



## Regulating Menthol Tobacco Products

The Tobacco Control Legal Consortium has created the Tips & Tools series of legal technical assistance guides to serve as a starting point for organizations interested in implementing certain tobacco control measures.<sup>1</sup> We encourage you to consult with local legal counsel before attempting to implement these measures.<sup>2</sup> For more details about these policy considerations, please contact the Consortium.

### Background

Menthol is a compound used in many consumer and medicinal products that has cooling and analgesic properties. Menthol is present in most cigarettes, even those not marketed specifically as menthol cigarettes.<sup>3</sup> It reduces the harshness of cigarette smoke and irritation from nicotine. Evidence indicates that menthol enhances the addictiveness of cigarettes, both by increasing the likelihood of nicotine addiction in youth who experiment with smoking and by making cessation among adult smokers more difficult.<sup>4</sup>

Moreover, menthol cigarettes are used at disproportionately higher rates by racial and ethnic minority smokers, including African Americans (82.6 percent), Native Hawaiian or Pacific Islanders (53.2 percent), Hispanics or Latinos (32.3 percent) and Asian Americans (31.2 percent), compared to White smokers (23.8 percent).<sup>5</sup> Also, approximately 71 percent of all young LGBT smokers use menthol cigarettes.<sup>6</sup> Nearly half of all teen smokers use menthol tobacco products.<sup>7</sup> In addition, a convincing body of evidence has shown that tobacco-related health disparities are exacerbated by targeted marketing in minority areas<sup>8</sup> and the consumption of menthol tobacco products.<sup>9</sup>

More than 80 percent of adolescent African American smokers and more than half of adolescent Latino smokers use menthol cigarettes.<sup>10</sup> Use of menthol products is also prevalent among non-minority youth, unemployed people, and those making less than \$10,000 per year.<sup>11</sup>

### Federal Regulation

The 2009 Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act) prohibited cigarettes from containing any characterizing flavor, including candy, fruit, and alcohol flavors.<sup>12</sup> Importantly, the flavor prohibition exempted tobacco and menthol flavors, and did not apply to non-cigarette tobacco products.

In part acknowledging the public health problem left unaddressed by the menthol exemption, the Tobacco Control Act directed the Tobacco Products Scientific Advisory Committee (TPSAC) to study “the issue of the impact of the use of menthol in cigarettes on the public health, including such use among children, African-Americans, Hispanics, and other racial and ethnic minorities.”<sup>13</sup> The TPSAC did so and approved a report documenting its findings in July 2011, concluding that removing menthol cigarettes from the marketplace would benefit public health.<sup>14</sup>

Rather than act promptly to protect public health by banning menthol as a characterizing flavor, the U.S. Food & Drug Administration (FDA) instead announced it would conduct “a preliminary independent scientific evaluation of existing data and research on menthol cigarettes.”<sup>15</sup> This report, which the FDA released in July 2013, concluded that menthol is associated with youth smoking initiation and greater addiction and poses a public health risk that exceeds the risk posed by nonmenthol cigarettes.<sup>16</sup> With the release of this report, the FDA issued a nonbinding advanced notice of proposed rulemaking and accepted public comments.<sup>17</sup> Despite the submission of more than 174,000 public comments on this docket – in addition to the thousands of pages of menthol research already gathered by TPSAC, FDA staff, and public health groups – the FDA has been silent on the topic of menthol since the comment period closed in November 2013.

## Policy Options

With the federal government showing little appetite for regulating menthol tobacco products, state and local governments are poised to take action. Some communities have already adopted or considered regulations that would impact menthol. This guide provides a few options and pointers for communities and policy makers to consider when drafting or implementing laws or policies that regulate menthol tobacco products. Given the rapidity with which communities are acting, this publication may be updated regularly.

Public health organizations support regulating menthol for several reasons, including reducing the appeal of tobacco products to youth, helping adult tobacco users quit, and reducing disparities in tobacco use. Several policy options can advance these public health goals.

- Sales Prohibition.** The most straightforward way to address the problem of menthol would be to remove it from the marketplace as a characterizing flavor in tobacco products. In 2014, the Hawaii Legislature considered a bill that would accomplish this goal.<sup>18</sup> A similar policy was adopted in Brazil in 2012<sup>19</sup> and the European Union is planning to adopt such a policy in 2016.<sup>20</sup> While a state or local government could not simply prohibit the manufacture of tobacco products with a menthol flavor,<sup>21</sup> the Tobacco Control Act preserves the authority of state and local governments to adopt measures “relating to *or prohibiting* the sale, distribution, ... or use of tobacco products.”<sup>22</sup> A sales prohibition would likely face an aggressive legal challenge from tobacco manufacturers and retailers, but tobacco industry challenges against policies related to tobacco sales – albeit policies that do not go as far as a sales prohibition -- have not been successful to date.<sup>23</sup>

- **Sales Restriction.** The City of Chicago has restricted the sale of flavored tobacco products, including those with a menthol flavor, in any establishment located within 500 feet of a school.<sup>24</sup> This groundbreaking policy is the first state or local tobacco product sales restriction that specifically includes menthol. However, the 500 foot buffer zone does mean that 88.25 percent of Chicago retailers can continue to sell menthol tobacco products.<sup>25</sup> Consequently, a more meaningful sales restriction might be one that exempts only certain adult-only tobacco stores. For example, New York City adopted an ordinance restricting the sale of flavored non-cigarette tobacco products and exempting menthol, mint, wintergreen, and tobacco flavors. This ordinance also contained an exemption for “tobacco bars,” of which there were only eight in the city.<sup>26</sup> This exemption is presumably narrower than the exemption of all establishments located more than 500 feet from all schools in Chicago. As a result, although the New York City ordinance exempts menthol from its flavor restriction, the ordinance applies to more retail establishments than the Chicago ordinance. An ordinance with a narrower retailer exemption that includes menthol would seem to be within the authority of state and local governments to adopt regulations relating to the sale or distribution of tobacco products.<sup>27</sup>
- **Tax Policy.** Raising tobacco taxes has long been recognized as an effective method to help encourage cessation and to help limit tobacco initiation by youth, who are especially price sensitive.<sup>28</sup> The Tobacco Control Act’s preemption clause specifically states that the law does not “limit or otherwise affect any State, tribal, or local taxation of tobacco products.”<sup>29</sup> A tax increase on menthol tobacco products beyond the level applied to non-menthol products might constitute an impetus to quit smoking and an additional deterrent to initiate tobacco use. However, the Chicago Board of Health specifically recommended against a higher tax for menthol tobacco products, because it believed such a tax would be regressive and would “place a disproportionate burden on minority communities that have already been the target of predatory marketing.”<sup>30</sup> Certainly, in the context of a jurisdiction with a large proportion of minority communities, this is a valid concern. However, a tax policy targeting menthol tobacco products might still be a viable policy option in a community where youth tobacco initiation is a larger concern – a college town, for example.
- **Other Price-Related Policies.** The Federal Cigarette Labeling and Advertising Act (FCLAA) permits state or local “regulations, based on smoking and health, ... imposing specific bans or restrictions on the time, place, and manner, but not content, of the advertising or promotion of any cigarettes.”<sup>31</sup> In 2012, the City of Providence, Rhode Island, adopted an ordinance prohibiting the redemption of coupons that lower the price of tobacco products. The ordinance, which was legally challenged on preemption grounds, was upheld as a valid restriction on the manner of cigarette promotion under the FCLAA.<sup>32</sup> A state or local government could adopt a similar ordinance that applies to menthol tobacco products. Tobacco manufacturers use coupons to lower the price of tobacco products and entice price-sensitive young people to try their products.<sup>33</sup> Many of these same young people prefer menthol tobacco products, and a state or local law prohibiting coupon redemption for menthol tobacco products might help prevent them from experimenting with smoking.

- Age-of-Sale Regulations.** Although federal law sets the minimum age to purchase tobacco at 18,<sup>34</sup> the Tobacco Control Act allows for state and local regulation of the “use of tobacco products by individuals *of any age*.”<sup>35</sup> Consistent with this provision, some jurisdictions have raised the minimum age to purchase tobacco to 21.<sup>36</sup> Since menthol tobacco products are common starter products for youth,<sup>37</sup> a state or local government could raise the age to purchase menthol tobacco products to 21.
- Disclosure Requirements.** The Tobacco Control Act also allows state and local governments to adopt tobacco control laws related to “information reporting to the State.”<sup>38</sup> Some states do require tobacco companies to disclose promotional activities.<sup>39</sup> If a state or local law were to require tobacco manufacturers to disclose data showing their marketing practices related to menthol, it would likely show disparities in how the products are marketed. That data could be a precursor to a more substantive policy addressing menthol, such as a sales restriction. Please see the Consortium’s publication on [Sunshine Laws](#) for more information on this topic.
- Marketing Restrictions.** As mentioned previously, the FCLAA permits state or local regulations on the “time, place, and manner, but not content, of the advertising or promotion of any cigarettes.”<sup>40</sup> U.S. Supreme Court precedent would be challenging in this area,<sup>41</sup> but it is potentially not insurmountable. One can imagine many time, place, and manner restrictions tailored to the problem of menthol, particularly since menthol is preferred by young smokers. A “time” restriction could prohibit the marketing of menthol tobacco products outdoors or in any place minors can enter before a curfew. A “place” restriction could prohibit the marketing of menthol tobacco products outdoors or in a facility that minors can enter within 1,000 feet of a school. A “manner” restriction could restrict the use of video advertisements for menthol tobacco products in retail stores that can be entered by minors. Any community considering marketing restrictions should expect litigation. While this is true of most tobacco control policy measures, any restrictions implicating the First Amendment are almost certain to provoke a legal challenge.

## Policy Elements

Regardless of the approach used to regulate menthol tobacco products, all strong policies share a few common elements, such as:

- Clear definitions and concise language:** Defining what constitutes a flavored tobacco product is not as easy a task as it may seem. This is certainly true in the context of menthol, since menthol is found in many tobacco products that are not marketed as mentholated. To avoid confusion about what constitutes a menthol tobacco product, definitions should explicitly state what the policies cover, yet be broad enough to cover future product innovations and tight enough to avoid legal loopholes.

When drafting definitions, it is important to consider the range of products and activity to be covered, related and relevant laws within the particular jurisdiction, and the political

environment. Definitions should be easy for the average person to understand and tailored to each situation. For example, when writing a sales restriction law, it might be helpful to include language that exempts products approved by the FDA for sale as tobacco cessation aids and that are being marketed and sold for that purpose.

- **Robust enforcement options:** Enforcing restrictions on menthol can be challenging unless clear procedures are established, including a reasonable penalty and appeals process. Effective enforcement of these policies often includes coordination among different enforcement agencies and consistent procedures throughout a community. States could also use existing consumer protection laws to ensure that the public is protected from false claims made about these products.
- **Well-planned implementation process:** A process should be established for publicizing the policy and educating the community, as well as for receiving, tracking and following up on complaints. It is also important to set a realistic date that the policy will take effect and to communicate that date.

## Policy Challenges

As with any tobacco control policies, state and local measures regulating the sale, marketing or price of menthol tobacco products may be challenged in the courts by the tobacco industry and its allies, who may argue that those restrictions are preempted by other laws or that they violate specific constitutional provisions.<sup>42</sup> For example, in 2013 the City of Providence, Rhode Island, successfully fought off a legal challenge to two ordinances: one that prohibits the sale of flavored noncigarette tobacco products in most locations and one that prohibits price discounting of tobacco products.<sup>43</sup> The industry argued that these ordinances were preempted by federal and state law and violated the First Amendment, but the court did not agree. Even as multiple courts address the preemption question and uphold local policies, new policies regulating menthol could be challenged in court simply as a means to dissuade other communities from adopting similar provisions.

## Select Legislation and Policies

State and local governments have only recently begun to consider regulating menthol tobacco products. Below are a few examples of tobacco control policies that include provisions relating to menthol, or that could be adapted to regulate menthol tobacco products.

Before using any language from the following policies, take care to ensure the provision in question is practical and legal in your jurisdiction, and find out whether the state or locality where the policy was adopted faced any issues that could affect implementation in your jurisdiction. Please note that the Tobacco Control Legal Consortium does not endorse or recommend any of the following policy approaches. These select examples are included simply to illustrate how various jurisdictions have approached the regulation of these products.

### Select State and Local Laws and Legislation Relevant to Menthol

Locality/State	Policy Name	Text of Policy
Chicago, IL (Sales Restriction)	<a href="#">Municipal Code of Chicago § 4-64-180</a>	“No person shall sell, give away, barter, exchange, or otherwise deal in flavored tobacco products, samples of such products, or accessories for such products at any location that has a property line within 500 feet of the property line of any public, private, or parochial elementary, middle, or secondary school located in the City of Chicago. This subsection does not apply to retail tobacco stores.”
	<a href="#">Municipal Code of Chicago § 4-64-098</a>	<b>Definitions:</b> A flavored tobacco product is “any tobacco product that contains a constituent that imparts a characterizing flavor. As used in this definition, the term ‘characterizing flavor’ means a distinguishable taste or aroma, other than the taste or aroma of tobacco, imparted either prior to or during consumption of a tobacco product, including, but not limited to, tastes or aromas of menthol, mint, wintergreen, chocolate, vanilla, honey, cocoa, any candy, any dessert, any alcoholic beverage, any fruit, any herb, and any spice; provided, however, that no tobacco product shall be determined to have a characterizing flavor solely because of the use of additives or flavorings or the provision of ingredient information. A public statement or claim made or disseminated by the manufacturer of a tobacco product, or by any person authorized or permitted by the manufacturer to make or disseminate such statements, that a tobacco product has or produces a characterizing flavor shall establish that the tobacco product is a flavored tobacco product.”
	<a href="#">Municipal Code of Chicago § 7-32-010</a>	A retail tobacco store is “a retail establishment that derives more than 80% of its gross revenue from the sale of loose tobacco, cigarettes, cigarillos, cigars, pipes, other smoking devices and accessories, hookahs and related products, and/or electronic cigarettes and related products, and in which the sale of other products is merely incidental. ‘Retail tobacco store’ does not include a tobacco department or section of a larger commercial establishment or any establishment with any type of liquor, food, or restaurant license.”
Hawaii (Sales Prohibition)	<a href="#">House Bill No. 1522</a> (2014)	“The sale or distribution of cigarettes with a menthol flavor is prohibited. Violations ... are subject to a fine of up to \$1,000 per day for each violation.”

<p><b>New York, New York (Sales Restriction on Flavored Tobacco Products, Exempting Menthol)</b></p>	<p><a href="#">New York City Administrative Code, § 17-715</a>  <a href="#">New York City Administrative Code, § 17-713(e)</a></p>	<p>“It shall be unlawful for any person to sell or offer for sale any flavored tobacco product except in a tobacco bar.”</p> <p><b>Definitions:</b> A flavored tobacco product is “any tobacco product or any component part thereof that contains a constituent that imparts a characterizing flavor. A public statement or claim made or disseminated by the manufacturer of a tobacco product, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such tobacco product, that such tobacco product has or produces a characterizing flavor shall constitute presumptive evidence that the tobacco product is a flavored tobacco product.”</p>
	<p><a href="#">New York City Administrative Code, § 17-713(b)</a></p>	<p>A characterizing flavor is “a distinguishable taste or aroma, other than the taste or aroma of tobacco, menthol, mint or wintergreen, imparted either prior to or during consumption of a tobacco product or component part thereof, including, but not limited to, tastes or aromas relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb or spice; provided, however, that no tobacco product shall be determined to have a characterizing flavor solely because of the use of additives or flavorings or the provision of ingredient information.”</p>
	<p><a href="#">New York City Administrative Code, § 17-502(jj)</a></p>	<p>A tobacco bar is “a bar that, in the calendar year ending December 31, 2001, generated ten percent or more of its total annual gross income from the on-site sale of tobacco products and the rental of on-site humidors, not including any sales from vending machines, and is registered with the department of health and mental hygiene in accordance with the rules of such agency. Such registration shall remain in effect for one year and shall be renewable only if: (i) in the preceding calendar year, the previously registered tobacco bar generated ten percent or more of its total annual gross income from the on-site sale of tobacco products and the rental of on-site humidors; and (ii) the tobacco bar has not expanded its size or changed its location from its size or location as of December 31, 2001.”</p>
<p><b>Providence, Rhode Island (Sales Restriction on Flavored Tobacco Products,</b></p>	<p><a href="#">Providence Code of Ordinances, § 14-309</a>  <a href="#">Providence</a></p>	<p>“It shall be unlawful for any person to sell or offer for sale any flavored tobacco product to a consumer, except in a smoking bar.”</p> <p>A flavored tobacco product is “any tobacco product or any</p>

<b>Exempting Menthol)</b>	<a href="#"><u>Code of Ordinances, § 14-308</u></a>	<p>component part thereof that contains a constituent that imparts a characterizing flavor. A public statement or claim made or disseminated by the manufacturer of a tobacco product, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such tobacco product, that such tobacco product has or produces a characterizing flavor shall constitute presumptive evidence that the tobacco product is a flavored tobacco product.”</p> <p>Characterizing flavor means “a distinguishable taste or aroma, other than the taste or aroma of tobacco, menthol, mint or wintergreen, imparted either prior to or during consumption of a tobacco product or component part thereof, including, but not limited to, tastes or aromas relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb or spice ... provided, however, that no tobacco product shall be determined to have a characterizing flavor solely because of the use of additives or flavorings or the provision of ingredient information.”</p>
	<a href="#"><u>Rhode Island General Law § 23-20.10-2(15)</u></a>	<p>Smoking bar is: (a) “an establishment whose business is primarily devoted to the serving of tobacco products for consumption on the premises, in which the annual revenues generated by tobacco sales are greater than fifty percent (50%) of the total revenue for the establishment and the serving of food or alcohol is only incidental to the consumption of such tobacco products. The establishment must annually demonstrate that revenue generated from the serving of tobacco products is greater than the total combined revenue generated by the serving of beverages and food. The division of taxation in the department of administration shall be responsible for the determination under this section and shall promulgate any rules or forms necessary for the implementation of this section.</p> <p>(b) Smoking bars shall only allow consumption of food and beverages sold by the establishment on the premises and the establishment shall have public access only from the street.</p> <p>(c) Any smoking bar as defined herein, is required to provide a proper ventilation system which will prevent the migration of smoke into the street.”</p>
<b>Providence, Rhode Island (Restriction on Coupon Redemption)</b>	<a href="#"><u>Providence Code of Ordinances, § 14-303</u></a>	<p>“No person who holds a license issued under this article, nor any employee or agent of same, shall:</p> <p>(1) Accept or redeem, offer to accept or redeem, or cause or hire any person to accept or redeem or offer to accept or redeem any coupon that provides any tobacco products without charge or for less than the listed or non-discounted</p>

	<p><a href="#">Providence Code of Ordinances, § 14-300</a></p>	<p>price; or                  (2) Accept or redeem, offer to accept or redeem, or cause or hire any person to accept or redeem or offer to accept or redeem any coupon that provides any cigarettes without charge or for less than the listed or nondiscounted price; or                  (3) Sell tobacco products to consumers through any multi-pack discounts (e.g., "buy-two-get-one-free") or otherwise provide or distribute to consumers any tobacco products without charge or for less than the listed or non-discounted price in exchange for the purchase of any other tobacco product; or                  (4) Sell cigarettes to consumers through any multi-pack discounts (e.g., "buy-two-get-one-free") or otherwise provide or distribute to consumers any cigarette without charge or for less than the listed or non-discounted price in exchange for the purchase of any other cigarette.”</p> <p><b>Definitions:</b> “Coupon means any card, paper, note, form, statement, ticket or other issue distributed for commercial or promotional purposes to be later surrendered by the bearer so as to receive an article, service or accommodation without charge or at a discount.”</p> <p>“Listed or non-discounted price means the higher of the price listed for a tobacco product on its package or the price listed on any related shelving, posting, advertising or display at the place where the tobacco product is sold or offered for sale plus all applicable taxes if such taxes are not included in the stated price, and before the application of any discounts or coupons.”</p>
<p><b>Suffolk County, New York (Age-of-Sale Regulation)</b></p>	<p><a href="#">Suffolk County Code of Ordinances, § 792-3</a></p>	<p>“Any person operating a place of business wherein tobacco products or herbal cigarettes are sold or offered for sale is prohibited from selling such products, herbal cigarettes, rolling papers or pipes to individuals under 21 years of age.”</p>
<p><b>New Jersey (Information Disclosure Requirement)</b></p>	<p><a href="#">New Jersey Administrative Code, § 18:6-4.2</a></p>	<p>“Written notification must be given to the Director by every sponsoring manufacturer at least 30 days prior to the commencement of any manufacturer's promotional sales plan, including a description of the plan in detail and the dates and period of time during which the plan is to be operative.”</p>

## Other Helpful Resources

The Tobacco Control Legal Consortium and Public Health Law Center's [website](#) features [several resources and publications on menthol](#). For information about federal regulation of menthol, check the [U.S. Food and Drug Administration's website on menthol](#) or the Consortium's [FDA Tobacco Action Center](#). Other public health organizations, including [Legacy](#), the [National African American Tobacco Prevention Network](#), and the [Campaign for Tobacco-Free Kids](#), have material on menthol on their websites as well.

The Consortium's website also has information about restrictions on flavored tobacco products generally, including a [fact sheet](#) and a [sample ordinance](#).

## Contact Us

Please feel free to contact the Tobacco Control Legal Consortium with any questions about the information included in this guide or to discuss any concerns you may have about implementing a policy regulating menthol tobacco products.

*Last updated: January 2015*

## Notes

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<sup>1</sup> This article was written as part of a grant-funded research project. Any public dissemination of information related to the grant was made possible by Grant Number RC-2013-002 from ClearWay Minnesota<sup>SM</sup>. The contents of this information are solely the responsibility of the author and do not necessarily represent the official views of ClearWay Minnesota.

<sup>2</sup> The information contained in this document is not intended to constitute or replace legal advice.

<sup>3</sup> TOBACCO PRODUCTS SCIENTIFIC ADVISORY COMM., MENTHOL CIGARETTES AND PUBLIC HEALTH: REVIEW OF THE SCIENTIFIC EVIDENCE AND RECOMMENDATIONS 1-2 (2011) [hereinafter TPSAC REPORT], *available at* <http://www.fda.gov/downloads/AdvisoryCommittees/CommitteesMeetingMaterials/TobaccoProductsScientificAdvisoryCommittee/UCM269697.pdf>.

<sup>4</sup> *Id.* at 225.

<sup>5</sup> SUBSTANCE ABUSE AND MENTAL HEALTH ADMINISTRATION, OFFICE OF APPLIED STUDIES, THE NSDUH REPORT: USE OF MENTHOL CIGARETTES 2 fig. 1 (2009), *available at* <http://store.samhsa.gov/product/Use-of-Menthol-Cigarettes/NSDUH09-1119>.

<sup>6</sup> National Youth Advocacy Coalition, *Coming Out about Smoking: A Report from the National LGBTQ Young Adult Tobacco Project* (2010), *available at* [http://lgbttobacco.org/files/Coming\\_Out\\_About\\_Smoking\\_NYAC.pdf](http://lgbttobacco.org/files/Coming_Out_About_Smoking_NYAC.pdf).

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<sup>7</sup> CASAColumbia, Analysis of the National Survey on Drug Use and Health [Data file] U.S. Dep't of Health and Human Services (2013).

<sup>8</sup> Sarah Moreland-Russell et al., *Disparities and Menthol Marketing: Additional Evidence in Support of Point of Sale Policies*, 10 INT. J. ENVIRON. RES. PUBLIC HEALTH 4571-83 (2013).

<sup>9</sup> See, e.g., Campaign for Tobacco-Free Kids, *Tobacco Company Marketing to African Americans* (2013), available at <http://www.tobaccofreekids.org/research/factsheets/pdf/0208.pdf>.

<sup>10</sup> *Id.* at 48.

<sup>11</sup> *Id.*

<sup>12</sup> 21 U.S.C.A. § 387g(a)(1)(A) (West 2012).

<sup>13</sup> 21 U.S.C.A. § 387g(e)(1) (West 2012).

<sup>14</sup> TPSAC REPORT, *supra* note 3, at 225.

<sup>15</sup> U.S. FOOD AND DRUG ADMIN., PRELIMINARY SCIENTIFIC EVALUATION OF THE POSSIBLE PUBLIC HEALTH EFFECTS OF MENTHOL VERSUS NONMENTHOL CIGARETTES (2013) [hereinafter FDA MENTHOL REPORT], available at <http://www.fda.gov/downloads/ScienceResearch/SpecialTopics/PeerReviewofScientificInformationandAssessments/UCM361598.pdf>.

<sup>16</sup> *Id.* at 6.

<sup>17</sup> Press Release, U.S. Food and Drug Admin., FDA Invites Public Input on Menthol in Cigarettes (July 23, 2013), available at <http://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm361966.htm>.

<sup>18</sup> H.B. 1522, 27th Leg. (Haw. 2014).

<sup>19</sup> Press Release, Framework Convention Alliance, Brazil Bans Flavoured Tobacco (March 23, 2012), available at [http://www.fctc.org/index.php?option=com\\_content&view=article&id=728](http://www.fctc.org/index.php?option=com_content&view=article&id=728).

<sup>20</sup> Wiktor Sarzy, *Poland to Challenge EU Ban on Menthol Cigarettes*, BUSINESS INSIDER, July 21, 2014, <http://www.businessinsider.com/r-poland-to-challenge-eu-ban-on-menthol-cigarettes-2014-21>.

<sup>21</sup> 21 U.S.C.A. § 387p(a)(2)(A) (West 2012).

<sup>22</sup> 21 U.S.C.A. § 387p(a)(1) (West 2012) (emphasis added).

<sup>23</sup> See, e.g., Nat'l Ass'n of Tobacco Outlets v. City of Providence, 731 F.3d 71 (1st Cir. 2013).

<sup>24</sup> CHI., ILL., CODE § 4-64-180(b).

<sup>25</sup> Melissa Buenger, *Licensed Tobacco Retailers Within 500 Feet of Public and Private Schools by Chicago Ward*, 2013.

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- <sup>26</sup> U.S. Smokeless Tobacco Mfg. Co. v. City of New York, 708 F.3d 428, 432 (2nd Cir. 2013).
- <sup>27</sup> 21 U.S.C.A. § 387p(a)(1) (West 2012). *See also* U.S. Smokeless Tobacco Mfg. Co., *supra* note 21.
- <sup>28</sup> U.S. DEP’T OF HEALTH & HUMAN SERV., THE HEALTH CONSEQUENCES OF SMOKING: 50 YEARS OF PROGRESS 18 (2014), available at <http://www.surgeongeneral.gov/library/reports/50-years-of-progress/>.
- <sup>29</sup> 21 U.S.C.A. § 387p(a)(1) (West 2012).
- <sup>30</sup> CHICAGO BOARD OF HEALTH, HEALTHY CHICAGO: TRANSFORMING THE HEALTH OF OUR CITY, CURBING THE USE OF MENTHOL-FLAVORED CIGARETTES AND OTHER FLAVORED TOBACCO PRODUCTS AMONG YOUTH: POLICY RECOMMENDATIONS AND OTHER STRATEGIES FOR LOCAL ACTION 6 (2013), available at <https://www.cityofchicago.org/content/dam/city/depts/cdph/CDPH/MentholReport%20Jan212014.pdf>.
- <sup>31</sup> 15 U.S.C.A. § 1334(c) (West 2012).
- <sup>32</sup> Nat’l Ass’n of Tobacco Outlets v. City of Providence, 731 F.3d 71, 81 (1st Cir. 2013).
- <sup>33</sup> B.R. Loomis et al., *Point of Purchase Cigarette Promotions Before and After the Master Settlement Agreement: Exploring Retail Scanner Data*, 15 TOBACCO CONTROL 140 (2006), available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2563558/pdf/140.pdf>.
- <sup>34</sup> 21 C.F.R. § 1140.14(a).
- <sup>35</sup> 21 U.S.C.A. § 387p(a)(1) (West 2012) (emphasis added).
- <sup>36</sup> *See, e.g., NYC Gets Tough on Tobacco, Raises Purchase Age To 21*, CNN, Nov. 19, 2013, <http://www.cnn.com/2013/11/19/us/new-york-city-tobacco-age-law/>.
- <sup>37</sup> FDA MENTHOL REPORT, *supra* note 10, at 6.
- <sup>38</sup> 21 U.S.C.A. § 387p(a)(1) (West 2012).
- <sup>39</sup> *See, e.g.,* N.J. ADMIN. CODE § 18:6-4.2 (2014).
- <sup>40</sup> 15 U.S.C.A. § 1334(c) (West 2012).
- <sup>41</sup> *See, e.g.,* Lorillard Tobacco Co. v. Reilly, 533 U.S. 525, 567 (2001) (striking down state regulations of smokeless tobacco marketing on First Amendment grounds).
- <sup>42</sup> *See* Tobacco Control Legal Consortium publications on Commercial Speech and Commerce Clause issues in the regulation of tobacco products on its website section, Federal Regulation of Tobacco Products, at <http://publichealthlawcenter.org/topics/special-collections/federal-regulation-tobaccollection>. *See also* Consortium resources on Preemption and Public Health, at <http://publichealthlawcenter.org/topics/other-public-health-law/preemption-public-health>.
- <sup>43</sup> *See* Nat’l Ass’n of Tobacco Outlets, Inc. v. City of Providence, 731 F.3d 71 (1st Cir. 2013), available at <http://media.ca1.uscourts.gov/pdf.opinions/13-1053P-01A.pdf> (upholding two 2012 Providence

ordinances that restrict sales of flavored non-cigarette tobacco products and prohibit the redemption of tobacco product coupons and other price discounting practices in retail stores and ruling that the laws serve the city's legitimate goal of reducing smoking and other tobacco use and that they do not violate the First Amendment and are not preempted by federal and state law).