

How Big Tobacco enlists Black activists to fight menthol, vaping bans

Tobacco companies woo Black and LGBTQ+ allies to loosen vaping regulations and fight Biden administration plan to ban menthol cigarettes

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In 2022, Earl Fowlkes, a Black gay activist, denounced tobacco companies for marketing e-cigarettes to his community as the latest way to hook people on nicotine.

A year later he declared that vaping saves Black and LGBTQ+ lives. Fowlkes's promotion of looser e-cigarette regulations, which came as he developed a relationship with an industry trade group, illustrates how the tobacco industry has expanded alliances with activists representing Black, LGBTQ+ and other disenfranchised groups to defend products public health experts say are harmful. Anti-tobacco activists say these partnerships help companies gain credibility among regulators and lawmakers as vaping groups lobby the Food and Drug Administration to approve more e-cigarette products and tobacco firms fight a Biden administration plan to ban menthol cigarettes.

Fowlkes said he did not directly receive any industry money but he said a private donor whose identity he would not disclose paid for a report released by his D.C.-based organization, the Center for Black Equity, that lobbyists widely cited to support e-cigarettes.

As the tobacco industry faces increasing federal scrutiny, some of the industry's biggest names are supporting causes important to civil rights activists. Juul, a major e-cigarette manufacturer, courted the Rev. Al Sharpton and his activist group, the National Action Network, with a multimillion-dollar smoking cessation partnership, according to court documents.

Reynolds American, which makes Newport, the nation's top-selling menthol brand, donated to the National Action Network and to scholarships run by civil rights lawyer Ben Crump, and has contributed hundreds of thousands of dollars to organizations representing Black law enforcement officials and Black newspapers, according to the recipients.

Representatives of those groups went on to meet with Biden administration officials to oppose the menthol ban. Sharpton and Crump have previously said the donations did not influence their position; neither responded to requests for comment.

Opponents of a ban said it would discriminate against Black smokers, 81 percent of whom smoke menthol cigarettes, according to a federal survey. They have invoked the specter of police violence, arguing that law enforcement would target Black people who turn to an illicit market for menthol cigarettes.

Tobacco companies have long funded Black organizations to gain political power and customers, said Valerie Yerger, a founder of the African American Tobacco Control Leadership Council. Billions of dollars are at stake, with menthol cigarettes making up a third of the more than \$65 billion in annual cigarette sales. The vaping industry, with at least \$2.76 billion in e-cigarettes sales in 2021, is trying to expand its market by selling itself as a safer alternative to traditional cigarettes.

“The industry is picking up their activities using a playbook they had created decades ago,” said Yerger, a health policy professor at the University of California at San Francisco, who wrote a paper 20 years ago detailing how the tobacco industry partnered with Black organizations. “We will always have individuals within these communities who will take money and find a way to justify their relationships with this industry.”

Fowlkes, who plans to step down as president and chief executive of the Center for Black Equity in July, said neither he nor his group has directly received industry money. A longtime smoking critic, Fowlkes said he still supports banning menthol cigarettes even as he has softened his stance on vaping as a way to help people stop smoking carcinogenic cigarettes.

“I have a right to change my mind as I’ve done over the course of my 30 years of doing this work,” said Fowlkes, citing his evolution from skepticism to support of needle exchanges to prevent HIV. “I just believe that we should have more tools in our toolbox to combat cancer.”

The National Action Network said it followed the lead of the mother of Eric Garner, who police killed in 2014 after approaching him for illegally selling loose menthol cigarettes. “There was a real concern that a ban on just menthol cigarettes, which had been sold in stores for generations and targeted to Black communities, would lead to law enforcement issues,” Ebonie C. Riley, a National Action Network executive, said in a statement.

Gwen Carr, Garner's mother, said Reynolds made a "small" donation to the foundation she set up in her son's memory. She said the money had no impact on her opposition to a menthol ban, which she worried would spur more police harassment of Black Americans.

Advocates for the menthol ban say it's especially galling to co-opt Black Lives Matter messaging to defend cigarette companies because far more Black Americans die of smoking-related illnesses than at the hands of police. Menthol flavors make cigarettes easier to smoke because of the cool, minty taste and can be more addictive by enhancing the effects of nicotine on the brain, experts say. One study estimated 157,000 Black Americans died prematurely between 1980 and 2018 because of menthol cigarette use.

The Biden administration has repeatedly delayed its plans to ban menthol cigarettes after Black opponents of the ban warned such a move could alienate the president's Black supporters ahead of the election, according to administration officials. Health and Human Services Secretary Xavier Becerra has said officials need more time to consider the feedback from civil rights and criminal justice activists. Proponents of the ban condemned the delays.

"We're talking about a product that, when used as intended, will kill up to half of all consumers prematurely," said Mitch Zeller, the FDA's top tobacco regulator until his retirement in 2022. "How that has gotten bollixed up into being a political issue and framed as social justice to me is beyond ironic, given the disproportionate toll that menthol takes on Black Americans."

Reynolds, Juul court Black organizations

In Detroit, the Rev. Horace Sheffield told The Washington Post he had turned down offers of up to \$250,000 from Reynolds representatives to oppose a menthol ban. His mother smoked even as emphysema ravaged her lungs and died at the age of 43, when he was a teenager.

"The folks who offer the money want to prostitute us against what's in the best interests of our own people without any regard for how that impinges on our own integrity," Sheffield said.

Sheffield said that a Black activist he mentored told him he had received significant money from the industry and that Sheffield could receive even more because of his stature and the impact of switching sides. Sheffield had called for a ban in an opinion piece for the Detroit Free Press in 2022. Sheffield had previously provided text messages of the Reynolds outreach to the Michigan-based Bureau of Investigative Journalism, a nonprofit news outlet.

Reynolds did not address Sheffield's allegations, but defended its overall practice of donating to Black-led organizations.

"Like many other companies, Reynolds supports organizations that offer perspectives on issues that are important to our consumers," Luis Pinto, a Reynolds spokesman, wrote in an email to The Post. "Reynolds does not make financial contributions conditional upon organizations maintaining a particular position."

Juul also steered millions of dollars to Black institutions and civil rights groups, according to internal documents released this year through a settlement in a lawsuit filed by the state of North Carolina alleging the company misrepresented the danger of nicotine, derived from tobacco, to attract young customers. The documents, some of which were first reported by STAT News, showed how Juul saw political and financial advantages in cultivating these relationships.

In a 2019 memo, Juul's senior director of strategic partnerships wrote, "Without a politically broad array of voices validating the company's brand, creating a positive echo chamber, with regulators and policymakers, the company could be irreparably harmed."

Juul partnered with the National Action Network in 2018 to run a tobacco cessation campaign, according to the documents. A \$7 million budget proposed by the National Action Network to mobilize clergy and youths in nine states included \$500,000 for advertising with African American media outlets and another \$500,000 to collect data from the Black community "for research purposes." The emails show Juul's then-chief executive Kevin Burns authorizing an initial \$500,000 payment to the civil rights organization for a pilot program in Detroit. Riley of the National Action Network said the organization ultimately decided to stop working with Juul because "we determined from a review of their data that it was not as safe an alternative as billed."

Stefanie Miller, Juul's vice president for external affairs, said the company cultivated relationships with groups serving marginalized communities to end higher rates of smoking traditional cigarettes. She noted that some of the organizations initiated contact for partnerships and funding.

"We believe it's not only appropriate but necessary to engage with organizations who represent these underserved communities," Miller said in an interview. "Not for us to tell them how best to meet their needs, but to collaborate with them and work with them on figuring out ways to minimize this health inequity."

Public health experts say longtime smokers may benefit by switching completely to vaping, while cautioning that e-cigarettes still pose risks through nicotine addiction and harmful chemicals in the vapor. The effects of long-term use are still being studied.

In 2019, Juul donated \$7.5 million to Meharry Medical College, a historically Black school in Tennessee, to fund research on public health issues affecting African Americans. School officials say they had autonomy in how to use the money. A Juul internal memo describing the business rationale for the donation said the school's reputation "is unparalleled" among communities of color and low-income communities and "the impact of their research helps to inform the policy recommendations made by national organizations like the NAACP, National Urban League, the Congressional Black Caucus" and other "key stakeholders."

Juul also forged a deal with a coalition of Black and Hispanic media that provided the company an opportunity to shape news articles promoting its products in up to 600 regional and local publications. Ron Burke, a sales representative for the National Newspaper Publishers Association, a network of Black newspapers, wrote to Burns and other Juul executives offering to provide "editorial support," including an article reviewed by the company before publication, as "a great way to maximize your messaging," according to an August 2018 email.

Several weeks later, Anita Grace, a business development executive for the National Association of Hispanic Publications, emailed a Juul executive to request "content, press releases, articles etc." to "arm" their journalists.

An article promoting Juul, written by a senior news reporter, ran in English and Spanish on the associations' platforms in August 2018 after company officials received drafts and offered edits. It is against journalism ethics to allow story subjects to edit drafts of news stories and for media organizations to receive payment for coverage, according to the Society of Professional Journalists. Miller declined to answer questions about Juul's dealings with the newspapers because, she said, the company officials involved have left Juul.

Burke told The Post the arrangement with Juul was a typical advertising relationship, and it was an oversight that the article wasn't labeled as sponsored content, a form of advertising.

Grace said sponsored content would have been labeled as such. The Spanish-language version of the article is no longer online, but social media posts promoting it and an archived image of how the article appeared on the homepage did not include such disclosures.

Juul also tried to woo the NAACP, according to a 2018 email from Juul executive Deryck Spooner recapping a dinner with top NAACP officials, including President Derrick Johnson, during the Congressional Black Caucus's annual policy conference.

Johnson told The Post that his organization later rebuffed Juul after concluding the company's argument that vaping would end addiction to cigarettes was shaky. "It was no different than Big Tobacco," Johnson said. "It was targeting our communities with flavors so that individuals would become addicted."

Vaping industry finds Black, gay ally

The news release from the Center for Black Equity calling on the FDA to approve a full range of nicotine e-cigarettes bewildered antismoking activists who once worked with Fowlkes.

Since Fowlkes founded the nonprofit in 1999 to support Black gay pride celebrations around the world, the center also developed a reputation as an advocate for public health, promoting coronavirus and mpox vaccination in disenfranchised communities. He even served as an adviser to the National African American Tobacco Prevention Network.

For years, tobacco companies offered Fowlkes five- and six-figure checks to sponsor Pride events, he said. He always turned them down, accusing companies of "masquerading as allies in order to addict us to their harmful products and grow their customer base," Fowlkes wrote in an opinion piece for the Advocate magazine in August 2022 that also condemned e-cigarettes.

But now Fowlkes was publicizing the findings of a new report commissioned by his organization: Switching from smoking to vaping saves lives and health-care costs, it concluded in October 2023. The report was written by an economic advisory firm. Fowlkes said he had begun to warm to the idea of vaping when he watched a television program about how longtime smokers were able to quit by switching to e-cigarettes.

Soon, the Center for Black Equity would be cited in a flurry of opinion pieces urging looser vaping regulations. Its report was mentioned in op-eds by former representative Ed Towns (D-N.Y.), a Black congressman turned lobbyist; Kellyanne Conway, a former top Trump aide who has conducted polling for vaping interests; and Rob Beamon, a Black former Olympic long-jumper who said Towns got him involved.

Fowlkes told The Post that Campbell Spencer, a consultant for the Vapor Technology Association, had helped him raise roughly \$30,000 to commission the report on the "major benefits and moderate risks" of vaping. Hours after The Post contacted Spencer for comment, Fowlkes said he was "mistaken" about the consultant's involvement in raising financing for the report. He said the money came from a private donor who he would not name. Fowlkes did not respond to further questions about the inconsistencies of his account.

Spencer and the Vapor Technology Association each said they did not play a role in the report's funding.

The Vapor Technology Association made the Center for Black Equity a fixture in its campaign to pressure the FDA to loosen restrictions. The industry group ran ads on X and Politico's Playbook newsletter, widely read in official Washington circles, promoting an op-ed by Fowlkes that argued wide approval of e-cigarettes would reduce cancer among Black and LGBTQ+ Americans. It cited the Center for Black Equity report in commercials describing e-cigarettes as beneficial for public health equity given higher smoking and death rates in Black and LGBTQ+ communities.

Fowlkes said the Vapor Technology Association offered what he described as "in-kind" support, which consisted of promoting his report online and to other policy advocates.

"They have access to people that I don't have access to," Fowlkes said. "I had to find a way of getting some traction."

Spencer told The Post that the vaping association reached out to LGBTQ+ groups because it wants to "save lives."

"It's about starting a dialogue with these groups around the importance and effectiveness of tobacco harm-reduction that absolutely must include noncombustible nicotine alternatives," she said in an email.

Fowlkes, who also leads the LGBTQ caucus of the Democratic National Committee, signed a letter organized by the vaping association urging the FDA to soften its approach to e-cigarettes — a fact the industry used to try to gain credibility in its attempt to get other LGBTQ+ groups to sign on.

Spencer touted Fowlkes' support and included him on an email to Scout, the executive director of the National LGBT Cancer Network, which promotes tobacco cessation.

Scout, who legally goes by one name, said he was taken aback that his longtime colleague in activism had teamed up with an industry group to promote a product he once criticized.

"They do such a great job of dividing underserved populations and turning us against ourselves and hiding their influence," Scout said.

He declined to sign.