

CITY COUNCIL
CITY OF NEW YORK

----- X

TRANSCRIPT OF THE MINUTES

Of the

COMMITTEE ON HEALTH

----- X

January 30, 2019
Start: 1:05 p.m.
Recess: 5:30 p.m.

HELD AT: Committee Room - City Hall

B E F O R E: Mark Levine
Chairperson

COUNCIL MEMBERS: Alicka Ampry-Samuel
Inez D. Barron
Mathieu Eugene
Keith Powers

A P P E A R A N C E S (CONTINUED)

Oxiris Barbot
Department of Health Commissioner

Casey Adams
Director of City Legislative Affairs at NYC
Department of Consumer Affairs

Joseph Fucito
NYC Sheriff

Kimberly Kesler
Assistant Commissioner for Bureau of Chronic
Disease Prevention and Tobacco Control

Matthew Myers
Campaign for Tobacco-Free Kids

Lorraine Braithewaite-Harte
NAACP

Michael Seilback
American Lung Association

Robin Vitale
American Heart Association

Bill Sherman

Deidre Sully
Public Health Solutions

Reverend Jesse Brown, Jr.
African-American Tobacco Control Leadership
Council

A P P E A R A N C E S (CONTINUED)

Jiles Ship
National Organization of Black Law Enforcement

Kyra Stephenson-Valley
National Action Network

Dorian Fuhrman
PAVE

Meredith Berkman

Dina Alessi

Luke Alessi

Caleb Mence [sp?]

Yael Mence [sp?]

Grant Fuhrman

Phillip Fuhrman

Mimi Boblick [sp?]

Rebecca Shallom [sp?]

Kevin Schroth
Rutgers

Damon Jacobs

David Abrams
NYU

A P P E A R A N C E S (CONTINUED)

John Connolly
Investigative Support Manager Altria

Rich Marianos
ATF Assistant Director

Gregory Conley
American Vaping Association

Jeff Stier
Consumer Choice Center

Mark Klyman

Spike Babain
New York State Vapor Association

Brian Foytik [sp?]
National Association of Tobacco Outlets

Jim Calvin
New York Association of Convenience Stores

Max Bookman
NYC Newsstand Operators

David Diaz
Bodega Association of United States

Youssef Mubarez
Yemeni American Merchants

Victor Canastraro
Benevolent E-Liquids

A P P E A R A N C E S (CONTINUED)

Robert Carrone [sp?]
Harold Levis Associates

Robert Testagrossa
Cloud 99 Vapes

P. Cocker [sp?]
Cloud 99 Vapes

Matthew Elliot

Miriam Sunny

Ashley Zanatta
Tobacco-Free Staten Island

Alexander Schniederman

Stewart Bowers
E-cigarette Store Owner

1
2 CHAIRPERSON LEVINE: Good afternoon
3 everybody, and welcome to the City Council's
4 Committee on Health. I'm Mark Levine, Chair of the
5 Committee. I'm pleased that we are joined by stall
6 work Health Committee Member Keith Powers, Council
7 Member from here and Manhattan. We will be joined by
8 other colleagues shortly. This is a busy day around
9 City Hall. You know we have a hearing in the next
10 room on Amazon, which I am aware also sells vaping
11 products. We probably could have just combined the
12 two hearings and been much more efficient, but alas,
13 here we are. Today, we're going to be hearing
14 testimony on two bills that are before this
15 committee, Introduction 1362 of which I am proud to
16 be lead sponsor. It is a Local Law in relation to
17 prohibiting the sale of flavored electronic
18 cigarettes. We will also be hearing Introduction
19 1345, which is sponsored by Council Member Fernando
20 Cabrera. This is a Local Law in relation to
21 prohibiting the sale of flavored cigarettes,
22 traditional, combustible cigarettes. At its best, our
23 public health system responds quickly and decisively
24 in the face of emerging health threats, but in the
25 case of teen use of e-cigarettes, we have been frozen

1 in inaction. Electronic cigarettes, also known as
2 vapes or e-cigs, are electronic or battery-operated
3 devices that deliver nicotine, propylene glycol,
4 glycerin, and flavoring through vaporization or
5 aerosolization. None of these chemicals are good for
6 you. Nicotine is highly addictive with known risks
7 for heart patients, pregnant women and potential harm
8 to the developing brains of kids with possible impact
9 on their memory and attention. E-cigarettes are
10 undoubtedly less harmful than traditional combustible
11 cigarettes, and they may indeed be a good tool to
12 help people quit smoking tobacco products. But for
13 most of the past decade, that's not how e-cigarettes
14 have been marketed. They have been presented as a
15 glamorous, trendy, even sexy product in ads almost
16 always featuring young, attractive people, a message
17 that young people themselves have massively amplified
18 on social media. This aggressive marketing strategy
19 echoes the messaging of tobacco ads in decades past,
20 and not coincidentally, tobacco companies themselves
21 have invested tens of billions of dollars into the e-
22 cigarette companies and are increasingly driving the
23 industry. The result, predictively has been soaring
24 rates of e-cigarette use, not by adults quitting
25

1 smoking, but by teenagers for whom this product is a
2 gateway into nicotine addiction. Between 2011 and
3 2015 vaping for young consumers rose 900 percent with
4 estimates today that no less than 30 percent of
5 teens, including high school students and middle
6 school, middle school students, are users of e-
7 cigarettes. Even President Trump's Food and Drug
8 Administration has called this "nothing short of an
9 epidemic." Just what kind of e-cigarettes are young
10 people consuming? Are they smoking vapes that mimic
11 the taste of tobacco? No, they are vaping a
12 veritable candy store selection of fruity and
13 enticing flavors. Here are just a few of the e-
14 cigarette flavors now being sold in stores in the
15 City: Caramel café, blueberry, mint chocolate, berry
16 cobbler, mango, strawberry mint, pina colada, cherry
17 crush, watermelon twist. I could go on and on. It's
18 a long list, but you get the idea, and it's simply
19 beyond dispute that these flavors appeal directly to
20 the taste of kids. It should be noted that you can--
21 you can't sell combustible tobacco products with any
22 of those flavors that I just mentioned. We banned
23 that a long time ago in this city precisely because
24 we don't want to entice young consumers into
25

1 cigarette addiction. It's time we do the same now
2 with e-cigarettes. Adults who want to quit smoking,
3 and I know many of you are here today, will have
4 continued access to their vapes in flavorless or
5 tobacco-flavored varieties, but we must protect kids
6 from the allure of all those candyish flavors that
7 are today luring so many into addiction. We will
8 hear today from a variety of voices on this critical
9 issue. Most importantly, we will hear from parents
10 and even some young people who are directly
11 confronting this epidemic in schools, playgrounds and
12 elsewhere in the city. We will hear from small
13 businesses about the economic impact of a flavor ban,
14 and that's a perspective that we do care about
15 deeply. We will hear from adult smokers who value e-
16 cigarettes as a smoking cessation tool, and we care
17 about that perspective, too. But throughout this
18 discussion our concern must remain paramount, the
19 health of the young people of this city. We have
20 been slow to react to this emerging crisis. We can't
21 afford to linger in inaction any longer. I want to
22 thank the Committee staff for the Health Committee
23 who has done incredible work in preparing for this
24 hearing as they always do: Zay Emanuel Hilieu [sp?],
25

1
2 Emily Barkin [sp?], Sara Liss [sp?]. And I now want
3 to turn it over to the Administration and the person
4 of the newly minted Commissioner of DOHMH, Doctor
5 Oxiris Barbot. Please take it away.

6 COMMISSIONER BARBOT: Thank you, sir.

7 Good afternoon, Chair Levine and members of the
8 Health Committee. I am Dr. Oxiris Barbot,
9 Commissioner of the New York City Department of
10 Health and Mental Hygiene, and I want to thank you
11 for the opportunity to testify on these important
12 issues and have this be my inaugural appearance
13 before this committee as Commissioner. As the City's
14 doctor, my highest priority is to improve the health
15 of all New Yorkers and reduce health inequities. It
16 is therefore fitting today that we are here to
17 discuss the dangers of both menthol and flavored e-
18 cigarettes, two issues of significant health risk and
19 disparity. As a doctor, the most important advice
20 for a long, healthy life that I can give New Yorkers
21 is to never start smoking, and to get help quitting
22 if they already smoke. They should call 1-866-
23 NYQUITS. This advice applies to all tobacco
24 products. As a pediatrician, I also know how
25 especially important it is to prevent New York City's

1 youth from becoming addicted to nicotine, which is
2 now of grave concern because of the increasing
3 popularity of e-cigarettes. First, I will address e-
4 cigarettes. Between 2001 and 2017, New York City's
5 youth cigarette smoking rate dropped by 72 percent,
6 from 18 percent to five percent. This is a testament
7 to the serious work we have undertaken to tackle
8 tobacco over the last two decades, making New York
9 City a national leader in tobacco control. Together
10 we have worked to enact bold policies specifically
11 targeted to prevent youth initiation of tobacco and
12 e-cigarette use, including restricting the sales of
13 flavored tobacco products and banning the sale of e-
14 cigarettes, cigarettes and other tobacco products to
15 those younger than 21 years of age at local
16 retailers. We have also updated the Smoke Free Air
17 Act to prohibit e-cigarette use everywhere smoking is
18 prohibited, and we have reduced the availability of
19 these products by banning their sale at pharmacies.
20 The recent package of laws, passed in 2017 and fully
21 implemented in 2018, help move us towards our goal of
22 reducing the number of smokers in New York City by
23 160,000 by 2020. I want to thank Speaker Johnson,
24 Chair Levine, Council Member Cabrera and others in
25

1 the Council for their leadership in this effort.

2 While these laws are significant in our fight against
3 adult and youth tobacco use, they are not enough.

4 Despite this progress, youth e-cigarette and other

5 tobacco product use, including cigarillos, little

6 cigars and smokeless tobacco products, has been

7 increasing substantially. Although e-cigarettes have

8 been on the market for less than 10 years, in 2017,

9 over 17 percent of New York City public high school

10 students reported vaping at least once in the

11 previous month. E-cigarette use is now more than

12 three times as common among youth as smoking

13 cigarettes. The rise in popularity of these products

14 threatens decades of progress we have made in

15 fighting youth tobacco and nicotine use. Let me

16 repeat: In 2001, 19 percent of public high school

17 youth used one or more traditional nicotine products;

18 in 2017, that number increased to 21 percent, driven

19 primarily by e-cigarette use. And I want to just

20 draw your attention to this graph that illustrates

21 how dramatically-- in blue you see the decline of

22 youth cigarette use, and here starting in 2015, the

23 dramatic rise of e-cigarettes showing that 17.3

1
2 percent, if you add it up, we're having more public
3 school youth exposed to nicotine.

4 CHAIRPERSON LEVINE: And Commissioner, if
5 you want to show the public that too for a second,
6 because it's pretty compelling.

7 COMMISSIONER BARBOT: Perfect. And so
8 although e-cigarettes do not contain tobacco, an
9 estimated 99 percent of e-cigarettes contain
10 nicotine, which can be particularly addictive for
11 youth. The amount of nicotine in e-cigarettes varies
12 greatly between products and is often not labelled
13 clearly or in an easily understandable way. For
14 example, youth may not be aware that one pod of a
15 popular e-cigarette, Juul, contains as much nicotine
16 as a whole pack of cigarettes. Nicotine is one of
17 the most addictive substances available in a consumer
18 product. E-cigarettes also release potentially
19 harmful chemicals that have not been fully studied to
20 determine their health effects over time, and youth
21 who use e-cigarettes are more likely to try
22 cigarettes in the future. Despite claims that e-
23 cigarettes are an effective way to quit smoking, this
24 is not backed by sufficient scientific evidence.
25 Further, the e-cigarette industry is rapidly

1 expanding. E-cigarette sales nearly doubled between
2 2017 and 2018, reaching over two billion dollars amid
3 more than a 75 percent increase in market size. And
4 Big Tobacco has a heavy hand in this market. We know
5 that some tobacco companies have large investments in
6 or outright own e-cigarette manufacturers. Perhaps
7 most critically, many e-cigarette companies deploy
8 nefarious marketing strategies long-used by Big
9 Tobacco, including positioning these products as
10 glamorous and targeting youth with thousands of
11 flavors. Flavors have been identified as one of the
12 top reasons why youth use e-cigarettes, and with
13 options as you mentioned earlier, and also including
14 Cotton Candy, Gummi Berry and SnoCone the youth
15 appeal is not surprising. And you'll see here in
16 front of me a bottle of sweet and sugary beverage
17 alongside a bottle of e-nicotine, and you'll see how
18 closely they are marketed. Flavors are of such
19 importance to the tobacco industry that they have
20 introduced concept flavors like Purple instead of
21 Grape in order to hinder flavor restriction
22 enforcement in local jurisdictions. The
23 proliferation of these types of flavors for both
24 tobacco and e-cigarette products is widely believed
25

1
2 to be an intentional effort by the tobacco industry
3 to try to flout the laws already in place. Strong
4 retail enforcement of these laws is needed given the
5 deceitful steps the tobacco industry has taken in
6 response to past efforts. These potential harms and
7 dangerous marketing strategies, coupled with the
8 Surgeon General's declaration that e-cigarettes have
9 reached epidemic levels of use among our younger
10 generations, are cause for alarm and immediate
11 action. New York City now, more than ever, must act
12 to protect our youth from these products. Now I'd
13 like to turn to the second issue at hand today:
14 menthol. Among New York City youth who smoke, nearly
15 two-thirds reported having started with menthol or
16 another flavored tobacco product. Menthol, like other
17 flavors, helps conceal the harshness of tobacco and
18 produces a more appealing product that is easier for
19 new users, like youth, to tolerate. But this is not
20 just about protecting New York City's youth. There
21 is a bigger picture here to paint, one fraught with
22 discrimination, as well as racial and health
23 inequity. For decades, Big Tobacco has targeted
24 communities of color with menthol cigarette marketing
25 campaigns. Unfortunately, I can tell you these

1
2 campaigns have worked. In New York City, menthol
3 cigarettes are used by 85 percent of Black adults who
4 smoke and 64 percent of Latino adults who smoke.
5 This is unfair and unjust, and is a true health
6 equity issue, one perpetuated by Big Tobacco and
7 ignored for decades by federal, state and local
8 governments nationwide. If we don't act now, we will
9 lose ground in our fight to protect future
10 generations and communities of color from Big
11 Tobacco's deadly grip. The potential health impact
12 here is very real. We know that tobacco use is a
13 leading cause of death, and we must reach the day
14 when smoking-related and preventable diseases such as
15 heart disease and stroke are not the key drivers of
16 premature mortality in New York City. We estimate
17 that over 100,000 New Yorkers may attempt to quit
18 smoking immediately after a ban on menthol takes
19 effect. That's over 100,000 people potentially
20 protected from these deadly products and the dangers
21 of smoking. This Administration will not tolerate
22 these discriminatory, predatory actions by the
23 industry, and we are here to join you in taking a
24 stand and taking action. I thank the Council for
25 recognizing the dangers of flavored e-cigarettes and

1
2 menthol products, and Chair Levine I thank you and
3 Council Member Cabrera for sponsoring these needed
4 pieces of legislation. The Administration fully
5 supports banning all flavored, including mentholated,
6 e-cigarettes, as well as banning the sale of menthol
7 cigarettes and other tobacco products. Doing so is a
8 critical step in protecting our City's youth and
9 communities of color. I look forward to working with
10 you on passage of these bills. Thank you for the
11 opportunity to testify. I am happy to take questions.

12 CHAIRPERSON LEVINE: Thank you,
13 Commissioner, and we're going to pause because we've
14 had such interest from the public in attending the
15 hearing. There's a line of people outside, and so
16 we're going to switch to the larger room now that the
17 other hearing cleared up, and then we'll continue
18 with Q&A. The Sergeants can help guide everybody.

19 COMMISSIONER BARBOT: Okay, Thank you.

20 [break]

21 CHAIRPERSON LEVINE: [off mic] Going
22 again. Thank you everybody for your patience. Thank
23 you for coming. The turnout here is great. We are
24 going to have a spirited and important debate today.
25 I want to acknowledge we've been joined by fellow

1
2 Health Committee Member Doctor Mathieu Eugene,
3 Council Member from Brooklyn, and I'm also going to
4 ask our Committee Counsel, Jose Emanuel Hilieu [sp?]
5 to offer the affirmation of the Commissioner before
6 we continue with Q&A.

7 COMMITTEE COUNSEL: Do you affirm to tell
8 the truth, the whole truth and nothing but the truth
9 in your testimony before this committee and to
10 respond honestly to Council Member questions?

11 COMMISSIONER BARBOT: I do.

12 CHAIRPERSON LEVINE: Thank you, and maybe
13 I can ask one of the Sergeants to close the back door
14 while that noise is-- Commissioner, most the stats
15 that I have on youth use of e-cigarettes are
16 national, and I'm wondering if you have statistics or
17 even estimates on the number of teenagers in New York
18 City who are using vaping products?

19 COMMISSIONER BARBOT: So, Council Member,
20 currently we have-- sorry, there's a little bit of
21 feedback. Seventeen percent of youth have reported
22 starting-- excuse me. Seventeen percent of youth use
23 e-cigarettes, and that equates to roughly 45,000
24 youth who report using e-cigarettes in the last 30

1
2 days, and of that number, two-thirds report starting
3 with flavors.

4 CHAIRPERSON LEVINE: What is the source
5 of that data?

6 COMMISSIONER BARBOT: That source is our
7 YRBS data. YRBS is the Youth Behavior Risk
8 Surveillance that we do with New York City public
9 high school students.

10 CHAIRPERSON LEVINE: So does that capture
11 middle school students?

12 COMMISSIONER BARBOT: That is a separate
13 survey. This is only captures ninth grade and up,
14 and it only captures youth that are enrolled in
15 school.

16 CHAIRPERSON LEVINE: Sorry about the
17 feedback. I'm just going to pause a second and see
18 if we can track down the source. There might be an
19 open mic. Just the feedback. This was an Amazon
20 hearing prior to this, so I'm wondering if there's
21 like an Amazon Echo that's listening in on us right
22 now.

23 [laughter]

24 CHAIRPERSON LEVINE: Alexa, please stop
25 making noise.

1

[laughter]

2

3

CHAIRPERSON LEVINE: Maybe kill that mic
and try one of the others at that table.

4

5

COMMISSIONER BARBOT: Is that better?

6

7

CHAIRPERSON LEVINE: That sounds good.
Okay. So I think I was asking you whether middle
school students are captured in your data on teen
vaping.

8

9

10

11

12

13

14

15

16

17

18

COMMISSIONER BARBOT: We don't have data
for middle school vaping rates. We only have data
for high school, and we know that of that 45,000 that
I mentioned earlier, amongst the youth that are
reporting usage, 27 percent of them are white, Latino
at 19.5 and black at 10.7, and Asian at 10.9. So,
it's across all racial groups that kids are really
taking advantage, if you will, of flavors and
unfortunately getting hooked on nicotine.

19

20

CHAIRPERSON LEVINE: Can you say anything
about trends? Do you have prior year data?

21

22

23

24

25

COMMISSIONER BARBOT: No, unfortunately,
if you look at that graph that we had up somewhere, I
don't know where it went, our data only begins from
2015.

1
2 CHAIRPERSON LEVINE: It did appear to go
3 up at least for the two years that you had data, but-
4 -

5 COMMISSIONER BARBOT: [interposing] I'm
6 sorry?

7 CHAIRPERSON LEVINE: I did appear to rise
8 at least for the two years that you had data,
9 although obviously we need more--

10 COMMISSIONER BARBOT: [interposing] Yes.

11 CHAIRPERSON LEVINE: time to look at the
12 trends.

13 COMMISSIONER BARBOT: And the thing about
14 that YRBS data, it's conducted every other year. It's
15 not like we have yearly data to look at.

16 CHAIRPERSON LEVINE: Right. Look, 45,000
17 young New Yorkers are doing anything that is harmful
18 to their health, that to me is a crisis. The number
19 is going to be greater if you consider middle school
20 students, and we know sadly that there are middle
21 schoolers who are vaping. Your stats on the
22 demographic distribution tells us that no community
23 in the city is immune.

24 COMMISSIONER BARBOT: Exactly.

1
2 CHAIRPERSON LEVINE: And most germane to
3 this hearing, if two-thirds of those users are
4 entering this addiction via a flavored e-cigarette,
5 that just tells us what a serious factor and teen
6 [sic] adoption [sic] these flavors are, which
7 confirms much of our suspicions.

8 COMMISSIONER BARBOT: And Mr. Chair, we
9 can follow up with middle school data.

10 CHAIRPERSON LEVINE: In terms of the sale
11 of these products, do we know how many actively
12 licensed retailers there are?

13 COMMISSIONER BARBOT: So, currently with
14 the recent legislation that was passed, we know that
15 we have 2,934 retailers that have been licensed.

16 CHAIRPERSON LEVINE: Is that number capped
17 for e-cigarettes the way it is for tobacco?

18 COMMISSIONER BARBOT: So, the way that
19 the legislation passed is that that is capped and
20 then over time looking to reduce the density, and I
21 have my colleague from DCA that can answer any more
22 detailed questions on that.

23 CHAIRPERSON LEVINE: And we're going to
24 ask him to do the affirmation as well.

1
2 COMMITTEE COUNSEL: Do you affirm to tell
3 the truth, the whole truth and nothing but the truth
4 in your testimony before this committee and to
5 respond honestly to Council Member questions?

6 DIRECTOR ADAMS: I do. And for the
7 record, my name is Casey Adams, Director of City
8 Legislative Affairs at the New York City Department
9 of Consumer Affairs. So, Council Member, yes, the
10 number of ECRD licenses is capped by the same formula
11 as the tobacco retail dealer license, which is 50
12 percent of the number of licenses that were issued on
13 a date certain, and that date certain occurred in
14 February, and it was after a period of applications.
15 So, as the Commissioner mentioned, we now have 2,934
16 actively licensed ECRD businesses. That number is
17 capped. There are situations where a license can
18 move between businesses if a business is sold and
19 bought and was in good standing, but the number
20 should not go up, and our caps, I'm happy to provide
21 them. They're actually up online, and it will tell
22 you for each community district the number of
23 licensed businesses and the cap, and in each district
24 it should be about 50 percent of the cap at this
25 point, because there hasn't been a lot of attrition.

1
2 CHAIRPERSON LEVINE: Okay. I'm correct
3 that the minimum age to purchase any vaping products
4 is 21, correct?

5 DIRECTOR ADAMS: Yes.

6 CHAIRPERSON LEVINE: So, how do we
7 explain the fact that 45,000 high school students are
8 vaping in a city where sale to minors is prohibited?

9 DIRECTOR ADAMS: I can speak to the sale
10 side of that equation. We do very vigorous
11 enforcement. We have a dedicated tobacco squad--
12 tobacco and ECRD squad. There are both city and
13 state laws and rules at play here. So, we have a
14 unit that goes out and conducts sale to minor, sale
15 to youth, in the case of 21 inspections, and that
16 will involve an actual youth or minor who goes in to
17 attempt to make a sale. So, I can-- I don't have the
18 sale to minor data, violations data, with me right
19 now. I'm happy to provide that to you after the
20 hearing.

21 COMMISSIONER BARBOT: And Council Member,
22 just to be complete, the data that we are reporting
23 on is as of 2017, and it just reports on usage. We
24 don't ask where it was purchased.

1
2 CHAIRPERSON LEVINE: Right. We know of
3 anecdotes, however, of young people who are able to
4 purchase these products in New York City stores.

5 COMMISSIONER BARBOT: Yes.

6 CHAIRPERSON LEVINE: Sometimes it happens
7 by passing a couple bucks to the person behind the
8 cash register. Sometimes it happens because they
9 just don't bother to ask for ID. So, we do need to
10 ramp up enforcement for the sake of traditional
11 tobacco products as well, and while we're at it for
12 alcohol and other products, which we don't want in
13 the hands of young people. While advocating for
14 strict enforcement, I'm also a realist, and I know
15 that even with the most stringent enforcement, there
16 could be an adult who purchases and passes it to
17 young people. I know that's illegal, but that's very
18 difficult to enforce against. And I think we need to
19 be realistic about the prospects of say a ban on sale
20 of flavored e-cigarettes only to minors, simply not
21 working, because either there would be some sale
22 direct to minors, or they would get it via people 21
23 and older. And that's led us to this move just to
24 get the flavors out of the stores so that we don't
25

1
2 have to worry about them finding their way into the
3 hand of young people.

4 COMMISSIONER BARBOT: Absolutely.

5 CHAIRPERSON LEVINE: Can you tell us
6 about the fines and sanctions now for stores that do
7 sell to minors?

8 DIRECTOR ADAMS: Yes, the penalties for
9 violations of tobacco laws range very widely. They
10 go from as low as 500 dollars to as high as 5,000,
11 and typically that will escalate based on the
12 recidivist status of the violator. So the more
13 violations that you get within a certain year period,
14 the higher your penalties will be. And as well,
15 violations like sale to minor can impact businesses
16 ability to hold on to a license, which is quite-- and
17 revocation is quite a severe penalty in a legal
18 situation where the cap is only going down.

19 CHAIRPERSON LEVINE: But how often is
20 that penalty actually applied? How often are we
21 revoking licenses?

22 DIRECTOR ADAMS: As I said, revoking is a
23 very extreme remedy, so it's not very common. I
24 don't have the number on that for you. I'm happy to
25 get it for you. And as well, as you noted, flavored

1
2 tobacco is-- flavored cigarettes are illegal in New
3 York City, and we do have data on the number of
4 violations that we issue for sale of flavored tobacco
5 because people continue to do it. We continue to
6 enforce against it. We take it very seriously.

7 CHAIRPERSON LEVINE: Do you have a number
8 on fines short of revocation?

9 DIRECTOR ADAMS: I don't, but I'm happy
10 to get it for you.

11 CHAIRPERSON LEVINE: Any enforcement
12 system is only as good as--

13 DIRECTOR ADAMS: [interposing] Yes.

14 CHAIRPERSON LEVINE: the penalties which
15 are placed on people who violate it.

16 DIRECTOR ADAMS: Yes.

17 CHAIRPERSON LEVINE: So, this is a very
18 important question.

19 DIRECTOR ADAMS: It is, and I want to
20 note that the penalties in this area are some of the
21 highest authorized in DCA's law. So, typically our
22 fines do not go up to 5,000, but they do in this
23 case. And we, as I said, we have a dedicated unit.
24 We report to the state on tobacco enforcement as part
25 of our grant process, because we receive money for

1
2 the state tobacco enforcement, which we submit to the
3 state, and I'm happy to provide those reports as well
4 which will tell you about how many checks we do.
5 Typically we try and do in the range of 10,000 sale
6 to minor checks in a year for the purposes of the
7 grant. But that's not-- it's not the whole picture,
8 because there's also sale to adult violations that
9 happen with flavored tobacco for instance, but I'm
10 happy to provide the reports that we submit to the
11 state, which will give you a more complete picture.

12 CHAIRPERSON LEVINE: Yes, please.
13 Commissioner, as I mentioned in my opening statement,
14 I view the crisis of teen consumption of e-cigarettes
15 as being a different matter from the question of
16 adult smokers transitioning off tobacco to e-
17 cigarettes, understanding that even in that case,
18 science hasn't really determined the effectiveness of
19 that as a smoking cessation strategy and that they're
20 still significant negative health effects of nicotine
21 consumption and some of the other chemicals in e-
22 cigarettes. But generally, the medical profession is
23 comfortable with Nicorette Gum and other brands of
24 nicotine gum and the patch. I think there's probably
25 questions about their effectiveness, but those are

1
2 generally accepted as part of the tool kit for people
3 who want to get off traditional cigarettes. So, is
4 it not fair to put tobacco flavored e-cigarettes into
5 the same category?

6 COMMISSIONER BARBOT: You know, that's a
7 very important question, because the industry would
8 like us to believe that e-cigarettes are a way
9 towards cessation, and the reality is that the
10 Surgeon General's report in 2016 cite that the
11 evidence for that is very weak. We do support FDA-
12 approved cessation products, either by prescription
13 or over-the-counter mainly because they have been
14 studied. We have confidence about the degree to
15 which the nicotine is released. I think one of the
16 major concerns about e-cigarettes is that we have no
17 clear way of knowing that every single puff will
18 deliver the same concentration of nicotine. And
19 while that science in terms of its effectiveness of a
20 cessation product is weak, what we do have is strong
21 evidence of how it is that e-cigarettes and to the
22 degree that they utilize flavors to the degree that
23 they target youth in their marketing has been
24 effective in increasing the percentage of youth that
25 are exposed to nicotine.

1
2 CHAIRPERSON LEVINE: All of us know
3 people, I certainly do, adults who have given up
4 cigarettes and transitioned to e-cigarettes
5 understanding that anecdotes don't equal data. One
6 thing I've observed amongst some of my friends is
7 because it's so easy to smoke e-cigarettes because
8 you can do it indoors easily without bothering the
9 person next to you, that often they end up smoking a
10 lot more of the e-cigarettes than they did of the
11 combustible devices, and are probably getting more
12 nicotine into their body. Now, they're not getting
13 some of the other chemicals that you get with
14 traditional cigarettes, so that's good, but there
15 might be an unintended consequence of the transition
16 from cigarettes to e-cigarettes of actually getting
17 more nicotine because it's just easier to smoke, and
18 I think you mentioned in your opening statement that
19 one pod is equivalent to the amount of nicotine in a
20 whole pack of cigarettes, is that not right?

21 COMMISSIONER BARBOT: That's exactly
22 right. So, there are 59 grams of nicotine in a Juul
23 pod which is a whole pack of cigarettes' worth of
24 nicotine, and twice the amount that is approved in
25 Europe. And so, you know, part of the issue here is

1
2 that when someone is smoking a pack of cigarettes,
3 they have the number of cigarettes that they can say
4 "Woah, I need to cut back, because look at all the
5 cigarettes I'm smoking." They don't have that option
6 when they're puffing on, you know, a jump drive,
7 right? They just keep doing-- it's part of the
8 addictive process, and so that's why I would really
9 like to see these companies provide rigorous science.
10 I would like for them to go through the FDA process
11 and get certified as cessation devices. I think
12 there's no question that nicotine is addictive, and
13 that once you start smoking it's hard to stop. I've
14 never been a smoker, but I certainly understand the
15 challenges of trying to get off nicotine, and so I
16 think that we can well serve the public by giving
17 them more options that have gone through the FDA
18 process.

19 CHAIRPERSON LEVINE: The health impact of
20 nicotine, which nobody's claiming nicotine's good for
21 you. It's a highly addictive substance. It's not an
22 easy addiction to kick. This isn't like caffeine
23 where you have a couple of days of a headache and
24 then you're clear. This is a very difficult
25 addiction to kick. We know kids. I know kids who

1
2 are caught in this, in the grips of this addiction,
3 and so they keep sneaking to the bathroom to smoke.
4 Sometimes they resort to smoking in classrooms hidden
5 behind a book or something, because their body just
6 has a craving. I believe there's research on the
7 negative impact from nicotine on people who have
8 heart issues. I think it's pretty well-established
9 that in pregnancy nicotine consumption is very bad.
10 I think, or at least I've read, that there are
11 concerns about the impact of nicotine on an
12 adolescent brain that's developing with possible
13 impact on memory and attention. Can you say anything
14 about what we know about the health impact of
15 nicotine?

16 COMMISSIONER BARBOT: So, Council Member,
17 I think you highlighted some of the main concerns
18 that there are with nicotine. I think that the point
19 to focus on with youth is that it also can affect
20 their educational progress by affecting memory,
21 concentration and the like, but one of the things
22 that we haven't focused on is that cessation
23 products, there's not enough science to really say
24 that in youth they are effective in helping them kick
25 the addiction of nicotine from e-cigarettes. So,

1
2 that's yet another reason why it's so important to
3 focus on the fact that Big Tobacco is utilizing
4 flavors as a gateway to create a whole new generation
5 of smokers, and that's why this proposed bill is so
6 important to ensure that we cut that pipeline off.

7 CHAIRPERSON LEVINE: Do we know anything
8 about the frequency with which someone starts on an
9 e-cigarette and then goes to combustible cigarettes?

10 COMMISSIONER BARBOT: So, I don't think
11 that we have enough data to say with any kind of
12 certainty, you know, at a one year's time or an x
13 period of time. What we do know is that a not
14 insignificant percentage of individuals report having
15 started with e-cigs and then transitioning to
16 cigarettes.

17 CHAIRPERSON LEVINE: Some advocates for
18 the industry would say that young people are starting
19 on e-cigarettes instead of tobacco and would never
20 get to tobacco. Do you have any comments on the
21 validity of that argument?

22 COMMISSIONER BARBOT: I think that there's
23 a lot of things that industry would want us to
24 believe that are not based in science and what we
25 know by looking at the data that we have is that we

1
2 as a city are losing ground in terms of ensuring that
3 our youth are not addicted to nicotine and don't end
4 up being life-long smokers, because once you start,
5 and especially if you start at a very young age, it's
6 incredibly difficult to stop, and so as the Public
7 Health Authority, our responsibility is to draw
8 attention to this and take measures that will help to
9 save lives.

10 CHAIRPERSON LEVINE: I think what your
11 chart shows is that there was thankfully a decline in
12 youth smoking for years, and that it's roughly
13 plateaued in the era of the e-cigarette rise, or at
14 least during the last couple of years when we have
15 data. Am I reading that chart right?

16 COMMISSIONER BARBOT: What the dark lines
17 show is cigarette use, cigar use, smokeless tobacco
18 use, and it demonstrates that with measures that were
19 taken, for example taxing cigarettes, increasing the
20 floor price, introducing tobacco 21, all of those
21 measures were effective, but in the lighter color
22 which is more challenging to see, we see that e-
23 cigarettes have been able to circumvent all of those
24 measures and that's why it's so important for us to
25

1
2 focus in on not only e-cigarettes but the issue of
3 flavors as gateways to smoking.

4 CHAIRPERSON LEVINE: Councilman Cabrera
5 who's the lead sponsor of Intro 1362, I believe--
6 sorry, that's 1345, which you addressed in your
7 opening statement. One of the concerns that I know
8 we're going to hear today related to a ban on menthol
9 cigarettes, and now I'm talking about tobacco,
10 traditional tobacco cigarettes, is that it has a
11 disparate impact on communities of color in New York
12 City and that therefore there's a concern about
13 unintended law enforcement consequences related to
14 such a ban, a ban on menthol, and I'd like to give
15 you while you're here, because you won't be here, you
16 won't be able to respond when advocates speak on
17 this. I'd like to give you a chance to address that
18 concern.

19 COMMISSIONER BARBOT: Thank you. So, one
20 of the things that we are incredibly concerned about
21 is the fact that tobacco, big tobacco has been able
22 to target communities of color, target youth in
23 getting them to start smoking, and we talk about the
24 percentage of black and Latino adults that are
25 current menthol smokers. Eighty-five percent of

1
2 African-American adults do smoke menthol; 64 percent
3 of Latinos do smoke menthols, but what doesn't get
4 enough attention is the fact that 57 percent of women
5 who smoke, also smoke menthols. So, this is yet
6 another opportunity, another way in which industry
7 would like us to have the conversation about how we
8 are disproportionately targeting communities of color
9 in terms of reducing the number of smokers, but I
10 think the real issue here is how tobacco, Big
11 Tobacco, has gone unchecked targeting communities,
12 youth, and women getting them hooked on cigarettes.

13 CHAIRPERSON LEVINE: Sheriff [sic], it's
14 great to have your perspective. I'm going to ask you
15 to pause so that Jose Emanuel can do the affirmation,
16 and then we'll look forward to hearing from you.

17 COMMITTEE COUNSEL: Do you affirm to tell
18 the truth, the whole truth and nothing but the truth
19 in your testimony before this committee and to
20 respond honestly to Council Member questions?

21 SHERIFF FUCITO: I do.

22 COMMITTEE COUNSEL: Please state your
23 name for the record.

24 SHERIFF FUCITO: Joseph Fucito, Sheriff
25 for the City of New York. So, thank you for having

1
2 us here today. Your concern is very valid, and I
3 just wanted to go over that. This legislation
4 doesn't criminalize these issues. What is criminal
5 in these issues is the taxation portion, and just
6 like any other offense in the City, if there's taxes
7 that are due at a certain point in time if you don't
8 pay them, there will be a criminal implication. So
9 the ban on e-cigarettes has nothing to do. There's
10 no criminal impact on the ban on e-cigarettes. There
11 isn't now, and there won't be after the legislation
12 would pass. The issue is menthol cigarettes, if
13 they're sold in the City after this legislation,
14 conceivably it would be a tax crime, because the
15 taxes were not paid on it. And the focus of the
16 Sheriff's Department's investigations have not been
17 the small street-level offense. It's almost like the
18 horse is already out of the barn. That is not going
19 to stop the problem. The Sheriff's Department
20 focuses in large trafficking networks. In fact, last
21 week, we did the largest seizure and arrest of any
22 case that we worked on. It involved a 30 million
23 dollar tax fraud case. So, that's the criminal focus
24 of law enforcement when it comes to the enforcement
25 of cigarettes. The large trafficking networks on the

1
2 lower end, when we do our regulatory inspections in
3 businesses and wholesalers, there is a civil penalty
4 which is enacted first, and that's for the lower
5 level offenses of having untaxed product, and then
6 once you reach felony level, that's when we start
7 talking about criminal offenses, but that's a very
8 high threshold. So, walking around with a carton of
9 cigarettes or a pack of cigarettes, of menthol
10 cigarettes, will not be a crime. The sale of 50
11 cartons or more of untaxed cigarettes is a crime.

12 CHAIRPERSON LEVINE: So, just to clarify,
13 and this would apply to e-cigarettes as well, it is
14 the sale of these products which would be illegal,
15 but the possession or consumption of them would not
16 be.

17 SHERIFF FUCITO: E-cigarettes now and
18 after the legislation have no tax impact. So there's
19 no investigation on the tax component of-- there's no
20 offense for the sale of e-cigarettes. That's handled
21 administratively by the Consumer Affairs. The
22 Sheriff's concern is the product that has to be
23 taxed, which is other tobacco products, and
24 cigarettes, and it would be the untaxed sales is
25 where we would have a concern.

1
2 CHAIRPERSON LEVINE: So, as of-- you
3 wanted to add something? Go ahead.

4 COMMISSIONER BARBOT: But your statement
5 is correct. It's just the sale. It's not related to
6 the possession or consumption.

7 CHAIRPERSON LEVINE: So, a young person
8 today, if let's say a 19-year-old who is not a minor,
9 but is not allowed to purchase any cigarette, were
10 found with an e-cigarette on their person or smoking
11 any cigarette,--

12 SHERIFF FUCITO: [interposing] That's not
13 a crime.

14 CHAIRPERSON LEVINE: That's not a crime.

15 SHERIFF FUCITO: That's not.

16 CHAIRPERSON LEVINE: Would there even be
17 a civil summons or any--

18 SHERIFF FUCITO: [interposing] There's not
19 a civil summons for that unless you're violating some
20 smoking regulation of the City of New York.

21 CHAIRPERSON LEVINE: Right. I mean,
22 there are places in the city where it's illegal to
23 smoke any product, electronic or tobacco.

24 SHERIFF FUCITO: Correct.
25

1
2 CHAIRPERSON LEVINE: But if a young
3 person was consuming an e-cigarette in a place where
4 it's legal for someone to smoke, they would not face
5 any sanctions.

6 SHERIFF FUCITO: They would not face any
7 sanctions, and that's true of somebody smoking a
8 menthol cigarette after-- if this legislation passed,
9 if they were smoking a menthol cigarette in a place
10 where they are allowed to smoke. There is no
11 criminal impact.

12 CHAIRPERSON LEVINE: Okay. Thank you
13 Sheriff and Commissioner. My colleague, Council
14 Member Powers, has some questions.

15 COUNCIL MEMBER POWERS: Thank you. Thank
16 you for doing this hearing. Thank you everybody for
17 being here. You know, this discussion around the
18 legislation and this entire discussion really is
19 predicated on the discussion around the harm that's
20 presented by a flavored cigarette or flavored e-
21 cigarette, so I wanted to ask some follow up
22 questions on that. The first thing is you had a
23 point you had made earlier that the Surgeon General
24 said there was weak evidence related to smoking
25 cessation, and I wanted to ask was it weak that it

1
2 doesn't serve as a smoking cessation tool or that
3 it's being used that way?

4 COMMISSIONER BARBOT: Weak specific to
5 the e-cigarette component, not cessation in general.
6 Cessation in general is something that we support,
7 but in terms of using e-cigarette.

8 COUNCIL MEMBER POWERS: But my question
9 is on-- does the Surgeon General find there was weak
10 evidence that electronic cigarettes were not serving--
11 - were not being used as a smoking cessation device
12 or were not appropriate, were not serving the purpose
13 of being a smoking cessation device?

14 COMMISSIONER BARBOT: The studies were
15 around the effectiveness, and we can get back to you
16 on the specifics of-- you know, they were some weak
17 in terms of yes, it might be helpful. There were
18 some weak and it doesn't make a difference. I think
19 the main point is that there have yet not been
20 rigorous studies done to demonstrate definitely to
21 the degree that other cessation products have been
22 that these are helpful.

23 COUNCIL MEMBER POWERS: Okay. And is the
24 concern from the Department of Health around it being
25

1
2 a gateway to traditional tobacco products, or it
3 being harmful in itself?

4 COMMISSIONER BARBOT: The combustion of
5 e-cigarettes does liberate certain chemicals that
6 have been demonstrated to cause harm. I think we
7 need more science to sort of illustrate what that
8 dosage might be. The concern is more so or in
9 addition the degree to which then young people
10 because of the effects of nicotine on a young
11 developing brain would be more likely to remain
12 addicting.

13 COUNCIL MEMBER POWERS: And can you tell
14 us which chemicals you feel like are the most harmful
15 here in terms of electronic cigarettes?

16 COMMISSIONER BARBOT: Yes, but I would
17 have to look at my notes to tell you the exact ones.
18 Yes, formaldehyde, benzene, diacetyl from the
19 flavoring, and heavy metals including nickel, tin,
20 and lead.

21 COUNCIL MEMBER POWERS: Got it. And the
22 concern, can you tell us-- state the concerns with
23 those chemicals?

24 COMMISSIONER BARBOT: So, the cancer
25 causing chemicals would be formaldehyde and benzene.

1
2 And then the diacetyl has been linked to lung
3 disease, and then heavy metals may affect other
4 organs in the body, for example, kidneys.

5 COUNCIL MEMBER POWERS: Okay. So it
6 sounds like you have questions about the harm that's
7 presented today in itself in addition to the ability
8 to serve as a gateway to a traditional smoking
9 product, is that fair?

10 COMMISSIONER BARBOT: We would like to
11 see more studies to demonstrate the degree to which
12 these are causing harms in long-- part of this is you
13 know, how much are people vaping, how long, and then
14 how do you correlate that effect with chemicals that
15 have been demonstrated to be harmful to health.

16 COUNCIL MEMBER POWERS: Okay. And those
17 chemicals I presume are in all electronic cigarette
18 products, and the flavored and the unflavored?

19 COMMISSIONER BARBOT: So, part of the
20 challenge, and I have a staff member here who can
21 introduce herself. Part of the challenge is that
22 since these aren't regulated by the FDA, it's hard to
23 know exactly what's in what, right? And so it--
24 that's yet another reason why having them be
25

1 regulated by the FDA would be useful. Did you want
2 to add to that?
3

4 COUNCIL MEMBER POWERS: Yeah, I think you
5 just have to be sworn in as well.

6 : Hi.

7 COMMITTEE COUNSEL: Do you affirm to tell
8 the truth, the whole truth and nothing but the truth
9 in your testimony before this committee and to
10 respond honestly to Council Member questions?

11 ASSISTANT COMMISSIONER KESSLER: I do.
12 I'm Kim Kessler. I'm the Assistant Commissioner for
13 the Bureau of Chronic Disease Prevention and Tobacco
14 Control. I would just echo what the Commissioner
15 said. We just-- we don't know enough about what's in
16 all of these products, and the long-term health
17 effects of them are unknown, but we do know that many
18 of them can release the types of components that she
19 spoke to.

20 COUNCIL MEMBER POWERS: And can you just--
21 - the FDA has not approved these products or
22 regulates them. Can you tell us why that's the case?

23 ASSISTANT COMMISSIONER KESSLER: There
24 are-- there just aren't strong con-- there has not
25 been a strong process around this yet, so we-- as the

1
2 Commissioner spoke about, we don't yet have-- the FDA
3 has not yet approved any of these products for
4 cessation unlike other nicotine replacement therapy,
5 which is evidence-based, can help people to quit, and
6 in general-- and the regulatory regime around e-
7 cigarettes is still being developed, which is very
8 much in the news, and the FDA has been speaking about
9 recently.

10 COMMISSIONER BARBOT: So, I would add
11 that this is one of those examples where for reasons
12 that escape me, these big companies have been able to
13 circumvent the processes at the federal level, right,
14 and still call themselves cessation devices without
15 having gone through the FDA process.

16 COUNCIL MEMBER POWERS: And the FDA, did
17 the FDA regulate smoking cessation products normally,
18 is that correct?

19 ASSISTANT COMMISSIONER KESSLER: Yes.

20 COUNCIL MEMBER POWERS: And they have--
21 and these products have not been regulated by the FDA
22 or approved, I guess I should say, by the FDA as
23 smoking cessation products?

24 ASSISTANT COMMISSIONER KESSLER:
25 Typically for-- typically smoking cessation products

1
2 are approved and they submit scientific evidence to
3 establish that they bring a cessation benefit, and
4 there are FDA-approved cessation products, and e-
5 cigarettes are not among them. They have not
6 completed that regulatory hurdle.

7 COUNCIL MEMBER POWERS: Okay. And then if
8 this ban on the flavors passed, there would be a ban
9 I guess in retail in New York City, but you could
10 still access products online, is that correct?

11 ASSISTANT COMMISSIONER KESSLER: I
12 believe so, yes.

13 COUNCIL MEMBER POWERS: Okay.

14 ASSISTANT COMMISSIONER KESSLER:
15 [inaudible] retail.

16 COUNCIL MEMBER POWERS: And what
17 regulations would be in place beyond-- we have a
18 regime of regulations around age and location with
19 the pharmacies and others. So what-- so those would
20 be-- so flavors would be banned. These smoking
21 products would be limited in terms of location and
22 age, I guess. What would be the ability-- so, the
23 Chair point around access by folks who are below the
24 regulated age or the allowable age today, what would
25 become their ability to get products via online or,

1
2 you know, through those who create the products
3 through other online places? What would be the af--
4 to get fla-- if you wanted a flavor product after
5 this and you were 17 or you were 22, what would be in
6 place?

7 COMMISSIONER BARBOT: So, I think that
8 those would be remaining questions that we would be
9 happy to work with Council on to figure out ways in
10 which we could limit the degree to which other
11 avenues of getting these products would hinder our
12 ultimate goal of keeping New York City youth from
13 starting on e-cigarettes or any form of tobacco.

14 COUNCIL MEMBER POWERS: Okay. I may have
15 follow-up questions, but I'll hand it back to the
16 Chair. Thank you.

17 CHAIRPERSON LEVINE: Thank you. Just to
18 clarify on the federal front, there was a dramatic
19 announcement a few months ago that the FDA I think
20 was putting the industry on warning essentially that
21 if they didn't find their own ways to reduce youth
22 consumption of e-cigarettes that there would be
23 regulatory action, but am I to understand that
24 they've ultimately pulled back from acting? What is
25 the status of federal action on this?

1
2 COMMISSIONER BARBOT: So, right now-- and
3 I'll ask him to come back up. Right now there hasn't
4 been any action, and you're right, there was big fan
5 fare. Part of the challenge was that the FDA was in
6 essence leaving it to industry to regulate
7 themselves, and we would hope for more affirmative
8 action, and that's why we're very excited about
9 supporting the bills that are before us. I don't
10 know, Kim, if you want to add anything to that?

11 ASSISTANT COMMISSIONER KESSLER: So, the
12 FDA has been updating their compliance procedures,
13 but at this point they're voluntary. So they are
14 issuing guidance to industry about where these
15 products should be available, but they're voluntary.
16 So, they wouldn't go as far as what the Council's
17 proposing here.

18 CHAIRPERSON LEVINE: And at the state
19 level, I know that the Governor has made some strong
20 statements about wanting to confront this crisis. I
21 believe that's the case. I'm not sure if any
22 specific policies have been proposed, but am I right
23 that at the moment there is no state regulation of
24 the sale of e-cigarette products?

1
2 ASSISTANT COMMISSIONER KESSLER: That's
3 correct.

4 CHAIRPERSON LEVINE: Okay. Alright.
5 Well, we like it when New York City's in the lead,
6 and we like to set the example for other parts of the
7 state and the country, and we thank you,
8 Commissioner, for your strong support and for your--
9 sharing your scientific knowledge on this topic and
10 look forward to working with you on this issue.

11 COMMISSIONER BARBOT: Thank you, Mr.
12 Chair, we look forward to that.

13 CHAIRPERSON LEVINE: Thank you. And
14 we're going to go to our next panel which is Matthew
15 Myers from the Campaign for Tobacco-Free Kids;
16 Lorraine Braithwaite-Harte from the NAACP New York;
17 Bill Sherman from the American Cancer Society;
18 Michael Seilback from the American Lung Association;
19 Robin Vitale from the American Heart Association.

20 That is a high-powered panel if there ever was one.
21 Mr. Myers, since you have traveled the farthest,
22 would you like to start us off? Can you make sure
23 your microphone-- there's a button there-- is on?

24 MATTHEW MYERS: Is that better? Got it.
25 It's a real pleasure to be here, and so I very much

1
2 appreciate that. My name is Matthew Myers. I'm the
3 President of the Campaign for Tobacco-Free Kids which
4 is the largest non-governmental organization in the
5 world, actually, devoted to public policy/advocacy
6 around this issue. It's a privilege to be here
7 because New York City Council has led the way on so
8 many important issues over the years that this
9 hearing couldn't be more appropriate, and it's also
10 important to understand that the two bills you are
11 considering today fill what is one of the most
12 important set of gaps in protection of our young
13 people, and frankly, African-Americans in the country
14 today. It's important to put it in context, and the
15 context is, in terms of cigarette smoking in this
16 country despite all the progress we've made, the
17 poorest, most vulnerable of our citizens are most at
18 risk. The second thing that's important to realize
19 is as you've heard previously, we have made historic
20 progress in reducing youth tobacco use across the
21 board, but flavored e-cigarettes, particularly Juul
22 threaten to undo that progress in an extraordinary
23 manner. Your two proposals will do more to both
24 protect public health and finally begin to attack a
25 health disparity caused by the targeting of the

1 African-American community that is long over-due.
2
3 Let me just talk about a few of the issues. You have
4 my full testimony, including copies of advertisements
5 there. Let me talk about a few issues. First, let me
6 address your bill with regard to flavored e-
7 cigarettes. Extraordinarily important, even more
8 important than you just heard, because the data you
9 just heard from New York was in 2017. Between 2017
10 and 2018 we had a crisis epidemic of skyrocketing e-
11 cigarette use in this country that changed all of
12 those figures, and it's extraordinarily important to
13 realize the national version of the National Youth
14 Tobacco Survey that you just heard about showed that
15 there was a 78 percent increase in e-cigarette use
16 since the New York City study was done across the
17 nation, and a 48 percent increase among middle school
18 students. So, that 45,000 you heard, that's fiction.
19 That number is much higher. Similarly, the
20 prestigious Monitoring the Future study done by the
21 University of Michigan that has been done every year
22 for the last 43 years found that e-cigarette use
23 among teenagers rose at a rate more rapid than they
24 had ever seen for any drug in the last 43 years. So,
25 the numbers you heard are the tip of the iceberg and

1
2 it's much worse. The New York State NYTS for 2018
3 also shows that between 2014 and 2018 e-cigarette use
4 increased by 160 percent statewide. You should know
5 that the 17 percent figure you heard in New York for
6 2017 was already above the national average, so that
7 you have to assume that what you're dealing with in
8 New York is much worse than what you heard. I'd like
9 to make four key points about it, because they relate
10 to the questions that you asked. First, are these
11 kids just experimenting and not becoming addicted?
12 That's one of the arguments you're going to hear. The
13 number is now irrefutable. The National Youth
14 Tobacco Survey showed that 27 percent of the kids
15 using these products today use them on 20 days or
16 more. That's a level of addiction as severe as we
17 see among cigarette smoking. Any argument that these
18 kids were just moving on has been blown away by the
19 new 2018 data. Second, these products are not
20 replacing e-cigarettes. There's now about 10 studies
21 that show that the kids who are using these products
22 are the kids who would not have smoked. That's why
23 the chart you saw here is in fact emblematic of what
24 we've been seeing. It is also the conclusion of both
25 the Surgeon General and the Commissioner of the Food

1 and Drug Administration that that is the case.
2
3 Three, you asked about what does it mean for future
4 cigarette use? The Surgeon General, the National
5 Academy of Sciences and the Food and Drug
6 Administration have all concluded that the studies
7 show clearly now that kids who use e-cigarettes are
8 more likely to go on to use cigarette smoking. Do we
9 know the long-term impact of that? No, but we do
10 know is that study after study shows that e-cigarette
11 use leads to greater cigarette use. And four, the
12 other question that you asked pointedly, and that is
13 while there are a lot of anecdotes, and there are a
14 lot of individual who clearly have quit smoking using
15 e-cigarettes, the scientific data is inadequate to
16 conclude that it is an effective tool for helping
17 smokers quit. Most recently the National Academy of
18 Sciences looked at the issue and found that it was
19 limited and inconclusive. Since that time there's
20 been three additional studies in the United States
21 that have raised questions about the efficacy of
22 that. In the absence of FDA reviewing those
23 products, the answer is we simply don't know and we
24 have reason to be concerned. Let me move on to
25 menthol cigarettes if I can quickly, because is-- no,

1 let me first go back to the issue of flavors. It is
2 flavors that is driving this issue. Eight out of ten
3 kids who use e-cigarettes say not only that they use
4 flavored e-cigarettes, but they use them because of
5 the flavors. If we want to stop the scourge of e-
6 cigarette use among kids, we have to get rid of the
7 flavors, and we have to understand, these flavors
8 haven't been introduced with scientific evidence in
9 advance that they help individual smokers quit.
10 There are literally over 15,000 flavors available in
11 e-cigarette use today. They're introduced because
12 they think they'll appeal to a market, and we know
13 who that market is. Now, let me do menthol
14 cigarettes, because I don't think there is any single
15 action that one could take that would help reduce the
16 death and disease of tobacco among New York citizens
17 more rapidly than the action that is taken-- is being
18 proposed with regard to menthol cigarettes. And this
19 is one of those rare bills that is both a public
20 health issue and a matter of social justice. You
21 correctly raised the issue. What we have seen is for
22 decades the tobacco industry has targeted our youth
23 and the African-American community like a laser beam,
24 and the consequences to the community have been
25

1
2 devastating. Make no mistake, there is nothing
3 inevitable that African-American will smoke menthol
4 cigarettes. If you actually look at the data, and
5 I've got a chart in my testimony for you. In the
6 early 1950s only five percent of African-American who
7 smoke, smoke menthol. It was exactly at that time
8 that tobacco industry documents show that they saw
9 that as an opportunity and targeted the community.
10 Between the early 1950s and 1968 that number went
11 from five to 14 percent. Laurel Ard [sic] and the
12 other big tobacco companies said there is an enormous
13 opportunity here. They have succeeded and taken that
14 14 percent and moving it up to over 80 percent. The
15 consequences for the community are unbelievably
16 devastating. African-American suffer from lung
17 cancer rates at higher than national average,
18 cardiovascular disease rates at higher than the
19 national average, life expectancy rates at lower than
20 the national average. Cigarette smoking is one of
21 the major causes of health disparities and health
22 inequity in this country, and it is because the
23 tobacco industry has targeted this community, not
24 because of anything else related to the community.
25 There's also a scientific explanation for it. The

1 data now shows clearly that menthol increases the
2 intensity of the addiction and therefore makes it
3 harder to quit. So data in the African-American
4 community shows that African-American smokers try to
5 quit at rates that are actually higher than
6 Caucasians, but because of the power of menthol, they
7 succeed at lower rates. And if you want to talk
8 about kids, you can't talk about kids and menthol in
9 the same breath without realizing the impact. Over
10 50 percent of all kids who smoke in this country use
11 menthol. Among African-American the figure is 70
12 percent. It is the gateway to long-term addiction
13 and death and disease from tobacco. Eliminating
14 menthol cigarettes is probably the single most
15 effective thing that one can do to reduce health
16 disparities among that community and to assist that
17 community to make the smart decisions the right way.
18 New York City is the perfect place to do it, because
19 as you heard you do not criminalize, you do not
20 penalize possession of the product. This is an
21 action that can be taken without regard to any of the
22 so-called unintended consequences that we have seen
23 before. This issue was raised in both San Francisco
24 and Oakland. They considered similar legislation and
25

1
2 it has passed similar legislation. And as you heard
3 from your sheriff, the police in those cases said
4 very clearly, given our laws and given how we
5 implement those laws, we don't see any likelihood
6 that that will result in "unintended law enforcement
7 issues with regard to that community, and we haven't
8 seen any yet." So, let me say to you, you are
9 considering two bills that have the potential to
10 reverse the greatest threat we have seen to our long-
11 term progress in reducing tobacco use among our kids
12 and at tackling one of the most serious public health
13 problems facing the African-American community today.
14 We look forward to working with you to help pass this
15 bill, and equally important in the implementation
16 phase of that bill to make sure that the consequences
17 you see are achieved. Thank you.

18 CHAIRPERSON LEVINE: Thank you, Mr.
19 Myers. Thank you for coming all the way from D.C.
20 and for your leadership in this important campaign.
21 Please, take it away.

22 LORRAINE BRAITHEWAITE-HARTE: Good
23 afternoon Chairman Levine and other members of the
24 committee. First, I want to thank you for the
25 opportunity to testify before you this afternoon in

1 strong support of Intro 1345, an ordinance that would
2 restrict the sale of menthol, mint, and wintergreen
3 flavored tobacco products to tobacco bars in New York
4 City. In 2009, when the Council first restricted the
5 sale of flavored tobacco products in New York City,
6 it included an exemption from menthol flavored
7 products. As you know, the tobacco industry has long
8 targeted its marketing in menthol products to youth,
9 especially African-American youth in the city, and
10 more broadly to African-Americans overall with
11 devastating consequences. The time has come to end
12 this blight for the New York City Council to protect
13 all of our children from these insidious products. My
14 name is Lorraine Brathwaite-Harte. I am the Health
15 Chairman for the New York State NAACP, and I am
16 speaking today on behalf of Doctor Hazel N. Dukes,
17 President of the New York State NAACP and a member of
18 the NAACP National Board of Directors. The mission
19 of the NAACP is to ensure that political,
20 educational, social, and economic equality of rights
21 for all persons and to eliminate race-based
22 discrimination. That includes working to make sure
23 that we address health-related disparities, including
24 those arising from tobacco use and that we optimize
25

1 health for all. The evidence shows that for decades
2 the tobacco industry has intentionally and
3 successfully marketed menthol cigarettes to African-
4 American and particularly African-American youth and
5 women as replacement smokers. This targeted
6 marketing has worked all too well. In the mid-1960s,
7 less than 20 percent of African-American who smoked
8 used menthol cigarettes. Today, as a result of the
9 targeted marketing of the tobacco industry, the
10 figure is well above 80 percent. The net result is
11 that our community suffers from the consequences of
12 tobacco-related diseases and at rates that are far
13 above what should be accepted. Menthol cigarettes
14 both contribute to youth tobacco initiation and makes
15 it harder for smokers to quit successfully. Research
16 shows that menthol smokers have a harder time
17 quitting smoking than smokers of non-menthol
18 cigarettes, and that tobacco use a major contributor
19 of heart disease, cancer, and stroke, three leading
20 causes of death among African-Americans. In 2016,
21 this harsh reality lead the national of NAACP to
22 adopt a unanimous resolution supporting state and
23 local policy efforts to restrict the sale of menthol
24 cigarettes and other flavored tobaccos. The
25

1 continued sale of menthol cigarettes in the city has
2 been harmful to all youth in the city, especially
3 African-American. Menthol in cigarettes makes it
4 easier to start smoking by masking the harshness of
5 tobacco smoke. As a result, more than half of all
6 youth smokers' ages 12 to 17 smoke menthol cigarettes
7 compared to less than one-third of smokers ages 35
8 and older. Among African-American youth, the
9 prevalence is even higher. Seven out of 10 African-
10 American youth smokers smoke menthol cigarettes. In
11 order to end the disproportionate impact of these
12 products on African-American youth and to protect all
13 children equally from flavored tobacco. We strongly
14 urge you to adopt Intro 1345 to apply the same
15 restrictions to menthol cigarettes that are applied
16 to other flavored tobacco products. We also
17 encourage this committee to amend 1362, a proposed
18 ordinance that would prohibit the sale of flavored e-
19 cigarettes throughout New York City to include mint
20 and menthol-flavored vapor products on the list of
21 prohibited items. These flavored products also
22 appeal to children. Data from the 2018 National
23 Youth Tobacco Survey showed that 52 percent of all
24 youth who use e-cigarettes use mint or menthol e-
25

1
2 cigarettes. Intro 1345 will protect the health of
3 African-Americans in New York City, reduce the number
4 of youth who smoke, and reduce the deleterious impact
5 of menthol smoking and tobacco use overall on
6 Americans' health. By doing so, it will reduce
7 tobacco-related health disparity, a critical public
8 health goal. Intro 1362, if amended, to include mint
9 and menthol flavors will similarly work to prevent
10 our children from becoming addicted to flavored e-
11 cigarettes. We urge the Council to approve both
12 measures to fully protect all New York City children
13 and the African-American community from these deadly
14 products. The leadership of the NAACP welcomes any
15 questions you might have on the Association's
16 position and looks forward to working with you to
17 pass and implement these policies.

18 CHAIRPERSON LEVINE: Thank you very much,
19 Madam Chair--

20 LORRAINE BRAITHWAITE-HARTE: [interposing]
21 You're welcome.

22 CHAIRPERSON LEVINE: for your testimony
23 and your leadership. Please, sir?

24 BILL SHERMAN: Thank you, Chairman
25 Levine, Council Member Powers, appreciate the

1
2 opportunity to be here today. My name is Bill
3 Sherman. I'm the Managing Director of the American
4 Cancer Society Cancer Action Network. We are the
5 nonprofit, nonpartisan, policy advocacy organization
6 of the American Cancer Society. But I'm also here as
7 a dad and as a son who has seen his father pass away
8 from lung cancer at the age of 58. I have three
9 daughters in school. I'm also a high school track
10 coach. Every single day I see the impact that
11 electronic cigarettes are having on our youth. In
12 fact, my daughters are not able to go to the bathroom
13 during the day because the Administration locks
14 bathroom doors because the issue has become so
15 prevalent in their school, unless there is a security
16 officer there to monitor the use of the bathrooms.
17 So, as you know, the stakes are high. Before I share
18 some additional statistics, I also-- Chairman, you
19 had mentioned the leadership shown in this city by
20 this council and by the Administration over a number
21 of years. I have a national view working for a
22 national organization of the impact New York City has
23 on health and protecting people's lives from across
24 the country. I cannot emphasize enough the
25 importance that this New York City Council and these

1 two bills have on the impact nationwide. The stakes
2 are indeed very high. And as a life-long New Yorker
3 I'm proud of that. So we are pleased to speak in
4 support of Intro 1345 and 1362. Every year in New
5 York City over 40,000 people are diagnosed with
6 cancer. Even though US cancer death rates have
7 decreased by 26 percent from between 1991 to 2015, as
8 we've heard here today, not all Americans and
9 certainly not all New Yorkers have benefited equally
10 from the advances in prevention, early detection, and
11 treatments that have helped achieve these historic
12 rates. Significant differences persist in cancer
13 incidence, survival, morbidity, and mortality among
14 specific populations in the United States. Lung and
15 bronchus cancer is the single largest cause of cancer
16 death in New York City. We continue to see
17 disparities by gender, race, ethnicity, and socio-
18 economic status. We feel this is unjust. Each year,
19 more than 12,000 people in New York City die from
20 illnesses related to tobacco use. The impact of
21 tobacco use is far from just that health impact which
22 is significant. The annual healthcare costs in New
23 York State alone directly caused by smoking are in
24 excess of 10.4 billion dollars in New York State
25

1
2 alone. Last year this council and the Administration
3 supported significant measures to reduce smoking, and
4 we're proud to have been part of that, all of us are.
5 We've also heard that in 2009 significant progress
6 was made early on in the fight against tobacco.
7 However, the federal and city laws exempted menthol,
8 mint, wintergreen flavors, and flavored electronic
9 cigarettes. So why does this matter? We've heard
10 already that the high school incidence rate and use
11 of e-cigarettes is at an all-time high, an increase
12 by 78 percent. Regarding flavors, the CDC reports
13 that a full 68 percent of high school students who
14 are using e-cigarettes use flavored e-cigarette
15 products. To give you tangible number, the 48
16 percent increase and the 78 percent increase in youth
17 usage in middle school and high school, that equates
18 to over 3.5 million kids use e-cigarettes in 2018.
19 In addition, flavors are frequently listed as one of
20 the top three reasons why children begin using
21 electronic cigarettes. I want to address the FDA in
22 issue with regard to cessation. The electronic
23 cigarettes have been out for quite some time.
24 There's been a lot of talk about the potential for
25 them for cessation. There's a reason that not one e-

1
2 cigarette manufacturer that we are aware of or
3 tobacco company has applied to the FDA for these
4 products to be cessation devices, because they know
5 that this will not pass the muster that's required.
6 They do not have the data to back up their claims for
7 cessation. If they did, they would have applied.

8 CHAIRPERSON LEVINE: And just briefly,
9 why is that gum and patch have managed to meet those
10 standards, not e-cigarettes?

11 BILL SHERMAN: There is significant
12 research done before that and the producers of those
13 devices and of those products had scientific evidence
14 to support their cessation claims. There is-- again,
15 e-cigarettes have been around for a long time. We're
16 now starting to see the huge impact and the growth
17 among youth, but they've been around a long time, and
18 certainly if a company had data that supported their
19 cessation claims for sure, because of financial
20 impact on that company, they would go to FDA and
21 start that process, and they have not. They've not
22 even applied to our knowledge. So we strongly
23 recommend implementing evidence-based policies to
24 prevent the initiation and use of all tobacco
25 products, and we also agree that these electronic

1 cigarettes, particularly flavored, are gateway
2 products. Let me mention regarding menthol and mint.
3 It's troubling because as we heard just earlier that
4 the truth about menthol flavors is a chemical
5 compound creates a cooling effect. It reduces the
6 harshness of cigarette smoke and suppresses coughing.
7 This makes it more appealing to young, inexperienced
8 smokers. Research also shows that menthol flavor is
9 likely to addict youth and makes it more difficult
10 for adults to quit. We've already heard of that.
11 There is no evidence that shows that menthol is safer
12 than any other tobacco products. This myth has been
13 perpetuated for decades by the tobacco industry. In
14 fact, there's research that comes to our attention
15 that it's estimated if there was a nationwide ban on
16 menthol, more than 320,000 deaths would be averted by
17 2050. About-- out of those 320,000, almost one-third
18 of them would be African-American lives saved. So,
19 we've heard about the disparities in menthol use
20 among ethnicities. Let me also share some statistics
21 regarding where they're used. In menthol, in the
22 Bronx, people who use menthol or who smoke, 74
23 percent of people in the Bronx smoke menthol. In
24 Manhattan, by comparison, 36 percent use menthol.
25

1
2 Some 58 percent of New Yorkers at the lowest economic
3 level, income level, smoke menthol cigarettes, while
4 the New Yorkers at the highest level smoke menthol
5 only at about 30 percent. The disparity is massive.
6 And I'll also highlight that non-Hispanic black males
7 have the highest cancer incident and mortality rates
8 compared to all other racial and ethnic groups. It is
9 time to take a stand and pass both of these bills. We
10 are in strongly support of that. Thank you.

11 CHAIRPERSON LEVINE: Thank you very much,
12 Mr. Sherman. We appreciate your powerful testimony,
13 and I'm sorry for the loss that you referred to of
14 your father. Thank you for turning that tragedy into
15 positive activism. We appreciate that. We want to
16 hear from everybody. I want to remind folks we have
17 a long list of witnesses if you could just bear that
18 in mind in delivering your testimony. Thank you.

19 MICHAEL SEILBACK: Sure. Thank you. My
20 name is Michael Seilback, and I'm the National
21 Assistant Vice President for State Public Policy for
22 the American Lung Association. On behalf the Lung
23 Association we're pleased to speak today in support
24 of Intros 1345 and 1362, assuming the edits get made
25 that will ensure their comprehensive nature. You've

1
2 heard a lot of statistics, and I'll try not to repeat
3 any of the ones from my colleagues. You have my
4 testimony for the record, but it's really important
5 that if we're going to have continued progress in
6 reducing both cigarette smoking and other tobacco
7 product use, we need bold and swift action on the
8 part of our federal, state and local government, but
9 we cannot sit here and wait for potential action from
10 our partners on the state and federal level. It's
11 imperative that the city acts now. Waiting for other
12 levels of government to act may lead to not only
13 another generation of New Yorkers addicted to tobacco
14 products, but ultimately will lead to more tobacco-
15 caused death and disease. With regard to the bills
16 being considered today, the Lung Association urges
17 the Council to move forward and pass both proposed
18 laws which prohibit the sales of all flavored e-
19 cigarettes and expand New York City's current
20 flavored tobacco product restrictions to apply to
21 menthol and wintergreen. Each day of delay benefits
22 the purveyors of these products who continue to prey
23 on our nation's children. As you heard the 2018
24 National Youth Tobacco Survey which was released in
25 November found that over 50 percent of high school

1 students that use e-cigarettes are using mint and
2 menthol flavors. We recognize that all tobacco
3 users-- that almost all tobacco users begin their use
4 during their adolescence or young adulthood, and
5 tobacco companies spend billions of dollars marketing
6 their products making them more attractive to young
7 people. It's well-established that flavors are
8 attractive to children and young people. The
9 industry's decade's long conspiracy to deceive the
10 public includes many documents that demonstrate the
11 industry's understanding of the unique role that
12 flavors play in tobacco use initiation. We saw with
13 the recent advent of Juul that it quickly became the
14 most commonly used e-cigarette product through the
15 sale of their cool, mango, fruit, crème, and cucumber
16 flavors. Other e-cigarette brands selling flavors
17 like gummy bear, atomic fireball, captain crunch, and
18 a wide variety of other fruit candy and sweet flavors
19 are appealing to our youth. The American Lung
20 Association strongly supports menthol cigarettes
21 being removed from the marketplace and has been
22 calling on such action since 2011. We testified back
23 in April of 2013 in a formal citizen petition to the
24 FDA where we referenced FDA's own Tobacco Product
25

1
2 Scientific Advisory Council which concluded menthol
3 cigarettes have an adverse impact on public health in
4 the United States. Mental cigarettes-- menthol
5 cigarettes offer no public health benefit. Menthol
6 cigarettes increase the likelihood of addiction and
7 the degree of addiction in youth smokers. Menthol
8 cigarettes does not affect everyone equally. Use of
9 menthol cigarettes is more common among youth, female
10 smokers, LGBT smokers, those with mental illness and
11 racial and ethnic minorities, especially African-
12 American. And that's not by chance. The sale and
13 marketing of menthol cigarettes disproportionately
14 burdens the African-American community as a result of
15 decades of targeted marketing, as you've heard today.
16 New York City, as we know, has led the way when it
17 comes to fighting the scourge of tobacco use. It's
18 imperative that the City steps up once again to fight
19 the use of flavored tobacco and e-cigarette use in
20 our city. The American Lung Association strongly
21 supports these efforts and urges the Council to
22 quickly act to pass these bills.

23 CHAIRPERSON LEVINE: Thank you, Michael.

24 Robin?

25

1
2 ROBIN VITALE: Good afternoon, Chair, and
3 thank you so much for the opportunity. My name is
4 Robin Vitale. I serve as Vice President of Health
5 Strategies for the American Heart Association here in
6 New York City, and out of deference to the experts
7 that have testified before me, I will be very brief.
8 My testimony is in front of you. It, I think,
9 reiterates many of the points that have already been
10 mentioned. I do want to draw your attention to some
11 specific research done by the American Heart
12 Association's Tobacco Regulation and Addiction
13 Center. Their studies have shown that 30 percent of
14 teenage users said e-cigarettes taste better, have a
15 bolder flavor and have a less burnt taste than other
16 tobacco products, and 42 percent said the ability to
17 try many flavors sets e-cigarettes apart from other
18 tobacco products. I think that speaks volumes to the
19 motivation behind your bill, Chair, and I think with
20 the addition of making sure that it is comprehensive
21 in nature, making sure that all flavors, including
22 mint, menthol, and wintergreen are included. It will
23 be a tremendous step forward in that particular
24 cause. I'm not going to reiterate again the focus
25 around menthol cigarettes, but I do share the

1
2 perspective of all the colleagues that have spoken
3 before me. As a national organization, this has been
4 a top priority for the American Heart Association for
5 numerous years. We were regretful that we were not
6 able to include it in the initial bans, and certainly
7 look forward to the City's efforts to address this
8 very concerning addiction. And to that point, in
9 your purview as Chair of the Health Committee, one
10 could argue there are very few other more impactful
11 measures that you could prioritize than the ban of
12 menthol tobacco in this city. We encourage you to
13 take that responsibility very seriously, move very
14 quickly on this proposal, and we look forward to work
15 with you.

16 CHAIRPERSON LEVINE: Thank you, Robin for
17 your activism and leadership in this and so many
18 other areas, and I do want to clarify that we're
19 working on some revisions to the language of Intro
20 1362 that would clarify that some of the flavors you
21 mentioned, e-cigarette flavors like wintergreen would
22 also be covered by the ban. That's the intention.
23 Okay. Thank you to this outstanding panel. Thank
24 you so much. We're going to go next to our next panel
25 which will be Deidre Sully from Public Health

1
2 Solutions, the Reverend Jesse Brown, Junior from the
3 African-American Tobacco Control Leadership Council,
4 Kara Stephenson Valley [sp?] from the National Action
5 Network, and Commissioner Jiles Chip from the
6 National Organization of Black Law Enforcement. Thank
7 you and welcome. Would you like to lead us off? Can
8 you make sure your microphone is on? There's a
9 button right at the bottom.

10 DEIDRE SULLY: Good afternoon and thank
11 you Council Member Levine and members of the Health
12 Committee for the invitation to comment on these two
13 bills. My name is Deidre Sully and I'm the Director
14 of Public Health Solutions NYC Smoke-Free Program.
15 For more than 20 years NYC Smoke-Free has worked to
16 protect the health of New Yorkers through tobacco
17 control policy, advocacy, and education. We partner
18 with community members, legislators, and health
19 advocates to support local efforts to end the
20 devastating tobacco epidemic throughout New York
21 City. I am here today in support of these two bills
22 that have been introduced and will address the public
23 health concern for marginalized communities and
24 subgroups. It's no secret that in the 15 years since
25 the implementation of the Smoke-Free Air Act, New

1
2 York City has seen great success in tobacco control
3 and cessation. However, some populations and
4 communities have not reaped the benefits of these
5 policies put in place to optimize public health. The
6 use of menthol cigarettes has remained significantly
7 disproportionate among smokers. The cooling effect
8 of menthol flavoring masks the harsh taste and
9 strength of tobacco triggering deeper and longer
10 inhalation and increased addiction. Menthol is the
11 flavor that initiates and then creates lifelong
12 customers. Youth smokers are the age group most
13 likely to use menthol. It is especially appealing
14 for them as they-- sorry. It is especially appealing
15 for young smokers, making initiation easier and
16 cementing addiction quicker. African-American
17 smokers in particular have been left far behind the
18 curve as the national average of menthol use rate
19 among that population is a staggering 85 percent.
20 The number is similar here in New York City. This
21 pervasive marketing of menthol to marginalized
22 communities is well-documented. For decades the
23 tobacco industry has employed predatory and
24 aggressive marketing campaigns to target marginalized
25 populations, ensuring a constant supply of customers.

1
2 There is no regard for health, only profit. Intro
3 1345 will address significant tobacco use disparities
4 that exist among smokers in New York City. Other
5 jurisdictions have done this, so we are not alone in
6 these efforts. The inclusion of menthol as a
7 prohibited flavor closes a decade-old gap that has
8 for far too long created space for increased health
9 equities. We're here also today to talk about
10 flavors. Flavor additives have always been an
11 important tactic for the tobacco industry. It is only
12 natural to provide flavor options to their newest
13 products, electronic nicotine delivery systems, your
14 e-cigs and your vaping products. This is not by
15 accident. E-cigarettes and other vaping products are
16 branded and marketed to appeal to a younger target
17 market using the same practices from the days of Joe
18 Camel and the Marlboro Man. E-cigarette and tobacco
19 company tactics include savvy media placements with
20 celebrity endorsements and from what we know now, fun
21 product designs that resemble toys, i.e. the Juul,
22 and enticing flavors that include menthol, mint,
23 wintergreen, candy apple, cherry, and many others.
24 Additionally, the use of e-cigarettes and other
25 similar vaporizing products is strongly linked to the

1
2 use of other tobacco products, including cigarettes,
3 cigars, hookah, and smokeless tobacco, especially
4 among youth. We have achieved great success in the
5 years since the Smoke-Free Air Act, however we must
6 be vigilant about keeping up with the tobacco
7 industry's ever morphing predatory practices to
8 maintain their profit. As a public health advocate
9 in the tobacco control industry, I know how difficult
10 it is when your opposition seems to have bottomless
11 pockets. It's a constant battle to stay up-to-date
12 with the new ways Big Tobacco tries to hook
13 customers. This includes their move to e-cigarettes,
14 dispensing millions of dollars to specifically market
15 and appeal to youth using flavors as a tactic. We
16 must continue to thwart their efforts and prohibit
17 any attempt to repeat history or normalize any form
18 of addiction. Thank you.

19 CHAIRPERSON LEVINE: Thank you. And I
20 just want to pause and acknowledge we've been joined
21 by a fellow member of the Health Committee, Council
22 Member Inez Barron from Brooklyn. Please, sir?

23 REVEREND JESSE BROWN: I hear the hum so
24 I'm going to change my microphone.

25 CHAIRPERSON LEVINE: Yes, thank you.

1
2 REVEREND JESSE BROWN: I'm Reverend Jesse
3 Brown. I'm part of the African-American Tobacco
4 Control Leadership Council. We work nationwide to
5 ban menthol in all jurisdictions everywhere and we
6 provide assistance to communities in various ways to
7 see that that happens. The African-American Tobacco
8 Control Council strongly encourages New York City
9 Council to restrict the sale of menthol and all
10 flavored products, including flavored e-juices
11 citywide in New York City. We already know that 80
12 percent of youth 12 to 17 start smoking using
13 flavored cigarettes. If the City Council truly wants
14 a healthier New York City, and we believe you do,
15 then it is imperative that the sale of menthol in all
16 flavored tobacco products be restricted and predatory
17 marketing of these products be realized as a social
18 injustice issue, an issue that disproportionately
19 impacts young people, poor communities, marginalize
20 groups and communities of color. Menthol and
21 flavored tobacco products are driving tobacco-caused
22 deaths and disease nationwide, while the use of non-
23 flavored tobacco cigarettes has been decreasing, the
24 use of menthol cigarettes is on the rise among young
25 people, among the youth, and adults, among Latinos,

1
2 blacks, and whites. Let's be clear, the majority of
3 women smokers smoke menthol cigarettes. Folks from
4 the LGBT community disproportionately smoke these
5 products. Forty percent of Latino smokers prefer
6 menthol cigarettes. Sixty-two percent of Puerto
7 Rican smokers using menthol. Nearly 80 percent of
8 native Hawaiians, a majority of Latinos, and a
9 majority of smokers with behavioral health issues
10 smoke menthol cigarettes. Frankly, most marginalized
11 groups disproportionately use minty products.
12 Moreover, 85 percent of African-American adult
13 smokers and 94 percent of black youth who smoke use
14 menthol products. These striking statistics arise
15 from the predatory marketing of these products in the
16 black community where there are more advertising,
17 more lucrative promotions and cheaper prices for
18 menthol cigarettes compared to other communities.
19 The City Council should be aware that menthol, as if
20 to add insult to injury, masked the harsh taste of
21 tobacco and allows for deeper inhalation of toxins
22 and greater amounts of nicotine. Moreover, the
23 presence of menthol made cigarettes harder to quit
24 compared to other cigarettes. The cool, refreshing
25 taste of menthol heralded by the tobacco industry is

1 just a guise. Ultimately, menthol allows the poisons
2 in cigarettes and cigarillos to go down into the body
3 more easily. We have been reading in the papers
4 about Juul, the Juul explosion, where a little thumb
5 drive-looking device is used more than regular
6 cigarettes among youth, and one of the major drivers
7 of this massive undertake of e-cigarette among youth
8 is the fact that there are over 15,000 kids friendly-
9 - 15,000 kids using or part of the marketplace. The
10 vapist community would like you to believe that
11 aerosol inhaled by e-cigarettes users is only water
12 vapor. Nothing could be further from the truth.
13 Here are some facts: E-cigarettes are tobacco
14 products that deliver nicotine, an addictive
15 substance that especially in youth can compromise a
16 brain's executive functioning. There is as many if
17 not more metals in vape or e-cigarettes. There are a
18 number of other facts that I could present, but many
19 of those have already been presented here today, and
20 I don't want to prolong this hearing any long than it
21 has to go. So let me say this, that the African-
22 American Tobacco Control Leadership Council is
23 calling on New York City Council to join a growing
24 number of cities and counties around the country that
25

1
2 are restricting jurisdiction-wide the sale of menthol
3 cigarettes of all other-- and all other flavored
4 cigarettes including these e-juices. In June 2018,
5 San Francisco voters passed the first-ever citywide
6 restriction on the sales of all flavored tobacco
7 products including menthol cigarettes and flavored e-
8 juices. The strong flavor ban law was rapidly
9 replicated in the city of Richmond, California.
10 Within weeks Beverly Hills followed with their own
11 citywide restrictions. Since November, the county of
12 Marin and the cities of Alameda, Santa Cruz, San
13 Pablo, and others in California-- other cities in
14 California and in Massachusetts all passed citywide
15 menthol restrictions. Indeed the Food and Drug
16 Administration announced that it was contemplating
17 initiating a process to remove menthol from
18 combustible cigarettes and flavors out of little
19 cigars. However, Governor Cuomo, after not
20 identifying menthol to be regulated, has mentioned
21 the need to regulate certain flavors in tobacco
22 products. And I quote: "The budget will include a
23 proposal to provide the Department of Health the
24 authority to ban the sale of certain flavored liquids
25 that target youth use of e-cigarettes." Frankly, it

1
2 would be a game-changer not only for the health of
3 New York City residents, but it would be a clarion
4 call nationwide to get menthol and flavors out of
5 tobacco products. These laws that are passed should
6 also include money for cessation services to
7 accompany the policies being implemented. We--

8 CHAIRPERSON LEVINE: [interposing] And
9 Reverend Brown, I don't want to cut you off, but only
10 because we have so many people waiting to testify.
11 If you could try and wrap up.

12 REVEREND JESSE BROWN: I will do. I'm
13 doing just that.

14 CHAIRPERSON LEVINE: Thank you.

15 REVEREND JESSE BROWN: We here at the
16 African-American Tobacco Leadership recognize the
17 City Council is under extraordinary pressure from the
18 tobacco industry and the vapist community to put
19 profits above human life by not including menthol in
20 its cities' existing flavor restrictions. So, please
21 join the cities that have already done this around
22 the country and stand up to the tobacco industry and
23 their allies, and we call on no selling of menthol
24 cigarettes and all other flavored tobacco products
25

1 including flavored e-juices citywide in New York
2 City. I hope this is the time we say no.

3
4 CHAIRPERSON LEVINE: Thank you, sir.

5 REVEREND JESSE BROWN: Thank you.

6 CHAIRPERSON LEVINE: Ms. Stevenson?

7 KYRA STEPHENSON-VALLEY: Hi, good
8 afternoon. My name is Kyra Stephenson-Valley, and I
9 work at National Action Network. I'm the Cessation
10 Coordinator. National Action Network is a national
11 civil rights organization founded in 1991 by the
12 Reverend Al Sharpton. Since our founding, man has
13 continued to carry the mantle of Doctor Martin Luther
14 King, Junior in his commitment to non-violent social
15 change. We are an organization that used non-violent
16 direct action to fight for the oppressed and
17 forgotten. Our commitment to one standard of justice
18 and decency for all is why today I am urging the New
19 York City Council to consider the unintended
20 consequences of a ban on menthol cigarettes as
21 proposed in Intro. 1345. Over 80 percent of African-
22 American who choose to smoke prefer menthol
23 cigarettes. Thus any consideration of a possible ban
24 on menthol cigarettes will principally affect
25 African-American smokers. We stand with groups like

1 the Drug Policy Alliance, the Law Enforcement Action
2 Partnership, and the National Organization of Black
3 Law Enforcement Executives as well as NAN members
4 from our chapters across New York City who are in the
5 room today in demanding that any conversation about
6 prohibiting menthol cigarettes includes a candid
7 discussion about racial disparities and selective
8 prosecution in communities of color. First, allow me
9 to start by saying that National Action Network does
10 not want people to smoke. We don't want youth to
11 smoke, and we want to try to help people who want to
12 quit smoking quit. We know that black smokers are
13 more likely to die prematurely from tobacco-related
14 diseases and are statistically less successful in
15 attempts to quit than smokers of other racial
16 backgrounds for a plethora of reasons. At NAN, I
17 lead our national cessation program. We are actually
18 the only civil rights organization operating
19 nationally that has a national cessation department
20 through which we are training our chapters across the
21 nation to educate our youth about the dangers of
22 smoking and the importance of deciding to be tobacco-
23 free. We're offering resources and support for
24 smokers who want to quit smoking. The conversations
25

1
2 around the menthol ban often suggests that the
3 legislation will help adult black smokers stop
4 smoking. We appreciate those within the public health
5 community to protect the health and well-being of the
6 black community. However, even policy with the best
7 intentions can be vulnerable to unintended
8 consequences. Here in New York we find ourselves in
9 a precarious position. On one hand we're supporting
10 the legalization of marijuana to overturn a
11 prohibition that has had a disparate impact on
12 African-Americans. Just a few months ago my
13 colleague testified in front of the New York State
14 Assembly to ensure that any legislation to legalize
15 marijuana will include provision for people who were
16 disproportionately arrested due to targeted policing.
17 Almost concurrently I sit here before you today
18 because New York City is considering implementing a
19 ban on menthol cigarettes without careful
20 consideration of the potential effects on the very
21 same population. How do we reconcile these two
22 opposing realities? How do we achieve progress if we
23 ignore the lessons we learned from bad policy?
24 Recent history has shown us the disparate impact of
25 bans and prohibitions on the African-American

1
2 community. It is proven that increased regulation
3 does not necessarily stop users from consuming
4 addictive products, but rather criminalizes addicts
5 without resource. History has shown us that bans and
6 prohibitions can often lead to an increase in
7 negative interactions between law enforcement and
8 African-Americans. History has shown us that here in
9 New York City law enforcement can take your life over
10 something as trivial as a loose cigarette. Before
11 taking any further action on menthol, I urge the
12 Health Committee to do more to investigate the
13 consequences of the proposed ban, especially on the
14 communities it aims to protect. I urge you today to
15 proactively review existing research, seek advice
16 from experts, and if necessary, commission the
17 studies required to make a fully-informed
18 determination on the best course of action to reduce
19 smoking in New York City. I invite you to work with
20 us to increase culturally relevant quit smoking
21 programs that are accessible for those who need them
22 most. With careful consideration to the consequences
23 of the proposed ban on menthol cigarettes, I hope
24 that we can avoid repetitions of policies like stop
25 and frisk that were specifically intended to protect

1
2 black New Yorkers, but instead only further engrained
3 systemic racism. Thank you for your time.

4 CHAIRPERSON LEVINE: Thank you, Ms.
5 Stephenson-Valley. Commissioner Ship?

6 JILES SHIP: Chairman Levine and
7 committee members, thank you for allowing us to give
8 testimony today. I also would request, respectfully
9 request to submit further information for your review
10 at a later date. I know how difficult it can be to
11 hear a lot of testimony throughout the day. I've
12 testified in Congressional hearings, State hearings,
13 and other municipal hearings, and so I'm going to
14 keep mine brief, and I'm also not going to read to
15 you from the testimony. I'm going to talk to you from
16 my practical experience of over 30 years in the law
17 enforcement field at a state and local level. First
18 and foremost I'm here today on behalf of our current
19 national president, Chief Vera Bumpers [sic] from
20 Houston, Texas. I'm here representing NOBLE, which
21 is an acronym for the National Organization of Black
22 Law Enforcement Executives. I'm proud to say when we
23 were formed in 1976 one of our founding members was
24 the first African-American Chief in New York City,
25 Chief Bill Bracy [sp?]. We are an organization of

1 federal, state, and local law enforcement officials
2 including members of ATF. We have 56 chapters
3 throughout the United States, the Caribbean, and the
4 UK. As much as we agree with the intent, the
5 proposed intent of the bill, we're very concerned
6 about that being misguided and that the outcomes will
7 be counterproductive, and I'm glad that the chart was
8 left up here. We feel that the way to really
9 approach this problem and be effective is through
10 education, not enforcement. If you look here at the
11 chart that the Health Commissioner left up here, I
12 will submit to you that that decrease was not because
13 of enforcement. That decrease was, I would guess,
14 was because of education, and you educate people on
15 these issues, that is the way to reduce the usage and
16 the consumption of these type of substances. And you
17 know, not only will the outcome be counterproductive,
18 a firm example-- we work now with NYU Law the Brennan
19 Center for Justice, and we currently now -- Law
20 Enforcement Leaders is the name of the group that we
21 are involved with there, and right now, we're working
22 trying to reverse what happened because of all the
23 laws that were put in place around marijuana. It had
24 devastating impact on communities of color. So many
25

1 families were torn apart. We're still trying to
2 reverse the incarceration rates of the so-called War
3 on Drugs, and we're working with that issue very
4 feverishly. What this would do as proposed, it would
5 create an underground economy, alright, and that
6 underground economy would manifest itself in the way
7 of criminality. We don't need to be incarcerating
8 more people. We need to be educating more people, and
9 I know a little bit about building cases. I worked
10 for a municipal police agency, New Jersey Attorney
11 General's office, and the way that we build cases, we
12 will take the smaller act and we'll-- we build a--
13 it's like building blocks. We find a person maybe
14 with a marijuana cigarette. Then we go to the person
15 who's selling maybe a kilo. Then we build it up and
16 we go to the kingpins. So, that will-- the way this
17 bill was written, it would create an opportunity for
18 law enforcement to use this as a pre-text to engage
19 someone that in other ways may not should have been
20 engaged, and we know those outcomes are not always
21 beneficial. We are working day and night to help try
22 to bridge the gap between the community and police,
23 and we think this effort will be counterproductive to
24 our efforts in that bank [sic]. I also wanted to
25

1 address the fact that-- you know, I heard testimony
2 early about the healthcare and the impact on African-
3 American, and true. There's a lot of reasons as
4 National Action Network stated the reason why
5 African-American males' lifespan is not as long as
6 others. So, it's not just because of cigarettes. I
7 mean, there are a lot of other factors that I don't
8 need to bore you with. But in conclusion, you know,
9 again, I would urge you to research the matter a
10 little further, because we do not need unnecessary
11 contact with people in the community who are not
12 committing crimes. I'd rather turn those resources
13 towards, you know, taking guns of the street and more
14 important matters versus-- I know myself, for me to
15 hire two police officers it's a quarter of a million
16 dollars, and I don't know how big the city's budget
17 is, but a quarter of a million dollars for two
18 people. then I don't know if somebody's even talked
19 to Commissioner O'Neill to see what the additional
20 cost would be for the enforcement effort, you know,
21 and that's just on a municipal level. That's not
22 even counting the additional cost on a state level,
23 but more importantly, it would be-- as I said
24 earlier, it would be counterproductive to the efforts
25

1
2 that we are trying to make now to rebuild strong
3 relationships between community members and the
4 police. Thank you for this time. And I'm also
5 available for any questions.

6 CHAIRPERSON LEVINE: Thank you,
7 Commissioner, and my colleague Council Member Powers
8 indeed has a question.

9 COUNCIL MEMBER POWERS: Thank you. And
10 I'm sorry, because I have to leave in a second. So I
11 wanted to just thank you all for your testimony. I
12 just wanted to raise that I think that the chart or
13 the numbers that are going down are really about more
14 than just the education. I just want to be on the
15 record. I think that, and I just-- respectfully, that
16 I think enforcement, I think, limiting access,
17 limiting glamorization and the idea that things are
18 cool or whatever in addition to the education around
19 the harms. All those things work together, and I
20 think education is very important to the-- all the
21 testimony we've heard today. Certainly,-- and the
22 questions I asked earlier really reflect my desire to
23 have more information about what are the harms, what
24 is the pathway from an e-cigarette to a harmful,
25 maybe potentially a more harmful product, and I think

1
2 we actually have to have a conversation about that
3 and educate folks about what is harmful and what is
4 not. I would say respectfully that I think education
5 itself here will fail if we don't-- if we don't-- if
6 we just leave it to education versus addressing ways
7 to limit access and ages and things like that. I
8 will take the comment very seriously, and I would say
9 to the Chair as well, which is communities that have
10 been harmed and have a long history here that you had
11 highlighted, I think we should certainly in both
12 bills be sensitive to how we enforce and who gets
13 enforcement, and how we make sure that anything we
14 pass does not have a negative consequence. So I will
15 take that comment back. I just want to be on the
16 record saying I think education on its own could be a
17 recipe for us being back here in some period of time
18 and realizing that those-- some numbers are going
19 back up that have come down in the past. I'm--

20 JILES SHIP: [interposing] No, I--

21 COUNCIL MEMBER POWERS: [interposing] You
22 certainly can respond.

23 JILES SHIP: I respectfully appreciate
24 your comments, and I also know based on my
25 experience, you know, if people want to get

1
2 something, they're going to find a way to get it,
3 okay? And usually it's going to be in an illicit
4 way. We can go back to the prohibition of alcohol,
5 you know. So, we really better pay a lot of
6 attention to, you know, educating people on these
7 issues versus so much effort on enforcement. You
8 know, and I understand the tax piece. We do that
9 well. We collect taxes in this country probably
10 better than any other. One of the things that we
11 don't need to do is ramp up enforcement especially in
12 a time like now when we're trying to strengthen
13 police community relationships.

14 COUNCIL MEMBER POWERS: I respect that. I
15 will say that makes an argument against gun control
16 as well, in my view. And I am in favor of gun
17 control. If you say that people would get it anyway,
18 but I do think it raises the point of what will be
19 access after we do something like this and whether we
20 are effectively limiting access or increasing
21 enforcement and not limiting the access. So, I will--
22 - I'm not-- also to have a follow-up conversation as
23 well.

24

25

1
2 JILES SHIP: I agree and I think the
3 enforcement side would be more beneficial on a
4 federal level versus on a municipal level.

5 COUNCIL MEMBER POWERS: Okay, thanks.

6 CHAIRPERSON LEVINE: Thank you very much
7 for another excellent panel. We appreciate you all
8 speaking out. The following panel is very special.
9 You will see why in a moment. We're going to start
10 with Meredith Burkman [sp?] from Parents Against
11 Vaping; Grant Furman, also from Parents Against
12 Vaping; Dorian Fuhrman from the same group; Yael
13 Mence [sp?] from the same group; Caleb Mence; Rebecca
14 Shalam [sp?]; Mimi Blubick [sp?]; Phillip Furman;
15 Dina Alessi [sp?], and Luke Alessi [sp?]. We will
16 get you extra chairs if we need it. Thank you for
17 squeezing in. Okay, who would like to lead us off?
18 And if you can make sure your microphone is on?

19 DORIAN FUHRMAN: Is that working? Okay.
20 Hi. My name is Dorian Fuhrman. I'm one of the three
21 Co-Founders of Parents Against Vaping E-cigarettes or
22 PAVE. We would like to thank the New York City
23 Council Health Committee and Councilman Levine for
24 proposing this very important proposal to ban
25 flavored e-cigarettes. My three co-founders and I

1
2 have nine kids between the three of us and six
3 different schools ages seven to 19 in New York. We
4 came together last year when we realized that some of
5 our kids and their friends were Juuling, using e-
6 cigarettes, and it was a growing trend in New York.
7 In fact, we are in the middle of what the FDA
8 Commissioner Scott Gottlieb and the Surgeon General
9 of the United States have both labeled a growing
10 epidemic of e-cigarette use among teenagers. I have
11 all the figures, but you've heard them about five
12 times already, so I won't go into every single
13 figure, but suffice it to say that most kids today
14 would have never picked up a cigarette with all the
15 anti-smoking education that had been done, and then
16 along came Juul, and with fruit flavors such as Fruit
17 Medley, with flavors like mint, crème brulee kids
18 were using them with no understanding of the
19 chemicals they were ingesting. Many of them thought
20 it harmless flavored water vapor. We've come to learn
21 from studies don't by Stanford University School of
22 Medicine that the flavors in these cigarettes prevent
23 children from perceiving danger and from
24 understanding that these products are addictive.
25 It's the flavors that hook the kids. In fact,

1
2 according to the Truth Initiative 63 percent of kids
3 survey did not know there was always nicotine in
4 their e-cigarettes, and yet there is still no proof
5 that flavors will help adults stop smoking regular
6 combustible cigarettes. New York City is in the
7 midst of this epidemic. As you will hear from some
8 of the teenagers and young people testifying today,
9 Juicing or vaping is rampant in New York City
10 schools. Kids as young as sixth grade are being
11 caught vaping. Other kids are worried to go into the
12 bathrooms because they don't want to be caught with
13 other kids who are vaping. A member of our PAVE
14 Advisory Board, Doctor Johnathan Avery [sp?] is the
15 Director of Addiction Psychiatry at Wyle [sic]
16 Cornell Medical College and the New York Presbyterian
17 Hospital, and he just created a nicotine addiction
18 program for the almost daily request they receive
19 from families whose kids are addicted to the nicotine
20 in the cigarettes. It's ironic that you have to be
21 18 to buy nicotine gum or patches, and that is very
22 strictly enforced, and yet everyone can seem to get
23 flavored e-cigarettes. New York is a leader. What
24 New York City does the state follows, and what the
25 state does, the country will take notice. Please

1
2 take a stand today. Prevention is key. Please pass
3 this bill and protect New York City kids from these
4 addictive flavored e-cigarettes. And now you'll hear
5 from the kids.

6 CHAIRPERSON LEVINE: Thank you.

7 CALEB MENCE: [off mic] My name is Caleb
8 Mence, and I'm here today with my mom and our
9 grassroots group called Parents Against Vaping and E-
10 cigarettes. In the beginning of the-- the first time
11 I saw Juul, I experimented with it as many of my
12 peers did, and I'd just like to let you guys know
13 that Juul has become so prevalent that I know all too
14 well the smell of mint Juul pods and mango Juul pods
15 in a way. Juul slang has become a universal language
16 amongst teens. Previously, when visiting a new town,
17 making conversations amongst kids consists of sports
18 and TV. Now I can reassure myself knowing that if I
19 say, "Do you have a Juul? Or do you have a pod?"
20 I've immediately connected with another kid. I
21 believe the extent of Juuling is far worse than many
22 believe. Previously, in regards to cigarettes, there
23 was a stigma associated with kids who smoked
24 cigarettes. These kids would often be characterized
25 as rebels, rule-breakers. I think Juul has become so

1
2 widespread that there is no specific group you can
3 pinpoint who Juuls. It is no longer a specific group
4 who Juuls, it is almost as if at least one teen from
5 every social group Juuls. There used to be-- with
6 Juul, the device looks slick and modern, and due to
7 the lack of combustibility, the stigma has been
8 removed. I recognized that my generation isn't a
9 priority. Preventing younger kids from Juuling is to
10 me the priority, and I can't help but feel as if my
11 generation is going to be defined as the generation
12 of damage control. Thank you.

13 CHAIRPERSON LEVINE: Thank you, Caleb,
14 and your generation certainly is my priority. That's
15 why we're here today, and thank you for speaking out
16 and being so eloquent. What would you estimate is
17 the number or the percentage of your peers at your
18 school who use e-cigarettes?

19 CALEB MENCE: So, I'd say it's hard to
20 get a percentage, but I'd say everywhere I look
21 there's, you know, at least one person from every
22 group, you know, who has a Juul or has Juuled. So,
23 it's fairly frequent.

24

25

1
2 CHAIRPERSON LEVINE: Could you say
3 anything about the role of flavors and how frequently
4 kids are using flavored e-cigarettes?

5 CALEB MENCE: I would definitely say that
6 without flavors such as cool mint or crème brule, a
7 lot of kids would not be enticed by flavors like
8 tobacco, or ethanol. I think the flavors definitely
9 played a part in drawing teenage customers.

10 CHAIRPERSON LEVINE: Okay. Can you say
11 anything about where it is that kids are getting e-
12 cigarettes in a city in which you have to be 21 to
13 buy in a store? Is it that stores aren't asking for
14 identification, or? If you don't feel comfortable
15 answering, you don't have to, sorry.

16 CALEB MENCE: I would say there-- I would
17 say a lot of people have older siblings who are, you
18 know, of age buy the Juul pods for them. Buying
19 online is actually fairly frequent amongst my peers,
20 I think. You know, you can go on eBay and they don't
21 require age verification, so it's pretty simple to do
22 on eBay. I would also say that not all stores, but
23 there are a small number of stores who will cater to
24 teens, teenage customers, but I think it's-- if I
25 want to have-- if I wanted to Juul by the end of

1
2 tonight I could probably have pods in my hand in an
3 hour or so.

4 CHAIRPERSON LEVINE: Wow. Well, that's
5 very frightening, but to have your voice sharing with
6 us the difficult reality is incredibly important.
7 Thank you, Caleb.

8 CALEB MENCE: Thanks.

9 CHAIRPERSON LEVINE: Thank you. Please?

10 YAEL MENCE: Hello. My name is Yael and
11 I'm 11 years old. My mom is the cofounder of PAVE,
12 but I want to make it clear that these are my words.
13 My parents didn't want me to speak today because I'm
14 younger, but I felt strongly I needed my voice to be
15 heard. I'm here today because I want to help keep
16 Juul and other flavored e-cigarettes away from me, my
17 friends, and other kids our age. I know kids only a
18 year older than me already sucked into the world of
19 Juul. I'm in sixth grade and am beginning to notice
20 people my age looking up to those who Juul in the
21 grade above us. I even see them hanging out with
22 Juulers in the bathroom or middle schoolers every
23 day. Not only are youth and teens being fooled, but
24 parents are too. I was once visiting a friend of my
25 brothers when I spotted a Juul charger that his mom

1 was convinced was a flash drive. I know how Juul
2 messages with your head. On my way home from school
3 every day I pass by bodegas that have a big sign
4 outside the door reading, "Juul sold here." Included
5 is a picture of a sleek, elegant-looking device, the
6 colors ranging from black to rose gold. If I didn't
7 know any better I'd want to have a rose gold one in
8 my bag too. The cool design and pretty colors draw
9 in youth. It's so easy to be fooled by Juul's tricks
10 such as the flavors that captivate your attention.
11 The flavor names make it sound like a candy that you
12 can enjoy as a treat to relax after a long day at
13 school. And there isn't any knowledge great enough
14 to stop someone from doing something that has a cool
15 connotation. If these flavors are banned, not only
16 will fewer youth and teens be drawn to vaping, but
17 they will also know that it is a problem for kids and
18 teens to use these devices. If you look at the name
19 of Juul flavors now versus before they were called
20 out for targeting youth, you will only see a
21 difference of a few words. Cool cucumber is now
22 cucumber. Crème Brulee is now Crème. Other vaping
23 companies such as Blu have flavors like blueberry,
24 mint chocolate, and cherry crush. Who are these
25

1
2 companies kidding? I'm a kid and I say enough is
3 enough. Stay away from my older brother and his
4 friends, and don't go anywhere near me or mine.

5 CHAIRPERSON LEVINE: My goodness, that
6 was very powerful testimony, Yael. In my time in the
7 Council, you're the youngest person to testify, and
8 also one of the most eloquent. Thank you for
9 speaking out. I know that wasn't easy but your voice
10 also is incredibly important. And I don't want to--
11 I'll turn to your mom for input. I don't want to put
12 you on the spot. But I just want to clarify, you're
13 a middle school student, correct? Can you say
14 anything about how many or what portion of the kids
15 in your middle school are using vaping?

16 YAEL MENCE: Well, I don't know an exact
17 number or percentage, but I do know that there are
18 many kids who are doing these things at Bat Mitzvah's
19 in the bathroom, places like that and it's very
20 secretive, but it happens a lot in middle school.

21 CHAIRPERSON LEVINE: Okay. Well, that is
22 particularly alarming to think about kids in seventh
23 grade already getting addicted to something that they
24 could be struggling with for the rest of their life.
25 That's why we're here today to stop that. We're here

1
2 for kids like you and your brother and the rest of
3 the young people who are speaking today. Thank you
4 for speaking out.

5 GRAHAM FUHRMAN: Hello. My name is Graham
6 Fuhrman. I am 14 years old and in the eighth grade
7 in New York City. Two years ago when my brother was
8 14 and at the end of eighth grade, he started
9 Juuling. At the time, I didn't know what it was, but
10 I would see him sucking on a flash drive device and
11 smell something sweet. Now, I definitely know what
12 it is. Everyone is Juuling. Some people I know
13 started in seventh grade, and my school even found
14 out about a sixth grader doing it. Last year, when I
15 would go into the bathroom, it would smell always of
16 Juul. I tried it once, but I didn't like it. Also, I
17 saw my brother using it and saw how difficult it was
18 for him to stop. My mother explained to me how
19 dangerous and addictive it was, so I never touched
20 it. Many kids think it's just water vapor and
21 flavorings. They do not know how much nicotine is in
22 a Juul. I know that e-cigarettes are very addictive
23 and there are a lot of chemicals in addition to the
24 nicotine in them. People think that they're safer
25 than regular cigarettes, but that does not mean

1 they're safe. No one really knows what is going to
2 happen to you in a few years if you start using it
3 now. Most kids with flavor-- most kids start with
4 flavors. It is easy to get these flavored pods in
5 smoke shops and convenience stores in New York.
6 There are many of them within a few blocks of my
7 school or my apartment who advertise flavored e-
8 cigarettes and pods. I know some of them even sell
9 to kids. I believe that the City should do something
10 to stop these kids from using e-cigarettes and
11 becoming addictive. You should definitely ban
12 flavors so that more of my peers do not start, and
13 also take someone's license away if they are caught
14 selling to kids. My younger sister is seven, and I
15 want to protect her. I do not want her to grow up in
16 a city where kids start vaping in the sixth grade
17 because they think it's safer.

19 CHAIRPERSON LEVINE: Thank you, Graham,
20 as well for speaking out. If you're comfortable, you
21 talked about young people not entirely being aware of
22 some of the chemicals in these products. I'm sure
23 that-- I would assume that if they experience the
24 addiction, which is this feeling that your body just
25 wants more of this, even if your mind doesn't. Do

1
2 you have friends who have fallen into that pattern of
3 just needing to vape even if their head tells them
4 it's not a good thing to do?

5 GRAHAM FUHRMAN: Oh, yes. I definitely
6 know people who experience it and know that it's bad,
7 but cannot stop it. It's kind of like when you're a
8 kid and you want sugar a lot. Even though you know
9 it's bad for you, you just always want it, and that's
10 kind of the same, and that's what's happening now in
11 middle schools and high schools.

12 CHAIRPERSON LEVINE: That is the nature
13 of an addictive substance, and that is what is most
14 frightening about young people Juuling, because even
15 when they want to stop they can't. And the solution
16 is for young people not to start.

17 GRAHAM FUHRMAN: Yes.

18 CHAIRPERSON LEVINE: And we believe that
19 flavors are enticing people, young people, kids to
20 start, and that is what we're focusing on with this
21 legislation. Thank you, Graham for speaking out.

22 GRAHAM FUHRMAN: Thank you for giving me
23 the time.

24 PHILLIP FUHRMAN: Hello, my name is
25 Phillip Fuhrman. I am Graham's older brother. I

1 live in New York City, and I'm here to talk about my
2 experiences with Juuling or vaping. The first time I
3 Juuled was at the end of eighth grade. My friend
4 handed it to me and I had no idea what it was. I took
5 my first hit and I coughed a little, but I like it.
6 The think that I liked most was the minty feel in my
7 throat. The thing that enticed me the most about
8 Juul was the mint and the high tech device. It was
9 like gum, and who doesn't like gum? A few weeks
10 after that I bought my own for the summer, and I
11 started using it. At first, I would get my pods
12 online. Then when I started eighth grade, I would
13 just get them near my school. It was really easy.
14 You just needed to know where to go and which
15 convenience stores. When I got to school in the
16 ninth grade, I was surprised to see how many other
17 kids had also started or had been Juuling, and how
18 easily I could connect with them about it. It
19 started to cause tension in my family when my mom
20 found my first Juul. After she found it, I got a new
21 one a few days later and the cycle continued. It did
22 not only cause tension in my family, but I also
23 wasted a tremendous amount of money on pods that I
24 started to buy more and more often. By the time I
25

1
2 realized it was bad and that I should stop, it was
3 too late. I was already addicted. That happened
4 around the end of ninth grade. Every time I tried to
5 stop I couldn't because every single party or social
6 gathering I went to there would always be Juuls
7 floating around and I just couldn't resist myself. I
8 would end up taking a hit, liking it so much and then
9 getting one at the end of the night. Then I would
10 keep it for a few weeks until I realized how bad it
11 was again, and throw it away, and the cycle would
12 just continue and I would waste even more money. I
13 see so many of my friends with the same problem as I
14 did, and they don't even know it yet. Luckily, I
15 have been able to stop even though it was difficult
16 then and still is now. If you ban flavors, kids will
17 not have an opportunity start and they will not find
18 themselves in the same situation that I was in.
19 Thank you.

20 CHAIRPERSON LEVINE: Thank you, Phillip,
21 for speaking out, and I'm so happy that you have
22 overcome this addiction. I'm guessing you have many
23 friends who are still struggling with this.

24 PHILLIP FUHRMAN: Yes.

25 CHAIRPERSON LEVINE: Is that right?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

PHILLIP FUHRMAN: That's true, yeah.

CHAIRPERSON LEVINE: And friends who have come to realize what's happening, that nicotine is addictive, but even when they try are just not able to stop.

PHILLIP FUHRMAN: Some have come to that realization, but there others who still haven't and who don't fully know all the bad things that are in the Juul or other vapes.

CHAIRPERSON LEVINE: Okay, thank you, Phillip.

LUKE ALESSI: Hi. My name is Luke Alessi. I'm 16 years old and a sophomore in high school. I'm here today to support the ban on flavors in e-cigarettes. As a teen I cannot escape vaping. It is all around me. Yes, I tried vaping, but it wasn't for me. But there's a-- there are so many of my friends and other teens that are addicted and they cannot stop. It is everywhere, in school bathrooms, walking down the street, at parties, it's even sold in convenience stores to teen and by other kids. All you have to do is slip them another five dollars and someone will sell it to you. It's really annoying to me that advertising in social media makes it so cool.

1
2 There's a slogan called, "Do it for Juul." So, even
3 if Juul is no longer on social media, it doesn't
4 matter. All the teens are on it for them. As a
5 teen, we think we're invincible unless someone shows
6 us the impacts of vaping. Most will not believe it's
7 bad. If you were to ask a teen to smoke a regular
8 cigarette, they would say no, because they were
9 gross. It took us years to get there. Why is vaping
10 cool? Is it just as harmful? Why are we making the
11 same mistake twice? Vaping is a Big Tobacco 2.0, and
12 we need to stop it now. Please support the ban on
13 flavors and save my generation from being a
14 generation of addicts.

15 CHAIRPERSON LEVINE: Thank you very much,
16 Luke, and you said something I just want to
17 emphasize. You said that for young people a
18 traditional cigarette might disgust them because of
19 the taste or the smell or the smoke, but that they're
20 not feeling that resistance with vaping. Is that
21 right?

22 LUKE ALESSI: They think it's like safer
23 for them, that it's fine. Like, there's no chemical.
24 They don't know what like the danger of it.

25

1
2 CHAIRPERSON LEVINE: And I'd asked Caleb
3 this earlier, but can you comment on the role of
4 flavors and--

5 LUKE ALESSI: I feel like the flavors are
6 a big portion. Like, kids wouldn't use like a
7 tobacco flavor, because they don't like the taste of
8 it. The flavors entice kids to use it. As Grant
9 said as well with the sugar. Kids want the taste
10 that's like good for like-- yes, I like this, like
11 bubblegum. They want to chew it. Or like mint, so
12 they enjoy it.

13 CHAIRPERSON LEVINE: Can you comment on
14 the most popular flavors?

15 LUKE ALESSI: Mint, mango, and cucumber.

16 CHAIRPERSON LEVINE: Okay. My goodness.
17 This is a very powerful group of speakers. I don't
18 know if the parents are-- is there another? Would
19 you like to contribute? Okay, please.

20 MIMI BLOBLICK: Hi there. Good
21 afternoon. My name is Mimi Boblick [sp?]. I want to
22 thank you for the opportunity to speak today and to
23 let my voice be heard. My family lives here in New
24 York. I'm a mother of three kids, two in college,
25 and one in ninth grade. For kids growing up in New

1
2 York City, Juuling and vaping in general has just
3 become normalized. It's all around them. As you
4 heard today, it's at school, at every party, on the
5 street, it's everywhere. This is the generation that
6 believes smoking combustible cigarettes is bad for
7 them. We as parents spent years making sure of that.
8 And now, in the blink of an eye, the same generation
9 of young people is hooked on Juul and other e-
10 cigarettes because the flavors have fooled them into
11 thinking that they are only vaping flavored water. I
12 joined PAVE because I'm horrified by this epidemic,
13 and I'm currently working on outreach to educate
14 teachers and kids on the real dangers of these
15 products. I know for some of our youth it's too late
16 for prevention, and I see that they will have to find
17 addiction centers which are not being built fast
18 enough to keep up with the rise in teen addiction.
19 We need help to prevent more kids from starting, and
20 the way to do that is through a flavor ban. Every
21 kid I've asked about what enticed them to start
22 vaping mentions the flavors, and the research
23 validates this. You've heard all the research today.
24 These flavored products are so clearly marketed to
25 hook kids and it's working. Every day I see the

1
2 heartbreaking emails that come into PAVE, from
3 mothers begging for help for their teen who was
4 addicted to nicotine and is desperate for a solution.
5 I'm hoping that won't be me some day, but as they
6 say, hope is not a strategy. We need real change.
7 Take away the flavors and you take away much of the
8 temptation. Our underage kids can easily buy these
9 vaping products in many stores across the city as you
10 also heard today, so other changes need to be made to
11 limit access to these products, but the flavor ban
12 must be at the foundation of the change and will be a
13 great start to ending this epidemic for the youth of
14 our city and to set an example across the country.
15 We are so grateful to those of you supporting this
16 effort. Thank you again.

17 CHAIRPERSON LEVINE: Thank you. Please?

18 REBECCA SHALLOM: Hi, Rebecca Shallom
19 [sp?]. I live in Manhattan, and I have four kids
20 between the ages of 12 and 18. And I come to the-- I
21 really want the flavor ban. I was in a bodega where
22 I saw an 11-year-old buying flavor pods, and I spoke
23 to the owner, and most bodegas are in under-market
24 rent situations. I come from a real estate family. I
25 know the situations they're in. They need to pay

1
2 their rent early because they could be kicked out or
3 evicted very easily. They're making a lot of their
4 money on Juul products, and they're not-- they're not
5 checking ages on who the buyer is. And I don't see
6 that as a situation that's really-- you can't really
7 regulate that. The bodegas sort of on their own.
8 And so I just wanted to bring the correlation between
9 the whole New York City real estate landscape and the
10 sale of these products. That's one thing. Another
11 thing is a lot of students and a lot of students who
12 are on scholarship are getting expelled from schools
13 as a disciplinary, you know, consequence for having
14 the Juuls at school. Schools don't know what to do.
15 This all came really quickly. So there are always
16 wonderful programs like Prep for Prep and Prep Nine
17 and Oliver Scholars who, you know, work with
18 students, deserving students and place them in the
19 most incredible educational institutions, and I have
20 a son who goes to a Vordis [sic] class out of
21 Manhattan. His roommate who was on-- you know, with
22 Oliver Scholars, got expelled from having a Juul with
23 him. He wasn't even using it. So, I just wanted to
24 let you know that consequence as well. It's a real
25 disruption for their education.

CHAIRPERSON LEVINE: Thank you, Rebecca.

And thank you for-- thank you to the parent leaders for putting this coalition together, and to the young people-- is there one more to speak? Forgive me.

: Yeah, I'll be very brief. I apologize.

CHAIRPERSON LEVINE: Yes.

: I think-- well, first of all, I think everyone in this room would agree that we all want harm reduction for adult smokers. So this is not to say that our desire to support a flavor ban or our desire to speak out today is because we don't want harm reduction for adult smokers. So, I just want to-- I'm sure we are all in agreement, but we're here because we're parents against vaping e-cigarettes. That doesn't mean we want to ban e-cigarettes. It doesn't mean we want to ban the Juul. We're just focused on trying to stem the tide of what the Surgeon General and the FDA Commissioner have repeatedly called a youth epidemic. And more importantly, we want to make sure that not only is the tide turned, but that younger kids, middle schoolers, are prevented from starting. And so while the 78 percent increase in use of Juul and other products, of flavored e-cigs by high school students

1 is staggering, it's that 48 percent increase between
2 2017 and 2018 among middle school students that's
3 even more staggering. And we are so grateful for
4 your leadership in proposing this flavor ban bill
5 because we know that the evidence is telling us the
6 truth. Flavors hook kids. If you look at research
7 done out of Stanford University Medical School
8 published in JAMA [sic] in November, a group led by
9 Doctor Bonnie Halpern Felcher [sp?], the head of
10 Adolescent Medicine Research at Stanford. You will
11 see flavors hook kids. That study was also the first
12 that looked at Juul hooking kids through flavors. So
13 we have evidence that-- we have evidence that flavors
14 hook kids. There's no evidence that proves that
15 removing flavors from the market-- thank you-- would
16 harm any adult smoker who might use one of these
17 products to switch and quit. There's no evidence.
18 Excuse me. There's no conclusive evidence that these
19 products will help adult smokers stop smoking. God,
20 you know, God willing they would, but there's no
21 conclusive evidence of that, and there's certainly no
22 evidence that removing flavors will harm any adult
23 smoker, but we do have the evidence that the flavors
24 hook kids, and we've heard all the numbers and all
25

1 the harm today. So, we do believe that a bill like
2 this passed in a city like ours sends very, very
3 strong message to other states, to the FDA, which has
4 taken some action, but not enough, and to companies
5 like Juul. One of the kids said, "Big Tobacco 2.0"
6 getting a 13 billion-dollar investment from Altria, a
7 company that is a tobacco company. The secret's out.
8 It is Big Tobacco 2.0, and we have all seen this
9 happen before, and not on our watch will we let our
10 kids and everyone else's kids get addicted to
11 nicotine through these flavored products. So, thank
12 you so much for proposing this bill, and we hope the
13 bill will pass. The FDA will take action because New
14 York will be a leader, because our kids don't want--
15 it's like they do not deserve to feel like they're
16 the generation of damage control, or for the younger
17 kids to feel that they are in danger of being sucked
18 into this. So thank you.

20 CHAIRPERSON LEVINE: Thank you very much,
21 and thank you to the parent leaders, but especially
22 thank you to the young people for having the courage
23 to speak out. There's no way that I at that age, 12
24 or 15 even, would have had the courage to do what you
25 just did. Actually, did you say you were 11, Yael?

1
2 Oh, my goodness. So, you're years ahead of me and
3 probably most elected officials. When you're 18 and
4 want to run for office, please let us know, but on a
5 more serious note, I think these were the most
6 important voices of this entire hearing. We needed
7 to hear from you. We needed to hear from young
8 people who are confronting this every single day,
9 yourselves, and your peers, and your schools, out in
10 the neighborhoods. Thank you so much. The hearing
11 would have been incomplete without you. You added a
12 very valuable, valuable perspective.

13 UNIDENTIFIED: And they get public
14 service credit for being part of the governmental
15 process, just so you know.

16 CHAIRPERSON LEVINE: Even better. Thank
17 you.

18 UNIDENTIFIED: Thank you.

19 CHAIRPERSON LEVINE: Alright, our next
20 panel is going to be John Connolly [sp?] from Blue
21 Water Investigations; Ken Schroth [sp?] from Rutgers;
22 David Abrahams from the NYU College of Global Health;
23 Damon Jacobs. We have two forms from Damon Jacobs. I
24 assume it's the same individual. Cynthia Cabrera and
25 Richard Marianos [sp?]. Okay, and I believe that due

1
2 to time constraints, Kevin Schroth needs to go first.
3 Professor, do you want to lead us off?

4 KEVIN SCHROTH: Sure. My name is Kevin
5 Schroth. Chairman Levine, members of the Committee, I
6 am a professor at Rutgers University School of Public
7 Health. The last time I testified before this
8 committee I was working as an attorney for the
9 Department of Health. In that role, I helped craft
10 the City's tobacco control policies, and I appreciate
11 the opportunity to be here right now. First, I'd
12 like to commend the Council for its leadership in
13 responding to the devastating health crisis posed by
14 tobacco use and for taking on flavors in tobacco
15 products and electronic cigarettes. Despite New York
16 City's leadership and progress on this issue, tobacco
17 use is a leading cause of premature preventable
18 death, and more work needs to be done. Menthol and
19 other flavors play a leading role in the increasing
20 youth use of tobacco and e-cigarettes. First,
21 related to menthol. Months after the US banned the
22 sale of flavored cigarettes in 2009, New York City
23 was the first municipality in the US to ban flavored
24 tobacco products other than cigarettes. However,
25 both federal law and New York City's law created an

1 exemption for menthol. In 2009, the menthol
2 exemption was understandable. Now, mounting evidence
3 shows the detrimental effect of menthol cigarettes on
4 population health. San Francisco, Canada, the
5 European Union are leading the way on this, and the
6 FDA made a historic announcement announcing its plan
7 to ban menthol cigarettes, but even in a best case
8 scenario, the FDA rule is unlikely to go into effect
9 for several years, and this is incredibly important
10 for New York City to do this. I think that this
11 menthol ban above any-- is probably more impactful
12 than any other single measure that New York City
13 could take right now, and I concur wholeheartedly
14 with all of the testimony so far in support of the
15 menthol ban.

17 CHAIRPERSON LEVINE: I neglected to
18 mention that we did start the clock because we still
19 have a very long list, but you can take some
20 additional time.

21 KEVIN SCHROTH: Okay, I will go through
22 my testimony quickly. I do have a couple points,
23 including some that have not been--

24 CHAIRPERSON LEVINE: [interposing] Please.

25

1
2 KEVIN SCHROTH: touched on by other
3 people, and I will skip right to those. One is that
4 with respect to flavors and tobacco, nobody has
5 talked about flavored cigars. New York City already
6 has a law that bans the sale of flavored cigars.
7 However, in recent years tobacco manufacturers been
8 devising ambiguous names for cheap flavored cigars
9 and cigarillos that do not indicate if a cigar is
10 flavored. For example, by changing the name of a
11 cigar from "Grape" to "Purple Reserve," those cigars
12 no longer fall within New York City's enforcement
13 protocol. Other names include "Tropical," "Pink,"
14 and "Summer Love." Over the past several years,
15 cigars with these ambiguous names have increased in
16 their market share from nine percent to 15 percent
17 nationwide, and that figure is probably significantly
18 higher in jurisdictions that have flavored bans. New
19 York City can close this loophole by requiring
20 manufacturers to certify that their cigars are not
21 flavored as a precondition for selling them in New
22 York and prohibiting wholesalers from supplying
23 retailers with cigars that have a certificate-- that
24 are not flavored. Regarding flavored electronic
25 cigarettes, on a population level there's increasing

1 concern that a lasting legacy of e-cigarettes may be
2 a generation of youth addicted to nicotine by
3 flavored Juul and similar products. That said, there
4 is anecdotal evidence that adults who use e-
5 cigarettes exclusively and regularly may have some
6 success in quitting smoking. For this reason, while
7 I applaud Intro 1362's goal, I believe that it can be
8 equally effective if it is less extensive, and
9 therefore I recommend an e-cigarette flavor ban that
10 does not extend to retail electronic cigarette stores
11 also known as "vape shops," that sell e-cigarettes
12 exclusively and do not permit people under the age of
13 21 from entering. Vape shops are already required to
14 get an e-cigarette license, and they're subject to a
15 retail density cap, which will prevent the market
16 from expanding. Based on that evidence and the threat
17 of losing their license, I trust that vape shops are
18 responsible players in this market who are unlikely
19 to sell to underage youth. In short, I support a ban
20 that bans the sale of flavored e-cigarettes and
21 refills, except for vape shops. This would remove
22 flavored e-cigarettes from convenience stores, and it
23 would reduce the number of retailers selling flavored
24

1
2 e-cigarettes from several thousand to several
3 hundred. Thank you very much.

4 CHAIRPERSON LEVINE: Thank you. I just--
5 I'll get to you in a second. I just want to point
6 out that we heard from young people about how easy it
7 is for an older sibling or someone else who is of age
8 to purchase these materials and pass them on. So,
9 even in a shop that prohibits young people from
10 entering doesn't prevent these products from winding
11 up in the hands of kids.

12 KEVIN SCHROTH: Well, all of the
13 testimony from the youth who were here today, and I
14 agree that it was extremely compelling, mentioned
15 that it was relatively easy to get electronic
16 cigarettes from convenience stores, and convenience
17 stores I think are a bit of a different animal than
18 vape shops that would only be selling a product that
19 cannot be sold to somebody under the age of 21.

20 CHAIRPERSON LEVINE: I'd like to test that
21 proposition. I'm not convinced that a 19-year-old
22 couldn't stroll into one of those and under certain
23 circumstances would not be asked to produce ID. I
24 hope there's an enforcement program on that, but I
25 think you run into the same problems. I understand

1
2 it's a more protected environment, but that would be
3 a pretty big loophole to leave if we exempted those
4 sellers in my opinion. Go ahead. I appreciate your
5 input. Yes?

6 DAMON JACOBS: Good afternoon.

7 CHAIRPERSON LEVINE: I think that mic is-
8 - we should probably get it off the table, if you
9 could try the other one.

10 DAMON JACOBS: Okay, well thank you.
11 There we go. My name is Damon Jacobs. I want to
12 thank you, Councilman Levine and thank you for the
13 committee for listening to all this. I know it's a
14 long day. I want to correct one thing you said
15 earlier at one o'clock, that Amazon does not sell e-
16 cigarettes, and the reason I'm beginning with that is
17 because it is one of many facts that have been stated
18 or things that have been stated in this room which
19 are not fully sustainable or supportable with facts,
20 and I think when we're having this argument or
21 debate, which is fairly emotional for many people,
22 it's really important that we stay fact-based and
23 data focused. I'm a licensed marriage family
24 therapist in New York State, and I live being a New
25 Yorker for so many reasons that have been mentioned

1
2 today. It was mentioned earlier that New York State
3 has always been the leader, and we-- and you said,
4 Council Person Levine that we like it when New York
5 City is the lead. I love that, too. We have been
6 the leaders in the 60s and making methadone available
7 and accessible, in the 90s in making needle exchange
8 accessible. In the just the last five years, New York
9 City took a very firm affirmative stand allowing Prep
10 to be available here as well as signing the
11 undetectable equals untransmutable statement, but I
12 don't feel like that argument or debate is being said
13 in a balanced way in this room by lack of the fact
14 that you had 21 speakers who are all given
15 approximately on average 10 minutes to agree with
16 your position versus those of us that may dissent. I
17 do honor and respect the energy and the voices here,
18 and I'm going way off script because there's a lot
19 more I can say. We do have facts. We do have data.
20 Doctors Abrahams is an expert in this, and given
21 enough time, he could tell you a lot more about the
22 compelling data that's available.

23 CHAIRPERSON LEVINE: Instead of using your
24 time to criticize the process, why don't you use your
25 time--

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

DAMON JACOBS: [interposing] Okay.

CHAIRPERSON LEVINE: to make your case.

DAMON JACOBS: Public Health England has told us that by coupling nicotine from smoking tobacco, vaping can reduce the risk of serious tobacco-related problems like lung cancer by about 95 percent. An analysis by New York University's College of Global Vaping estimated that 6.6 American lives could be saved if US smokers switched to vaping in the next 10 years. As someone who has been working and serving the HIV positive community in New York and California for well over 20 years, I can tell you, and the data sustains that more than 40 percent of people living with HIV have been addicted to nicotine, and there's many reasons we could go into for that. But the point is, many have also found that switching to vaping has saved the quality and enhanced the quantity of their lives and that vaping is a viable, legal option for them to do so. I was also very compelled and very moved by the testimony of the panel that just came before us. I was very compelled by the young people, and I want Yael and everyone to be able to go to school without having to be confronted with harmful measures,

1
2 without vaping, without alcohol, without marijuana,
3 being able to go to school safely, but I do think
4 that makes a stronger argument for prioritizing
5 education over enforcement, putting the science over
6 the stigma, putting the data over the dogma, and
7 having a more nuanced conversation about this, than
8 just the emotional reactions that I'm hearing. And I
9 would honor and love to have more of a conversation
10 with you and with anyone on the committee about this.

11 CHAIRPERSON LEVINE: Well, I appreciate
12 you speaking out, Mr. Jacobs, and we're glad you're
13 here and care about your opinion. As I mentioned in
14 my opening statement and since, I do think that it's
15 a good thing when someone gives up tobacco and if e-
16 cigarettes make that possible, that's a step in the
17 right direction. I think we can continue to allow
18 that kind of harm reduction strategy while doing more
19 to protect kids.

20 DAMON JACOBS: I agree with you, 100
21 percent.

22 CHAIRPERSON LEVINE: As for your
23 statement about Amazon, maybe we're using different
24 apps, but right here I'm looking at four-piece
25

1
2 multiple choice pods for Juul. This is-- I'm on the
3 Amazon app right now, so I'm not sure--

4 DAMON JACOBS: [interposing] Huh.

5 CHAIRPERSON LEVINE: Maybe this only
6 additional paraphernalia, but it's right here. You
7 can come look at it later if you want.

8 DAMON JACOBS: Because my Amazon app does
9 not sell Juul, does not sell vaping products. It
10 might sell a container, and again, that is not good
11 either.

12 CHAIRPERSON LEVINE: Four-piece multiple
13 choice pods for Juul. But anyway we're not here to
14 regulate e-commerce. We're here to regulate what's
15 sold in the stores in the city.

16 DAMON JACOBS: Yes.

17 CHAIRPERSON LEVINE: And I do appreciate
18 your input on that, and--

19 DAMON JACOBS: [interposing] I think we
20 can protect youth and save adult lives at the same
21 time. I don't think it's a dichotomy. I don't think
22 we have to do one or the other.

23 CHAIRPERSON LEVINE: Okay, well that's
24 our goal. Thank you, Mr. Jacobs.

1
2 DAVID ABRAMS: Thank you. I'm Doctor
3 David Abrams, a Professor at NYU College of Global
4 Public Health. I speak for myself and I have no
5 financial disclosures. I urge you to oppose the ban
6 on flavored e-cigarettes. Millions of smokers have
7 already successfully quit by vaping, and many of them
8 cite flavors as vital in switching completely from
9 inhaling toxic tobacco smoke to much less harmful e-
10 cigarettes. The data and the science are extremely
11 strong. Scientists do change their minds when new
12 evidence is available. I know this firsthand. I was
13 wrong about opposing e-cigarettes early on. I shared
14 the concerns of many here, but as I reviewed the
15 mounting stronger scientific evidence, the evidence
16 clearly shows that vaping, while not harmless,
17 presents a fraction of the risk of smoking and can
18 help people quit. The evidence is much stronger than
19 you've been led to believe. I changed my mind. We
20 don't know everything about vaping, but we do know
21 more than enough to recommend smokers switch
22 completely. Smokers don't even know that vaping is
23 much less harmful and less likely to switch if they
24 don't know it's less harmful. Why would you ever
25 switch if you doubts that vaping is less harmful than

1 cigarettes. Fewer than one in five smokers
2 understands vaping is substantially less harmful than
3 smoking, and I fear flavor bans on vaping will worsen
4 this confusion. Nearly a million New York City
5 residents still smoke. Two Americans will have died
6 prematurely early from smoking in the time that I
7 deliver this two-minute testimony. I too want to
8 protect youth. I have a 14-year-old granddaughter and
9 11-year-old grandson, and I take this very seriously,
10 but New York City is already doing so, having banned
11 flavored cigars and purchase of all tobacco to those
12 under 21. Enforcement and education are critical.
13 Parental smoking is also a major, major risk factor
14 for youth smoking. This bill would make it harder,
15 especially for lower socioeconomic smokers to quit
16 and have access to vape, and therefore, they will
17 unintentionally increase the risk of their youth
18 starting to smoke. This may seem counterintuitive,
19 but if policy makers only relied on intuition and gut
20 feelings, you wouldn't need science or scientists
21 like myself. Please, don't put barriers between
22 smokers, as hard as it is for them to quit, and the
23 vaping products that could save their lives and save
24

1
2 the lives of children, too, who would otherwise be
3 smoking.

4 CHAIRPERSON LEVINE: Thank you, Doctor
5 Abrams for your testimony and for your work in this
6 area. I haven't heard anyone today dispute the
7 notion that e-cigarettes are less harmful than
8 traditional cigarettes. I certainly haven't made
9 that point, and what I've said many times is that I
10 do want adult smokers to be able to give up tobacco
11 and move to e-cigarettes as a harm-reduction
12 strategy, but they get all the health benefits if
13 it's a tobacco flavored e-cigarette. They don't need
14 to have something that looks like a Fanta bottle
15 that's attracting kids, right?

16 DAVID ABRAMS: I disagree with some of
17 what you've said. I agree that no nicotine product
18 should be marketed in a predatory way to youth at
19 all. However, some of the testimony from the youth
20 and a couple of them reminded me of my grandchildren,
21 also showed that if they want to get this, they'll
22 get it. I'm not sure a ban in either retail stores
23 or vape shops will be as effective as you think it
24 is. That's an empirical [sic] question, number one.
25 Number two, I do think there is increasingly strong

1 evidence in published peer review journals that not
2 only does vaping significantly help smokers who've
3 tried nicotine replacement therapy and other ways to
4 quit and failed, and more importantly than that,
5 there is increasing evidence from several recent
6 studies, again in peer review journals, that flavors
7 other than tobacco and menthol help them
8 significantly to switch completely and prevent
9 relapse or dual use to both smoking and vaping. And
10 that's both common sense, what I call what your
11 grandmother knew already, as well as solidly
12 supported by psychology and learning theory, and that
13 is if you've been smoking for 40 years and have a
14 classically conditioned memory of the taste and smell
15 of a cigarette, primarily a regular cigarette or a
16 menthol cigarette, then the only way you can switch
17 completely is to forget about those tastes and not be
18 reminded of the craving and that would promote
19 relapse. So, it's very significant that the majority
20 of over 100,000 successful switchers to vape have
21 said that they used the very flavors that are not
22 menthol and not tobacco, and I fear that a tobacco
23 vape actually is so close to a cigarette that you're
24 actually helping Big Tobacco continue to sell
25

1
2 cigarettes and you're promoting dual use, and you
3 have major unintended consequences if you don't look
4 at this in a more complex way.

5 CHAIRPERSON LEVINE: Well, look, the
6 ultimate break from the flavor of tobacco is to go
7 flavorless, and that's an option for--

8 DAVID ABRAMS: [interposing] No--

9 CHAIRPERSON LEVINE: menthol smokers and
10 anyone else, and as for your assertion that a ban in
11 New York City wouldn't prevent anyone from getting
12 access, but can tell we have national policy making
13 on this that will always be true to some extent, but
14 in many, many, many areas we have regulated what can
15 be sold and how it can be sold in New York City from
16 the availability of trans fats on restaurant menus to
17 the highest price for traditional cigarettes in
18 America. And yes, you can go elsewhere and get those
19 things, but in every case where we've made that
20 legislation, it has reduced the consumption in New
21 York, particularly for people who have not yet
22 started. There the convenience and availability is a
23 major factor, and sure, you can still go on eBay and
24 order your Fruity Tutti flavors, but it's just one
25 more obstacle in the way, and because the lives of

1
2 young people are on the lines, I'm all for adding as
3 many obstacles to young people becoming addicted as
4 we can. I'm sorry to move on, because your
5 perspective has been extremely valuable to hear.
6 Very quickly, because we have a very--

7 DAVID ABRAMS: [interposing] So, you
8 know,--

9 CHAIRPERSON LEVINE: long list of people
10 who want to speak.

11 DAVID ABRAMS: The one thing that makes
12 this logic somewhat concerning is if you continue to
13 allow the most lethal cigarettes to be sold in every
14 mom and pop convenience store, and you have done that
15 for decades, and you somehow trust that the store
16 aides and the enforcement of age 21 laws will keep
17 most of that away from youth, I don't see how you can
18 in a sense turn things upside down and make a far
19 less harmful product completely unavailable while
20 leaving the most lethal product in every convenience
21 store.

22 CHAIRPERSON LEVINE: Well, I'm not sure
23 whether you have--

24 [applause]

1
2 CHAIRPERSON LEVINE: First of all, folks,
3 folks, no. Folks, you're new around here, and if you
4 want to signify support for a speaker, you can go
5 like this, but we don't allow those kinds of
6 disruptions. You're welcome to do that. I know you
7 all are new around here, not because you didn't know
8 about the prohibition on clapping, because you must
9 not be aware that we have aggressively acted to
10 reduce the availability of tobacco sales in New York
11 City. We've capped the number of retail outlets. I
12 discussed this with the Commissioner earlier in the
13 hearing. We are gradually reducing that to 50
14 percent of the current level. We have raised the
15 price, the minimum price of tobacco in New York City
16 to the highest in America, and we are making progress
17 in reducing the number of people who smoke in New
18 York City because of those local measures. That
19 doesn't mean you can't go to another city or state
20 and acquire those products more cheaply, but the lack
21 of availability here has yielded some victories as
22 represented by the decline on that graph of young
23 people who have started smoking. Where we're losing
24 that war is in e-cigarettes, and we need to take
25 action to prevent young people from suffering from a

1
2 lifelong addiction, an addiction which you
3 acknowledge is unhealthy. I do appreciate your
4 perspective. We are going to have to move on because
5 we have this many people who still want to testify,
6 and everyone's going to get a chance to speak, but I
7 do thank you for speaking out, Doctor Abrams. Thank
8 you. Yes sir?

9 JOHN CONNOLLY: Mr. Chairman, Council
10 Members, my name is John Connolly. I'm currently an
11 Investigative Support Manager working as a contractor
12 for Altria and Brand Integrity Investigations and Law
13 Enforcement Support Unit. I supervise investigators
14 that search for subjects counter fitting cigarettes
15 and/or smuggling cigarettes and tobacco products, and
16 I train law enforcement in what to look for in
17 relation to the smuggling activity. Previously, I
18 worked for over 30 years in law enforcement with the
19 last 16 years at the New York State Tax and Finance
20 Petroleum, Alcohol, Tobacco Bureau. Retired as the
21 Chief Investigator of that unit, and oversaw complex
22 criminal investigations and undercover operations
23 targeting subjects smuggling cigarettes, tobacco,
24 alcohol, motor fuel into New York State to avoid the
25 applicable taxes. I believe that banning the sale of

1
2 flavored cigarettes in New York City will only
3 increase the smuggling illicit cigarettes into the
4 city. In addition, banning the sale of flavored e-
5 cigarettes and vape proud cuts will lead to an
6 illicit market springing up to supply these products
7 to consumers. Then you will see the proliferation of
8 subjects who will be offering them for sale illegally
9 to retail stores or directly to consumers. Anytime
10 an entity restricts a commodity or adds a tax on a
11 commodity that is used by a large number of people,
12 it opens the door for criminal groups to stop in and
13 take advantage of that situation. I've seen that
14 previously in relation to numerous regulated
15 commodities like cigarettes, tobacco, alcohol, and
16 motor fuel. Criminals are all about taking advantage
17 of situations, whether it be selling a popular
18 commodity at a lower price such as cigarettes or
19 providing a commodity that is not readily obtainable
20 through legal channels like synthetic marijuana,
21 Cannabidiol oils or potentially flavored cigarettes,
22 flavored e-cigarettes or vape products. Once
23 criminals have created a supply chain for an illegal
24 commodity, they can smuggle all types of illegal
25 products through that same network. These smuggling

1 networks already exist in relation to cigarettes.
2 Lower price cigarettes are smuggled in the New York
3 City area from various sources and locations for
4 resale, and this only will increase with a ban on the
5 sale of flavored cigarettes. In addition, you will
6 likely see the illicit smuggling of flavored e-
7 cigarettes and vape products for sale into the City
8 and if a ban is also enacted on those products as
9 well. I would say even though like we've talked
10 about, heard from people talking about, you know, how
11 much product does get in people's-- whether people
12 have stopped smoking or not, there are a lot of
13 untaxed cigarettes already in the city, even though,
14 you know, the regulations are there, and probably not
15 enough law enforcement out there doing anything about
16 it. So I think with the flavor ban, you're likely to
17 increase the need for more law enforcement to be
18 looking for those products.

19
20 CHAIRPERSON LEVINE: And so Mr. Connolly,
21 by your logic I assume you would favor removal of the
22 ban on fruity flavored tobacco?

23 JOHN CONNOLLY: I'm not-- I'm not saying
24 I'm in favor of anything. I'm just giving you the
25 consequence of what happens, you know, when bans

1
2 and/or a tax or something goes into effect, that's
3 what--

4 CHAIRPERSON LEVINE: [interposing] Right,
5 but we--

6 JOHN CONNOLLY: [INTERPOSING] You're going
7 to have to deal with those issues.

8 CHAIRPERSON LEVINE: I'm not a
9 prohibitionist. I don't favor the prohibition of
10 tobacco. I don't favor at least until science would
11 indicate otherwise the prohibition of e-cigarettes.
12 I favor doing everything we can as policy makers to
13 keep them out of the hands of kids and to keep kid
14 from falling into that addiction. And we have
15 focused on the flavoring as a major driver of youth
16 consumption. And I do want to emphasize, I'm sure
17 you're aware, that nothing that we're considering
18 today would outlaw the possession or the consumption
19 of flavored e-cigarettes.

20 JOHN CONNOLLY: Right.

21 CHAIRPERSON LEVINE: they would rather
22 outlaw the sale and the truth is that you still can
23 go on eBay and perhaps on Amazon and other sites and
24 order those. Personally, I regret that, but that is
25 the reality until there's federal action. But I do

1
2 appreciate your perspective as a law enforcement
3 officer.

4 JOHN CONNOLLY: Thank you.

5 CHAIRPERSON LEVINE: Thank you. Yes?

6 RICHARD MARIANOS: Mr. Chair and the
7 members of the Committee, thank you very much. Good
8 afternoon. My name is Rich Marianos. I'm the retired
9 Assistant Director with ATF, spending 27 years in law
10 enforcement. I'm currently a professor at Georgetown
11 University teaching Master's programs and applied
12 intelligence. I'm here to discuss nuisance bans and
13 nuisance ordinance, because ban 1345 I feel is. I
14 think it's a ban that is going to do many things.
15 It's going to create crime, and it's also going to
16 drive a wedge between law enforcement and the
17 community, and I'll get to that later. Currently,
18 New York has the worst criminal tobacco problem in
19 America, and every year you lose in the illicit
20 market about 1.63 billion dollars to criminals
21 exploiting the demand for contraband cigarettes. I
22 enjoyed the testimony earlier with the Sheriff and
23 you working with them when you outlined that there's
24 under 50 cartons of cigarettes they're considered
25 low-level and misdemeanor. So when I did the data

1 and looked at that for a misdemeanor ticket, an
2 individual can make 7.8 million dollars for
3 misdemeanor ticket by selling cigarettes by going
4 across New Jersey and bringing them here, 7.8 million
5 dollars would help these kids. 7.8 million dollars
6 would educate a lot of these schools that need some
7 of this stuff of what you're talking about on the
8 table. With 25 percent of the population are the
9 smoking population involved in smoking menthol. If
10 you were to maybe decrease this ban or get rid of
11 this ban, I think it's going to alleviate a lot of
12 problems you're going to have, and I promise you'll
13 have them between the police and the community. New
14 York has the best Police Department on the planet,
15 and they have great investigators, and they have the
16 most resilient community you're going to find. They
17 do some of the best work, focusing on organized crime
18 groups with cigarette smuggling, money launderers.
19 They just took off a crew for 30 million dollars.
20 But even terrorist have found their way into this
21 market, and if we continue to go along the path of
22 allowing criminals to exploit this black market,
23 you're going to find more bad guys involved in it.
24 Finally, and I don't want to take up a lot of time,
25

1 because I respect everybody that's on that list. We
2 have to understand that millions of dollars in the
3 United States right now, and it was discussed for the
4 last four years in this building, have been spent in
5 trying to decrease this Fergusson effect, to make the
6 police more accountable to the community and the
7 community more accountable to the Police Department.
8 Now, you're going to place a menthol ban or a menthol
9 restriction on the sale of tobacco products, which
10 will get into the black market and drive a wedge with
11 that community? You can't do that. You can't have
12 both. Do you want a Missouri? Do you want a
13 Baltimore? Do you want your citizens replying to the
14 cops, "Don't you have anything better to work on?"
15 Because that's what you're going to have. And you
16 know it well, counselor. It's just the way of the
17 world right now, and we want to try to avoid that.
18 We want to work the community together not against
19 each other. Finally, when has public safety not been
20 a part of a public health strategy? I hear all this
21 talk about public health and I agree, but public
22 safety is paramount to public health. And if you're
23 allowing criminals to make seven million dollars a
24 year on organized crime at high-level targets, that
25

1 better be a part of your public health strategy. I'm
2 sorry, but it has to be taken into consideration.
3 Finally, this city deserves respect to their men in
4 blue and their community members. They deserve it.
5 They need it. And by creating these senseless
6 nuisance bans instead of fighting crime and
7 responding to calls for service, as during the last
8 testimony you heard siren upon siren, we need to take
9 that into consideration instead of going looking for
10 nuisance abatement and turning our cops into code
11 enforcement officers. I just ask you to respect that
12 and respect your community and respect your men in
13 blue. They deserve it. They're out there every day.

14 CHAIRPERSON LEVINE: Thank you, Mr.
15 Marianos. Thank you for coming up from D.C. We
16 appreciate your testimony and the whole panel, and we
17 are going to have to move on to hear our other
18 voices, but thank you. And our next panel will
19 consist of: Brian Fotik [sp?]- I'm sorry if I'm
20 mispronouncing the name-- from the National
21 Association of Tobacco Outlets; Spike Babian [sp?]
22 from the New York State Vapor Association; Greg
23 Connolly from the American Vaping Association; Alex
24 Clark from Consumer Advocates for Smoke-Free
25

1
2 Alternatives; Jeff Stier from the Consumer Choice
3 Center; and Mark Klyman [sp?] from-- I think it's
4 called Botec [sp?]. Okay, would you like to kick us
5 off, sir? If you can-- your mic?

6 GREGORY CONLEY: Good afternoon,
7 Chairman. My name is Gregory Conley, and I serve as
8 the President of the American Vaping Association, a
9 public health advocacy group which seeks sane and
10 sensible regulation of vapor products with the end
11 goal of getting as many smokers to quit as possible.
12 In my limited time-- earlier today we discussed
13 cessation and the evidence for cessation and the
14 evidence for flavors helping in cessation. Who is it
15 out there that's talking about e-cigarettes being
16 good for cessation? Public Health England, the Royal
17 College of Physicians, our own FDA Commissioner,
18 Doctor Scott Gottlieb recently stated, "If all adult
19 smokers switch to vaping, that would be a tremendous
20 benefit to public health." Doctor Gottlieb himself
21 explaining why he has not banned e-cigarette flavors,
22 but instead restricting them to adult-only stores has
23 repeatedly stated that there is evidence that flavors
24 are helping smokers quit. For the general category,
25 go look at the New England Journal of Medicine today

1 at 5:00 p.m. There's an embargo. I can't tell you
2 what the study says, but the idea of e-cigarettes not
3 helping smokers quit doesn't match the science. My
4 testimony that hopefully you have in front of you
5 cites several studies, including an FDA-funded study
6 that found adult users of flavored products were more
7 likely to be smoke-free than those using tobacco
8 flavors. That was my personal experience eight and a
9 half years ago. Tobacco failed. I went back to
10 smoking. It was only when I had melon that I quit.
11 This is going to be prohibition. Today, I am in
12 violation of this law, your law, your proposed law.
13 Your law says, "Anyone in possession of four or more
14 flavored products," that is the assumption that you
15 are intending to sell them. In my bag today I have
16 more than four flavors. I could be arrested on the
17 streets of New York City under your law because I am
18 merely possessing products that I use when I am in
19 this city. The failure to adequately defend the
20 interest of adults who use e-cigarettes puts actual
21 lives at risk. We can do this in a smart way. We do
22 not need prohibition. Flavors are critical. You
23 will hear from many adult consumers today. Please do
24

1
2 not dismiss their stories as mere anecdotes, and I'd
3 be happy to answer any questions.

4 CHAIRPERSON LEVINE: We appreciate you
5 speaking out. No one's perspective is being
6 dismissed. I think you've probably heard that from
7 me so far in the hearing. You're mistaken about the
8 bill. There's no criminal-- there would be no
9 criminal charges for possession for large amounts of
10 product. It would be a fine. You would lose your
11 license as a retailer, ultimately, but to say you
12 could be arrested is just not accurate.

13 GREGORY CONLEY: So, I can be fined for
14 possessing four vapor products while walking through
15 the streets of New York City?

16 CHAIRPERSON LEVINE: For selling.

17 GREGORY CONLEY: But you-- if you possess
18 four or more product that says-- they assume your
19 intent. I would have to go to court and prove that
20 those products were for personal use, or else I would
21 face a fine. That is ridiculous. Every day of New
22 York City you have tourists coming here that bring
23 along with them enough e-liquid to last them as long
24 as their trip and of cartridges. You are if not
25 criminalizing, giving them the ability to pay a fat

1 fine for merely quitting smoking or trying to quit
2 smoking. And all these vape shops that are here
3 today, they will have 90 days to sell off all their
4 inventory, break their lease, potentially declare
5 bankruptcy and get out of the city. That doesn't
6 make sense when we have strong federal action coming
7 restricting these products to adult-only stores.

8
9 CHAIRPERSON LEVINE: Okay. Thank you, Mr.
10 Conley.

11 GREGORY CONLEY: Thank you.

12 CHAIRPERSON LEVINE: Please.

13 JEFF STIER: Thank you. Good afternoon.
14 I'm Jeff Stier, I'm a Senior Fellow at the Consumer
15 Choice Center as well as the Taxpayer Protection
16 Alliance, but perhaps more importantly I'm a
17 constituent of yours on the north side of 96th
18 Street, just within in, and I appreciate your very
19 emotional and thoughtful support for helping and the
20 problem of youth use of e-cigarettes, which is really
21 the discussion here today, and I share that concern.
22 But I would encourage you to consider a more targeted
23 approach, one that will be effective, and one that
24 will not harm adult smokers. We've heard a lot and
25 we can debate the evidence, but flavors are critical.

1
2 You mentioned earlier well, we should just have
3 flavorless e-cigarettes. Doctor Abrams and others
4 and there's lots of science as well as lots of
5 constituents who will testify that flavors are
6 critical to helping quit smoking completely. And I
7 was embarrassed as a New York City resident, as a
8 long-time public health advocate, that our Health
9 Commissioner who testified-- maybe it was her first
10 time today-- didn't mention to you that there are a
11 million adult smokers in New York, a million smokers.
12 Why is that not also a concern? Why doesn't that
13 trouble us? Why isn't that a crisis? If only we had
14 something new that could help them, and we do. Why
15 can't we come together? Why can't we agree that kids
16 should not vape, that any store in New York City that
17 is caught selling e-cigarettes to minors should
18 immediately lose their license? And oh, it's only a
19 small fine, maybe on the second time there's a bigger
20 fine. Put them out of business and do so
21 immediately, because they are the bad actors. But I
22 would be embarrassed that if our city becomes the bad
23 actor and makes it more difficult for smokers to quit
24 using the flavors that they need to tremendously
25 reduce the harm that they have from smoking. I think

1
2 we can work together to find more targeted and more
3 effective ways to protect kids because we should
4 agree that they should not vape and we should do what
5 we can to help prevent that. But we can be tougher
6 on the bad actors, and we should have some compassion
7 for the adult smokers.

8 CHAIRPERSON LEVINE: It's good to meet
9 you, Mr. Stier. If you ever need a pothole fixed on
10 96th Street, you can let me know. I appreciate the
11 thoughtful nature of your comments. I do want to
12 repeat that it's just inaccurate to say the city
13 doesn't care about the one million smokers, and I
14 gave a partial list of some of the aggressive actions
15 that we've taken to try and curtail smoking by adults
16 and others. It's a very, very long list. It
17 includes banning smoking and almost all indoor public
18 spaces. It now includes banning smoking in public
19 parks. We banned smoking in public housing
20 developments. We have funding for smoking cessation
21 programs that are available to all smokers in the
22 city. We have raised the price of a pack of
23 cigarettes. We're reducing the number of outlets
24 where cigarettes can be sold. We are all in in the
25 battle against smoking, and we are going to continue

1
2 that battle, but we've also got a parallel epidemic
3 of 11-year-olds who are getting access to cherry
4 crush flavored e-cigarettes and we cannot ignore
5 that.

6 JEFF STIER: I didn't say that we-- that
7 the city doesn't care about smokers, but I do think
8 we need to help those smokers, not by banning their
9 access to flavors that help them quit. I think we
10 can do both. I think a thoughtful way of doing it can
11 accomplish both goals, and I think that's what we
12 should focus on. Without-- you know, we've had hours
13 and hours of testimony about how much of a problem it
14 is that youth are smoking. We could have saved a lot
15 of time, and we could have agreed upon that. It
16 shouldn't be done, but at the same time, the Health
17 Commissioner who was here did not talk about the
18 adult smokers, and didn't think about how we could do
19 more not to ban, not to marginalize, especially those
20 as Damon Jacobs so thoughtfully explained,
21 communities that have already been facing a lot of
22 challenges, but how can we help them? Not ban, tax,
23 and further marginalize them. I think that's where
24 we can do better.

CHAIRPERSON LEVINE: Okay. Thank you.

Yes, please, sir.

MARK KLYMAN: Good afternoon. Thanks for this opportunity to testify. My name is Mark Klyman [sp?]. My credentials such as they are in my financial interest are in the written statement in front of you. I've been working on drug policy for more than 30 years, and it's a little distressing to hear the drug war rhetoric, which is largely been abandoned with respect to the current illicit drugs coming back to bite us on tobacco policy. I want to make three simple analytic points and one factual point. Vaping competes with smoking as a way of delivering nicotine, and it's a greatly reduced harm version of that, about 95 percent is the best estimate I've seen. In addition, the legitimate market in tobacco products competes with the illicit market and tobacco products. The proposal on the table by disadvantaging licit vape sales is going to relatively advantage both the combustion market and the illicit market. The factual point that hasn't been made yet today is that of the cigarettes consumed in New York City one-third to one-half were not legally sold in New York City. That's

1 approximately a one billion-dollar-a-year illicit
2 market. That's comparable to the size of the illicit
3 cannabis market or the illicit opioids in New York
4 City, and for reasons that have been discussed, we're
5 not going to do much enforcement against that. We're
6 not going to put bodega owners in prison. If we make
7 flavored vape unavailable at vape shops, I have
8 reason to think that the very same convenience store
9 owners who are now selling Virginia Marlboros under
10 the table won't figure out how to sell vape pods
11 under the table, and again, it's not as if we're
12 going to enforce against that. So, it seems to me
13 that this very well-intentioned measure is likely to
14 net increase mortality by decreasing the rate at
15 which smokers switch to vaping. It's been emphasized
16 that the FDA has not approved vaping as a smoking
17 cessation device. That's partly because to get
18 something approved by the FDA as a smoking cessation
19 device, you have to prove that it won't appeal to
20 non-smokers. So, all of the products that are
21 currently on the market were designed to be
22 unpleasant to anybody who doesn't already have a
23 nicotine addiction. That's the reason nicotine gum
24 tastes so foul. That's a design feature if you want
25

1
2 the FDA to approve it. Vaping products are designed
3 as consumer products to appeal to people, and it
4 turns out that they're much more appealing to smokers
5 than the approved nicotine cessation devices. So, it
6 seems to be--

7 CHAIRPERSON LEVINE: [interposing] And if
8 I may, sir, how many companies, how many e-cigarette
9 companies have applied for FDA approval--

10 MARK KLYMAN: [interposing] No, no,
11 nobody.

12 CHAIRPERSON LEVINE: Why not?

13 MARK KLYMAN: Because there's no way that
14 a product that, as you've heard, appeals to juveniles
15 is ever going to get through the FDA process. It's
16 just a non-starter. Not because it doesn't work for
17 adults, but because they can't prove that it's
18 unattractive to nonsmokers. So, that's a barrier.
19 It doesn't mean it's not an effective device. It
20 just-- it can't get through that regulatory process.
21 More generally, there's a double standard, and this
22 is familiar to me from my drug war days. There's a
23 double standard of evidence. Any rumor that e-
24 cigarettes do any harm is accepted as a basis for
25 public policy. And evidence that they actually do

1
2 good is dismissed as well, but not inclusively have
3 done. That's, I think, a mistake. I want to put two
4 proposals on the table as alternatives.

5 CHAIRPERSON LEVINE: If you can quickly,
6 because--

7 MARK KLYMAN: [interposing] Quickly, yes.

8 CHAIRPERSON LEVINE: the hour is late,
9 and the stack is still very thick.

10 MARK KLYMAN: I understand. More
11 aggressive enforcement against sales to minors seems
12 to me is a perfectly plausible thing to do. And
13 since the issue is primarily Juul, which is a very
14 high nicotine product, if you want to do a product
15 standard, put a cap on the nicotine level in vape.
16 That it seems to me is the powerful way to go about
17 this. I don't think that the flavor ban is going to
18 get you where you want to go.

19 CHAIRPERSON LEVINE: Okay.

20 MARK KLYMAN: Thank you very much.

21 CHAIRPERSON LEVINE: Thank you.

22 SPIKE BABAIN: My name is Spike Babain.
23 I have been here many, many times. I'm here today on
24 behalf of New York State Vapor Association. We
25 represent 700 shops in New York State and 70 of them

1 specifically in New York City. There are 70 vape-
2 specific shops in New York City that sell only vapor
3 products. There are-- 93 percent of their sales are
4 flavored e-liquid that is not tobacco. Because 93
5 percent of their sales make up flavored vapor
6 products without flavors, they will have no stores,
7 because you cannot pay rent with seven percent of
8 your sales. Unfortunately, this means the 70 shops
9 in New York City will close. That also means that
10 the people who come into New York City for work and
11 for school and from Italy on holiday can no longer
12 purchase vapor products. So, many times since the
13 age was raised-- since I was here to fight the 18-21
14 raise, we've had young people come in from other
15 countries and say I need to buy some e-liquid, and we
16 say you're 19 years old, you can't buy that here. You
17 need to be 21. Well, then I guess I guess I'll just
18 go back, buy cigarettes instead. And I understand
19 that it's illegal for them to buy cigarettes at 21,
20 but that doesn't stop them. It doesn't stop them
21 from getting cigarettes. The guy who stands on the
22 corner at Port Authority that opens his duffle bag
23 and it says Newport's, Juul pods, you know,
24 strawberry e-liquid, he doesn't check ID. We do. I
25

1
2 have four shops in New York City. I opened the first
3 vape store in New York City in 2011. Since that time
4 I have testified in front of this body of Health
5 Committee and this New York City Council more than a
6 dozen times to fight to be able to save lives.
7 That's crazy. It's crazy that I have to spend-- all
8 four of my stores are closed today. All of my
9 employees are sitting here. Those people that need
10 to come in and buy their liquid to keep them off of
11 cigarettes, they're buying cigarettes right now
12 because my employees are here. My stores are all
13 closed. Who's fault is that? I'm disgusted by the
14 fact that I'm back here again to fight to save
15 people. In the last eight years in business since
16 2011, I have saved over 10,000 people from smoking
17 cigarettes. I have converted them to a product that
18 is saving their lives, and in 90 days you're going to
19 do that. I hope you can sleep with that.

20 CHAIRPERSON LEVINE: You're learning the
21 protocols. We appreciate that. Go ahead, sir.

22 BRIAN FOYTIK: Thank you, Mr. Chairman.
23 My name is Brian Foytik [sp?]. I testify today on
24 behalf of the National Association of Tobacco
25 Outlets. We oppose both proposals, because they will

1
2 cause harm to our retail business members in New York
3 City while also failing to achieve the policy
4 objectives for which they're being offered.

5 Regarding the ban on menthol cigarettes, there's no

6 credible basis to demonstrate that menthol causes

7 initiation or continued smoking. You've heard

8 mention earlier about academic analysis of the

9 illicit trade. It demonstrates that New York City is

10 already the cigarette smuggling capital of the United

11 States. If this proposal is enacted, menthol ban

12 will only increase illegal sales and decrease

13 compliance with age of purchase laws. Regarding the

14 ban on flavored vapor products, once again I would

15 say there's no credible basis to demonstrate that

16 flavored products cause initiation or continued use.

17 Credible scientists in the United States and around

18 the world, we heard briefly from one of them today,

19 would demonstrate through science and evidence that

20 these products are vastly safer than cigarettes. And

21 I would say that if this flavor ban is enacted, the

22 proposal will harm rather than benefit public health.

23 Those who will be harmed disproportionately will be

24 New Yorkers who are lesser educated and lower income,

25 New Yorkers who struggle with mental illness or

1 substance use disorders and member of New York's
2 LGBTQ community. Members of each of these groups
3 smoke at rates much higher than the general
4 population, in some cases two or three times the rate
5 of the general population, and banning harm-reduction
6 products that can help those communities will reduce
7 the quantity and quality of their lives. Government
8 surveys demonstrate that youth get these products
9 from social sources, and from 2000 to 2012 the youth
10 smoking rates in New York declined approximately 1.25
11 percent points per year. Since 2012, as vapor
12 products became more prevalent, youth smoking
13 declined about two percent per year and are lower
14 today than any time in recorded history. That is a
15 good thing. Raising the age to 21 also eliminates the
16 need to end these products. It will only impact
17 adults over the age of 21 trying to make legal
18 purchases. For these reasons, we respectfully oppose
19 both proposals. Thank you.

21 CHAIRPERSON LEVINE: Thank you, sir, and
22 thank you to this panel. We very much appreciate your
23 testimony. We're going to try and keep this moving.
24 Next up we have Dana de Blasio from the National
25 Supermarket Association, Jim Calvin from the New York

1
2 Association of Convenience Stores, Max Bookman from
3 the New York City Newsstand Operators, David Diaz
4 from the-- David Diaz from the Bodega Association of
5 the United States. I think this is Mr. Mubarek [sp?]
6 from the Yemeni American Merchants, and Victor
7 Conastraro from Benevolent Liquids Inc.

8 UNIDENTIFIED: Ladies and Gentleman, if
9 your name was called, please come up. If you have
10 any copies of statements, have them ready when you
11 come up. Thank you.

12 CHAIRPERSON LEVINE: Please, sir.

13 VICTOR CANASTRARO: Thank you, Mr.
14 Chairman.

15 CHAIRPERSON LEVINE: Thank you.

16 VICTOR CANASTRARO: As you said, my name
17 is Vic Canastraro, and I am the owner of Benevolent
18 E-liquids. I'm also the owner of Perfection Vapes, a
19 retail outlet. I'm also a member of the Vapor
20 Technology Association as well as the New York State
21 Vapor Association. I flew here this morning from
22 Buffalo, New York when I heard of what was happening.
23 I felt it was very dangerous this type of
24 legislation, simply because two weeks ago I lost two
25 of my brothers one day a part to cancer, lung cancer,

1
2 another that cancer went throughout his whole body
3 because they didn't operate in time. Two years prior
4 to that I lost my father, two other brothers. I
5 cannot tell you how painful it has been to watch my
6 family members all die of cancer that is a direct
7 result of their smoking. It has been brought up here
8 multiple times the Royal Academy of Physicians and
9 the studies that have been done. I do not understand
10 for the life of me-- I've got some ideas, but I still
11 don't understand it-- why the information you claim
12 is unavailable is not being presented to you. The
13 information is there that supports flavors help
14 people quit. I'm a perfect example of this. I quit
15 smoking 10 years ago. I starting trying to quit at
16 the age of 19; didn't happen until I was 35. I
17 started smoking at the ripe age of nine years old, my
18 first cigarette. Apologize. The difference between
19 yourself and myself is more than likely you've never
20 smoke. You will never understand what it's like to be
21 a smoker. You will never understand that as a nine-
22 year-old it was easier for me to get a pack of
23 cigarettes than a bottle of soda, and that's crazy to
24 think about, and that has not changed in the 30
25 years, 35 years that have since passed. We can

1
2 continue to create laws and legislation that protect
3 or attempt to protect, and in all truth as many have
4 stated, markets open up and products will be
5 delivered to young and old. They make comedies.
6 South Park made a wonderful little comedy about this,
7 kindergarten kids. I mean, it's sickening to think
8 about that, but it's the truth. It's just the way
9 the world works. But the difference between you and I
10 is you've never experienced smoking. When you smoke
11 a cigarette, you first start off, you hate the taste.
12 You can't stand it. It's disgusting, but you
13 continue to do it because you're young. Nobody
14 starts-- very, very few people start smoking after
15 the legal age to smoke. So you continue to smoke and
16 bear through this horrible taste, this obnoxious
17 smell, because you want to feel older. You want to
18 feel cool. You want to be respected. Now, during
19 this time your taste buds actually start to
20 disintegrate. You don't taste food anymore. You
21 don't taste anything. When I quit smoking, I tasted
22 ice-cream. I swear to God it was like the most
23 incredible thing in my life. At the same time, when I
24 first quit smoking I went to a vaporizer, and I
25 wanted tobacco flavor. What's ironic is about three

1
2 or four days after quitting, all the sudden my sense
3 of taste and smell started to return. That item that
4 I was now tasting was repulsive. I needed something
5 that would satisfy my craving but taste good. The
6 alternative is to go back to cigarettes which will
7 take away my sense of smell and take away my sense of
8 taste. I can't expect you to understand it. You're
9 an intelligent individual by choosing never to have
10 started down the path that so many of us
11 unfortunately have done. I beg of you to consider,
12 just consider, the ramifications of what your agenda
13 is doing and could do. There's a documentary, it's
14 called "The Billion Lives." A gentleman Aaron Beiber
15 [sp?] put this together. Get it. It's on Amazon.
16 There's doctors. There's scientists. The studies
17 are there for you, but you have to look. Don't just
18 buy the--

19 CHAIRPERSON LEVINE: [interposing] Thank
20 you, Mr. Canastraro for coming down from-- all the
21 way from Buffalo and braving the weather and for
22 sharing your story. I am so, so sorry about the loss
23 of your two siblings. That's got to be incredibly
24 painful, and you certainly have my condolences, and I
25 think ultimately you and I are motivated by the same

1 thing, which is I'm thinking about the next nine year
2 old who is out there, and the reality today is young
3 people who start to smoke are mostly starting to
4 smoke e-cigarettes. They're not starting to smoke
5 traditional tobacco. Maybe if that was available to
6 you when you were nine, that would have been your
7 path as well. And so those of us who are thinking
8 about the next generation of young people have to
9 focus on e-cigarettes. I don't minimize the value of
10 this as a smoking strategy for yourself and others,
11 but I am just pointing out our paramount interest in
12 protecting the next generation of kids.

14 VICTOR CANASTRARO: If I may, just to
15 finish up with this. I do agree with you. The only
16 thing that we're missing is the fact that we know one
17 out of two people that smoke cigarettes will die of a
18 smoke-related cause. We cannot identify that. So,
19 granted the spectacle of smoking or vaping, the
20 imagery that it conveys to other children, the idea
21 that they might be addicted to it, I will say this,
22 we are the only industry-- and I will assure you that
23 the vast majority of the business owners in this room
24 have no interest in Big Tobacco. We are not Juul.
25 We are not Phillip Morris. We are not R.J. Reynolds.

1 We are mom and pops that found something that helped
2 save lives, and many of us, many of us have
3 experienced that loss and it is what has driven me to
4 have this type of passion to fly through blizzards
5 and be stuck here more than likely for the next two
6 days before I can go home to give this type of
7 testimony. And I thank you for your time. I truly
8 thank you for the opportunity.

10 CHAIRPERSON LEVINE: Thank you again for
11 speaking and for coming from Buffalo. Please, sir?
12 Just press your microphone button.

13 DAVID DIAZ: Good afternoon. My name is
14 David Diaz, President of the Bodega Association of
15 the United States. On behalf of the over 14,000
16 bodegas that the bodega Association represent, I urge
17 to reject the proposal to ban menthol cigarettes and
18 banning the self-flavorite [sic] e-cigarette. These
19 proposals hurts our community disproportionately, and
20 will not serve the problem of underage access. The
21 bodega community is committed to ensuring that
22 minimum age law and age verification requirement are
23 fully completed with. New York already has one of
24 the highest rates of compliances with underage law in
25 the country. Bodegas are important to underserved

1
2 community. We operate in the most challenges to
3 economic environment in New York State. Government
4 policy which raise costs like higher minimum wage
5 requirement will limit our ability to serve legal
6 product to adult like tobacco product impact us for
7 more dramatically than other retail. Retail tobacco
8 sales already have heavily regulated by the Federal
9 and State and City Government. New York City
10 currently has among the most restrictive regulation
11 of tobacco in the country, and now coincidentally also
12 the highest rate of cigarette smoking in the country.
13 Higher taxes minimum [inaudible] on license
14 restriction have already lead to the dramatic growth
15 of cigarettes smuggling in New York State. The
16 harder the city makes is for legal at checking
17 compliant to serve tobacco product to the doctor.
18 The larger the black market will get. This hurts
19 retailer, reduced tax revenue and also harm our
20 young. We believe the proposal will result in lost
21 revenue, lost jobs, and increase numbers of sales
22 underage and illegal selling. New York State has
23 almost the highest tobacco taxes in the country. As
24 a result I will state also have the higher ate of
25 black market cigarettes sells in the United States.

1
2 Almost 60 percent of tobacco served, and no taxes or
3 age verify. The black market is higher in the
4 communities that bodegas serve. When [inaudible] away
5 from the [inaudible] bodega feels like hardest. We
6 have employees to pay and family to feed like
7 everyone else. The Bodega Association of United
8 States respectfully requests that the proposal to ban
9 Menthol cigarettes and flavor e-cigarette. Reject it
10 [sic]. Thank you.

11 CHAIRPERSON LEVINE: Okay. And [speaking
12 Spanish] Can I-- I'd like to ask a follow-up
13 question. If you'd like, we can translate.
14 [speaking Spanish]

15 DAVID DIAZ: Espanol.

16 CHAIRPERSON LEVINE: Okay. [speaking
17 Spanish] I'll translate to English in a moment.
18 What I was asking Mr. Diaz is, his response to young
19 people reporting the east with which they as underage
20 people have bought flavored e-cigarettes from
21 convenience stores.

22 DAVID DIAZ: [speaking Spanish]

23 CHAIRPERSON LEVINE: Mr. Diaz was
24 explaining that he has personally not had-- not been
25 ticketed or fined for this at his store, and that he

1
2 believes the people who are selling to kids are
3 unlicensed which is an interesting angle we would
4 like to certainly explore with the City to
5 specifically target unlicensed sellers of this
6 product. We do have to move on, but very much
7 appreciate--

8 DAVID DIAZ: [interposing] [speaking
9 Spanish]

10 CHAIRPERSON LEVINE: [speaking Spanish]

11 DAVID DIAZ: Thank you very much.

12 CHAIRPERSON LEVINE: Okay, thank you,
13 sir. Please?

14 YOUSSEF MUBAREZ: Hi my name is Youssef
15 Mubarez from the Yemeni American Merchants
16 Association. We're a nonprofit birthed from the
17 successful bodega strike of 2017, and I'm pleased to
18 provide testimony on behalf of our merchants against
19 this bill. Yemeni American bodegas account for
20 thousands of businesses throughout the New York area,
21 a large portion of which these businesses in these
22 neighborhoods, the Yemeni American Merchant has their
23 families and homes as well. These businesses support
24 their livelihood and a ban on menthol cigarettes or
25 e-flavored cigarettes will inevitably result in a

1 steep decrease in revenue for these businesses. Our
2 community has particularly worked very hard to
3 educate and raise the lives of our constituents to a
4 comfortable standard of living by following the law
5 when it comes to properly selling these products in
6 their stores. So, it's unfair to punish the law-
7 abiding citizens by assuming the actions of the few.
8 The idea of banning menthol cigarettes, which if you
9 ask the average bodega owners, essentially banning
10 cigarette sales entirely, shuts down a full faction
11 of business. Such measures increase criminal
12 enterprises of illegal sales, increases "loosie"
13 [sic] sales and in turn increases public safety needs
14 for already stressed communities that these merchants
15 of families are living in. Our law-abiding bodega
16 owners will essentially be forced to either close
17 their business or sell "loosies" to keep their
18 businesses afloat, the latter of which we all know is
19 not an option. We believe this bill needs to be fully
20 re-evaluated, if not abandoned completely. Our
21 Yemeni bodega owners are a staple in our communities
22 and the NYC economy, and we support our merchants by
23 protesting this bill. We continue every day to
24 educate our merchants on the responsibility to sell
25

1
2 these products legally. I implore you to test this
3 notion that you can easily buy products without age
4 verification. We ask for a careful consideration of
5 our community, and we invite you to work with us.

6 CHAIRPERSON LEVINE: Thank you very much,
7 Mr. Mubarez, if I'm pronouncing that correct. I
8 couldn't live without my corner bodega, and to me
9 they're an essential part of the fabric of New York
10 City neighborhood life. I'll ask you the same
11 question I asked Mr. Diaz, which is how you respond
12 to reports from young people who spoke earlier of the
13 ease with which underage New Yorkers can purchase
14 flavored e-cigarettes.

15 YOUSSEF MUBAREZ: I mean, like I said, I
16 would test that notion, and I do agree that the
17 people who are selling these products to minors are
18 unlicensed. I mean, their bodegas are, you know,
19 getting by to just support their family. They're not
20 living high wealthy lives. They wouldn't risk that by
21 selling cigarettes or banned products to minors. The
22 people with licenses take it very seriously. I
23 myself can't even buy one without being ID'd. So, I
24 reject that notion.

1
2 CHAIRPERSON LEVINE: Okay. Thank you for
3 speaking out and for your input and for representing
4 this important sector in the City, and it's an
5 opinion that matters a lot to me and the Council as
6 whole--

7 YOUSSEF MUBAREZ: [interposing] Thank you.

8 CHAIRPERSON LEVINE: as we think about
9 this policy. Thank you all very much. Muchas muy
10 gracia [sic]. Oh, yes, sir, please. Okay, you
11 confused me.

12 JIM CALVIN: Chairman Levine, my name is
13 Jim Calvin. I'm the President of the New York
14 Association of Convenience Stores. We're a private
15 statewide trade association. Most of our members are
16 licensed and responsibly sell legal tobacco products
17 to adult customers. We believe that legislatively
18 banning the sale of menthol cigarettes would be like
19 commanding the tide to stop coming in. There's
20 enormous demand for the product. About a third of
21 total cigarette consumption nationally, and it's
22 existed for generations. Menthol smokers would be
23 undeterred in finding alternate sources of the
24 product. It's widely known that hundreds of
25 thousands of New York City smokers routinely buy

1
2 cigarettes from "trunk slammers," street peddlers,
3 criminal entrepreneurs who smuggle them in largely
4 from lower taxed states down the I-95 corridor. The
5 Mackinac Center for Public Policy describes New York
6 as a smuggler's paradise, documenting that 56 percent
7 of all cigarettes are purchased outside of regulated
8 channels. As for flavored cigarettes, they too, if
9 you were to ban them, would still be abundantly
10 accessible in New York City, online, from neighboring
11 jurisdictions, and from a black market, which would
12 become as strong as the one that exists today for
13 cigarettes. Given the pervasiveness of these
14 unregulated channels, the choice here is not between
15 making menthol cigarettes available or unavailable or
16 between making flavored e-cigarettes available or
17 unavailable. It's between having them sold in a
18 licensed, taxed, age-verified environment, or having
19 them sold on the street without any tax collection or
20 age verification whatsoever. Please don't hand the
21 other 44 percent of New York's tobacco trade to the
22 bootleggers, and please don't unwittingly drive
23 smokers of menthol cigarettes and users of flavored
24 e-cigarettes to the unlicensed, unregulated, untaxed
25 side of the street. Please don't cripple mom and pop

1
2 retailers for whom business survival is a daily
3 struggle and who are trying to do the right thing.
4 When you asked earlier about the incidence of
5 underage sales of tobacco in New York City, the
6 Administration representatives were unable to come up
7 with data on their fingertips. However, I've got
8 some data to share with you. New York State Health
9 Department publishes an annual report of underage
10 sales community by community. The most recent report
11 is for the year ended March 31st of 2016. First, let
12 me take you back to 2006. At that time, in New York
13 City there was 85 percent compliance, meaning 15
14 percent of the time the retail store failed the
15 undercover tobacco sting. In 2016, the compliance
16 rate is now 94 percent. So, retailers have gotten
17 the message, and they're doing their best to do the
18 right thing to prevent underage sales as citizens, as
19 parents, and as responsible business owners. We are
20 as committed to preventing underage sales of e-
21 cigarettes and tobacco products in New York City.

22 CHAIRPERSON LEVINE: Okay. Thank you
23 again for that perspective and for coming here and
24 for reprinting your important sector. We appreciate
25 that. Very quickly, Vic, because we do have a--

1
2 VICTOR CANASTRARO: [interposing] I
3 appreciate it. Just one thing.

4 CHAIRPERSON LEVINE: Yes.

5 VICTOR CANASTRARO: You know, to his
6 point, and I really don't get the opportunity to talk
7 to the bodega owners and the convenience store
8 owners, but hearing their testimony-- you said
9 something that was key earlier, and I verified it.
10 Amazon does now have e-cigarettes. What's ironic is
11 it's against their very own end user licensing
12 agreement. EBay as well. This should be legislation
13 that you guys could look at, because I got to tell
14 you, a lot of kids are buying this stuff online.
15 They're telling mom and dad they're getting a video
16 game. It shows up on the credit card as eBay or
17 Amazon, and they're getting stuff delivered right to
18 the house before mom and dad even get home from
19 work. But I just thought I'd bring that to your
20 attention.

21 CHAIRPERSON LEVINE: Appreciate that
22 clarification. Thank you. Okay. The next panel, we
23 actually have eight people who have signed up from
24 what looks like the same company called Harold Levis
25 and Associates. So, rather than reading out all the

1
2 names, if it's okay I'll ask the individuals from
3 that company-- okay, thank you for that. Thank you.
4 Okay, then while you're settling in-- it was Mr.
5 Barrone?

6 UNIDENTIFIED: Carrone [sp?].

7 CHAIRPERSON LEVINE: Carrone? I'm going
8 to call up some additional individuals so that we
9 keep this moving. So we have Alexander David Morales
10 [sp?]. We have Christine Johnson [sp?]. I think
11 it's Leonin [sp?] Gindy [sp?]? Mark Silber [sp?], and
12 Joseph Senapi [sp?]. And Mr. Carrone, you can kick
13 us off while we're waiting for the others to come up.
14 Go ahead, sir.

15 ROBERT CARRONE: Alright. My name is
16 Robert Carrone [sp?]. I want to thank you very much
17 for this opportunity. I'm here on behalf of Harold
18 Levinson Associates [sp?], the ownership of.
19 Firstly, I'd like to give you our background. HLA is
20 a full-line convenience store distributor selling
21 grocery, frozen and refrigerated foods, beverage,
22 school supplies, health and beauty products, general
23 merchandise as well as cigarettes and e-cigarettes.
24 Our company is located in Farmingdale, New York. HLA
25 is one of the largest privately-held companies in New

1
2 York State. Over the last 41 years we have grown to
3 over 15,000 customers, which includes thousands of
4 customers within New York City and the five boroughs.
5 We occupy 23 acres of real estate and have over 700
6 employees, most of them who are members of the
7 Teamsters Union, and most live and vote within City
8 of New York. In addition to all this, we are also one
9 of the largest tax collectors, not only in the City
10 of New York, but the entire state of New York,
11 proudly remitting hundreds of millions of dollar
12 annually in support of the state that enables us to
13 employ so many individuals and touch many lives in a
14 positive way. This background is necessary for you
15 to understand that you realize-- and that you realize
16 that we just-- we're just not a fly-by-night company
17 or individual wanting our voice heard, or we as an
18 organization are not only worried about revenue.
19 Cigarette smoking and teen vaping is an issue that
20 all of us are concerned about as parents and
21 citizens. However, this problem certainly did not
22 arise overnight, and neither should decisions about
23 the best way to address it. Yet, legislation is
24 proposing a ban on flavored cigarettes and menthol
25 cigarettes without any notice or request for input

1 from the very businesses that are licensed to
2 responsibly sell these products to adults. This
3 could be considered a careless use of authority with
4 a potentially detrimental cause and effect result.
5 Banning the sale of menthol cigarettes from New York
6 City will lead to thousands of New York employees
7 losing their jobs, many of which are union employees
8 with health benefits and pensions, 100 million
9 dollars in lost tax revenue to the City of New York,
10 tax collectors going into bankruptcy, the state and
11 city won't have anyone to stamp cigarettes. The city
12 will encounter hundreds if not thousands of people
13 selling menthol cigarettes from lower tax
14 jurisdictions. Crime will be out of control. In a
15 perfect world, this would purely-- this would be a
16 public health issue. However, we all know that we do
17 not live in a perfect world, and therefore it is a
18 business and societal issue, a serious issue that
19 needs to be handled with care, thought, and
20 responsible action. The marketplace has changed in
21 just the last several weeks with manufacturers
22 voluntarily withdrawing some flavored e-cigarettes
23 from the market, as you're aware of what the FDA is
24 doing with regard to flavored products. The tobacco
25

1
2 industry is working diligently with the Federal
3 Government. We ask you to be patient while the
4 Federal Government comes out with new legislation for
5 all states. Respectfully, we think you need to call
6 a timeout so that you can hear the effective
7 retailers, wholesalers and the community as a whole
8 and investigate whether a sales ban would actually
9 keep the product away from children and take the time
10 to better understand all the regulatory and market
11 forces at play here. The ownership of HLA is
12 available to discuss the subject at hand and answer
13 any questions at any time.

14 CHAIRPERSON LEVINE: I appreciate that,
15 Mr. Carrone. What percent of your sales would you
16 say are flavored e-cigarettes? You have a very wide
17 product line, right?

18 ROBERT CARRONE: Yes, we do. We have a
19 very wide product line. I don't have accurate data
20 on that, but being the regional sales manager of the
21 City of the five boroughs of New York City, I would
22 say it's maybe 40 percent would be flavored.

23 CHAIRPERSON LEVINE: Forty percent of the
24 e-cigarettes you sell.

25

1
2 ROBERT CARRONE: Of the e-cigarettes
3 would be flavored.

4 CHAIRPERSON LEVINE: But e-cigarettes as
5 a whole are only a tiny percentage. You said you
6 sell all sorts of consumer products, packaged foods,
7 etcetera, right?

8 ROBERT CARRONE: Yes.

9 CHAIRPERSON LEVINE: So, the--

10 ROBERT CARRONE: [interposing] The
11 tobacco and menthol, I would think at this point in
12 my region would be the predominant sell, each ones.

13 CHAIRPERSON LEVINE: Really, more than
14 all the other categories combined?

15 ROBERT CARRONE: Correct, correct.

16 CHAIRPERSON LEVINE: Okay. We have a lot
17 of work to do to educate New Yorkers about health
18 choices if that's the case. But we appreciate you
19 speaking out. Please, sir?

20 ALEXANDER MORALES: Hi.

21 CHAIRPERSON LEVINE: [interposing] Sorry,
22 that mic actually is a little bit funky. So, you can
23 use either.

24 ALEXANDER MORALES: Thank you. Hi, my
25 name is Alexander Day Morales [sp?]. I am 41 years

1
2 old. I was a former two-pack-a-day smoker for 21
3 years until four years ago when I walked into a vape
4 shop in Manhattan and bought my first flavored liquid
5 for a vape, and weeks later I was no longer smoking
6 cigarettes. Let everything come full circle, and I
7 now work for that vape shop helping others quitting
8 smoking. In my family there is a history of heavy
9 smoking usage. There is a history of cancer in my
10 family. I am that risk, but my risk now has been
11 reduced because flavored e-liquids helped me get off
12 of combustible cigarettes. I am now also able to
13 breathe better. I have lived most my life with
14 bronchial asthma. I have not had a fit of bronchitis
15 in four years. I can actually run for my subway train
16 and not be winded when I make it, and trust me, I
17 live far, okay? Making this ban is honestly not
18 going to work. You can ban a lot of things and that
19 work, but there's a lot more things that don't work.
20 I live in public housing, and let me tell you
21 something, the smoking ban in public housing, not
22 working. It's not working at all. But if you ban
23 these flavored liquids, I will become not a positive
24 statistic of somebody who no longer smokes. I will
25 now be back in the statistic of a smoker in risk of

1 heart disease, in risk of cancer, and risk of just
2 having bag lungs in general. I will also be
3 unemployed, because I work at a vape shop. And
4 because like with most of my customers, about 95
5 percent of them say they would be going back to
6 cigarettes if they don't have the flavors, and me
7 living in public housing, I would also be at risk of
8 losing my apartment because of this addiction which
9 is very hard. You may not understand how bad it is
10 trying to quit smoking, but at least getting nicotine
11 from something other than cigarettes, trust me, it
12 helps a lot. I recently helped my girlfriend make
13 the switch. She was a pack, pack-and-a-half day
14 smoker. I bought her a vape with some fruit flavored
15 e-juice about two weeks ago. She's now down a half a
16 pack. That's almost a whole pack-a-day less she's
17 smoking now. Banning in general is honestly not
18 going to work, because if we don't find other means
19 of getting it as easy as going down to the local vape
20 shape, we're either going to go back to smoking or
21 just get it from somewhere else. It's as simple as
22 that. I am-- I'm in agreement, keep the kids away
23 from it. There are so many other ways to go do to
24 eliminate their access to it, but you can't just jump
25

1
2 the gun and just ban it and risk having millions of
3 New Yorkers go back to cigarettes.

4 CHAIRPERSON LEVINE: Thank you, Mr.
5 Morales, for speaking out, and I congratulate you on
6 what I know must have been a very difficult process
7 to give up tobacco, and I wish more people had the
8 fortitude to do it. I congratulate you on that, and I
9 hear you, I hear you on the role that vaping has
10 played in helping you make that transition, and so
11 we're glad you spoke out, and I appreciate you
12 putting your voice on the record. Thank you to you
13 both. We're going to move on to the next, because we
14 still have a lot of people. The next panel will be
15 Johnathan Corker, Robert Testagrossa [sp?]. Oh boy,
16 this is someone else from Cloud Vapors, Cloud 99
17 Vapors, Vale Zinzar-- the handwriting is not
18 readable. Looks like we have a second person with
19 the last name Corker also from Cloud 99, Matthew
20 Elliot, and I think it might be Ham Dan Hisan [sp?].
21 Okay, I'm going to call two more, but then you can
22 start, sir.

23 ROBERT TESTAGROSSA: sure.
24
25

1
2 CHAIRPERSON LEVINE: We're going to ask
3 for Robert Singapi [sp? And Maryum Suni [sp?]. But
4 you can start, sir, please.

5 ROBERT TESTAGROSSA: Chairman Levine,
6 good afternoon. My name is Robert Testagrossa. I am
7 the President and owner of Cloud 99 Vapes. It's a
8 local New York City vape shop. On behalf of our
9 company, I'd like to express why we believe this
10 legislation is counterproductive, overreaching and
11 ill-advised. I myself, as well as my partner, many of
12 our employees and thousands of our customers have
13 quit smoking cigarettes through the use of flavored
14 nicotine. I had no success quitting with nicotine
15 gum or patches and anecdotally we find most of
16 customers did not. On the one hand, our state is in
17 the process of legalizing marijuana, a long over-due,
18 widely supported change in law that defers judgement
19 to responsible adults, and yet, on the other, we're
20 here today now debating banning the sale of flavored
21 nicotine. This dissonance is a result of succumbing
22 to a moral panic. Every responsible party in this
23 industry is endeavoring to keep nicotine products
24 away from minors. At our own stores we go far beyond
25 the letter of the law. No one under 21 is permitted

1 entry. Every single customer is verified by photo ID
2 before purchase regardless of their age, and twice a
3 month at each of our locations a secret shopper is
4 sent in to test that employees are following these
5 written policies, a service we pay for at our own
6 expense. We are responsible retailers and our
7 vigilance is not unique in this industry. We have 18
8 employees that depend on us for their jobs to pay for
9 college, childcare, and to afford to live in a city
10 that we call our home. There are almost 3,000 other
11 licensed electronic cigarette dealers in New York
12 City. These businesses, often small businesses,
13 employ tens of thousands of New Yorkers. If this ban
14 is enacted, the livelihood of every one of them will
15 be endangered. Not one of us here wants kids to pick
16 up these products, and we're 100 percent in favor of
17 age restrictions and a robust enforcement of the law.
18 But the concern that children will use them, the fear
19 that is driving this legislation is not novel threat.
20 Society has crossed this bridge before with alcohol.
21 We do not ban flavored alcohol just because the
22 underage find it palatable. Instead, we restrict the
23 purchase to legal adults and we prosecute any
24 businesses or individual that violates society's
25

1
2 norms and sells to children. This is exactly the
3 tact that needs to be taken with e-cigarettes. I
4 implore the City Council to follow the precedence
5 that our society has established and not rush to
6 repeat prohibitionist mistakes.

7 CHAIRPERSON LEVINE: Thank you, Mr.
8 Testagrossa for speaking out and for your very
9 thoughtful and respectful tone. You've got a lot of
10 fans in the room, clearly. I will just point out on
11 the charge of inconsistency vis-a-vi marijuana, for
12 your own benefit and for the benefit of a few
13 libertarians who are clearly watching us online and
14 tweeting at me, I actually want the same thing for
15 marijuana as I want for alcohol, as I want for
16 tobacco, as I want for e-cigarettes. I want heavy
17 regulation. I want heavy taxation. I want to strictly
18 prescribe where the products can be sold and who they
19 can be sold to, and yes, I do favor a ban on certain
20 varieties of all of these products.

21 ROBERT TESTAGROSSA: Are you in favor of
22 banning flavored alcohols?

23 CHAIRPERSON LEVINE: I might be if you
24 can make the case, but I haven't seen any evidence
25 that that's driving a youth epidemic of--

1
2 ROBERT TESTAGROSSA: [interposing] You
3 ever recall in your youth--

4 CHAIRPERSON LEVINE: [interposing] high
5 school age alcohol consumption.

6 ROBERT TESTAGROSSA: consuming blackberry
7 snaps or an appletini or something when you were
8 under age? Don't you suspect--

9 CHAIRPERSON LEVINE: [interposing] If you
10 can make the case that those flavored liquors are
11 driving youth alcoholism, I'd love to have that
12 discussion. We can come back for another hearing,
13 but in the case of vaping, we don't need to come back
14 because we do already know that young people are
15 vaping at epidemic levels, and they're overwhelmingly
16 choosing things like "fantasy" and "bazooka" which if
17 these aren't designed to appeal to kids, I don't know
18 what are. I do want to-- I don't want to linger
19 this. I do want to say how much I appreciate the
20 case that you and others have made on two points.
21 One is that there are adults for whom the flavor has
22 been key to kicking the cigarette habit. I hear you
23 on that. And I also understand that there are small
24 businesses out there who would be impacted by this,
25 so I don't minimize that perspective, and I want you

1
2 to know that I hear you, and your tone was thoughtful
3 and reasonable and so I don't take anything away from
4 it, but I just didn't want to respond on the
5 questions of inconsistency among different addictive
6 substances. I do want to move on only because it's
7 now-- we were supposed to be done at five. We have
8 many other people who want to speak, and so yes, sir,
9 please take it away.

10 P. COCKER: Hello, Mr. Chairman. My name
11 is P. Cocker [sp?]. I'm Rob's partner at Cloud 99.
12 I'm a former smoker. I'm a shop owner.
13 Unfortunately, my mom is currently diagnosed with
14 Stage IV lung cancer, but today's testimony-- I
15 wasn't going to speak until I heard that young lady
16 speak before about the prohibition and what we have
17 not learned. So, my past, I'm a retired New York
18 City police officer, right? And the reason why I
19 compelled to come up here, the name that yourself and
20 everyone else is dancing around is Eric Gardner.
21 Eric Gardner died because of prohibition and high
22 taxes, prohibition through high taxes. He was
23 selling "loosies" in front of another bodega, and
24 that's what I feel what's going to happen. You know,
25 we could talk past it. As far as the e-liquid goes,

1
2 I mean, the only people that sell Juul pods online is
3 Juul themselves. See, you're going to ban our stores
4 from selling Juul, but they're going to be able to
5 bring them into our stores. Over one of the largest
6 ports in the country is right across the Hudson
7 River, an eight-minute ferry ride. You're going to
8 create such a black market, and I guess it must be
9 very easy-- and not to be controversial with you, but
10 I don't know if you've ever put handcuffs on people,
11 but I did for marijuana, and there was a lot people
12 who were suffering from that. Now you're just
13 creating that whole 'nother [sic] market, and it's
14 going to-- believe me, nicotine is a lot more
15 addicting and people are going to do a lot more shady
16 things, if you want to say it, to get their nicotine
17 fix than they ever did for marijuana. That I can
18 promise you. So, I just-- I heard people talking
19 past the name, because no one wanted to say it, but
20 we've already had a young black man die because of
21 high taxes on cigarettes, and now you're creating
22 this other black market that I promise you it's going
23 to happen.

24

25

1
2 CHAIRPERSON LEVINE: And we care about
3 the law enforcement angle, and I appreciate your
4 perspective on that. Thank you. Yes, sir?

5 : Good afternoon.

6 CHAIRPERSON LEVINE: If you could turn
7 your mic on. Yep.

8 MATTHEW ELLIOT: Good afternoon, or
9 should I say good evening at this point. My name is
10 Matthew Elliot. I am 27 years old, turning 28, and I
11 started smoking cigarettes at eight years old. I was
12 stealing cigarettes from my grandfather's packs. I
13 was stealing cigarettes from my mom's packs. Now, I
14 wasn't from them, not keeping them out of harm's way.
15 I would look for them-- inquisitive minds. But I
16 started smoking full cigarettes, inhaling, at eight
17 years old. By the time I was 12 years old, I was
18 smoking a pack a day. I've had nicotine going through
19 my system since I was eight years old. By the time I
20 was 16 I had a slight disagreement with my mother,
21 and I was out on the streets. There were many times
22 I had to choose between do I buy cigarettes or do I
23 buy food, and I can't tell you how many times that I
24 actually chose food, because I could always trade
25 cigarettes to get food. I quit smoking using vaping

1
2 when I was 22 years old, and at that point I was a
3 three-pack-a-day habit. Cigarettes are expensive. I
4 was working extra hard to afford it. Since then, I
5 worked in the vape industry. I worked at shops. I
6 worked at e-liquid manufacturing facilities. I know
7 the ins and outs of this industry. I'm also from
8 Suffolk County, Long Island, but I lived in Carroll
9 Gardens, Brooklyn for a time, PS58. It is imperative
10 that flavors are around to help adult smokers quit
11 because you've never smoked; good for you. I have,
12 and the thing that will drive me back is if flavors
13 are no longer around. I was addicted, and I still am
14 addicted to nicotine, but that's okay, I've made my
15 peace with it. Others may not be able to. So I urge
16 this Health Committee, listen to the testimonies of
17 everyone, and if anything stands out, it is that a
18 gentleman at eight years old started smoking
19 cigarettes, had to give up a baseball career because
20 I was throwing up blood after practice. I chose
21 cigarettes over food when I was homeless. Now, I'm
22 able to help others quit cigarettes using flavored
23 vapor products. Flavors save lives. Thank you.

24 CHAIRPERSON LEVINE: Thank you, Matthew.
25 Thank you speaking. Yes, ma'am?

1
2 MIRIAM SUNNY: Good afternoon. My name
3 is Miriam Sunny [sp?]. I'm a minority. I'm a woman.
4 I'm a lifelong New Yorker, and I'm a user of flavored
5 e-liquids. I'm also the owner of a vape retail space
6 in Queens, New York. We are an employer within our
7 community and a holder of a license issued by this
8 city to sell electronic cigarettes, which we receive
9 by adhering to all the laws and regulations of this
10 city which include the refusal of any person under
11 the age of 21 from even being entertained within our
12 space. Approximately, 95 percent of the e-liquids
13 sold in our store are of flavors other than tobacco,
14 and that's not because we don't offer multiple
15 tobacco options as a part of our inventory. The
16 thousands of adults that have quit the proven deadly
17 effects of cigarettes that have walked through my
18 store doors have done so because of flavors. Excuse
19 me. Vape shops are not line one-stop smoke shops.
20 We don't carry traditional tobacco products, and like
21 others, my vape shop-- like my vape shop, we put a
22 tremendous effort to self-regulate through employee
23 and consumer education and should not be forced to go
24 out of business because of sales to minors by gas
25 stations, delis and other similar less concerned

1
2 retailers that have not gone through the process of
3 licensing or regulation, and we welcome further
4 regulation by both the government and parental
5 guardians, regulations that would serve both of our
6 efforts of ending youth access to these products. We
7 share the same goal and hope it's understood that our
8 umbrella ban of all vapor flavored products is not
9 going to be the best course of action. This bill
10 needs to be edited in a way that would make sense for
11 everyone involved. I will end by reiterating that my
12 identity is that of a minority, that of a female
13 business owner, and operating in a predominantly
14 minority neighborhood in New York City, one that has
15 not benefited from the previous smoke-free actions
16 taken in a way that it may have benefitted other
17 parts of our city. I opened my business four years
18 ago in order to provide my community with an
19 alternative to cigarettes and the deaths that follow
20 from cigarette addiction, and I hope that we can
21 continue to do so. Thank you.

22 CHAIRPERSON LEVINE: Thank you for your
23 testimony. Thank you to this panel. We very much
24 appreciate it, and we're going to try and keep moving
25 because we still have a lot of people. Next I'd like

1
2 to call up Ashley Zanatta, Allen Schniederma [sp?],
3 I think it's David Mofrig [sp?], Stewart Bowers,
4 Shera Wynn [sp?], it's Alex, I think, Cubara [sp?],
5 and I'm going to call up a couple additional, but
6 then I'll ask you to start. So, we have Courtney
7 Williams, Steve Marrer [sp?], and looks like it's
8 Miguel de Jesus [sp?]. You can start, please.

9 ASHLEY ZANATTA: Thank you, and good
10 evening, and thank you so much for the opportunity to
11 speak. My name is Ashley Zanatta, and I am currently
12 the Community Engagement Manager of Tobacco-Free
13 Staten Island, a program that works with youth and
14 the community to decrease the social norm and
15 acceptability of tobacco use through advocacy and
16 education. Eliminating flavors, including menthol
17 products and flavors in e-cigarettes can save lives
18 and money. Flavored tobacco products are marketed in
19 ways that appeal strongly to children and youth.
20 These flavors are particularly enticing to young
21 people, and experimentation can lead to long-term
22 addiction to tobacco products. In addition, these
23 products harm low income communities, resulting in a
24 greater burden and a less prosperous community in
25 already vulnerable areas. Over the past decade I have

1
2 seen firsthand the rise of e-cigarettes and flavored
3 tobacco products among youth, specifically 13 to 18
4 years old. I have been called upon by middle and
5 high school principals to educate staff and students
6 that these products have become so problematic within
7 schools and communities. While we can all agree that
8 kids should not vape, the reality is that due to the
9 flavors and accessibility of these products they are.
10 A Truth Initiative survey found that in 2018, one in
11 five high school students reported using e-cigarettes
12 in the past month. Most people are here because it
13 impacts their wallet, and while some can argue e-
14 cigarettes help current smokers, e-cigarette use
15 among high school students between 2014 and 2018
16 increased 160 percent. So the real question should
17 be, are we here to help people quit smoking using
18 evidence-based practices, or are we here ensuring
19 that we sustained future users through flavors,
20 because through the testimony what I'm hearing is
21 that individuals have only replaced the products. I
22 work with students, so I'm going to read a few of
23 their statements. "E-cigarette companies advertise
24 with colors and diverse smells, and I feel like they
25 target me by making it candy-like. I like mint and

1 winter fresh, and the candy ones smell nice. Some of
2 the ads make me feel like it's better for your
3 health, but we really don't know that. Their
4 marketing is used to get me during a bad time,
5 because it's colorful and tasty, but in reality it
6 will only make things worse, and there is so much we
7 don't know about the effects. They are taking our
8 futures away for money," Kalil [sp?] 15 years old. "I
9 see lots of signs advertising new flavors such as
10 mint, blue ice, bubblegum, and many more. A lot of
11 these are specifically nearby schools, giving me,
12 along with other students, easy access to get them."
13 Isabella, she's 12. "In order for an e-cigarette
14 companies to draw many of my friends into buy or use
15 their products, they make bright colorful
16 advertisements, signs that make us want this. They
17 also advertise flavors to draw us in that make us
18 want to use these products. Lastly, they make their
19 products smell like sweet flavors that youth would
20 like to try." The prime objective of public health
21 law is to pursue the highest possible level of
22 physical and mental health in the population, to
23 identify, prevent and eliminate risk to health in the
24 population consistent with the value of social
25

1 justice. This is an opportunity to decrease the gaps
2 of health equity and save lives of our future
3 leaders, politicians, doctors, lawyers, and
4 advocates. So while New York City has come a great,
5 great way, there is clearly more work that needs to
6 be done, especially in regards to flavors.

8 CHAIRPERSON LEVINE: Thank you, and thank
9 you for sharing the voices of young people. It's
10 always the most important. Thank you. Yes, sir? I
11 think they actually fixed the funky one, too, if you
12 want to--

13 ALEXANDER SCHNIEDERMAN: [interposing]
14 No, that's alright.

15 CHAIRPERSON LEVINE: give it a shot.

16 ALEXANDER SCHNIEDERMAN: Hi, my name is
17 Al Schniederman. I'm 24 years old. I've been smoke-
18 free for four years now because of flavored nicotine
19 products. As a former smoker of nine years, I can
20 confidently say that if I had been stuck using a
21 tobacco or menthol flavor I would still be a smoker
22 today. I'm completely opposed to minors using vaping
23 products, but I'm also completely opposed to not
24 allowing adult smokers the chance to get off
25 traditional cigarettes they have been a slave to for

1 years. I have three younger siblings aging from 14
2 to 17, and not a single one of them or their friends
3 smoke cigarettes compared to when I was their age and
4 all my friends smoked. You say you care about
5 children's health, and I really hope you do, but
6 between losing syntax money, master settlement
7 agreement payments, legalize-- you know, going to
8 legalizing recreational marijuana including flavored
9 candy, THC-infused products seems more about
10 economical issues than children's health. Why not
11 regulate these products by enacting mandatory ID
12 scanning, We Card training programs, heftier fines
13 for noncompliant retailers, and why are we not fining
14 the minors who have these products. In 45 out of 50
15 states, if a minor gets caught with an e-cigarette
16 product, they get fined, they get sentenced to
17 community service that gets the parents involved.
18 Why are we not doing that in New York? Another
19 problem is we should really let the adults know that
20 if they try to purchase a product for a minor that
21 they are going to be charged and fined as well. It's
22 not just the retailer, because there's a huge problem
23 with adults buying it for minors knowingly, and it's
24 a shame that because of them and their problems, not
25

1
2 just them, but because of those issues, we're all
3 going to suffer as consumers. I'd like to ask you,
4 do you drink coffee? And if you do, do you drink it
5 black or do you put sweetener in it? Why is it that
6 adults put flavors in their coffee? They don't like
7 the taste of it by itself. Basically, what you're
8 saying is the equivalent to we can only drink black
9 coffee with caffeine in it, and if we want coffee
10 that has caffeine in it, we cannot have it with
11 sugar, we cannot have it with creamer, because
12 children also like flavored creamer and sugar. It's
13 not fair for these adults that are going to lose out
14 on these products. Thank you for your time.

15 CHAIRPERSON LEVINE: For the record, I
16 don't put sugar in my coffee. Also, no one's dying
17 coffee. Go ahead.

18 STEWART BOWERS: My name is Stewart
19 Bowers. I run an electronic cigarette store in
20 Brooklyn. Part of my job and responsibilities is to
21 make sure that underage do not purchase from my
22 store, but parents also have a job and
23 responsibility. Mrs. Fuhrman's son bought an e-cig
24 on eBay probably for about 70 dollars. Pods go for
25 about 25 dollars. I'm not in her home to tell her

1 child that he can't buy those things. If I don't do
2 my job, I get fined. When a parent doesn't do their
3 job, what happens to them? There's no fine for them.
4 There's no consequences for the youth. If your son
5 throws a rock through your neighbor's window, you
6 don't punish your neighbor's child. You're not going
7 to get the result you're looking for. This bill
8 holds no responsibility for a parent not doing their
9 job or hold a child accountable for his actions.
10 Instead, you want to punish me and my business and my
11 customers, make me pay for the broken window. In
12 Park Ridge, Illinois they have made it illegal for
13 underage to possess vaping products. There's a fine
14 to be paid. Consequences for your decisions. When
15 parents start having to be responsible for their
16 child and pay fines, watch how fast this epidemic
17 disappears. All of a sudden parenting will be coming
18 into the factor, not flavors. Flavors are an
19 important part of my business. My oldest customer is
20 86 years old, and he uses a mango flavored e-liquid.
21 If this bill passes, you want me to tell him that he
22 can't get his mango liquid because some kid thinks
23 it's a good idea to use a Juul. It's cool for him
24 and his friends. The New York City and New York

1 State Health Commissioners have to my knowledge not
2 met with any vape businesses, vapers, or
3 organizations like the New York State Vapor
4 Association to get information from the people who
5 use the product. This is a regulation that impacts
6 us, yet you don't have us in the mix. We're never on
7 the other side of the table when you're talking to
8 the American Lung Association and everybody else. I
9 would like to see some kind of information from
10 somebody that's going to give me some kind of
11 guarantee that if these flavors are taken away, that
12 underage youth use of these things will drop. The
13 consequences to this bill passing will be my business
14 will close. I will be looking for work. My customers
15 will be purchasing flavored liquid from outside of
16 New York City and maybe New York State. Some of
17 these guys are going to go back to smoking if they
18 don't have access to these products. All of these
19 consequences affect everyone else except the parents
20 and the children who are using these products not
21 meant for them. Me having to look for a job, my
22 business closing, potential for my customers to go
23 back to smoking have no effect on the underage users.
24 Why you're punishing me for something I did not do is
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

beyond me. I am not in your house. I'm not the
boogey man hiding in the closet that pops out to tell
your child not to vape. That is a parent's job. Why
is my choice of flavors and--

[audio ends abruptly]

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

COMMITTEE ON HEALTH

C E R T I F I C A T E

World Wide Dictation certifies that the foregoing transcript is a true and accurate record of the proceedings. We further certify that there is no relation to any of the parties to this action by blood or marriage, and that there is interest in the outcome of this matter.



Date February 25, 2019