

STATE OF MICHIGAN
IN THE SUPREME COURT

MARC SLIS and 906 VAPOR,
Plaintiff-Appellee,

Supreme Court No. 161625
Court of Appeals Case No. 351211
Court of Claims Case No. 2019-000152-MZ

v.

STATE OF MICHIGAN and MICHIGAN
DEPARTMENT OF HEALTH AND HUMAN
SERVICES,
Defendants-Appellants.

Consolidated with

A CLEAN CIGARETTE CORPORATION, a
Michigan Corporation,
Plaintiff-Appellee,

Supreme Court No. 161626
Court of Appeals Case No. 351212
Court of Claims Case No. 2019-000154-MZ

v.

GOVERNOR GRETCHEN WHITMER, in her
Official capacity and the STATE OF
MICHIGAN, Acting through the Governor's
Office, MICHIGAN DEPARTMENT OF
HEALTH AND HUMAN SERVICES,
Defendants-Appellants.

**BRIEF OF AMICI CURIAE PUBLIC HEALTH AND
MEDICAL ORGANIZATIONS IN SUPPORT OF
DEFENDANTS-APPELLANTS' APPLICATION FOR LEAVE TO APPEAL**

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STATEMENT OF QUESTIONS PRESENTED

This brief of *amici curiae* will address the question of 1) whether the Michigan Court of Appeals erred in finding that the Defendants-Appellants' finding of an emergency was invalid because it did not meet the conditions for emergency rules under MCL 24.248(1) and 2) whether a preliminary injunction issued to prevent enforcement of the Michigan Protection of Youth from Nicotine Product Addiction Emergency Rules harms the public interest.

INTRODUCTION AND STATEMENT OF INTEREST OF *AMICI CURIAE*

Amici curiae are filing this brief in support of the Defendants-Appellants’ Application for Leave to Appeal the court of appeals’ decision upholding the lower court’s grant of a preliminary injunction against implementation of Michigan Protection of Youth from Nicotine Product Addiction Emergency Rules (Emergency Rules).¹ The *amici* are the following local, state and national public health and medical organizations, which work on a daily basis to protect the public, in Michigan and elsewhere, from tobacco-related disease: American Heart Association, American Indian Veterans of Michigan, American Lung Association, American Medical Association, American Thoracic Society, Campaign for Tobacco-Free Kids, Genesee County Prevention Coalition, Genesee Health Plan, Hurley Medical Center, Karmanos Cancer Center, Mercy Health & St. Joseph Mercy Health System, Michigan Academy of Family Physicians, Michigan Association for Local Public Health, Michigan Chapter – American Academy of Pediatrics, Michigan Chapter – March of Dimes, Michigan Council for Maternal & Child Health, Michigan Council of Nurse Practitioners, Michigan Health & Hospital Association, Michigan League for Public Policy, Michigan Osteopathic Association, Michigan Society of Hematology & Oncology, Michigan Society for Respiratory Care, Michigan State Medical Society, Michigan Thoracic Society, Parents Against Vaping e-cigarettes, Preventing Tobacco Addiction Foundation, South Eastern Michigan Indians, Inc., Tobacco Free Michigan, and Truth Initiative.²

A description of these organizations is provided in the Attachment to this brief.

¹ Emergency Rule, App Vol 1, p 1.

² Pursuant to MCR 7.312(H)(4), *Amici Curiae* state that neither party’s counsel authored this brief in whole or in part, nor contributed money that was intended to fund the preparation or submission of the brief. Further, no person other than the *amici curiae* has contributed money intended to fund the preparation and submission of this brief.

By this filing, *amici* seek to demonstrate that the court of appeals erred in 1) holding that the State's finding of an emergency was invalid because the State did not provide more specific quantification of the additional harm that would occur during the lengthier notice and hearing rulemaking process in the absence of the Emergency Rules; and 2) failing to find that a preliminary injunction against Michigan's Emergency Rules is contrary to the public interest because it deprives residents of the state, and particularly its young people, of the demonstrable public health benefits of prohibiting the sale of flavored vapor products.³

The *amici* have a strong interest in the implementation of tobacco control policies that will prevent the initiation of tobacco use by young people and thereby reduce the death and disease from tobacco products. A key component of such policies is the capacity of public health agencies to move quickly to protect young people from the harmful effects of newly-emerging and highly addictive tobacco products that have an intense appeal to youth. By the Fall of 2019, when the Emergency Rules were issued, the State of Michigan was faced with a fast-developing epidemic of youth usage of flavored e-cigarettes, which threatened to addict a new generation to nicotine and thereby reverse decades of progress in reducing youth tobacco use. The *amici* have a strong interest in enhancing this Court's understanding of the public health urgency of the Emergency Rules under attack and the importance of preserving the State's capacity to use its emergency rulemaking authority to respond effectively to new threats to public health posed by tobacco products. *Amici* also have a strong interest in ensuring that the State's emergency rulemaking authority can be effectively deployed to protect Michigan's residents from fast-developing public

³ The Emergency Rules state that e-cigarettes are also known as vapor products. We use the terms e-cigarettes and vapor products interchangeably in this brief.

health threats of other kinds, an interest that is particularly salient as this State, and the Nation, continue to struggle against the devastating effects of the COVID-19 pandemic.

SUMMARY OF ARGUMENT

By the time the Emergency Rules were issued in September of 2019, youth e-cigarette use in the United States had skyrocketed to what the U.S. Surgeon General and the U.S. Food and Drug Administration (FDA) have called “epidemic” levels. By then it was clear that the State of Michigan, and states across the country, were faced with a public health crisis that was getting worse by the day. Newly released data from the 2019 National Youth Tobacco Survey (NYTS) showed that e-cigarette use among high school students more than doubled from 2017 to 2019, to 27.5 percent of students, or more than 1 in 4 high schoolers.⁴ Altogether, 5 million middle and high school students used e-cigarettes in 2019 – an increase of nearly 3 million users in two years.⁵ The Emergency Rules were a proper and appropriate use of the State’s emergency authority to curb the youth vaping epidemic and protect the health of Michigan’s children.

In upholding the lower court’s grant of a preliminary injunction against the Emergency Rules, the court of appeals erred in two fundamental respects. First, it determined that, despite the clear evidence that youth vaping was increasing at an alarming rate, with severe public health consequences, the plaintiffs were likely to succeed in showing that the Emergency Rules were invalid. The court relied on the State’s failure to provide specific quantification of the additional

⁴ FDA, *Trump Administration Combating Epidemic of Youth E-Cigarette Use with Plan to Clear Market of Unauthorized, Non-Tobacco-Flavored E-Cigarette Products*, (Sept. 11, 2019), https://www.fda.gov/news-events/press-announcements/trump-administration-combating-epidemic-youth-e-cigarette-use-plan-clear-market-unauthorized-non?utm_source=CTPEblast&utm_medium=email&utm_term=stratout&utm_content=pressrelease&utm_campaign=ctp-vaping.

⁵ Anna Edney, et al., *Vaping Furor Intensifies as Trump Vows Tough U.S. Scrutiny*, Bloomberg, Sept. 11, 2019, <https://www.bloomberg.com/news/articles/2019-09-11/trump-to-hold-meeting-on-vaping-after-reports-of-u-s-illness>.

harm that would occur during the period of delay caused if the State attempted to regulate e-cigarettes through the ordinary rulemaking process, instead of the emergency rulemaking process, an evidentiary burden imposed on the State by no provision of Michigan law. Second, the court erred in failing to find that an injunction against the Emergency Rules is contrary to the public interest because the Rules represent a science-based policy that is critical to curbing the youth e-cigarette epidemic that continues to face the State of Michigan. See *M & S, Inc v Attorney General*, 165 Mich App 301 (1987) (finding issue of an injunction would harm public interest).

ARGUMENT

I. The Emergency Rules Were a Necessary Response to the Vaping Crisis Among Youth.

A. The Vaping Crisis among Michigan Youth Constituted a Serious and Worsening Public Health Emergency.

The Emergency Rules responded to an epidemic of youth usage of flavored e-cigarettes by ending the sale of flavored vaping products in Michigan (except tobacco flavored products). The severity of this epidemic cannot be overstated. E-cigarettes have become by far the most commonly used tobacco products among U.S. youth. Whereas the 2019 NYTS showed that 5.8% of high school students smoked regular cigarettes, use of e-cigarettes by high school students soared to 27.5% in 2019, up from 20.8% in 2018 and 11.7% in 2017.⁶ Adolescents are not just experimenting with e-cigarettes; they are using them frequently. More than a quarter (27.7%) of high school e-cigarette users are frequent users, using e-cigarettes on at least 20 of the preceding 30 days.⁷ Alarming, 1 in 9 of all high school seniors (11.7%) report that they vaped nicotine

⁶ FDA, *supra* note 4.

⁷ Centers for Disease Control and Prevention (CDC), *Use of Electronic Cigarettes and Any Tobacco Product Among Middle and High School Students—United States, 2011-2018*, Morbidity and Mortality Weekly Report (MMWR), 67(45): 1276-1277 (Jun. 8, 2010); CDC, *Behavioral Risk Factor Surveillance System, Prevalence and Trends, E-Cigarette Use, Michigan (2017)*, <https://nccd.cdc.gov/BRFSSPrevalence/>.

nearly daily, a strong indication of addiction.⁸

Trends in e-cigarette use in Michigan mirror the epidemic levels that are seen nationwide. According to the 2017 Youth Risk Behavior Surveillance, 14.8% of Michigan high school students use e-cigarettes, compared to 4.9% of adults.⁹ Between the years 2015-16 and 2017-18, counties across Michigan witnessed between a 30% and 118% increase in high school students who used an e-cigarette during the past month. In several Michigan counties, more than a third of high school students use e-cigarettes.¹⁰

By the time Michigan issued its Emergency Rules, both the Surgeon General of the United States and the Commissioner of the FDA had recognized that youth usage of e-cigarettes had reached epidemic proportions, requiring aggressive steps to curtail use. In December 2018, the Surgeon General issued an advisory on e-cigarette use among youth, declaring the growing problem an “epidemic.” The Surgeon General called for “aggressive steps to protect our children from these highly potent products that risk exposing a new generation of young people to nicotine.”¹¹ According to Norman E. “Ned” Sharpless, then Acting Commissioner of the FDA,

⁸ Richard Miech, et al., *Trends in Adolescent Vaping, 2017-2019*, 381 New Eng. J. of Med. 1490, 1491 (Oct. 10, 2019), <https://www.nejm.org/doi/full/10.1056/NEJMc1910739>.

⁹ CDC, *Youth Risk Behavior Surveillance – United States, 2017*, 67 Morbidity and Mortality Weekly Report (MMWR) 8, Table 67 (Jun. 25, 2018), <https://www.cdc.gov/healthyyouth/data/yrbs/pdf/2017/ss6708.pdf>.

¹⁰ MDE and MDHHS, *Michigan Profile for Healthy Youth Survey*, 39 County Data from 2015-2016 and 2017-2018 for e-cigarette usage among high school students, https://www.michigan.gov/documents/mdhhs/ENDS_MI_County-Level_Data_659995_7.pdf; Testimony of Dr. Joneigh S. Khaldun, MD, MPH, FACEP, Chief Medical Executive, State of Michigan, Chief Deputy Director for Health, Michigan Department of Health and Human Services, Hearing, *Sounding the Alarm: The Public Health Threats of E-Cigarettes*, Department of Health and Human Services, State of Michigan, Subcommittee on Oversight and Investigations, Committee on Energy and Commerce, September 25, 2019, <https://docs.house.gov/meetings/IF/IF02/20190925/110008/HHRG-116-IF02-Bio-KhaldunMDMPHJ-20190925.pdf>.

¹¹ U.S. Dept. of Health and Human Services (HHS), Office of the Surgeon General, *Surgeon General’s Advisory on E-Cigarette Use Among Youth*, (Dec. 18, 2018) (2018 SG Report),

“Years of progress to combat youth use of tobacco – to prevent lifetimes of addiction to nicotine – is now threatened by an epidemic of e-cigarette use by kids.”¹² In May of 2019, a U.S. District Court declared e-cigarettes a “clear public health emergency.” See *Am Acad of Peds v FDA*, 399 FSupp3d 479, 486 (D Md, 2019), *appeal dismissed sub nom In re Cigar Association of America*, No. 19-2130, 2020 WL 2116554 (4th Cir, May 4, 2020) (citing “the uncertainty in the efficacy of e-cigarettes as smoking cessation devices,” the “recalcitrance” of the e-cigarette industry, “the continued availability of e-cigarettes,” and “their acknowledged appeal to youth.”).

There is little doubt therefore that the youth vaping crisis in Michigan, as in other states across the nation, is a true public health emergency that was apparent at the time the Emergency Rules were issued and continues to this day. As explained more fully below, the injunction delaying implementation of the Emergency Rules has deprived this State of a vital tool to bring this epidemic under control.

B. Availability of Vaping Products Offered in Thousands of Flavors Increase Youth Usage and Pose Serious Health Risks to Youth.

In recent years, tobacco companies have significantly increased the introduction and marketing of flavored non-cigarette tobacco products, especially e-cigarettes. Flavored e-cigarettes are undermining the nation’s overall efforts to reduce youth tobacco use and putting a new generation of kids at risk of addiction and the serious health harms that result from it.

Internal tobacco industry documents show that tobacco companies have a long history of using flavors to reduce the harshness of their products and to make them more appealing to new

<https://e-cigarettes.surgeongeneral.gov/documents/surgeon-generals-advisory-on-e-cigarette-use-among-youth-2018.pdf>.

¹² FDA, Statement from Acting Commissioner of Food and Drug Administration, *Statement on the agency’s actions to tackle the epidemic of youth vaping and court ruling on application submission deadlines for certain tobacco products, including e-cigarettes* (July 15, 2019), <https://www.fda.gov/news-events/press-announcements/statement-agencys-actions-tackle-epidemic-youth-vaping-and-court-ruling-application-submission>.

users, almost all of whom are under age 18.¹³ In recent years, companies have extended this strategy of using flavored products to attract kids to the emerging market for e-cigarettes. As of 2017, researchers had identified more than 15,500 unique e-cigarette flavors available online.¹⁴ An earlier study of e-cigarette flavors found that among the more than 400 brands available online in 2014, 84% offered fruit flavors and 80% offered candy and dessert flavors.¹⁵ E-liquids are being sold in such kid-friendly options as cotton candy and gummy bear. These products are widely available through convenience stores, other retail outlets and online retailers.

News stories across the country have documented the popularity of flavored e-cigarettes like JUUL. According to one high school student, “It [JUUL] spread like wildfire for two reasons...the first reason is the flashy flavors like crème brulee. The flavors are responsible for bringing the kids in, the nicotine keeps them.”¹⁶

The data confirms that flavors play a major role in youth initiation and continued use of e-cigarettes. The 2020 Surgeon General Report on smoking cessation notes that “the role of flavors in promoting initiation of tobacco product use among youth is well established...and appealing

¹³ CDC, A Report of the Surgeon General, *Preventing Tobacco Use Among Youth and Young Adults, A Report of the Surgeon General* (2012), https://www.cdc.gov/tobacco/data_statistics/sgr/2012/consumer_booklet/pdfs/consumer.pdf.

¹⁴ Greta Hsu et al., *Evolution of Electronic Cigarette Brands from 2013-2014 to 2016-2017: Analysis of Brand Websites*, 20(3):e80 J. Med. Internet Res. (2018), <https://www.jmir.org/2018/3/e80/>.

¹⁵ Shu-Hong Zhu et al., *Four Hundred and Sixty Brands of E-cigarettes and Counting: Implications for Product Regulation*, 23(3) Tobacco Control (2014), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4078673/>.

¹⁶ Lavanya Ramanathan, *We killed the cigarette. What we got in return is mango-flavored nicotine in ‘party mode,’* Washington Post, August 8, 2018, https://www.washingtonpost.com/lifestyle/style/we-killed-the-cigarette-what-we-got-in-return-is-mango-flavored-nicotine-in-party-mode/2018/08/08/bf4db3a8-8b8a-11e8-8aea-86e88ae760d8_story.html?noredirect=on&utm_term=.2a6418f461f3

flavor is cited by youth as one of the main reasons for using e-cigarettes.”¹⁷ The 2016 Surgeon General Report on e-cigarettes also had concluded that flavors are among the most commonly cited reasons for using e-cigarettes among youth and young adults.¹⁸ Data from the 2016-2017 wave of the government’s Population Assessment of Tobacco and Health (PATH) study found that 70.3% of current youth e-cigarette users say they use e-cigarettes “because they come in flavors I like.”¹⁹ The PATH study also found that 97% of current youth e-cigarette users had used a flavored e-cigarette in the past month.²⁰

Flavored tobacco products play a key role in enticing new users, particularly kids, to a lifetime of addiction. There is growing concern that use of e-cigarettes may function as a gateway to the use of conventional cigarettes and other combustible tobacco products, thereby undermining decades of progress in curbing youth smoking. A 2018 report by the National Academies of Science, Engineering and Medicine (NASEM) concluded that, “There is substantial evidence that e-cigarette use increases risk of ever using combustible tobacco cigarettes among youth and young adults.”²¹ A nationally representative analysis found that from 2013 to 2016, youth e-cigarette use was associated with more than four times the odds of trying cigarettes and nearly three times the odds of current cigarette use (when compared to non-users of e-cigarettes). The researchers

¹⁷ HHS, *Smoking Cessation, A Report of the Surgeon General* 611 (2020), (2020 SG Report), <https://www.hhs.gov/sites/default/files/2020-cessation-sgr-full-report.pdf>.

¹⁸ HHS, *E-Cigarette Use Among Youth and Young Adults, A Report of the Surgeon General*, 5 (2016), https://www.cdc.gov/tobacco/data_statistics/sgr/e-cigarettes/pdfs/2016_sgr_entire_report_508.pdf.

¹⁹ FDA, *Modifications to Compliance Policy for Certain Deemed Products: Guidance for Industry, Draft Guidance* 9 (Mar. 13, 2019), <https://www.fda.gov/media/121384/download>.

²⁰ *Id.*

²¹ National Academies of Sciences, Engineering, and Medicine (NASEM), *Public health consequences of e-cigarettes* 10 (2018), <http://nationalacademies.org/hmd/Reports/2018/public-health-consequences-of-e-cigarettes.aspx>.

estimate that this translates to over 43,000 current youth cigarette smokers who might not have become smokers without e-cigarettes.²²

Moreover, use of e-cigarettes is not limited to youth who are otherwise likely to become cigarette smokers. Rather, e-cigarette use is associated with trying cigarettes even among youth who are unlikely to smoke. Several studies have found that the link between e-cigarette use and starting to smoke cigarettes is stronger for youth who had lower risk factors for smoking.²³

E-cigarettes and refill liquids contain widely varying levels of nicotine, and the nicotine delivered through the aerosol can also vary depending on the device characteristics and user practices.²⁴ Nicotine is a highly addictive drug that can have lasting damaging effects on adolescent brain development.²⁵ Nicotine also impacts the cardiovascular system.²⁶ The Surgeon General concluded that, “[T]he use of products containing nicotine poses dangers to youth, pregnant women, and fetuses. The use of products containing nicotine in any form among youth, including in e-cigarettes, is unsafe.”²⁷ According to the 2020 Surgeon General’s Report, “[O]nce

²² Kaitlin M. Berry et al., Association of Electronic Cigarette Use with Subsequent Initiation of Tobacco Cigarettes in U.S. Youths, 2(2):e187794 JAMA Network Open (2019), <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2723425>.

²³ *Id.* See also, Jessica Barrington-Trimis et al., *E-Cigarettes and Future Cigarette Use*, Pediatrics, 138(1) (July 2016); Thomas Wills et al., *E-cigarette use is differentially related to smoking onset among lower risk adolescents*, 26 Tobacco Control 534 (2016).

²⁴ NASEM, *supra* note 21.

²⁵ HHS, *The Health Consequences of Smoking: 50 Years of Progress. A Report of the Surgeon General* (2014), <http://www.surgeongeneral.gov/library/reports/50-years-of-progress/index.html>. See also, CDC, Office on Smoking and Health, *Electronic Nicotine Delivery Systems: Key Facts* (July 2015).

²⁶ HHS, *How Tobacco Smoke Causes Disease: The Biology and Behavioral Basis for Smoking-Attributable Disease: A Report of the Surgeon General* (2010), <http://www.ncbi.nlm.nih.gov/books/NBK53017/>.

²⁷ HHS, *E-Cigarette Use Among Youth and Young Adults. A Report of the Surgeon General* (2016), https://www.cdc.gov/tobacco/data_statistics/sgr/e-cigarettes/pdfs/2016_sgr_entire_report_508.pdf.

erroneously considered a habit that could be broken by simply deciding to stop, nicotine addiction is now recognized as a chronic, relapsing condition.”²⁸

Flavorings in e-cigarettes can pose additional health hazards. According to the Surgeon General, “while some of the flavorings used in e-cigarettes are generally recognized as safe for ingestion as food, the health effects of their inhalation are generally unknown,” noting that some of the flavorings found in e-cigarettes have been shown to cause serious lung disease when inhaled.²⁹ An article in the *Journal of the American Medical Association* raised concerns that the chemical flavorings found in some e-cigarettes and e-liquids could cause respiratory damage when the e-cigarette aerosol is inhaled deeply into the lungs.³⁰ In *Nicopure Labs LLC v FDA*, the U.S. Court of Appeals for the D.C. Circuit relied on findings that flavors in e-cigarettes are harmful in upholding the application of FDA’s premarket review process to e-cigarettes. See 944 F3d 266 (DC Cir, 2019). Specifically, the court found that:

Aldehydes, “a class of chemicals that can cause respiratory irritation” and “airway constriction,” appear in many flavored e-cigarettes, including cotton candy and bubble gum. One study found that the flavors “dark chocolate” and “wild cherry” exposed e-cigarette users to more than twice the recommended workplace safety limit for two different aldehydes. Like secondary smoke inhalation from conventional cigarettes, exhaled aerosol from e-cigarettes may include nicotine and other toxicants that can pose risks for non-users.

Id. at 274 (internal citations omitted).

Thus, given the fast-spreading epidemic of youth e-cigarette use, caused in large part by the appeal of flavored products, the Emergency Rules represent a critical effort by this State to act quickly to protect its young people from the addictive and other harmful effects of e-cigarettes.

²⁸ 2020 SG Report, *supra* note 23.

²⁹ *Id.*

³⁰ Jessica Barrington-Trimis et al., *Flavorings in Electronic Cigarettes: An Unrecognized Respiratory Health Hazard?*, 312(23) *The Journal of the American Medical Association* (2014), doi:10.1001/jama.2014.14830.

C. The Court of Appeals Erred in Concluding that MDHHS Must Provide Specific Quantified Evidence About Future Harm to Youth to Justify the Necessity of the Emergency Rule.

Despite the overwhelming evidence of an ever-worsening youth vaping crisis fueled by flavored products, the court of appeals concluded that the plaintiffs were likely to succeed on the merits of their claim that the Emergency Rules are invalid. The court of appeals reached this conclusion without questioning the existence of a youth vaping crisis,³¹ but rather because the State did not provide specific quantification of the additional harm that would occur if it had pursued the conventional and lengthier rulemaking process instead of emergency rulemaking. Slip op at 24. In imposing this evidentiary burden on the State, the court of appeals reached beyond the requirements of Michigan law, as well as substituting its own judgement for that of the agency statutorily charged with making an emergency determination. The court's failure to give proper deference to an agency's emergency finding is a clear error that conflicts with the statutory requirements in MCL 24.248(1) and decades-old precedent established by the Michigan Supreme Court that "the courts have no jurisdiction to interfere with acts of health authorities except in cases of palpable abuse of the discretion conferred." See *Rock v Carney*, 216 Mich 280, 289 (1921).

Nothing in Michigan law remotely suggests that MDHHS is obliged to carry the evidentiary burden required by the court of appeals. The court's heightened evidentiary standard not only requires the agency to address "the events or circumstances that would likely transpire during this period of delay," but further requires that the State provide specific evidence related to: "the number of youths who could be expected to start vaping for the first time during the period of delay;" "the danger of those first-timers becoming addicted to nicotine based solely on the use

³¹ Indeed, the court of appeals recognized that the MDHHS had presented evidence "that use of e-cigarettes or vapor products by minors is an ever-worsening and serious public health concern and that flavored nicotine vapor products are at the forefront of driving and exacerbating the problem and leading youths to future nicotine addiction." Slip op at 24.

of flavored products during the period of delay;” and “whether youths already using flavored nicotine vapor products would have a decreased chance of a healthier or addiction-free outcome if there was a period of delay.” Slip op at 23-24. There is no support in the law for asking an agency to undertake such an exacting and quantified analysis to support its finding of an emergency. Indeed, requiring such detailed calculations would severely limit the State’s capacity to respond to fast-developing threats to public health, whether involving tobacco products or otherwise.

In *Michigan State AFL-CIO v Sec’y of State*, the Court noted that under MCL 24.248(1), “an emergency rule is justified if three conditions are satisfied”:

(1) “the agency ‘finds that preservation of the public health, safety, or welfare requires promulgation of an emergency rule without following the notice and participation procedures required by section 41 and 42;’”

(2) “the agency ‘states in the rule the agency’s reasons for that finding’”; and

(3) “‘the governor concurs in the finding of emergency.’”

230 Mich App 1, 21 (1998) (quoting MCL 24.248(1)).

As required by MCL 24.248, MDHHS stated its reasons for finding that an emergency rule, without following notice and participation procedures, was necessary to preserve the public health, safety and welfare of Michigan youth. MDHHS experts relied on concrete trends in public health data and conclusions from public health experts that youth usage of vaping products had reached epidemic levels and such trends were expected to continue. It should be sufficient that MDHHS examined the trends in existing data to conclude that, without immediate and decisive State action, the vaping crisis will continue unabated, victimizing more and more Michigan children. Nothing in Michigan law requires more.

In upholding the preliminary injunction against the Emergency Rules because MDHHS did not “in any form or fashion tailor the evidence...to the period of delay,” Slip op at 24, the court of appeals overlooked the overwhelming evidence showing that if MDHHS did not act quickly, the number of youth harmed by flavored vaping products would continue to increase throughout the time period necessary to undertake and complete the conventional rulemaking process. This evidence includes the following:

- “The total number of children who are currently using e-cigarettes rose to an astonishing 3.6 million in 2018, *1.5 million more than the previous year alone.*”³²
- “From the years 2015-2016 and 2017-2018, counties across Michigan witnessed *between a 30% and 118% increase in use* among high school students who used an e-cigarette during the past month.”³³
- “The nicotine in e-cigarettes can rewire the brain to crave more of the substance and create a nicotine addiction. Resulting brain changes may have *long-lasting effects* on attention, learning, and memory.”³⁴
- “All JUUL e-cigarettes have a high level of nicotine. A typical JUUL cartridge, or “pod,” contains about as much nicotine as a pack of 20 regular cigarettes....This is of particular concern for young people, because it could make it easier for them *to* initiate the use of nicotine through these products and also could make it easier to progress to regular e-cigarette use and nicotine dependence.”³⁵

³² Emergency Rules, *supra* note 1 at 1 (emphasis added).

³³ *Id.*

³⁴ *Id.* at 2 (emphasis added).

³⁵ 2018 SG Report, *supra* note 11 at 2 (source cited in Emergency Rules at fn. 1).

Furthermore, Dr. Joneigh Khaldun, the State's expert, testified that the State decided to promulgate the Emergency Rules because it expected that more youth would be harmed by vaping if the state did not act quickly. As the court of appeals itself noted, when asked whether there would be any harm if the Emergency Rules were halted, Dr. Khaldun replied that each new day without the ban would allow for the opportunity for a minor to gain access to flavored vapor products. Slip op at 9.

The Certificate of Need for Extension of Emergency ("Certificate of Need) filed in March 2020, further demonstrated that the State was concerned "that regular vaping use among minors increased dramatically."³⁶ The Certificate of Need established that the State had been correct in expecting that vaping rates amongst youth would continue to increase, citing additional evidence justifying the need for the State to act quickly to curb the increase in youth vaping rates, including the following:

- Considering the 48% increase in middle schoolers' use of e-cigarettes in 2018, *the rate has tripled in two years.*
- Data from the 2019 Monitoring the Future Survey of eighth, 10th, and 12th graders also *shows high rates of youth e-cigarette use compared to just one year ago, with rates doubling over the past two years.*
- New data released from the University of Michigan to the New England Journal of Medicine also shows *significant increases* over the past few months in each of the three grade levels surveyed (eighth, 10th, 12th grade).³⁷

³⁶ MDHHS, Certificate of Need for Extension of Emergency, (Mar. 11, 2020), https://www.michigan.gov/documents/lara/Protection_of_Youth_from_Nicotine_Product_Addiction_666131_7.pdf

³⁷ *Id.*

The Certificate of Need reiterated that the Emergency Rules were issued to address the “emergency and worsening crisis of youth vaping.”³⁸ It further noted that the Emergency Rules “will significantly limit the appeal of vaping to youth, curbing the increase in youth users. Meanwhile, the Emergency Rules’ restrictions on marketing will limit the flow of misinformation about the safety of vaping products, which will also curb the growth in youth use.”³⁹

Thus, the data cited in the Emergency Rules and the Certificate of Need demonstrate that the Emergency Rules were based on current vaping trends establishing that, absent immediate action, more Michigan youth would initiate vaping, with resulting long-term addiction and risk of escalation to cigarettes. The Emergency Rules were promulgated to allow the state to act more quickly than the conventional rulemaking process would allow to curb this fast-developing public health crisis. The Rules were supported by data supporting the inference that, during the more protracted period of time necessary to complete the conventional rulemaking process, more and more Michigan young people would initiate use of highly-addictive and harmful e-cigarettes.

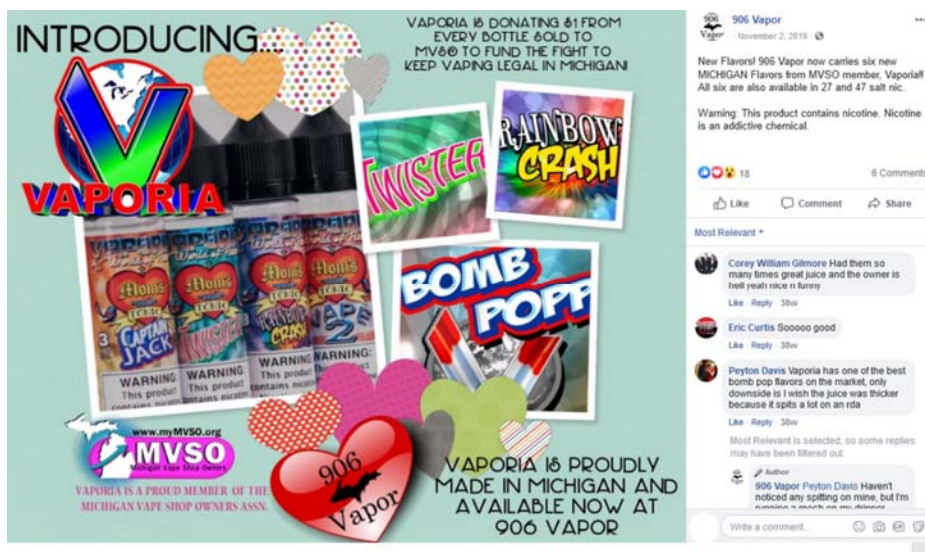
Furthermore, the trends projected by MDHHS experts have proven accurate. New data from 2019 National Youth Tobacco Survey indicated that from 2018 to 2019, e-cigarette use increased from 3.62 million to 5.38 million, or an average of 4,822 new youth users per day.⁴⁰ Furthermore, as demonstrated by these examples of social media marketing by Plaintiff 906 Vapor and other vape shops in Michigan, youth in Michigan continue to be exposed to marketing of kid-friendly flavored vaping products on social media sites like Facebook and Instagram.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ CDC, *Use of Electronic Cigarettes and Any Tobacco Product Among Middle and High School Students—United States, 2011-2018*, *supra* note 7.

Example 1:⁴¹



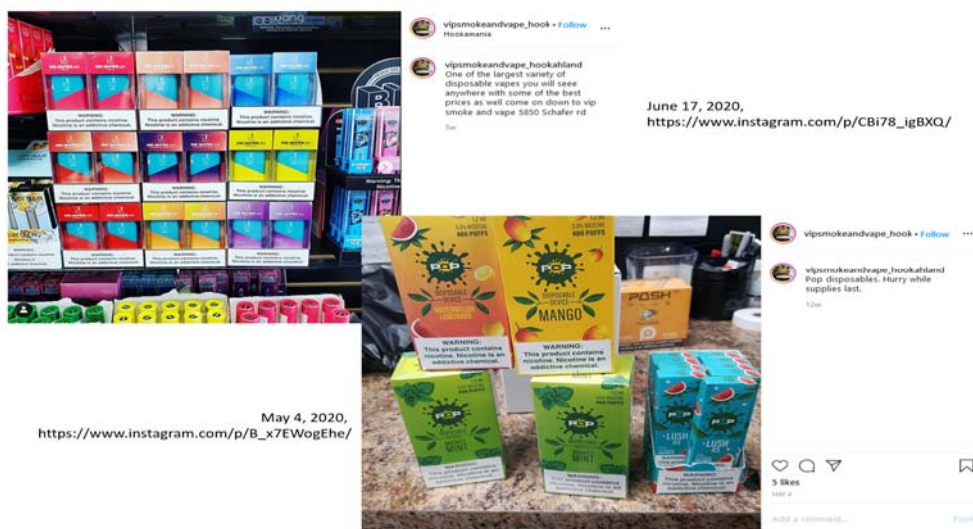
Example 2:⁴²



⁴¹ Plaintiff 906 Vapor, Facebook, (Nov. 2, 2019), https://www.facebook.com/pg/906Vapor/posts/?ref=page_internal (last accessed Aug. 31, 2020).

⁴² Inline Vape, Canton MI, Instagram, (May 1, 2020), https://www.instagram.com/p/B_qbp9I1-rG/ (last accessed Aug. 31, 2020).

Example 3:⁴³



Thus, MDHHS reached an entirely reasonable judgment, supported by overwhelming data showing an ever-burgeoning youth crisis of e-cigarette usage, that immediate action was needed, through the emergency rulemaking procedure, to protect Michigan youth from a lifetime of nicotine addiction, with all its harmful effects. That scientifically sound judgment deserves the deference of Michigan courts. The court of appeals erred in ruling otherwise.

II. The Court of Appeals Erred in Failing to Recognize that the Harm to the Public Interest Weighs Significantly Against the Grant of an Injunction.

The court of appeals also erred in upholding the lower court's finding that the real health risks posed by flavored e-cigarettes do not weigh significantly against the issuance of the preliminary injunction. Indeed, as explained *supra*, it is beyond doubt that the preliminary injunction entered by the lower court and affirmed by the court of appeals continues to expose Michigan youth to a plethora of flavored and highly addictive, harmful e-cigarette products.

⁴³ Hookah Land & VIP Smoke & Vape, Dearborn MI, Instagram (May 4, 2020, June 17, 2020), https://www.instagram.com/p/CBi78_igBXQ/, https://www.instagram.com/p/B_x7EWogEhe/ (last accessed Aug. 31, 2020).

Finding the impact on the public interest to be “neutral,” (Court of Appeals Op. at 29), the court of appeals erroneously gave equal weight to the real health risks those products pose, as detailed *supra*, and the entirely speculative benefits of e-cigarettes for smoking cessation. See *Michigan AFSCME Council 25 v Woodhaven-Brownstown School Dist*, 293 Mich App 143, 157 (2011) (speculation is insufficient to justify an injunction). Because the harms posed by e-cigarettes are real and extensively well-documented, while the benefits of e-cigarettes to current smokers are entirely unproved, the impact on the public interest weighs heavily against entry of a preliminary injunction.

A. Plaintiffs-Appellees Exaggerate the Scientific Evidence of Claimed Health Benefits of E-Cigarettes Relative to Conventional Cigarettes and Ignore the Real Health Risks E-Cigarettes Pose.

General statements that e-cigarettes are “safer” than conventional cigarettes do not sufficiently convey the health risks of e-cigarettes, particularly to young people. Plaintiffs-Appellees have greatly exaggerated what is known about the safety of e-cigarettes relative to cigarettes.

Plaintiffs-Appellees have insisted that switching from combustible cigarettes to e-cigarettes improves respiratory and cardiovascular health, but the extent of such salutary effects remains uncertain. A recent review article published in *The BMJ* concluded, “current knowledge of these [e-cigarette] effects is insufficient to determine whether the respiratory health effects of e-cigarette are less than those of combustible tobacco products.”⁴⁴ The article concluded “that, to date, no long term vaping toxicological/safety studies have been done in humans; without these data, saying with certainty that e-cigarettes are safer than combustible cigarettes is impossible.”⁴⁵

⁴⁴ Jeffrey Gotts, et. al, *What are the respiratory effects of e-cigarettes?*, *The BMJ* 366 (2019), <https://www.bmj.com/content/366/bmj.l5275>.

⁴⁵ *Id.*

The Surgeon General’s 2020 Report on tobacco cessation notes that “[a]lthough e-cigarette aerosol generally contains fewer toxic chemicals than conventional cigarette smoke, all tobacco products, including e-cigarettes carry risks.”⁴⁶ In *Nicopure Labs, supra*, a federal appellate court relied on findings regarding the known harms of e-cigarettes versus its speculative benefits. The court noted that “[e]-cigarette liquids and vapor contain chemicals in addition to nicotine that pose known risks. The aerosol emitted from e-cigarettes is not simply water vapor; rather e-cigarette aerosols have been found to contain at least carbonyls, tobacco specific nitrosamines, heavy metals, and volatile organic compounds. 944 F.3d at 274. The court noted that “e-cigarettes provide a trendy on-ramp to tobacco use for people who otherwise might have never used it. Accordingly, while e-cigarettes have been touted as less risky than combustible cigarettes, those claims remain unproved. Meanwhile, e-cigarettes clearly have the potential to increase tobacco use and net health costs for the public as a whole.” *Id.* at 275.

B. E-Cigarettes Have Not Been Proven to be Effective for Smoking Cessation

In finding the impact on the public interest of an injunction to be “neutral,” the court of appeals cited the testimony of plaintiffs’ witnesses that prohibiting flavored nicotine vapor products “would drive many users back to smoking cigarettes.” Court of Appeals Op. at 29. This conclusion, of course, would be valid only if smokers previously had stopped smoking and switched to e-cigarettes because they are flavored. But no e-cigarette has been approved, or even reviewed, as a smoking cessation drug or device by the FDA. The U.S. Preventive Services Task Force concluded that “the current evidence is insufficient to recommend electronic nicotine delivery systems for tobacco cessation...”⁴⁷ The same NASEM report cited by Plaintiffs-Appellees

⁴⁶ 2020 SG Report, *supra* note 24, at 23.

⁴⁷ U.S. Preventive Services Task Force, *Behavioral and Pharmacotherapy Interventions for Tobacco Smoking Cessation in Adults, Including Pregnant Women*: U.S. Preventive Services Task Force Recommendation Statement, 163 *Annals of Internal Medicine* (2015),

also concluded, “Overall, there is limited evidence that e-cigarettes may be effective aids to promote smoking cessation.”⁴⁸ According to CDC researchers, “There is currently no conclusive scientific evidence that e-cigarettes promote long-term cessation, and e-cigarettes are not included as a recommended smoking cessation method by the U.S. Public Health Service.”⁴⁹ A 2018 systematic review of 66 articles published on consumer preference for e-cigarettes supported these conclusions and also found inconclusive evidence as to whether e-cigarettes assist smoking cessation.⁵⁰

Furthermore, according to CDC data, most adult smokers do not switch completely to e-cigarettes; rather, they use both e-cigarettes and cigarettes (dual use).⁵¹ NASEM found that dual use of cigarettes and e-cigarettes “is not a proven method for combustible tobacco cigarette cessation.”⁵² FDA reached the same conclusion and stated, “[T]here is not sufficient evidence to conclude that youth and young adults are using [e-cigarettes] as a means to quit smoking.” See 81 Fed Reg 29,028. According to the FDA, “systematic reviews found insufficient evidence to conclude that e-cigarettes aid smoking cessation.” *Id* at 29,037. In reaching this conclusion, the

<http://www.uspreventiveservicestaskforce.org/Page/Document/UpdateSummaryFinal/tobacco-use-in-adults-and-pregnant-women-counseling-and-interventions1>.

⁴⁸ NASEM, *supra* note 21.

⁴⁹ Brian King, et al., *Awareness and Ever Use of Electronic Cigarettes Among U.S. Adults, 2010-2011*, 15 *Nicotine & Tobacco Research* 1623 (2013). See also, Brian King et al., *Trends in Awareness and Use of Electronic Cigarettes among U.S. Adults, 2010-2013*, 17 *Nicotine & Tobacco Research* 219 (2014).

⁵⁰ Samane Zare et al., *A systematic review of consumer preference for e-cigarette attributes: Flavor, nicotine strength, and type*, 13 *PLoS One*. 1 (2018) Mar 15; <https://doi.org/10.1371/journal.pone.0194145>

⁵¹ CDC, *QuickStats: Cigarette Smoking Status Among Current Adult E-cigarette Users, by Age Group — National Health Interview Survey, United States, 2015*, 65 *MMWR* 1177 (October 28, 2016), <https://www.cdc.gov/mmwr/volumes/65/wr/mm6542a7.htm>. See also CDC, *About Electronic Cigarettes (E-Cigarettes)*, https://www.cdc.gov/tobacco/basic_information/e-cigarettes/about-e-cigarettes.html#who-is-using-e-cigarettes

⁵² NASEM, *supra* note 21, at 18-24.

FDA cited studies finding that cigarette smokers who also used e-cigarettes had statistically significantly worse quit rates than those cigarette smokers who did not use e-cigarettes. See *id.* at 29,028, 29,037. The recent Surgeon General’s report on smoking cessation summarized the existing evidence, concluding that “there is presently inadequate evidence to conclude that e-cigarettes, in general, increase smoking cessation.”⁵³

Moreover, there is no evidence that *flavors* in e-cigarettes play any role in smoking cessation. While there are surveys showing that many adults enjoy using flavored products, and anecdotal reports of smokers who say flavored e-cigarettes helped them quit, there is no evidence that smokers could not have quit without non-tobacco flavors. There has not been a single randomized controlled trial to assess the impact of flavored vs. non-flavored or tobacco-flavored e-cigarettes on smoking cessation outcomes.

Thus, the risk that the Emergency Rules would cause e-cigarette users who have quit smoking to return to cigarettes is based on speculation about the benefits of e-cigarettes as effective devices for smoking cessation that is entirely unsupported by the available evidence. Because the asserted benefits of e-cigarettes are entirely speculative, while the risks of e-cigarettes, including nicotine addiction and other harms, are well-documented and real, the grant of an injunction is contrary to the public interest.

III. Michigan’s Emergency Rules Are Necessary Because Other Existing Tobacco Regulations Are Insufficient to Address the Epidemic of E-Cigarette Use Among Kids.

Plaintiff-Appellee suggests that Michigan’s law making it illegal for retailers to sell e-cigarettes to minors had an “ameliorative impact” on the youth e-cigarette problem. See Plaintiff-Appellee A Clean Cigarette’s Brief in Response to Defendants’ Brief on Appeal, at 3-4. Although

⁵³ 2020 SG Report, *supra* note 24, at 23.

age-restrictions on the sale of tobacco products are important and necessary measures to restrict access, they are insufficient on their own to combat the e-cigarette epidemic among youth. Young people entering stores cannot avoid being accosted by an array of e-cigarettes—virtually all with flavors designed to enhance their appeal to youth. The epidemic of e-cigarette use by young people itself demonstrates that, because flavored e-cigarettes have such a powerful appeal to youth, laws prohibiting sales to minors are simply not enough.

According to the 2019 Monitoring the Future Survey, about two-thirds of 10th grade students say it is easy to get vaping devices and e-liquids.⁵⁴ Indeed, it is clear that, despite age restrictions, retailers continue to sell these products to minors. In the summer of 2018, the FDA’s undercover enforcement efforts yielded over 1,300 warning letters and fines to brick-and-mortar and online retailers for illegally selling e-cigarettes to minors.⁵⁵ According to FY2019 data, Michigan has a sales to minors violation rate of 10%.⁵⁶ FDA reported 809 sales to minors violations in 2018 in Michigan, involving the issuance of 532 warning letters, 275 civil money penalties, and 2 no-tobacco sale orders.⁵⁷ A study in JAMA Pediatrics found that in California 44.7% of tobacco and vape shops sold e-cigarettes to underage decoys.⁵⁸

⁵⁴ University of Michigan, Monitoring the Future Study, *Trends in Availability – Table 16* (2019), <http://monitoringthefuture.org/data/19data/19drtbl16.pdf>.

⁵⁵ FDA, *Modifications to Compliance Policy for Certain Deemed Products: Guidance for Industry, Draft Guidance*, March 13, 2019, <https://www.fda.gov/media/121384/download>.

⁵⁶ Michigan Annual Synar Report, FFY 2019, at 39, https://www.michigan.gov/documents/mdhhs/SYNAR_Report_2019_637850_7.pdf.

⁵⁷ FDA, *Compliance Check Inspections of Tobacco Product Retailers* (through 8/31/2019), https://www.accessdata.fda.gov/scripts/oc/inspections/oc_insp_searching.cfm.

⁵⁸ April Roeseler et al., *Assessment of Underage Sales Violations in Tobacco Stores and Vape Shops*, 173 JAMA Pediatr. 795 (2019).

Given the obvious insufficiency of age restrictions alone in preventing youth usage of flavored e-cigarettes with such a powerful appeal to young people, the Emergency Rules prohibiting the sale of these products are absolutely necessary to protect Michigan kids.

CONCLUSION

When Michigan issued its Emergency Rules to prohibit the sale of flavored vaping products, it did so based on the emergence of a youth e-cigarette crisis that the data showed would continue to victimize more and more Michigan children if the State relied entirely on the more protracted conventional rulemaking process. Under Michigan law, this data was sufficient to justify the Emergency Rules, particularly given the traditional deference Michigan courts have accorded the findings of public health agencies. Michigan children and families should no longer be deprived of the benefits of this necessary and appropriate response to a real and continuing public health crisis. The State's application for Supreme Court review should be granted and the Court should act expeditiously to vacate the preliminary injunction preventing implementation of the Emergency Rules addressing the youth vaping crisis.

Respectfully submitted,

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Dated: August 5, 2020

CERTIFICATE OF SERVICE

Cassie Poe, being first duly sworn deposes and says that on August 5, 2020, she filed the foregoing Brief of *Amici Curiae* and this Certificate of Service with the Clerk of the Court using the Court's electronic filing system which will electronically serve all counsel of record.

/s/ Cassie Poe _____

Cassie Poe

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ATTACHMENT

Description of Amici Curiae

1. American Heart Association

The American Heart Association (AHA) is the nation's oldest and largest voluntary organization dedicated to fighting heart disease and stroke. In Michigan, AHA has helped advocate for critical tobacco control and prevention policies including the Clean Indoor Air Act, and increasing the age of sale on tobacco from 18 to 21 in both Ann Arbor and Genesee County.

2. American Indian Veterans of Michigan

American Indian Veterans of Michigan has worked in Commercial Tobacco Control specifically with all veterans, their organizations and VA's throughout Michigan.

3. American Lung Association

The American Lung Association is the nation's oldest voluntary health organization. The American Lung Association has long been active in research, education and public policy advocacy regarding the adverse health effects caused by tobacco use, including supporting eliminating the sale of all flavored tobacco products.

4. American Medical Association

The American Medical Association ("AMA") is the largest professional association of physicians, residents, and medical students in the United States. Additionally, through state and specialty medical societies and other physician groups seated in its House of Delegates, substantially all physicians, residents, and medical students in the United States are represented in the AMA's policy-making process. The AMA was founded in 1847 to promote the art and science of medicine and the betterment of public health, and these remain its core purposes. AMA members practice in every medical specialty and in every state, including Michigan.

The AMA and MSMS join this brief on their own behalves and as representatives of the Litigation Center of the American Medical Association and the State Medical Societies. The Litigation Center is a coalition among the AMA and the medical societies of each state and the District of Columbia. Its purpose is to represent the viewpoint of organized medicine in the courts.

5. American Thoracic Society

The American Thoracic Society (ATS) is a medical profession society comprised of physicians, nurses, respiratory therapists and researchers dedicated to the prevention, detection, treatment, cure and research of respiratory disease, critical care illness and sleep disordered breathing. Members of the ATS are research and clinical experts on the prevention

and treatment of nicotine-related diseases and tobacco cessation. Many of our members are currently treating youth and adults suffering from the recent outbreak of e-cigarette vaping associated lung injury (EVALI). For these reasons, the ATS has a compelling interest in the state of Michigan's ban on flavored vaping and e-cigarette products.

6. Campaign for Tobacco-Free Kids

The Campaign for Tobacco-Free Kids is a leading force in the fight to reduce tobacco use and its deadly toll in the United States and around the world. The Campaign envisions a future free of the death and disease caused by tobacco, and it works to save lives by advocating for public policies that prevent kids from smoking, help smokers quit and protect everyone from secondhand smoke. Tobacco-Free Kids has a strong interest in ensuring the enforcement of Michigan's Emergency Rules because they are essential to curbing the dramatically increasing incidence of youth usage of e-cigarettes in Michigan that threatens to addict a new generation of young people to nicotine and undermine the progress made over decades in curbing tobacco use by adolescents in Michigan and elsewhere.

7. Genesee County Prevention Coalition

The Genesee County Prevention Coalition represents a diverse group of people and organizations working within the community to develop new and effective ways to prevent and reduce mental health and substance use disorders. We believe in our collective and individual responsibility to ensure healthy, safe and productive lives for all Genesee County residents through innovative strategies and community partnerships.

8. Genesee Health Plan

Genesee Health Plan (GHP) is a community-initiated non-profit program designed to provide health care coverage to the uninsured residents of Genesee County. At GHP, we have a Health Navigation program designed to assist individuals with chronic disease management including smoking cessation for individuals wanting to make healthy changes with their lifestyle. By conducting assessments with our GHP members, we know that 40% of our members smoke. We have helped over ten thousand Genesee County residents over the last 18 years get the resources they need to start the difficult process of quitting smoking. GHP also has Community Health Workers in each of the Flint Public Schools. Thirty-Four (34%) percent of adults assessed are smokers in the households where the children in the Flint community reside. GHP has also helped these Flint residents get the tools they need to quit smoking.

9. Hurley Medical Center

The Hurley Mission: "Clinical Excellence. Service to People." The mission of Hurley Medical Center is to ensure that we are always ready when someone faces a serious injury, complex illness, or high-risk condition. Today, tomorrow, and beyond, we have the dedicated, compassionate professionals, advanced technology, and state-of-the-art facilities to meet the complex health needs of our region. Hurley's Vision: To be "Leaders in transforming health through academic and clinical excellence, expanding access to innovative care."

“Transforming Health” means that our job is to help Genesee County get healthy and stay that way. At Hurley, our vision is to create a healthier future for every child, adult and senior citizen. We will not only treat people when they are sick or injured and then return them to their homes, but we will find ways to help them stay in their homes living vibrant, healthy, active lives.

10. Karmanos Cancer Center

Karmanos Cancer Center is the only National Cancer Institute (NCI)-designated comprehensive cancer center in metro Detroit and one of just 51 centers of its kind in the United States. That means patients can access treatments exclusive to Karmanos as well as clinical trials, cancer prevention programs and multidisciplinary teams of cancer specialists — a comprehensive approach you cannot find at a community hospital.

11. Mercy Health & Saint Joseph Mercy Health System

The Michigan-based health systems of Trinity Health, Mercy Health and Saint Joseph Mercy Health System, are leading health care providers and one of the state’s largest employers. With 20,000 employees serving 23 counties, we provide the full continuum of care for Michigan residents through eight hospitals, including the five hospitals of Saint Joseph Mercy Health System in Ann Arbor, Chelsea, Howell, Livonia and Pontiac, and the three-hospital Mercy Health, operating in Grand Rapids and Muskegon.

12. Michigan Academy of Family Physicians

The Michigan Academy of Family Physicians (MAFP) is the largest specialty physician association in the State of Michigan. With more than 4,200 student, resident, active, and life members, MAFP is dedicated to assisting family physicians and their practices as they work to ensure high-quality, cost-effective healthcare for patients of all ages.

13. Michigan Association for Local Public Health

The Michigan Association for Local Public Health (MALPH) was founded in 1985 as a private, non-profit, 501(c)(3) state association. The association is organized to represent Michigan's 45 city, county, and district health departments before the state and federal legislative and executive branches of government, to strengthen Michigan's system of local public health.

14. Michigan Chapter – American Academy of Pediatrics

The Michigan Chapter of the American Academy of Pediatrics (MIAAP) is a diverse group of over 1,400 pediatricians. Members include general pediatricians, sub-specialists, and academicians. Members are active in promoting the health and well-being of the children in the state of Michigan. The MIAAP is an affiliate of the American Academy of Pediatrics. The mission of the MIAAP is to identify, develop and manage opportunities to improve the health and welfare of children and the practice of pediatric medicine and to provide ongoing Continuing Medical Education opportunities for its members.

15. Michigan Chapter – March of Dimes

March of Dimes leads the fight for the health of all moms and babies. We believe that every baby deserves the best possible start. Unfortunately, not all babies get one. We are changing that.

16. Michigan Council for Maternal & Child Health

The Michigan Council for Maternal & Child Health (MCMCH) is an advocacy organization which seeks to impact public policy and improve maternal and child health outcomes through prevention programs, access to care and adequate funding. Members include health care systems, public health departments, statewide and local organizations.

17. Michigan Council of Nurse Practitioners

The Michigan Council of Nurse Practitioners (MICNP) is a professional membership association representing all nurse practitioner specialties throughout the state. MICNP seeks to provide nurse practitioners the leadership and resources to improve their practice environment through education of its members and the community, legislative support on issues affecting the profession, and promoting access to nurse practitioner services.

18. Michigan Health & Hospital Association

The Michigan Health & Hospital Association (MHA) is the statewide leader representing all community hospitals in Michigan. Established in 1919, the MHA represents the interests of its member hospitals and health systems in both the legislative and regulatory arenas on key issues and supports their efforts to provide quality, cost-effective and accessible care. Our mission is to advance the health of individuals and communities.

19. Michigan League for Public Policy

The Michigan League for Public Policy has been around for 107 years. Children have been at the core of the League's mission from day one, as it formed in 1912 in part to address child labor laws and keep kids safe and out of factories. That commitment to kids was boosted further in 1992, when the League became the Kids Count organization in Michigan to monitor and report on child well-being at the state and local level. The League proudly continues to be a policy-minded and data-driven voice for Michigan kids.

20. Michigan Osteopathic Association

The Michigan Osteopathic Association (MOA) is the largest statewide osteopathic organization representing osteopathic physicians, interns, residents and medical students in Michigan. Since 1898, the MOA has been dedicated to the promotion of quality patient care and advocating on behalf of physicians and the communities they serve.

21. Michigan Society of Hematology & Oncology

The Michigan Society of Hematology and Oncology (MSHO) represents over 90% of the medical oncology, hematology and radiation oncology specialists in Michigan, treating cancer patients across all settings of care. It is the mission of our Society to promote exemplary care for patients with cancer and blood disorders through advocacy, education and research.

22. Michigan Society for Respiratory Care

The Michigan Society for Respiratory Care (MSRC) is a not-for-profit professional association dedicated to providing education, advocacy and resources to promote respiratory health in communities throughout Michigan. Founded in 1956 as the Michigan Society for Respiratory Therapy, MSRC is committed to enhancing the quality of respiratory health by ensuring the professional development and growth of its membership. Our mission is to be the leading state professional association for respiratory care. We represent and promote professional excellence, advance the science and practice of respiratory care and serve as an advocate and resource for our patients, their families, the public, the profession and the respiratory care practitioner. The MSRC is a chartered affiliate of the American Association for Respiratory Care (AARC).

23. Michigan State Medical Society

The Michigan State Medical Society (MSMS) is a professional association that represents the interests of over 14,000 Michigan physicians. Organized to protect the public health and to preserve the interests of its members, the mission of MSMS “is to promote a health care environment that supports physicians in caring for and enhancing the health of Michigan citizens through science, quality, and ethics in the practice of medicine.” MSMS has a continuing interest in issues which affect the medical profession and the patients it serves and is an active advocate in the educational, judicial and legislative arenas.

24. Michigan Thoracic Society

The purpose of the Michigan Thoracic Society is to support and maintain the highest professional and scientific standards and to collect, interpret and disseminate scientific information concerning all aspects of respiratory and critical care medicine and nursing; to participate actively with medical societies, governmental units, patient advocacy groups and other organizations in the prevention and control of respiratory diseases; to encourage and support professional and technical education in the field of respiratory and critical care medicine, nursing, respiratory therapy and other allied health professions; to encourage and fund research relative to the respiratory system and the quality of life of individuals and communities with respect to respiratory and critical care medicine and nursing; and to develop and disseminate standards of practice in respiratory and critical care medicine.

25. Parents Against Vaping e-cigarettes (PAVe)

Parents Against Vaping e-cigarettes (PAVe) is a national grassroots organization founded in 2018 by three moms in response to the youth vaping epidemic. The catalyst for PAVe was their discovery in April, 2018 that a JUUL representative had entered their sons' high-school through an outside anti-addiction group, without the school's knowledge, and told the 9th-grade students, without adults present, that JUUL was "totally safe" and would receive FDA approval "any day." PAVe's volunteer parent advocates operate in multiple states across the country. PAVe believes that regulatory and legislative change at the state level is key to slowing the explosive growth of teen vaping and protecting teens from the predatory behavior of Big Tobacco.

26. Preventing Tobacco Addiction Foundation

Established in 1996, the Preventing Tobacco Addiction Foundation's mission is to reduce the health and economic impact of tobacco through education, advocacy, and policy change. PTAF works nationwide to advance strong tobacco control legislation that prevents youth initiation and addiction to tobacco and nicotine.

27. South Eastern Michigan Indians, Inc.

South Eastern Michigan Indians, Inc. has worked in Commercial Tobacco Control since 2007 in education, prevention and cessation.

28. Tobacco Free Michigan

Tobacco Free Michigan is a coalition of school health specialists, health care providers, prevention specialists, and other tobacco related professionals who work to prevent and reduce tobacco use and its harmful effects in all Michigan communities through education, networking, advocacy, and dissemination of research data, with a specific focus on vulnerable populations heavily targeted by the tobacco industry.

29. Truth Initiative

Truth Initiative Foundation, d/b/a Truth Initiative (Truth Initiative) is a 501(c)(3) Delaware corporation created in 1999 out of a 1998 master settlement agreement that resolved litigation brought by 46 states, five U.S. territories, and the District of Columbia against the major U.S. cigarette companies. Headquartered in Washington, D.C., Truth Initiative studies and supports programs in the United States to reduce youth smoking, vaping and nicotine use and to prevent diseases associated with tobacco products. Its nationally recognized truth® campaign has educated hundreds of millions of young people about the health effects and social costs of tobacco.