



# JUUL & THE GUINEA PIG GENERATION REVISITED

## Juul's Spawning of the Youth Vaping Epidemic



### That was then ...

When we first wrote about Juul in April 2018, it was an emergent phenomenon — a nicotine-fueled, highly potent, flavored e-cigarette, boasting a sleek, modern design that mimicked the shape and size of a standard USB flash drive

— an enormous hit with young people, who found they could easily hide the devices from view and engage in using it (aka “juuling”) without detection in school buildings and other prohibited settings. Juul Labs, Inc. (Juul) was in the midst of making a remarkably swift and steep climb in its percent of market share and retail sales, such



that by the end of 2018, the company controlled about 75 percent of the country's e-cigarette market, leaving all its competitors in the dust, scrambling to distinguish themselves to consumers. By 2018, Juul's skyrocketing popularity among youth and young adults had become a matter of grave concern to the nation's public health community, threatening to undo decades of hard-won success in effectively lowering rates of youth use of commercial tobacco products.

### **... this is now ...**

This fact sheet picks up where the first one left off. It provides updated evidence of Juul's disturbing marketing practices; explains the deeply troubling health impacts of youth and young adult initiation, use, and illness; and describes regulatory steps and legal actions to rein in Juul and other e-cigarette manufacturers and prevent young people from further harms.

### **Q: How did Juul overtake all its competitors in the e-cigarette marketplace, including products made by Big Tobacco giants, less than three years after its mid-2015 launch, and how has Juul's outsized commercial performance affected the e-cigarette marketplace?**

**A:** Less than three years after the company's launch in June 2015, Juul became the e-cigarette industry's frontrunner, blowing all its competitors out of the water in sales and market share — its November 2018 sales represented an astonishing 76.1 percent of the entire U.S. e-cigarette market.<sup>1</sup> In the 12 months ending August 2018, Juul sold \$1.29 billion worth of its devices and e-juice cartridges, dubbed "pods." By the end of its third year, Juul was valued at \$15 billion; it has since been recognized as the fastest start-up to reach a valuation of \$10 billion, a feat it accomplished four times faster than Facebook.<sup>2</sup> The U.S. e-cigarette market expanded to eight times its former size, from about \$50 million in sales per month in July 2016 to \$412 million in sales per month in July 2019, a clear indicator of Juul's enormous market impact.<sup>3</sup>

While study of Juul's early marketing practices is still in its infancy, extensive information has already been disclosed to the public by researchers including Stanford Research into the Impact of Tobacco Advertising (SRITA) and the Schroeder Institute at Truth Initiative, and via the findings of a 2019 Congressional investigation into Juul's marketing practices.<sup>4</sup> These analyses, among others, provide clear evidence that Juul took direct aim at young people in the design of its device, the formulation and flavoring of its e-juices, and the development and roll-out of its early marketing strategies. The evidence shows that Juul's actions led to an explosion of retail sales to youth and young adults that fueled the company's unprecedented commercial

success while at the same time causing vast harm to public health — luring a new generation of youth into addiction to commercial tobacco and exposing them to substantial health risks.<sup>5</sup>

**Early marketing tactics.** Juul has portrayed itself as a company that markets its products solely to active adult smokers to convince them to switch from combustibles to Juul. The evidence shows otherwise. Examination of Juul’s early advertisements, launch events, use of social media and influencers, and findings from the recent congressional investigation into Juul’s marketing practices provide many damning examples of how Juul aggressively and blatantly marketed its devices and flavored pods to underage people during its early years of operation (2015–2018). Juul’s initial advertisement campaign, *Vaporized* — a large-scale bid to lure young consumers — featured ads that riffed on the look of conventional cigarette advertisement themes and colors from past decades, modernized to reach today’s youth, with placements in iconic locations, such as New York City’s Times Square jumbotrons. These photo-style ads depicted, in eye-popping colors, young, hip adults in suggestive “come hither” poses, vaping. Early on, Juul also invested heavily in the development of strategies to spur a strong online presence on youth- and young adult-favored social media platforms including Twitter, Facebook, and Instagram. The company also sponsored launch parties in major U.S. cities, geared toward young people, where free product samples were distributed amid opportunities to mingle with celebrities.<sup>6</sup>

In an interview conducted by Stanford researchers, Juul co-founder James Monsees acknowledged that Juul had mined Stanford’s substantial collection of tobacco industry advertising documents, assiduously studying Big Tobacco’s playbook from decades past to learn from and emulate the industry’s marketing success (to wit, in targeting young people for addiction to nicotine in combustible commercial tobacco products — advertising practices that are now illegal). Monsees boasted: “we were able to catch up, right, to a huge, huge industry in no time.”<sup>7</sup>

Juul’s outsized marketplace performance from its 2015 start through 2019 has spawned the emergence and popularity of a flood of similar flavored, sophisticated e-cigarette products that have further enticed underage persons. Like Juul, e-cigarette brands such as Suorin Drop and myblu also feature high-tech, sophisticated designs with nicotine masked in an array of kid-friendly flavors. Many copycat e-cigarette products have mimicked Juul’s formulation of e-liquids with nicotine salts, a process that Juul successfully pioneered. This formulation results in a smooth and rapid intake of a highly addictive amount of nicotine into the bloodstream. Also like Juul, many copycat e-cigarette devices are designed for use with cartridges/pods that are sold separately and/or with vaping devices in starter kits. Some copycat products, including *Eonsmoke* and *Vapor4Life*, are compatible or interchangeable with Juul devices and pods.

By the end of 2018, the marketplace was flooded with Juul and thousands of knock-offs, including disposable, flavored e-cigarette brands such as Puff Bar, Posh, blu, and Mojo, some

of which were introduced for sale after August 2016, despite an FDA rule banning sales of new e-cigarette products after that date without FDA regulatory approval.<sup>8</sup> In December 2018, the U.S. Surgeon General released an advisory citing the marketing of e-cigarettes “in a wide variety of channels that have broad reach among youth and young adults.” The Surgeon General cautioned against e-cigarette use by youth, officially declared youth e-cigarette use “an epidemic,” and called for “aggressive steps to protect our children from these highly potent products that risk exposing a new generation of young people to nicotine.”<sup>9</sup>

In addition to a proliferation of brands of vaping devices and e-liquids, a multitude of accoutrements hit the market, fueled by youth and young adult chatter on social media channels — from decorative skins for personalizing the look of Juul vaping devices, to hoodies and t-shirts designed to enable vaping without detection, compatible with multiple devices.<sup>10</sup>

The rapid expansion of the e-cigarette marketplace to include a wide array of discreet-sized vaping devices, candy-, mint-, fruit-, and menthol-flavored e-liquids, and accessories was spurred largely by Juul’s enormous popularity and pervasive online and social media presence.<sup>11</sup> The unprecedented pace of Juul’s growth in the face of substantial federal, state, and local policy gaps — a result of governments’ failure to keep pace with these disturbing shifts in the marketplace — further enabled Juul and its progeny to gain a huge foothold with youth and young adults, bringing matters to a crisis point by mid-2018 and boiling over in 2019, amid growing national and international concerns about the youth and young adult vaping epidemic.<sup>12</sup>

### **Q: How did Juul’s 2015–2018 marketing practices impact initiation and use of Juul and other e-cigarettes by youth and young adults?**

**A:** Youth and young adult e-cigarette use had begun trending up prior to the introduction of Juul in mid-2015. The U.S. Surgeon General issued a report on youth and young adult use of e-cigarettes in 2016, which summarized National Youth Tobacco Survey (NYTS) data from 2011 to 2015, showing these upward trends. The Surgeon General’s report showed that ever use of e-cigarettes among students in grades 6–12 had climbed steadily from 3.3 percent in 2011, to 6.8 percent in 2012, to 8.1 percent in 2013, to 19.8 percent in 2014, and then to 27 percent in 2015.<sup>13</sup> In 2014, youth and young adult use of e-cigarettes broke new ground, overtaking use of conventional cigarettes, becoming the most commonly used commercial tobacco product in the U.S., even though rates of e-cigarette use generally declined between 2015 and 2017.<sup>14</sup>

Then, in 2018, youth and young adult use of e-cigarettes exploded, with Juul becoming, by far, the most commonly used e-cigarette brand in the country. From 2017 to 2018, current e-cigarette





Photo: JUUL Labs, Inc.

use (meaning use at least once per day in the past 30 days) among U.S. high school students increased 78 percent — from 11.7 to 20.8 percent — meaning that a total of 3.05 million high schoolers were current e-cigarette users in 2018. Youth use of e-cigarettes alone was higher in 2018 than their use of all tobacco products in 2016 and 2017. A similar surge in use, a 48 percent increase from 2017 to 2018, took place among middle schoolers: a total of 570,000 children in grades 6 to 8 were current smokers in 2018, wiping out previous declines in use.<sup>15</sup>

Separate findings from the annual National Institutes of Health Monitoring the Future (MTF) survey of 8th, 10th, and 12th graders nationwide also showed a dramatic increase in e-cigarette use over the course of just one year, from 2017 to 2018, with 37.3 percent of 12th graders reporting any vaping within the past 12 months, compared to 27.8 percent in 2017. Also very concerning because of association with addiction, e-cigarette use by 12th graders within the past 30 days nearly doubled from 2017 to 2018, jumping from 11 percent to 20.9 percent. Use was up significantly across virtually all measures for all age groups surveyed.<sup>16</sup>

NYTS data in 2019 revealed even more widespread use among youth. From 2018 to 2019, current e-cigarette use among all high school students climbed from 20.8 percent to 27.5 percent (4.1 million), while current use among middle school students shot up to 10.5 percent (1.2 million), more than double the number of current users in 2018. Use of any tobacco products shot way up, too — 31.2 percent of high schoolers (4.7 million), worse than every year since 2000, when any use was 34.5 percent — wiping out two decades of progress.<sup>17</sup>

The deeply troubling trend of increased e-cigarette use by youth signifies an alarming reversal of decades-long progress by the public health community in reducing youth and young adult use of commercial tobacco products, which nearly always contain nicotine. Research shows that youth and young adults are particularly at risk for exposure to nicotine because their

brains are still developing into their early 20s. Exposure to nicotine during these critical, final years of brain development can seriously alter brain functioning, wiring it for susceptibility to a lifetime of addiction and causing long-term effects, including mood disorders and damaged impulse control. Studies indicate that youth who use e-cigarettes are also at an increased risk for future use of combustible cigarettes.<sup>18</sup> Research also shows that when many youth begin using e-cigarettes, they do not understand that nearly all flavored e-juices contain nicotine — let alone in extremely high amounts — and they can quickly become addicted, compounding the tragic circumstance of the uptick in use.<sup>19</sup>

By 2018, school, public health, and law enforcement authorities across the nation became caught up in the dramatic escalation of youth use of Juul and other brands of discreet e-cigarettes, as students' ability to vape ("juul") without detection in school classrooms and bathrooms ("juul rooms") created significant student discipline, health, mental health, and hazardous waste disposal issues that negatively impacted student learning and required significant investments of already strapped school resources to study and address through policy change.<sup>20</sup> Many school districts have now sued Juul to hold the company accountable and recoup expenses.<sup>21</sup>

In summer 2019, sudden spikes in onset of symptoms, accompanied by hospital admissions, among patients with lung injuries associated with use of e-cigarettes became a national emergency. Many of these patients were young people. The Centers for Disease Control and Prevention (CDC), U.S. Food and Drug Administration (FDA), state and local health departments, and clinical and other public health experts rushed to coordinate their respective investigations into the cause of this outbreak, which came to be known as e-cigarette or vaping product use-associated lung injury (EVALI). Emergency room visits peaked in September 2019, then gradually declined over the following months, spilling into early 2020. Investigations into the cause of EVALI cases indicate that most, but not all, patients had used tetrahydrocannabinol (THC), the mood-altering component in marijuana, often after obtaining it informally through friends, family, in-person or online. THC has been found to have played a major role in the outbreak.

Vitamin E acetate has also been strongly linked to EVALI; having been found in the lung fluid of patients with EVALI but not in the lung fluid of patients with no EVALI, vitamin E acetate is now considered a primary cause of EVALI. Additional chemicals of concern, including some found in non-THC products, may have contributed to EVALI in some patients who claim never to have used THC. As of mid-February 2020, 2,807 hospital admissions or deaths involving diagnoses of EVALI were reported to the CDC from all 50 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands. Of these, 68 deaths were confirmed in 29 states and Washington, D.C. EVALI cases have not been strongly associated with Juul; that said, at least one EVALI patient reported use of Juul only.<sup>22</sup>

## Q: What triggered the 2019 US congressional investigation of Juul and what was the outcome of that investigation?

**A:** The Committee on Oversight and Reform is the main investigative committee of the U.S. House of Representatives; its Subcommittee on Economic and Consumer Policy (Subcommittee), currently chaired by Representative Raja Krishnamoorthi (IL), investigates consumer protection policies and other matters. Beginning in June 2019, the Subcommittee conducted a months-long investigation into Juul's marketing practices, examining concerns that the company had intentionally and illegally marketed products to children and youth. The Subcommittee's initial investigation included review of about 55,000 non-public, internal company documents that Juul produced to the Subcommittee and the Massachusetts Attorney General, Juul's written responses to Subcommittee questions, and review of testimony taken at two days of public hearings held in July 2019. The subcommittee released its findings in a July 25, 2019 post-hearings memorandum, *Examining Juul's Role in the Youth Nicotine Epidemic: Parts I & II*. The Subcommittee issued an updated memorandum on February 5, 2020, supplementing its initial findings.<sup>23</sup>

The Subcommittee concluded that Juul, in its quest to become the country's top seller of e-cigarettes, deliberately targeted children and youth using a variety of methods, including buying direct access to them. Among the Subcommittee's findings were that Juul: deployed a sophisticated program to enter schools to convey its messaging directly to youth; targeted at-risk youth and children as young as 8 years old in summer camps, summer schools, public out-of-school programs, and youth alternative discipline and court diversion programs; and recruited thousands of online social media influencers to market to youth using a vast, high-cost, sophisticated recruitment plan. The Subcommittee found that in school presentations to students where no other adults were present, Juul representatives falsely claimed that Juul was "totally safe." Documents investigated by the Subcommittee revealed that Juul was aware its student outreach programs were "eerily similar" to those previously used by large cigarette manufacturers and that internal executives raised concerns about Juul's work in schools. The Subcommittee also found that Juul targeted vulnerable populations, including Black Americans and Native Americans, who, along with Alaska Natives, have the highest prevalence of smoking among all racial and ethnic groups in the country, veterans, and other minority communities.<sup>24</sup>

Following its review of additional internal company documents and Juul's responses to questions posed by the Subcommittee in September 2019, the Subcommittee updated findings in February 2020 to include admissions by Juul that the company: relies on keeping users addicted to nicotine; will not rule out re-introducing kid-friendly flavors in the U.S. or introducing new flavors; engaged in more pervasive targeting of Native Americans than

was initially reported; may still be making claims about safety and efficacy without legal authorization; is lobbying in 48 states; and markets to children in other countries.<sup>25</sup>

The Subcommittee's investigation has exposed and influenced changes to Juul's marketing practices as well as changes to federal policies — with the Subcommittee proclaiming, "[i]n just eight months, the investigation has fundamentally altered the e-cigarette landscape for the better."<sup>26</sup> In the aftermath of the Subcommittee's investigation and issuance of findings:

- The FDA sent Juul a warning letter, calling out marketing practices that violated federal laws; Juul and two other e-cigarette companies, NJOY, and Logic, announced they would stop advertising e-cigarettes in the U.S.;
- Juul removed its chief executive officer, Kevin Burns;
- the FDA took steps to prohibit some flavored e-cigarettes (exempting menthol flavored products and disposable e-cigarette devices, and omitting cheap flavored cigars, as discussed in a recent Public Health Law Center [blog](#)); and
- Congress enacted legislation raising the minimum legal sales age for tobacco products to 21 years of age.<sup>27</sup>

The Subcommittee is continuing to investigate related concerns, e.g., letters sent in January 2020 to blu and NJOY — makers of disposable e-cigarettes — investigating their business plans in the wake of the FDA's exemption of their products from the flavored e-cigarette prohibition.<sup>28</sup>

## **Q: What steps has the FDA taken to investigate Juul and has there been a regulatory impact?**

**A:** The FDA's September 2019 warning letter to Juul cited evidence that Juul had violated federal marketing and labeling laws by illegally representing Juul products as modified risk tobacco products in presentations to underage students, describing Juul as "totally safe," "a safer alternative than smoking cigarettes," and "99% safer" than cigarettes.<sup>29</sup> The warning emphasizes that the FDA's concern was "amplified by the epidemic rate of increase in youth use of ENDS [electronic nicotine delivery products, aka e-cigarettes], including Juul's products, and evidence that ENDS products contribute to youth use of, and addiction to, nicotine, to which youth are especially vulnerable." Juul was ordered to submit corrective actions to the FDA within 15 days, explaining the actions the company would take to discontinue its illegal marketing practices.<sup>30</sup> The FDA sent similar warning letters to several other e-cigarette companies.<sup>31</sup> As of this writing, the FDA has taken no further regulatory action specifically against Juul.



In January 2020, the FDA issued a Guidance for Industry, establishing enforcement priorities for regulating e-cigarettes and other deemed products that the agency has allowed to be marketed before obtaining premarket authorization. A revised guidance issued in April 2020 provided further details of the FDA's intent to prioritize enforcement against:

- Flavored, cartridge/pod-based e-cigarettes, excluding tobacco- or menthol-flavored e-cigarettes;
- All other e-cigarettes for which a manufacturer has failed or is failing to take adequate measures to prevent access by minors;
- Any e-cigarette targeted to minors or whose marketing is likely to promote use by minors; and
- Any e-cigarette offered for sale after September 9, 2020 for which the manufacturer does not submit a premarket application or has received a negative action from the FDA.<sup>32</sup>

Juul currently sells only menthol- and tobacco-flavored e-juice pods in the U.S., but has continued to market discontinued flavors in other countries.<sup>33</sup> The FDA's decisions to exempt menthol products and flavored e-juices designed to be used with disposable e-cigarette devices (whether the cartridges/pods are sealed or refillable), and to omit flavored cigars, have been criticized as short-sighted, insufficient, and doomed to perpetuate health disparities and diminish positive health impacts.<sup>34</sup> Critics have urged the FDA to propose and finalize a rule to prohibit all flavored products, including menthol, and to consider harms flavors cause when evaluating whether a product should remain on the market pending agency review and authorization.<sup>35</sup> On June 17, 2020, the African American Tobacco Control Leadership Council and Action on Smoking and Health filed a [joint lawsuit](#) against the U.S. Department of Health and Human Services, U.S. Food and Drug Administration, and the Center for Tobacco Products, to compel the FDA to fulfill its mandate to take action on its own conclusions that adding menthol to the list of prohibited characterizing flavors and therefore banning it from sale would benefit the public health.

## **Q: What types of private and public lawsuits have been brought against Juul?**

**A:** Hundreds of private and public lawsuits have already been filed against Juul. The volume of cases has mushroomed particularly since mid-2019, following the release of the Congressional investigation findings and the spike in incidences of serious lung illnesses. The volume of cases is expected to continue to climb in the near future.

**Private lawsuits:** As of mid-January 2020, private lawsuits against Juul included dozens of civil lawsuits and numerous class actions, including at least 55 federal lawsuits in 25 states.<sup>36</sup> Many of the lawsuits have accused Juul of engaging in false advertising by posturing an intent to market its products solely to adult smokers to convince them to switch from combustibles to Juul, while marketing its products to youth and young adults, including underage persons who had never smoked or used any tobacco products. Lawsuits have also accused Juul of misleading customers to believe the company's products are less addictive than conventional cigarettes and misrepresenting the amount of nicotine in its products. Some lawsuits have also made product liability claims.

Lawsuits filed on behalf of youth and young adults have asserted that Juul's deceptive marketing practices caused addiction to nicotine, as well as acute and/or chronic health harms, such as worsening of asthma symptoms, lung damage, heart damage, seizures, strokes, and wrongful death. Lawsuits have also been filed claiming defective lithium-ion batteries caused Juul vaping devices or similar devices to overheat and explode, causing serious injuries or death.<sup>37</sup> Multiple lawsuits accusing Juul of illegally marketing products to underage persons while providing misleading information about vaping-related health risks have been brought under the federal Racketeering Influenced and Corrupt Organizations Act (RICO),<sup>38</sup> which formed the basis for the historic, successful litigation brought by the U.S. Department of Justice against the tobacco industry in the 1990s, *U.S. v. Philip Morris*.<sup>39</sup>

The volume of federal lawsuits led the U.S. Judicial Panel on Multidistrict Litigation, in October 2019, to order the cases consolidated into a single multidistrict lawsuit (MDL) in San Francisco federal district court. As of February 2020, the MDL involved approximately 331 private suits, including both individual personal injury cases and class action lawsuits, none of which had yet been scheduled for trial.<sup>40</sup>

**Public lawsuits:** As of May 2020, nine state attorneys general, plus the attorney general of the District of Columbia, have filed lawsuits against Juul. North Carolina was the first to file, in May 2019, followed by California, Illinois, New York, District of Columbia, Minnesota, Arizona, Pennsylvania, Massachusetts, and New Mexico.<sup>41</sup> These lawsuits assert several claims, including that Juul violated state consumer protection laws, engaged in unfair and deceptive trade practices, breached its duty of reasonable care, and created a public nuisance by causing a public health crisis and an epidemic of youth nicotine use and addiction. The suits generally seek to stop Juul's wrongful conduct, award civil penalties and fees, award monetary relief for damages suffered, and require Juul to take affirmative steps to prevent youth access, release data related to its practices and to health risks and harm, and fund corrective measures including public education and cessation.<sup>42</sup> Separate from the lawsuits brought by state attorneys general, 39 states are participating in a comprehensive joint investigation into

Juul's marketing practices, examining, in part, whether Juul's early marketing activities illegally targeted youth and made misleading claims about the amount of nicotine in its devices.<sup>43</sup>

Investigations underlying the lawsuits brought by state attorneys general have disclosed important additional evidence of Juul's wrongdoing, beyond those detailed in the findings of the US Congressional investigation. For example, Massachusetts' lengthy investigation, led by the state's attorney general, Maura Healy, found that Juul purchased advertisement space on several youth-focused websites between June 2015 and early 2016 including:

- Sites operated by Nickelodeon, the Cartoon Network, and Seventeen magazine;
- Educational sites for middle school and high school students such as [basic-mathematics.com](#), [coolmath.com](#), [mathplayground.com](#), [socialstudiesforkids.com](#), etc.; and
- Sites targeting young girls such as [dailydressupgames.com](#), [games2girls.com](#), and others.<sup>44</sup>

The investigation also revealed Juul's rejection of a marketing proposal that would have branded Juul as a technology company targeting adult smokers using ads, featuring images of outmoded consumer technologies, e.g., bulky phones, alongside trendy Juul devices and the words, "The evolution of smoking. Finally, a truly satisfying alternative." Instead, Juul opted for the blatantly youth-focused *Vaporized* campaign, featuring images of young people in suggestive poses, vaping.<sup>45</sup> The Massachusetts investigation also discovered that Juul shipped e-cigarettes to more than 1,200 consumers who listed high school email addresses from three Massachusetts communities, including email addresses with made-up names like "PodGod," and advised underage people how to bypass Juul's online age-verification process to purchase e-cigarette products.<sup>46</sup> Juul has also been accused of violating the privacy of underage persons by retaining contact information they provided when seeking entry to Juul's website, and later contacting them to provide coupon offers and the like.<sup>47</sup>

Lawsuits have also been filed by cities, counties, tribes, and school districts. Tribe and school district cases have been consolidated, as they raise similar claims and requests for relief. These lawsuits speak to very significant strains on budgets and resources caused by the urgency of addressing the youth vaping epidemic and the need to recoup money spent on confronting it. Tribes have had to divert funds to cover treatment of nicotine-caused illnesses, prevention, early intervention programs, enforcement, and disposal of hazardous waste. Schools have had to divert funds to educate staff, students, and parents about Juul and copycat products; increase staff and/or install vapor detectors to detect student use in bathrooms and other areas; address impacts of student use on academic performance and extracurricular activities; and provide guidance on intervention and cessation options, about which limited information was available when student use began to mushroom.<sup>48</sup>



*James Monsees, co-founder and chief product officer at Juul Labs Inc., testifies before the House Economic and Consumer Policy Subcommittee which is examining Juul's role in the youth nicotine epidemic on July 25, 2019, in Washington, D.C.*

Photo by Mark Wilson/Getty Images

An investigation by the Federal Trade Commission (FTC) has also been underway, examining Juul's business practices, marketing materials, and financial performance from 2015-2018, including sales figures, information on flavors, ad spending, product placement arrangements, and social media efforts. This probe is allowing the FTC to analyze Juul's data in comparison to data the FTC has collected previously on cigarettes and smokeless tobacco products.<sup>49</sup> In addition, on April 1, 2020, the FTC filed an administrative complaint alleging that through a series of agreements, including Altria's \$12.8 dollar acquisition of a 35 percent stake in Juul, the two companies transitioned from competitors to collaborators — sharing in Juul's profits — an unreasonable restraint of trade in violation of federal antitrust laws. In essence, the FTC alleges that Altria dealt with the competitive threat that Juul represented by agreeing not to compete in exchange for a substantial share of ownership of Juul.<sup>50</sup> The FDA may also be conducting an ongoing probe of Juul, as suggested by the agency's September 19, 2020 warning letter.<sup>51</sup>

## **Q: How has Juul responded to the public's outrage, including the slew of lawsuits filed against the company?**

**A:** As the epidemic youth use of Juul and other e-cigarettes took hold, Juul strove to position itself in the public eye as having marketed its products strictly to adults. In a 2019 public statement, the company said: "We have never marketed to youth and do not want any non-nicotine users to try our products."<sup>52</sup> In the summer of 2019, as EVALI gripped the nation, Juul's

then-CEO, Kevin Burns, took steps to salvage Juul's public image; by then, the company had been blamed for spawning the youth vaping epidemic. In response to questions about claims that the company had targeted youth, Burns replied: "I hope there was nothing that we did that made it appealing to them."<sup>53</sup> Blanket denials were also made by Juul's co-founder James Monsees.<sup>54</sup>

In late September 2019, as Juul came under increased federal and state scrutiny, the company announced that it would stop advertising its products on broadcast, print, and digital platforms in the U.S. The company also announced that CEO Kevin Burns was stepping down and would be replaced immediately by Altria senior vice president, K.C. Crosthwaite. Altria, maker of the iconic cigarette brand, Marlboro, had purchased a 35 percent share in Juul at a valuation of \$38 billion just nine months earlier, in December 2018, when Juul's market share was still soaring. Co-founders James Monsees and Adam Bowen characterized Crosthwaite as having "long understood the potential of alternatives to combustible cigarettes and the need to combat youth usage." That same month, Viacom and WarnerMedia banned Juul and other e-cigarettes advertisements across its networks, and federal prosecutors in California launched a criminal investigation of Juul.<sup>55</sup> By the end of October 2019, Altria had written down its investment in Juul by \$4.5 billion, citing rising regulatory pressure on vaping and flavored e-cigarettes.<sup>56</sup>

Responding to the mounting turmoil, Juul spokesperson Ted Kwong said "We will fully cooperate and are focused on earning the trust of regulators, policymakers and other stakeholders."<sup>57</sup> In a more recent prepared statement, Austin Finan, Juul's senior director of communications, said that Juul "will continue to reset the vapor category ... and seek to earn the trust of society by working cooperatively with attorneys general, regulators, public health officials, and other stakeholders to combat underage use and transition adult smokers from combustible cigarettes."<sup>58</sup>

Juul's strategy to gain support from attorneys general dates back at least to early 2018, when it enlisted Iowa Attorney General Tom Miller as a behind-the-scenes advisor to help the company respond to media requests and inquiries from government officials — an unusual alliance with a currently serving state attorney general, and remarkable, too, given that Miller, the longest-serving state attorney general in U.S. history, had played a key role in the historic litigation against Big Tobacco in the 1990s. A March 2020 Associated Press exposé of Juul's efforts to sway state officials and its recruitment of former state attorneys general and staff shows the lengths Juul has gone to in its efforts to influence state and federal policies and respond to threats of litigation.<sup>59</sup>

In March 2020, Juul co-founder James Monsees announced his departure from the company. In April 2020, Cole Hatton, Juul's principal engineer, one of the firm's first employees and



named as a co-inventor on the patent for the Juul device, also left the company, as did Guy Cartwright, a senior executive in charge of the company's restructuring.<sup>60</sup> Juul recently announced plans to relocate its headquarters from San Francisco to Washington, D.C. in efforts to shore up its relationships with federal regulators, restructure the company, and attempt to repair its national reputation.<sup>61</sup>

## Q: What federal, state, and local laws are available to strengthen regulation of Juul and other e-cigarettes?

**A:** In just two years since early 2018, when awareness of the epidemic use of Juul by youth was first surfacing, significant policy advances have been made to strengthen regulation of Juul and other e-cigarettes by tribes, local governments, states, and the federal government. Progress has been uneven, though, and not comprehensive, with much work remaining to be done to protect youth and young adult from initiation, addiction, use of combustibles and illicit substances, and serious health harms.

Below is an abbreviated summary of policy approaches, highlighting examples of recent policy advances. A combination of tribal, federal, state, and local policy options is an effective way to strengthen regulation of Juul and other e-cigarettes.

**Tribal policy advances:** Since 2018, at least five tribes have instituted permanent prohibitions on sales of e-cigarettes on tribal lands, and at least one tribe, the Oglala Sioux, has banned e-cigarettes altogether on Pine Ridge Reservation.<sup>62</sup>

**Tobacco 21:** Effective December 20, 2019, the Federal Food, Drug, and Cosmetic Act was amended to raise the federal minimum legal sales age for commercial tobacco products from 18 to 21 years. The amendment applies to sales of nicotine-based e-cigarettes and other tobacco products, and affects all retail establishments and persons with no exceptions. Federal enforcement remains ongoing, adjusted for the new minimum age. As before the amendment, federal enforcement of minimum age requirements is separate from and in addition to applicable state and local enforcement. States, however, may enact stricter, state-specific Tobacco 21 laws, and several states have done so or are considering such bills. Local governments, unless preempted by state law, can also enact Tobacco 21 ordinances and complementary regulations to help ensure appropriate community-level oversight and prevention measures through retail licensure, enforcement, and monitoring.<sup>63</sup>

**Flavored products:** In April 2018, national public health groups urged the FDA to remove menthol and all other flavored Juul products introduced before August 8, 2016, that the FDA had allowed to be marketed before obtaining FDA authorization, and to suspend all internet

sales of Juul products until effective rules are established to prevent online sales to underage persons.<sup>64</sup> While the FDA has not suspended internet sales, its Guidance for Industry (April 2020) signifies limited progress by calling for one type of flavored e-juice cartridges/pods (all but menthol and tobacco) to be removed from the marketplace, (namely, flavored Juul pods and similar cartridges designed for use with rechargeable vaping devices like Juul). Unfortunately, in addition to exempting menthol, the FDA has not restricted sales of e-juice cartridges designed for use with disposable or refillable e-cigarette devices. The agency's guidance also fails to restrict sales of flavored cigars.<sup>65</sup>

Tribes, states, and local governments, if not preempted by states, can adopt stricter restrictions on sales of flavored products, including a comprehensive prohibition of sales of all menthol and other flavored products, made applicable to fixed establishments as well as local, delivery-based and online retailers. Massachusetts, in November 2019, became the first U.S. state to completely prohibit sales of menthol and all other flavored tobacco products, including e-cigarettes and menthol cigarettes.<sup>66</sup> The states of New Jersey, New York, and Rhode Island have also prohibited sales of all flavored e-cigarettes, as has New York City. San Francisco, Sacramento, and Los Angeles County are examples of local communities that have adopted total prohibitions on sales of all flavored commercial tobacco products.<sup>67</sup> A federal bill, *Protecting American Lungs and Reversing the Youth Tobacco Epidemic Act*, H.R. 2339, which would prohibit sales of menthol and all other flavored e-cigarettes, cigars, and other tobacco products has made its way through the U.S. House of Representatives, passing on February 20, 2020.<sup>68</sup>

**Internet and delivery-based sales:** Federal laws and most state laws restricting consumer access to internet sales and shipments of commercial tobacco products do so, in large part, by requiring age verification checks at the time a person places an order and at the point of delivery. Most existing regulations have failed to keep pace with marketplace changes — in Minnesota, for example, applying only to cigarettes, premium cigars, and smokeless products but not e-cigarettes or cheap cigars — and virtually all lack an effective inspection system for monitoring and enforcing compliance with age-restricted sales. These shortcomings greatly limit the ability to curb youth access to products of interest to today's youth. Simply put, age-verification laws have failed to effectively prevent underage access to e-cigarettes, e-juices, and other tobacco products and related devices and accoutrements like vaping-enabled clothing. The significant challenges posed and failure of federal, state, and local governments to prevent youth access, has convinced a growing number of states to completely prohibit retail internet sales and shipments directly to consumers. States can go further, prohibiting sales by any means other than face-to-face, over the counter transactions in fixed-location retail establishments. Additional resources on this topic, including a detailed overview, are available on the Public Health Law Center website.

**Taxation and pricing controls:** Increasing the price of commercial tobacco products by raising excise taxes and instituting other price controls is one of the most effective means of reducing youth use because youth are very price-sensitive.<sup>69</sup>

**Comprehensive prohibition of all sales of commercial tobacco products:** Decisive movement toward the ultimate, endgame goal of prohibiting all sales of commercial tobacco products in the US is underway. On June 4, 2019, Beverly Hills, CA became the first locality to enact an ordinance prohibiting the sale of nearly all tobacco products, including cigarettes, cigars, dissolvable products, electronic cigarettes, chewing tobacco, and water pipes, with exemptions for cigar lounges and hotel sales of tobacco products to guests. The ordinance is scheduled to take effect January 1, 2021.<sup>70</sup>

The Public Health Law Center's website provides many resources addressing regulation of e-cigarettes. We encourage you to visit the site and to contact us directly for additional information or inquiries about legal technical assistance on this or other issues related to commercial tobacco control.

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The Public Health Law Center provides information and legal technical assistance on issues related to public health. The Center does not provide legal representation or advice. This document should not be considered legal advice.

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