

Public Health Law Updates and What's Coming Down the Pike



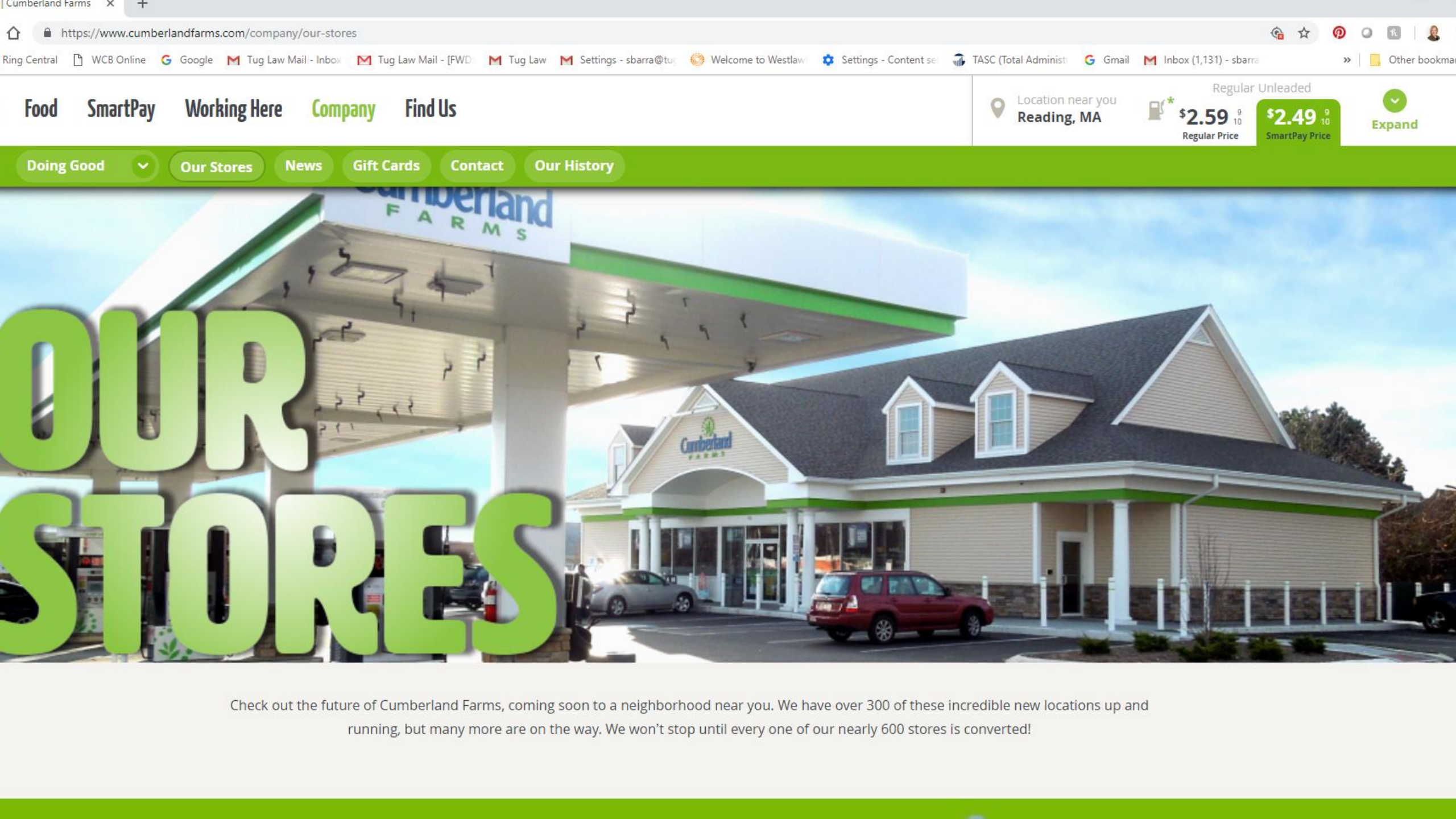
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MAHB Certificate Program Spring 2025

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- **MAHB does not enter into attorney – client relationships.**

Agenda

- Cumberland Farms, Inc. v. Board of Health of Braintree, 495 Mass. 225 (2025).
- Cannabis Social Consumption Establishments
 - Proposed regulations
- Oral Nicotine Pouches – Is *Zyn* the new *Juul*?
- Nicotine Free Generation - Update



Food

SmartPay

Working Here

Company

Find Us

Location near you

Reading, MA

Regular Unleaded

\$2.59

9 10

Regular Price

\$2.49

9 10

SmartPay Price

Expand

Doing Good

Our Stores

News

Gift Cards

Contact

Our History

OUR STORES

Cumberland Farms

Cumberland Farms

Check out the future of Cumberland Farms, coming soon to a neighborhood near you. We have over 300 of these incredible new locations up and running, but many more are on the way. We won't stop until every one of our nearly 600 stores is converted!

Cumberland Farms v. Board of Health of Braintree (2025)



- Tobacco inspector, while conducting a routing inspection, observed an open container of Jazz brand “**Black & Mild**” cigars displayed on a shelf behind the cash register at CF along with other tobacco products.

Before inspector put sign on product.





**This is not CF's First
Rodeo**

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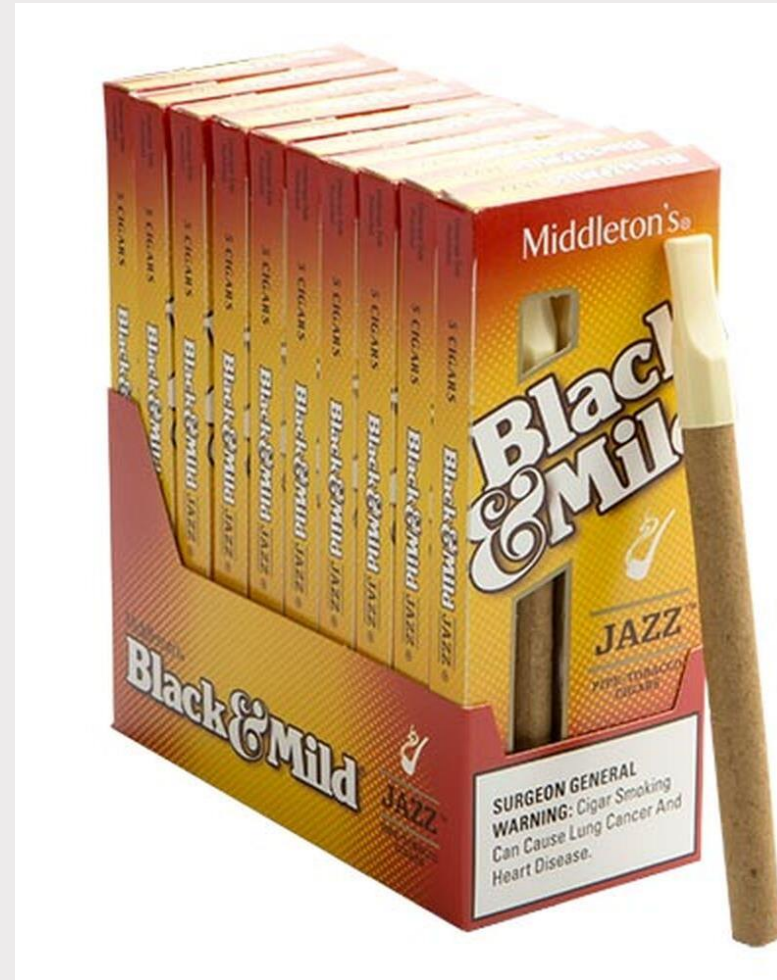
All that Jazz

Enforcement Strategies for Flavored Tobacco Products

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Massachusetts
Association of Health
Boards

National Conference on
Tobacco or Health

August 2019



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Cumberland Farms, Inc. v. Board of Health of Yarmouth *(Mass. Appeals Ct. 2020)*

- Yarmouth inspector fined CF for selling *Jazz* because it was a flavored tobacco product.
- CF appealed to BOH.
- BOH upheld fine after smelling the product.
- CF appealed to Superior Court.
- Superior Court upheld finding of BOH that product was flavored.
 - Smelled like something other than tobacco.
- CF appealed to Mass. Appeals Court.
- Appeals Court upheld finding of BOH that product was flavored.
- **CF LOST THREE TIMES.**

CF's First Claim in Braintree Case

- BOH fined CF \$1000 for **offering for sale** a flavored tobacco product in violation of state law.
- CF appealed to the BOH.
- At the hearing, CF claimed they did not offer the product for sale because:
 - They did not intend to sell Jazz.
 - Point of sale system would have prevented Jazz from being sold.
- CF's District Manager's testimony at hearing:
 - Admitted that Jazz is a flavored product.
 - He stated "human error was involved, and it was delivered to the site and it was put up for sale."

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CF's Second Claim

- BOH had no authority to issue a \$1000 fine administratively.
 - After a hearing.
- BOH could only issue a fine by filing an Application for a Criminal Complaint (G.L. c. 280, §1).
 - Did not read the entire law – which permits a civil complaint as well as a criminal complaint.
- CF actually waived this claim because they didn't make it initially.
 - Court addressed it “as a matter of discretion” because public policy would benefit.
 - “regarding the authority of local boards of health to enforce State and local tobacco laws and regulations.”

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CF's Most Recent Travails in the Courts

- Lost at BOH hearing.
- Lost in Norfolk Superior Court.
- Petitioned to Direct Appellate Review to Supreme Judicial Court (SJC).
- SJC granted Direct Appellate Review.
- SJC requested Amicus Briefs.
- SJC received Amicus Briefs from:
 - MAHB and Public Health Advocacy Institute
 - Attorney General
 - NONE on behalf of CF
- CF lost at SJC.

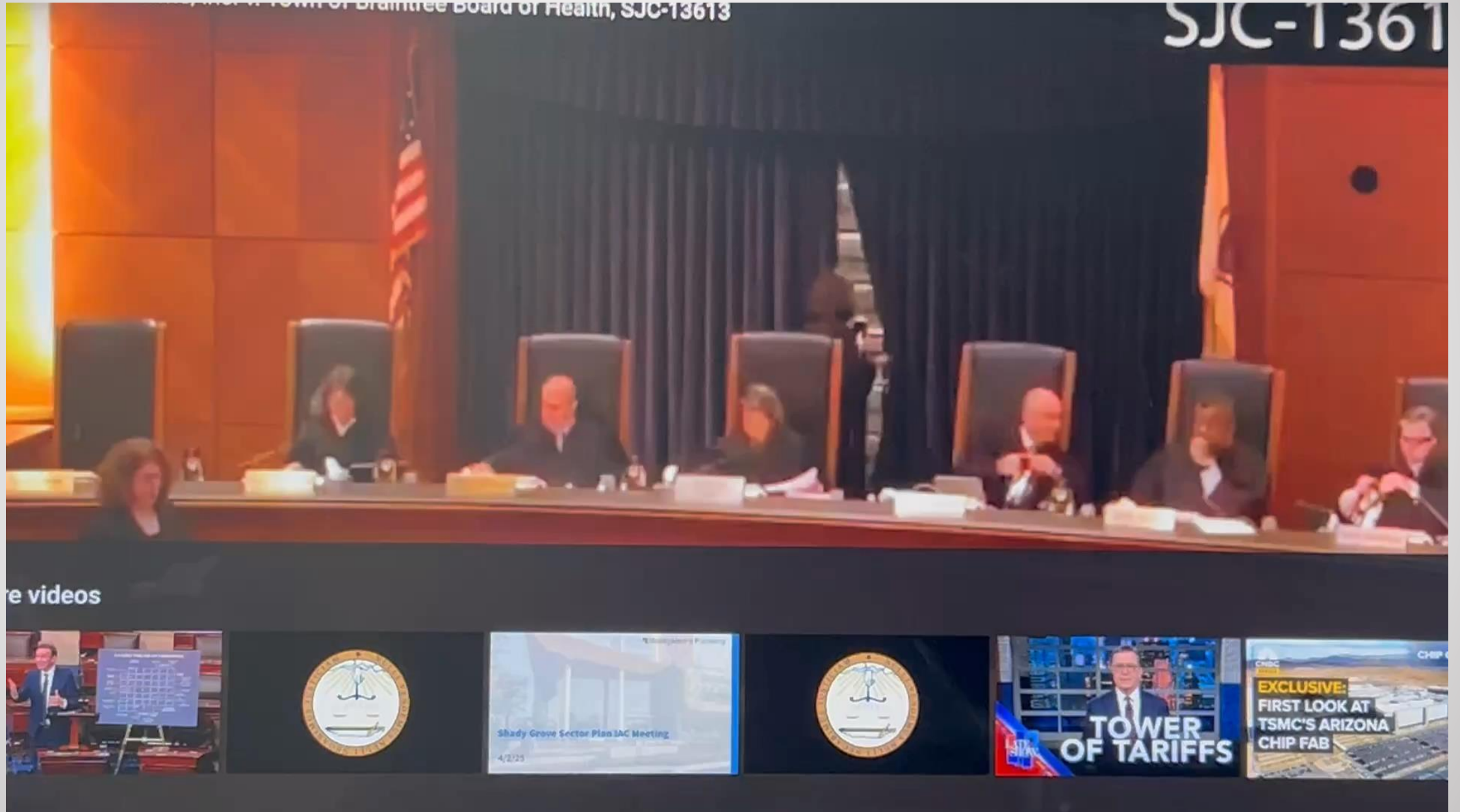


SJC's response to first claim

- Cumberland Farms contended that even though the products were on display with similar but legal products that that did not constitute an “offer for sale” of tobacco products.
- This claim does not pass the laugh test.



Supreme Judicial Court



SJC's Response to Second Claim - Criminal Enforcement is the Only Option

- First, the Court noted that CF never made this argument and therefore waived it.
- The statute banning the sale or offer for sale of flavored tobacco products authorized DPH to make regulations necessary to implement it.
 - “Each board of health may enforce 105 CMR 665.000 . . . at law or in equity in the same manner that local rules and regulations are enforced.”
- DPH delegated authority to LBOHs.
 - “long-standing history of local regulation of tobacco products” (*Brookline case* – 2024).
 - “Local communities have a lengthy history of regulating tobacco products to curb the well-known, adverse health effects of tobacco use.”
- C. 280, §1 itself authorizes criminal and civil mechanisms of enforcement.

I SURRENDER!!



**Will They Ever
Give Up?**

NOPE

**BUT NEITHER
WILL WE**

Draft Social Consumption Establishment Regulations



Amendments to 935 CMR 500.000

- Proposed on 12.17.24.
- Initial input until 01.23.25.
 - DPH submitted comments.
 - TFM submitted comments.
 - MMA submitted comments.
- Formal regulation promulgation process begins soon.
 - Additional opportunity to comment.

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Exclusively Available for the next 5 Years to the following:

- Social Equity Businesses
- Social Equity Program Participants
- Certified Economic Empowerment Priority Applicants
- Microbusinesses
- Craft Marijuana Cooperatives



3 New Proposed Categories of Licenses



Supplemental On-site Consumption

- Available to:
 - Cultivators
 - Product manufacturers
 - Retailers
 - Microbusinesses
 - Craft Marijuana Cooperatives
 - Delivery Operators
- Would permit consumption in designated areas within or attached to existing establishment.
 - Only consumption of product purchased at establishment (except for MM patients).
 - Consumption not allowed in areas where marijuana is sold.
 - Allowed after Marijuana Establishment closes or
 - Allowed in an establishment attached to the Marijuana Establishment
 - Smoking only allowed in areas separated by either “walls or other barriers.”

Hospitality On-site Consumption

- New or existing non-cannabis businesses to host on-site consumption event.
 - Yoga studios, lounges, movie theaters, gyms
- Must partner with qualifying Marijuana Establishment.
- Must designate consumption area.



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Event Organizer On-site Consumption

- Available to qualifying Marijuana Establishments to organize and host temporary consumption events at designated consumption areas on specified dates and times.
 - 5-day maximum
 - 24 events annually maximum



Process for Obtaining Temporary Consumption Permit

- Need a Permit for each consumption event.
- Only available to Qualified Marijuana Establishments licensed to sell cannabis.
- Must submit “documentary evidence” of the following:
 - Diagram of event showing:
 - Designated area for retail sales
 - Designated area for food sales
 - Designated area for consumption
 - Mandatory signage
 - Security plan
 - Must obtain Host Community Agreement from municipality where Marijuana Establishment is based.

Requirements for ALL social consumption establishments

- Permit Medical Marijuana patients to bring in their own cannabis or have their own cannabis delivered from a MM Treatment Center to the social consumption site.
- Must provide access to non-infused food and water.
- Shall not provide access to alcohol or tobacco unless:
 - There is a physical barrier to the consumption areas, or
 - Alcohol sales are not offered at the same time as consumption of cannabis.



Food Safety

- Required to obtain “all licenses, permits, and approvals for food handling . . .”
 - Who enforces this?
- Consumption establishment can serve:
 - Marijuana-infused food
 - Pre-packaged, shelf-stable food and drink
 - No local food service permit required for either marijuana-infused food or shelf-stable food.
- Need a local regulation that requires a local food permit for shelf-stable food to inspect?
- Need a local regulation to be able to inspect?



**Infused
Rice Crispy
Treats Recipe**

Smoking of Tobacco and Cannabis

- Tobacco smoking indoors is prohibited.
- Indoor Cannabis smoking/vaping must be permitted by CCC.
 - Authorized area.
- Employees will receive PPE and options to remain in a smoke-free, vapor-free area.
- Ventilation requirements:
 - HEPA filtration system or equivalent
 - Maintain negative air pressure
 - Minimum air exchange rate: 15 air changes per hour
 - Vented directly to outdoors
 - Stop smoking/vaping if filtration system fails.



Smoking Areas (cont.)

- **Indoor Smoking Areas** must be separate from retail sales areas “by walls or other barriers” approved by the CCC.
 - Flies in the face of the statewide smokefree workplace law.
- **Outdoor Smoking Areas:**
 - Must be open to the air with thorough, unobstructed circulation.
 - Took language from DPH regulation on tobacco smoking in outdoor areas of buildings and restaurants.
 - Must not migrate into indoor areas.
 - Must not be in view of the public.
 - Must be compliant with local laws on outdoor smoking.
 - Must have plan to mitigate noise and odor sufficient with municipality.

Local Regulatory Options

- Municipality must “opt in.”
 - Enact a by-law or ordinance.
 - Review existing zoning by-law or ordinance.
 - Petition process – present issue to voters directly.
 - Petition created by the Secretary of the Commonwealth.
 - Signed by not less than 10% of voters who voted in preceding state election.
 - Petition added to ballot at next regular local election.



Municipality may:

- Prohibit social consumption establishments.
 - “opt-in”
- Establish civil penalties for public consumption.
- Require **local** inspection of social consumption establishment for food and other sanitary code violations.
- Require local permits.
- Regulate time, place, and manner.
- Regulations must not be “unreasonably impracticable.”
 - Cannot regulate them out of business.





Is Zyn the New Juul?

What are Oral Nicotine Pouches

- Small fiber pouches filled with nicotine salts.
- Not heated or burned (combusted).
- Do not contain cut, ground, powdered or leaf tobacco.
- Frequently flavored.



How to Use a Nicotine Pouch “discreet and convenient design”



How Popular Are They?

- From 2016 to 2023 sales increased from 6 million to 334 million. (CDC)
- From 2019 to 2023 current use among MA high students tripled. (1% to 3.2%)
 - Can be used discreetly in school.
 - No smoke or vaper.
 - Small.
 - Containers look like they contain mints or gum.
 - Can be used anywhere.
- 2nd most popular tobacco/nicotine product used by youth in 2024.
 - 480,000 middle and high school students using nationwide.
- Majority are flavored.
- Zyn (Philip Morris/Swedish Match)
- On! (Altria)

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Nicotine Strength Varies

- Low strength: 2 - 4 mg.
 - For beginners.
 - “Particularly beneficial for those who are experimenting with nicotine for the first time.”
 - <https://alppouch.com/>
- Medium strength: 6 – 8 mg.
 - For those with moderate nicotine tolerance.
- High Strength: 10 – 14 mg.
 - For those with high nicotine tolerance providing a “robust experience.”
- Extra High Strength: 16 – 20 mg.
 - For those with very high nicotine tolerance.
- Loon NYXX – Bad Bull: 28 mg.
 - Some higher.

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Health Effects of Pouches

- Youth use of nicotine in any form is unsafe.
 - Disrupts the formation of brain circuits.
 - Intensifies symptoms of depression and anxiety.
- Stomach problems
- Gum problems
- Cardiovascular issues
- Long term neurological effects?
- Presence of carcinogenic TSNAs in pouches

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Marketing Strategies

- It's a harm reduction product.
 - No evidence that it helps quit smoking/vaping.
 - Not an FDA approved cessation device.
 - FDA authorized 3 mg. and 6 mg. Zyn products with explicit statement that:
 - "The authorization does not allow the company to make reduced risk claims about the products."
- Zynfluencers
 - Tucker Carlson
 - "Then you feel the power rising from your central nervous system, then going outward through all the nerve endings down to the tips of your fingers. And then up here, it just starts crackling the synapses."
 - "Zyn is a lifesaving medical product that enhances male vitality and mental acuity."



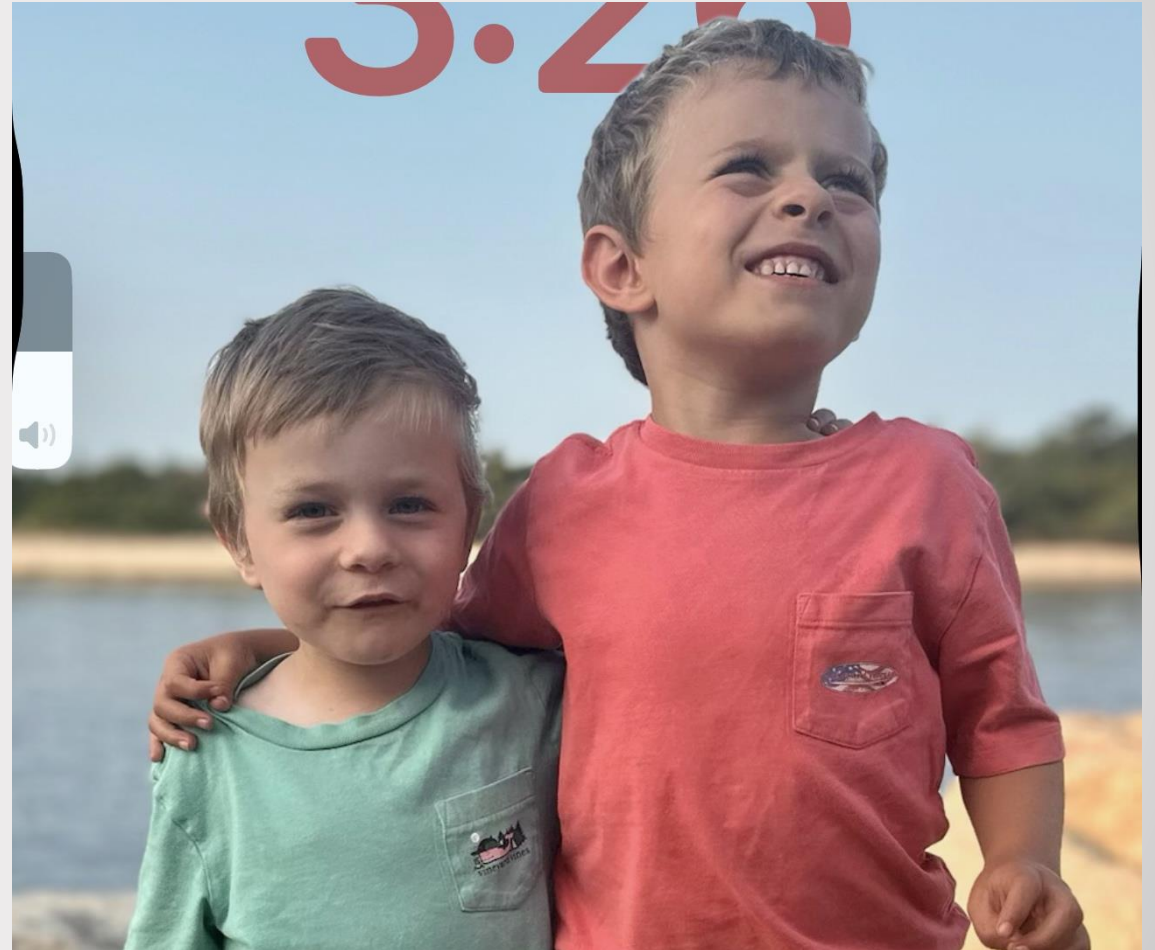
Is Zyn the New Juul?

A Cautionary Tale

- Philip Morris International (MPI) bought Swedish Match for \$16 billion in 2022.
- PMI sales are at record highs.
- Sales fueled by sale of Zyn.
- In 2024 shipments of Zyn rose 644 million cans, up by more than half from 2023.
- PMI cannot keep up with the demand.
- Expanding a factory in Kentucky.
- Building a new factory in Colorado for \$600 million.
- PMI pledged to make two-thirds of its income from products like Zyn by 2030.
- ALTRIA bought Juul for \$12.8 million.
 - Within 4 years it was nearly bankrupt by lawsuits blaming it for targeting youth.

Nicotine Free Generation

- Tobacco and nicotine products cannot be sold to anyone born after January 1, 2005.
- Would result in a generation of tobacco/nicotine free people.
- Long-term goal.
- Part of a comprehensive strategy.



Municipal Tobacco Control Technical Assistance Program

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MUNICIPALITIES THAT HAVE ADOPTED NICOTINE FREE GENERATION

Belchertown

Brookline

Chelsea

Concord

Malden

Manchester-By-The-Sea

Melrose

Needham

Newton

Pelham

Reading

Somerville

Stoneham

Wakefield

Winchester

TOTAL: 15 (5 cities in bold) – 4% of state's population (533,276) lives in listed municipalities

