

**STATE OF MICHIGAN
IN THE SUPREME COURT**

MARC SLIS and 906 VAPOR,

Plaintiff-Appellees,

v.

STATE OF MICHIGAN and MICHIGAN
DEPARTMENT OF HEALTH AND HUMAN
SERVICES,

Defendant-Appellants.

Supreme Court Case No. 160431

Court of Appeals Case No. 351211

Court of Claims Case No. 2019-000152-MZ

A CLEAN CIGARETTE CORPORATION, a
Michigan Corporation,

Plaintiff-Appellee,

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,

Defendant-Appellants.

Court of Appeals Case No. 351212

Court of Claims Case No. 2019-000154-MZ

BRIEF OF AMICUS CURIAE TYLISE IVEY

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STATEMENT OF QUESTION PRESENTED

This brief amicus curiae will address the question whether the public interest would be served by the enforcement of the Michigan Protection of Youth from Nicotine Product Addiction Emergency Rules to prohibit the sale of flavored vaping products and keep vaping products out of Michigan's schools.

INTRODUCTION AND STATEMENT OF INTEREST OF AMICUS CURIAE

I, amicus curiae Tylise Ivey, am filing this brief in support of the Michigan Protection of Youth from Nicotine Product Addiction Emergency Rules (“Emergency Rules”). I teach economics, government, and leadership at Durant High School in Waterford, Michigan. Teaching is my passion and life’s work. I care deeply for my students, and I work hard to provide them with a good education. I have worked as a teacher for 13 years. Over the last couple of years, I have seen my school become overrun with flavored vaping products, and I have seen the profound negative impact that vaping has had on my students.

I am also the parent of a sixteen-year-old daughter. It is with some amount of shame that I admit that my own daughter has become an e-cigarette user. It is especially disturbing to witness how vaping has taken hold of her despite my knowledge of the serious harm of e-cigarettes and my best efforts to keep her off drugs in general and e-cigarettes in particular. By this filing, I seek to demonstrate that the Emergency Rules indeed address an emergency affecting Michigan’s youth. As a teacher responsible for the education of my students and as a parent responsible for the health of my daughter, I have a strong interest in the enforcement of the Emergency Rules.¹

ARGUMENT

I. How Vaping Changed My School.

“Hey, what flavor do you have?” “Yo, don’t get grape—it’s not as good as it sounds.” “Bro, mango is back in stock—let’s hit the store after school!” I hear my students utter statements like these on a daily basis. Vaping has become my new reality. Vaping—in all its flavors—has invaded my school. The fruity smells are everywhere.

¹ Pursuant to MCR 7.312(H)(4), Amicus Curiae states 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. Campaign for Tobacco-Free Kids has contributed money intended to fund the preparation and submission of this brief.

I am proud and honored to spend every day with my “school kids.” (I refer to both my daughter and my students as “my kids.”) My first class begins at 7:25 a.m., but the first question I hear from my students in the morning is typically not about class. I hear repeatedly, “Can I be the first one to use the bathroom?!” For my students, it is not just a bathroom—they call it “the vape lounge.” They spend extended amounts of time in the bathroom sharing vapes and trying flavors. They sell to each other. (“I’ll let you hit my vape for a dollar.”)

When I started teaching at Durant High School just over four years ago, student vaping was a rarity, but e-cigarette use has sharply increased over the last couple of years. Now, vaping is a part of daily life. I estimate that at least half of the students are vaping. The nicotine addiction is clear: students are unable to make it through an entire class period without requesting to visit the bathroom. They have no idea how much nicotine they are consuming. We have had students vomiting in the bathroom from overuse. We also had a student collapse in the bathroom after drinking vape liquid. He did not think the bubblegum flavored “juice” would hurt him. He had to be taken to the hospital. Another student had a vaping device catch fire inside his backpack.

Vaping has impacted my students’ education in multiple ways. Most obviously, learning is impacted because students spend so much time in the bathroom instead of in the classroom. As vaping has become increasingly popular over the last few years, I have noticed behavior changes that make it more difficult for me to teach and for my students to absorb content. They have become increasingly irritable, they have been exhibiting mood swings, and some have even become aggressive. They are also often lacking focus. When they have gone too long without vaping, I have heard students say, “I can’t function!” I have heard students talk about wanting to quit, but they say that the withdrawal symptoms are too much to bear.

I know what the nicotine is doing to my kids' brains, and it is hard for me to watch. As I teacher, I feel mostly powerless to do much of anything about the vaping crisis at my school. The addiction to nicotine seems impossible to escape. I cannot keep students from using the bathroom, even though I know the real reason they are going so much of the time. Some students try to avoid the bathroom altogether because they feel intimidated to even enter. They feel uncomfortable with the pressure from other students who are vaping and who approach them looking for e-cigarettes.

To be clear, vaping is not allowed at my school. During my free hour, I help shoulder the burden of policing the bathrooms, which means that I take time out from my grading and lesson plans. When students are caught vaping, they are frequently suspended, which means they miss even more classroom time. Teachers and administrators have addressed vaping at meetings, but we cannot seem to make any impact. One aspect of vaping that is troubling to me is how it seems to develop a rule-breaking mentality among the students.

I cannot emphasize strongly enough how the flavors are driving students' use. It is the flavors that I constantly hear about and smell. The flavors have become something of a "culture." Students are obsessed with flavors. They talk about rating flavors, where to get the newest flavors, and how to find the most obscure flavors. I am not aware of a single incidence of a student using tobacco-flavored e-cigarettes.

The restriction on selling vaping products to minors has seemed to have no impact on the prevalence of vaping at my school. It is necessary to do something more.

II. How Vaping Changed My Home.

After observing the behavior changes in my students, one day it hit me: my daughter was acting the same way. My daughter used to be cooperative and conscientious about her schoolwork and received mostly "A" and "B" grades. I slowly noticed her grades slipping and her behavior changing. I would say to myself, "it is easier to teach teenagers in school than to live with one."

Then, I started to notice the same smells I would experience at work, and my concern became stronger. I investigated my daughter's text messages, and my heart sank: "Meet me in the bathroom—I need a fix." My daughter was now a part of her very own vape lounge.

I went through her belongings and discovered a white bottle decorated with bright, almost neon, colors and cartoon-like lettering that read "sour patch." It was confirmed. They got my kid too. I dispose of any vape products I find, but more reappear. My home has been invaded with strawberry, watermelon, cherry, and mint.

My daughter's grades have dropped to "Cs," "Ds," and even an "F." I am afraid that she is on the brink of failing another class this semester. It is heartbreaking for me to see the effect that vaping has had on my daughter. I have read articles that are aimed at helping parents talk to kids about vaping. I have tried to talk to my daughter, but I just cannot seem to get through to her. To her, the flavors just seem harmless. To me, it can feel like the nicotine is a more powerful influence than I am.

CONCLUSION

Part of what makes me so disappointed is to know that we allowed youth vaping to reach the point of crisis. I was grateful to learn that our Governor and other officials rightly recognized that vaping among Michigan's youth had risen to the level of emergency and that they also understood the predominant role of flavors. As both a teacher and a mom, I know the ban on flavored products is necessary to beat the vaping epidemic. I urge the Court to do its part to protect Michigan's kids and uphold the Emergency Rules.

Respectfully submitted,

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Dated: October 30, 2019

CERTIFICATE OF SERVICE

Cassie M. Poe, being first duly sworn deposes and says that on October 30, 2019, she filed the foregoing Brief of Amicus 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 M. Poe

Cassie M. Poe