sup>14</sup> *Ibid*

<sup>15</sup> Adviser, Colin Seeberger Senior, et al. "Flavored Disease and Death for Minorities." Center for American Progress, 26 Jan. 2011, [www.americanprogress.org/article/flavored-disease-and-death-for-minorities/](http://www.americanprogress.org/article/flavored-disease-and-death-for-minorities/).

; Mendez, David, and Thuy T T Le. "Consequences of a Match Made in Hell: The Harm Caused by Menthol Smoking to the African American Population over 1980–2018." Tobacco Control, BMJ Publishing Group Ltd, 1 July 2022, [tobaccocontrol.bmj.com/content/31/4/569](http://tobaccocontrol.bmj.com/content/31/4/569).

<sup>16</sup> Mendez, David, and Thuy T T Le. "Consequences of a Match Made in Hell: The Harm Caused by Menthol Smoking to the African American Population over 1980–2018." Tobacco Control, BMJ Publishing Group Ltd, 1 July 2022, [tobaccocontrol.bmj.com/content/31/4/569](http://tobaccocontrol.bmj.com/content/31/4/569).



If you have any questions, please do not hesitate to follow up with Tim Wang, our Director of Policy and Advocacy at [timothyw@howardbrown.org](mailto:timothyw@howardbrown.org).

Sincerely,

David Ernesto Munar  
President and CEO