

Supreme court to hear case challenging FDA's ban of flavored vapes

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In a case that will test the U.S. Food and Drug Administration's authority to approve or reject new vaping products, the U.S. Supreme Court said Tuesday it will weigh whether the agency was legally allowed to ban

flavored e-cigarettes.

In recent years, the FDA has declined to approve flavored vapes, saying they pose a health risk because they encourage [young people](#) to use e-cigarettes. But they remain widely available on the U.S. market.

Meanwhile, vaping companies claim the agency got it wrong, arguing that their products can be used to help people stop smoking traditional cigarettes.

E-cigarette makers have filed lawsuits around the country challenging the FDA's decisions, NBC News reported.

While the FDA has won most of those cases, it appealed to the Supreme Court after the 5th U.S. Circuit Court of Appeals issued a January ruling in favor of two vape companies seeking to have their products approved.

That appeals court concluded that the FDA failed to correctly assess the companies' requests in violation of a federal law called the Administrative Procedure Act, NBC News reported.

"The Supreme Court should overturn the Fifth Circuit decision because it is misguided and, if left to stand, would cause significant harm to [public health](#) and especially to the health of our kids," Yolonda Richardson, president and CEO of Campaign for Tobacco-Free Kids, said in a statement. "This decision is also in direct conflict with the decisions of seven other federal courts of appeals that have upheld FDA marketing denial orders for flavored e-cigarettes."

The case the Supreme Court has agreed to hear was brought by Triton Distribution, which makes e-liquids for vape pens in such flavors as "Signature Series Mom's Pistachio" and "Suicide Bunny Mother's Milk and Cookies," and Vapestasia, which has sought approval for flavors

including "Iced Pineapple Express" and "Killer Kustard Blueberry," NBC News reported.

Even as legal cases swirl around flavored vaping products, there has been a growth in teens using other nicotine-containing products.

"Youth [e-cigarette](#) use remains a serious public health problem in the United States," Richardson said. "According to the 2023 National Youth Tobacco Survey, 2.1 million kids use e-cigarettes and nearly 90% of them use flavored products, with the most-reported [flavors](#) including fruit, candy/desserts/other sweets, mint and [menthol](#)."

Despite that fact, the FDA recently [approved](#) menthol-flavored e-cigarettes for the first time and also [rescinded its ban](#) on Juul selling its vape products.

"The FDA's decision today to authorize the sale of four menthol-flavored e-cigarettes made by NJOY—the first time the agency has authorized the sale of any flavored e-cigarettes—is deeply troubling given the extensive scientific evidence that menthol is a flavor that appeals to kids and the FDA's repeated conclusions that flavored e-cigarettes, including menthol-flavored products, have driven youth [e-cigarette use](#)," Richardson said in a [statement](#) when the agency approved menthol vaping products.

More information: The U.S. Centers for Disease Control and Prevention has more on [vaping among youth](#).

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