Lawsuit Against the FDA Dismissed in Light of Menthol Rulemaking Process

WASHINGTON, DC – June 1, 2022 – Today, we are pleased to announce that we are dismissing our lawsuit against the United States Food and Drug Administration (FDA). A rulemaking process to ban menthol as a characterizing flavor is in progress, and we are grateful to be able to declare victory in this case.

The plaintiffs in the lawsuit against the FDA—Action on Smoking and Health (ASH), African American Tobacco Control Leadership Council (AATCLC), the American Medical Association (AMA), and the National Medical Association (NMA)—represented by the legal team at Pollock Cohen LLP, are proud to have spurred on this action. The lawsuit followed the 2013 Citizen's Petition which called on the FDA to prohibit menthol in cigarettes.

"As African American physicians, we are thrilled with the FDA's proposed rule to ban menthol in cigarettes and flavored cigars as a remedy to settle our lawsuit," said Dr. Rachel Villanueva, President of the National Medical Association. "This proposed rule will save lives and improve health within Black communities. This would not have been possible without the leadership and assistance of our co-plaintiffs and attorneys, whom we wish to sincerely thank."

While we are pleased that the rule is in progress, we encourage local advocates to keep pursuing local menthol bans. The quicker these laws are passed; the more lives can be saved.

"We are encouraged by the FDA's recent action to propose a ban on menthol-flavored cigarettes. We look forward to participating in the rulemaking process as we continue our collective push to ensure these harmful products are removed from the market once and for all," said AMA President Gerald E. Harmon, M.D.

"The FDA has finally taken a major step forward to protect the health of Black Americans but the work is far from done. We will not stop until no more Black Lives are lost due to the predatory marketing of menthol cigarettes and flavored little cigars," promised Dr. Phillip Gardiner, Co-Chair of the African American Tobacco Control Leadership Council (AATCLC).

We are certain that the tobacco industry will attempt to insert themselves into the rulemaking by obscuring the facts and slowing down the process. The public health, research, and medical communities must counter the tobacco industry's influence; we strongly encourage those communities to submit fact-based comments to the rule.

"ASH's goal is to use litigation as a tool to protect the right to health of all citizens against the harms of the tobacco industry," said Kelsey Romeo-Stuppy, Managing Attorney at Action on Smoking and Health. "We are proud to have been a co-plaintiff in this extraordinary demonstration of the power of proactive litigation."

This lawsuit has achieved an important goal; we are one step closer toward preventing the deaths of 39,000 African Americans every year from tobacco-related diseases. We are pleased to have been a part of this historic action. The end of the lawsuit does not mean the end of our involvement in working towards a menthol ban; we will not stand down until an effective rule is in place. We encourage the FDA to move as quickly as possible to reach that goal.

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