

# **ZYN: REGULATORY WIN OR LEGAL SIN? SOUTH CAROLINA’S REGULATORY RESPONSE TO NICOTINE POUCH POPULARITY**

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## I. INTRODUCTION

There is an ongoing debate on the regulation of novel nicotine products.<sup>1</sup> Following aggressive legislation regulating tobacco products and the eventual decline of popularity in smokeless tobacco products, a new product, nicotine pouches, has taken social media by storm.<sup>2</sup> Nicotine pouch products are discrete, hands-free, and spit-free;<sup>3</sup> pouches are small, white, and may contain synthetic nicotine.<sup>4</sup> The pouches are placed under the upper and lower lip

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1. See, e.g., Christie D. Fowler et al., *Basic Science and Public Policy: Informed Regulation for Nicotine and Tobacco Products*, 20 NICOTINE & TOBACCO RSCH. 789, 796 (2018).

2. See Peter Clark, *The Zyn Marketing Fallacy*, TOBACCO REP., <https://tobaccoreporter.com/2024/10/24/the-zyn-marketing-fallacy/> [<https://perma.cc/Y8FC-X7TG>].

3. ZYN, *Still Have Questions?*, <https://us.zyn.com/questions/#What-is-ZYN> [<https://perma.cc/CND6-5XQS>] (choose “ZYN Basics”).

4. See *History of Nordic Spirit Nicotine Pouches*, NORDIC SPIRIT (Dec. 3, 2020), <https://nordicspirit.co.uk/blog/history-of-nicotine-pouches> [<https://perma.cc/T78U-7XP5>].

along the gum line and come in several flavors.<sup>5</sup> The recent rise of nicotine pouch use has raised the regulatory question of whether these products are being marketed to children and how to prevent predatory marketing practices from occurring.

Little action has been taken at the national and state level to regulate nicotine pouch products and the subsequent surge of online marketing campaigns.<sup>6</sup> Although the legislature amended the statute in 2024 to include nicotine products derived from tobacco, the legislature did not target nicotine pouch products explicitly in its list of product examples.<sup>7</sup>

In this Article, I propose that the South Carolina General Assembly should amend existing legislation and enact new legislation to regulate the marketing of tobacco-free nicotine pouch products for the purpose of preventing companies from targeting underage users. Specifically, the South Carolina Legislature should:

- (1) amend S.C. Code Ann. § 16-17-501(8)(a) to include “nicotine pouch” in its list of tobacco products under the “tobacco product” definition to remove ambiguity;
- (2) amend S.C. Code Ann. § 16-17-500 to include age restrictions on social media content featuring tobacco products and regulate tobacco reward programs; and
- (3) pass a resolution to declare nicotine pouches are encouraging youth to begin using nicotine products because of predatory social media marketing strategies

to remove any ambiguity that nicotine pouch products are included in South Carolina’s statutory scheme.

This Article proceeds in five sections. Part I discusses the history of tobacco legislation in the United States generally while drawing parallels to nicotine pouch manufacturer marketing and social appeal. There appears to be a correlation between consumer trends and tobacco manufacturers meeting those demands by creating new products that evade regulation.

Part II addresses cigarette and e-cigarette product development, including its introduction in the United States and marketing. Specifically, the section

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5. ZYN, *supra* note 3 (choose “Using Zyn”).

6. See Renee D. Kramer et. al., *Nicotine Pouch Awareness and Use Among Youth*, 25 NICOTINE & TOBACCO RSCH. 1610, 1610 (2023), <https://pubmed.ncbi.nlm.nih.gov/37279928/> [<https://perma.cc/4FA3-J8Y5>].

7. See S.C. CODE ANN. §16-17-501(8)(a) (2023) (defining “tobacco product” to seemingly include nicotine pouches without explicitly listing it).

addresses how cigarette brands have leveraged popular culture to encourage users to use nicotine products.

Part III addresses nicotine pouch products, including its meteoric rise in popularity, social media following, and rewards program. It shows that the product is mainstream and “trendy” among young people who may not have necessarily used tobacco products in the past.

Part IV addresses current and proposed legislative reforms that could be adopted to mitigate nicotine pouch digital marketing directed towards young users. Tobacco companies have become increasingly well-versed in evading government regulation, and nicotine pouches are the newest product to leverage this skill.

Part V addresses how the South Carolina General Assembly can prevent nicotine pouch product manufacturers from evading tobacco marketing regulations and calls for legislation to expand state regulation of online marketing of nicotine products.

## II. BACKGROUND

### A. *The History of the Cigarette Industry*

Smokeless tobacco products have a long history globally, and their popularity can be traced to eighteenth century Europe.<sup>8</sup> In France, snuff<sup>9</sup> became the primary source of tobacco consumption in elite social circles; it eventually fell out of favor after the French Revolution when it was seen as a “somewhat dirty habit.”<sup>10</sup> The United States followed French trends, which may have been influenced by America’s rebellion from Great Britain.<sup>11</sup> As snuff fell out of favor, the United States shifted to “plug”<sup>12</sup> in rural areas, whereas urban tobacco consumers preferred pipe tobacco or cigars.<sup>13</sup>

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8. See RICHARD B. TENNANT, *THE AMERICAN CIGARETTE INDUSTRY* 128 (Yale University Press, 1950).

9. According to Philip Morris International, snuff was traditionally inhaled through the nose. The term now commonly describes tobacco that is placed in the mouth. *All About: Snus, Snuff, and Nicotine Pouches*, PHILIP MORRIS INT’L, <https://www.pmi.com/our-science/snus-snuff-nicotine-pouches-explained#snussnuff> [<https://perma.cc/T6WA-T5N6>].

10. See TENNANT, *supra* note 8.

11. See *id.* at 129.

12. *Id.* A plug is tobacco leaves that have been pressed into a brick. Users may bite or cut a piece from the brick and place it between the gum and the cheek. *Smokeless Tobacco*, in *Encyclopedia*, UNIV. ROCHESTER MED. CTR., <https://www.urmc.rochester.edu/encyclopedia/content.aspx?contentTypeid=1&contentid=2947> [<https://perma.cc/73AB-7Z8J>].

13. TENNANT, *supra* note 8, at 129.

The use of smokeless tobacco would eventually be eclipsed by the rise of the cigarette in the late 1800s.<sup>14</sup> The cigarette significantly changed the tobacco landscape and American culture.<sup>15</sup> Cigarette brands began to emerge.<sup>16</sup> In the late 1850s, Philip Morris, a London merchant, began manufacturing cigarettes.<sup>17</sup> The Philip Morris brand suffered economic hardship until 1880 when it was purchased from the Morris family.<sup>18</sup> The following year, in 1881, the company went public and acquired new stockholders.<sup>19</sup> At the time, it was too small to compete among the leading British manufacturers, so instead, it marketed itself as a discrete luxury brand.<sup>20</sup> In a 1907 advertisement, Philip Morris marketed its manufacturers of the “highest grade” cigarettes.<sup>21</sup> The rise in popularity in the United States market over the 1900s led Philip Morris to open a small New York branch, which was incorporated in 1902 as Philip Morris & Company, Ltd.<sup>22</sup> During its first year of its American operation, Philip Morris sold 7 million cigarettes, including brands such as Blues, Cambridge, and Marlborough.<sup>23</sup>

American cigarette brands entered the scene in the 1870s, including: Vanity Fair, Allen & Ginter, Baltimore, and Marburg and Felgner.<sup>24</sup> Buck Duke formed the American Tobacco Company in 1889,<sup>25</sup> and from 1893 through 1899, nearly ninety new companies capitalized a combined average of \$20 million per year.<sup>26</sup> In 1911, the American Tobacco Company was forced to dismember because the Supreme Court determined it violated the Sherman Act.<sup>27</sup> Following the decision, Duke cut ties with several independent subsidiaries, including: United Cigar Stores, British-American Tobacco, and the R.J. Reynolds Company.<sup>28</sup>

The cigarette industry was quick to capitalize on its new-found success in the American market. Popularity steadily increased from the late 1890s

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14. See generally *id.* at 129–30 (detailing the rise of the cigarette in nineteenth-century Europe and surrounding regions).

15. See *id.* at 130–31.

16. See SUSAN WAGNER, CIGARETTE COUNTRY: TOBACCO IN AMERICAN HISTORY & POLITICS 40–41 (1971).

17. See *id.* at 33.

18. See RICHARD KLUGER, ASHES TO ASHES: AMERICA’S HUNDRED-YEAR CIGARETTE WAR, THE PUBLIC HEALTH, AND THE UNABASHED TRIUMPH OF PHILIP MORRIS 50 (1st ed. 1996).

19. See *id.*

20. See *id.*

21. *Id.*

22. *Id.*

23. *Id.* at 50–51.

24. See WAGNER, *supra* note 16, at 34.

25. See KLUGER, *supra* note 18, at 29.

26. See *id.* at 31.

27. See *id.* at 51.

28. See *id.* at 52.

through the 1950s.<sup>29</sup> Only three decreases in sales occurred from 1896 through 1901, 1920, and again from 1931 through 1933.<sup>30</sup> The first decline is attributed to a tax increase and hostile legislation.<sup>31</sup> The second decline is likely attributable to statistical calculation errors arising from World War I.<sup>32</sup> The third decline may have been influenced by monopoly pricing and the Great Depression.<sup>33</sup>

The rise in popularity of smoking was met by early critics.<sup>34</sup> Commenters against cigarettes believed the habit was for boys, women, and the sexually promiscuous.<sup>35</sup> The *New York Times*, on October 17, 1882, reported:

Where the danger of cigarettes comes in is from their cheapness, which permits too many of them to be smoked, and because they are getting into use by urchins of all ranks who are not more than 10 years old. Smoking when indulged in by boys is as pernicious habit as if they commenced to tipple.<sup>36</sup>

The anti-cigarette movement was partially influenced by the temperance movement.<sup>37</sup> Churches and other religious groups strongly opposed tobacco products.<sup>38</sup> Some spread rumors the paper was bleached with arsenic, or the tobacco leaves themselves were downgraded to a lower quality.<sup>39</sup>

A wave of anti-cigarette legislation occurred in the United States from 1896 through 1921.<sup>40</sup> At the time, every state except for Texas prohibited sale to minors.<sup>41</sup> The Supreme Court of Tennessee, in passing on the validity of the state anticigarette law, stated, “Are cigarettes legitimate articles of commerce? We think they are not, because wholly noxious and deleterious to health. Their use is always harmful; never beneficial.”<sup>42</sup> The Supreme Court of Oklahoma held a grocery store was an unfit place for women and children to buy groceries if the store chose to sell cigarettes to underage buyers.<sup>43</sup> Businesses refused to employ people who smoked and deemed the person

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29. See TENNANT, *supra* note 8, at 127.

30. See *id.* at 137.

31. *Id.*

32. *Id.*

33. *Id.* at 138.

34. See *id.* at 132–33.

35. See *id.* at 133.

36. *Id.*

37. See WAGNER, *supra* note 16, at 41–42.

38. See *id.* at 42.

39. *Id.*

40. TENNANT, *supra* note 8, at 134.

41. *Id.*

42. *Id.* (quoting *Austin v. Tennessee*, 48 S.W. 305, 306 (Tenn. 1898)).

43. See *id.* (quoting *Balch v. State ex. rel. Grigsby, Co. Atty.*, 164 P. 776 (Okla. 1917)).

“unfit for business.”<sup>44</sup> At one point, there were attempts to have young boys pledge not to use tobacco to curb tobacco use.<sup>45</sup> By 1921, fourteen states prohibited the sale of cigarettes entirely.<sup>46</sup> Despite early criticisms, the tobacco market would use advertising to influence consumers to purchase cigarettes.<sup>47</sup>

### *B. Flavored Cigarettes Emerge*

Very little innovation occurred in the cigarette industry until the late 1990s, where cigarette companies began to advertise a new line of products—flavored cigarettes.<sup>48</sup> Camel was among the first brands to launch an exclusive line of candy-flavored products.<sup>49</sup> The flavored cigarettes had names like “Twista Lime” and “Kauai Kolada.”<sup>50</sup> In 1999, the R.J. Reynolds Tobacco Company began marketing Camel Exotic Blends, a line of limited-edition, premium cigarettes.<sup>51</sup> The blends used flavors like berry, lime, coconut, and citrus mixed with sweet flavors such as vanilla, cinnamon, chocolate, mint, and toffee to create unique, one-of-a-kind flavors.<sup>52</sup> Some cigarettes in the blends line had alcohol flavors like bourbon.<sup>53</sup> Camel Exotic Blends would eventually lead to other lines introduced in the early 2000s.<sup>54</sup>

Flavored cigarettes came under fire from public health and tobacco control advocates who quickly realized flavored products were being used at high rates by teenagers.<sup>55</sup> A survey conducted showed as many as 20% of smokers seventeen to nineteen years old had used flavored cigarettes in the last thirty days, whereas only 6% of smokers older than twenty-five were found to have smoked one of Camel’s flavored cigarette lines.<sup>56</sup> In 2009, the United States Congress authorized the Food and Drug Administration (“FDA”) to ban all cigarette flavors except menthol if the prohibition would be “appropriate for the protection of public health.”<sup>57</sup>

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44. *Id.* at 135.

45. *Id.*

46. *See id.* at 134.

47. *See id.* at 137.

48. *See* John A. Wolfe, *How the Tobacco Industry Targets Children*, 106 AM. J. NURSING 13, 13 (2006).

49. *See id.*

50. *Id.*

51. M. Jane Lewis & Olivia Wackowski, *Dealing with an Innovative Industry: A Look at Flavored Cigarettes Promoted by Mainstream Brands*, 96 AM. J. PUB. HEALTH 244, 245 (2006).

52. *Id.*

53. *Id.*

54. *See id.*

55. *See id.* at 247.

56. *Id.* at 244.

57. 21 U.S.C. §§ 387g(a)(1)(A), (3)(A).

### C. *History of Tobacco Advertising*

Several respected commentators from the early 1900s attributed the success of the cigarette industry to the extensive marketing practices implemented at the time.<sup>58</sup> L. D. H. Weld<sup>59</sup> wrote in the *Printer's Ink* that, "The growth of cigarette consumption has, itself, been due largely to heavy advertising expenditure."<sup>60</sup> S. Clay Williams, chairman of Board Reynolds Tobacco Co.,<sup>61</sup> stated, "I think that if we were to discontinue advertising of our brands, that you would find a sloughing off of the volume of consumption of tobacco products in that form, smokers going towards pipe or roll-your-own or some other forms of tobacco."<sup>62</sup>

Historically, the United States cigarette industry has spent more money on advertising than most other countries.<sup>63</sup> In 1913, the United States' per capita consumption was two-thirds that of Finland and five-sixths of that of the United Kingdom.<sup>64</sup> However, effective advertising by several brands encouraged new users to try cigarettes.<sup>65</sup> Introduced by the company's illustrator in 1913, Joe Camel quickly became the face of Camel cigarettes.<sup>66</sup> His success led Reynolds Tobacco to operate overtime by mid-1914 to meet demand, and within a year, the brand had captured 13% of the market.<sup>67</sup> Other brands quickly followed suit, with each brand purchasing newspaper advertisements, billboards, and skywriting.<sup>68</sup>

Celebrity endorsements of cigarettes began in the late 1920s and has continued to be a standard practice.<sup>69</sup> At first, celebrity advertisements began

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58. See TENNANT, *supra* note 8, at 137.

59. L. D. H. Weld is cited as one of the most prolific early contributors to marketing knowledge. He became the president of New York's Market Research Council in 1931 and of the American Marketing Society in 1933. Donald R.G. Cowan, *A Pioneer in Marketing*, 25 J. MKTG. 63, 63, 66 (1960).

60. TENNANT, *supra* note 8, at 137.

61. Harris & Ewing, *Chairman of Board Reynolds Tobacco Co. Washington, D.C., May 2. A New Informal Photograph of S. Clay Williams, Chairman of the Board, R.J. Reynolds Tobacco Co. He is Here Attending the Annual Meeting of the U.S. Chamber of Commerce*, LIBR. OF CONGRESS (May 2, 1939), <https://www.loc.gov/item/2016875556> [<https://perma.cc/D8SX-5U36>].

62. *Id.*

63. *Id.* at 141.

64. *Id.*

65. See, e.g., KLUGER, *supra* note 18, at 57 (giving an example of a successful marketing scheme executed by Reynold's Camel brand).

66. *Id.*

67. *Id.*

68. See *id.* at 57, 61.

69. See KLUGER, *supra* note 18, at 57; see also "The Tobacco Celebrities," *Advertising Stars, 1920s-1960s*, POP HIST. DIG, <https://pophistorydig.com/topics/tag/al-jolson-cigarette-advertising/> [<https://perma.cc/PRD5-8PHK>].

as posters and magazine spreads.<sup>70</sup> Celebrity endorsements in still advertisements included professional baseball players, movie stars, and musicians.<sup>71</sup> Lucile Ball and Desi Arnaz, starring on the hit TV show *I Love Lucy*, posed with a pack of Philip Morris cigarettes in 1952.<sup>72</sup> The poster read, “Smart young Americans are changing to Philip Morris . . . why don’t you?”<sup>73</sup> In 1949, Bob Hope promoted Chesterfield cigarettes as part of the “ABC” campaign.<sup>74</sup> Hope’s testimonial read, “I’ve been smoking Chesterfields ever since I’ve been smoking. I like their taste and real mildness. They pay top prices for the best cigarette tobacco.”<sup>75</sup> Carole Lombard endorsed Lucky Strike in 1937 and stated Lucky Strike’s light smoke did not irritate her throat before she sang.<sup>76</sup>

Celebrity partnerships would eventually lead to cigarette companies funding motion picture advertising campaigns.<sup>77</sup> From the late 1930s through the 1940s, two-thirds of popular adult movie stars advertised cigarettes by smoking on screen.<sup>78</sup> Movie studios such as Warner Bros., Paramount, Fox, MGM, and Universal collaborated with tobacco companies to produce advertisements for the highest bidder.<sup>79</sup> Through the 1960s, cigarette companies sponsored television shows.<sup>80</sup> For example, Winston sponsored the original *Flintstones*, which featured cartoon characters smoking Winston cigarettes in short-form advertisements from 1960 to 1966.<sup>81</sup> In one Winston televised advertisement, Fred and Barney lit a cigarette and said, “Winston tastes good, like a cigarette should.”<sup>82</sup> Congress’s passage of the Public Health Cigarette Smoking Act of 1969 formally banned cigarette commercials.<sup>83</sup> The

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70. See “*The Tobacco Celebrities*”, *supra* note 69; see also Cinde Ramirez, *Vintage Celebrity Cigarette Ads*, CT INSIDER (Oct. 1, 2013), <https://www.ctinsider.com/lifestyle/health-family/slideshow/Vintage-celebrity-cigarette-ads-71166.php> [<https://perma.cc/CKS5-AVDN>] (collecting examples of poster and magazine spreads from beginning to mid-twentieth century).

71. See “*The Tobacco Celebrities*”, *supra* note 69 (showing John Wayer, Al Jolson, Honus Wagner, and Babe Ruth on cigarette advertisements); Ramirez, *supra* note 70 (showing Louis Armstrong, Kirk Douglas, and Jackie Robinson on cigarette advertisements).

72. *Selling Smoke: Tobacco Advertising and Anti-Smoking Campaigns*, YALE UNIV. LIBR., <https://onlineexhibits.library.yale.edu/s/sellingsmoke/page/celebrities> [<https://perma.cc/WZW6-8WMG>].

73. *Id.*

74. *Id.*

75. *Id.*

76. *Id.*

77. See *Timeline of Tobacco Industry Hollywood Involvement*, U.C.S.F.: SMOKE FREE MEDIA, <https://smokefreemedia.ucsf.edu/history/timeline> [<https://perma.cc/826E-PC34>].

78. *Id.*

79. See *id.*

80. See Wolfe, *supra* note 48.

81. See *id.*

82. *Id.*

83. See Pub. L. No. 91-222, § 6, 79 Stat. 282, 284 (1970) (codified as amended at 15 U.S.C. §§ 1331-1339).



Act stated, “After January 1, 1971, it shall be unlawful to advertise cigarettes on any medium of electronic communication subject to the jurisdiction of the Federal Commissions Commission.”<sup>84</sup>

After 1971, film advertisements rose to popularity due to the discrete nature of the advertisement placement in the motion picture and the recent ban on advertisements exclusively produced for tobacco companies through electronic mediums.<sup>85</sup> Tobacco companies used motion picture marketing as early as 1890.<sup>86</sup> The 1894 short film titled “Fred Ott’s Sneeze” was the second oldest surviving United States motion picture to be copyrighted and features forty-five frames.<sup>87</sup> Fred Ott is shown sneezing while holding a can of snus.<sup>88</sup> Motion pictures eventually became the preferred type of tobacco advertisement because, “the audience is totally unaware of any sponsor involvement.”<sup>89</sup> Studios began to pitch movies to cigarette companies to secure funding, and in exchange, the movies would feature the brand’s products.<sup>90</sup> For instance, in the 1980 film *Superman II*, General Zod threw Superman into the side of a Marlboro truck.<sup>91</sup> According to historical accounts, the truck did not exist outside the movie set and was manufactured for the purpose of appearing in the movie.<sup>92</sup> Product placement in media has continued into 2024, with the TV show *The Sympathizer* placing Lucky Strike and Camel cigarettes in the background of episode two titled, “Good Little Asian.”<sup>93</sup>

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84. *Id.*

85. See *Timeline of Tobacco Industry Hollywood Involvement*, *supra* note 77.

86. See *Edison Kinetoscope Record of a Sneeze, January 7, 1894*, LIBR. OF CONG., <https://www.loc.gov/item/00694192> [<https://perma.cc/4D52-DLAY>].

87. *Id.*; *Scholar at the Library of Congress Identifies the First Motion Picture Ever Copyrighted*, LIBR. OF CONG. (Oct. 13, 2022), <https://newsroom.loc.gov/news/scholar-at-the-library-of-congress-identifies-the-first-motion-picture--ever-copyrighted/s/6b6eae5-b504-4776-82f7-f6c2fc114c18> [<https://perma.cc/8V3P-8ADW>] (explaining how, until just a few years ago, Fred Ott’s Sneeze was believed to be the first copyrighted U.S. film until it was displaced as the record holder upon historic discovery).

88. See *Edison Kinetoscope Record of a Sneeze*, *supra* note 86; *Fred Ott’s Sneeze*, UNIV. LEEDS: FACING THE MIND – FILM/ART/MENTAL HEALTH, <https://facingthemind.leeds.ac.uk/mindless-faces/fred-otts-sneeze/> [<https://perma.cc/D8ZX-G97J>].

89. See *Timeline of Tobacco Industry Hollywood Involvement*, *supra* note 77.

90. See *id.*

91. *SUPERMAN II* (Warner Bros. Pictures 1980).

92. *Timeline of Tobacco Industry Hollywood Involvement*, *supra* note 77.

93. *The Sympathizer: Good Little Asian* (HBO television broadcast Apr. 21, 2024); Sergey, *Lucky Strike, Kent, Pall Mall, Kool and Camel Cigarettes in The Sympathizer S01E02 “Good Little Asian”* (2024), PROD. PLACEMENT BLOG, [<https://perma.cc/4EEX-KEYJ>].

Tobacco companies began implementing new strategies in 1990s and the 2000s.<sup>94</sup> Camel cigarettes, for example, re-imagined Joe Camel into a cartoon figure; he frequently was shown riding a motorcycle, wearing a jacket and sunglasses, and smoking a Camel cigarette.<sup>95</sup> However, in 1998, manufacturers were prohibited from using cartoons, “in the advertising, promoting, packaging or labeling of Tobacco Products.”<sup>96</sup>

#### D. *The Advent of E-Cigarettes*

Vaping quickly changed the tobacco landscape.<sup>97</sup> Electronic cigarettes (“e-cigarettes”) were first introduced in the United States in 2007.<sup>98</sup> Tobacco companies originally advertised them to help patients quit smoking, although there was no evidence to support the claim it could be used as a smoking cessation tool.<sup>99</sup> E-cigarettes were not subject to the same regulations as combustible cigarettes because they were seen as a smoking cessation tool.<sup>100</sup> It was not until 2016 that Congress passed the Child Nicotine Poisoning Prevention Act, which gave the FDA the authority to regulate e-cigarette packaging, that Congress placed specific restrictions on e-cigarette companies.<sup>101</sup>

JUUL was introduced to the United States in 2015.<sup>102</sup> The e-cigarettes were shaped like a Universal Serial Bus (“USB”) stick, were lightweight, and could be re-filled with different pods.<sup>103</sup> JUUL devices are rechargeable and

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94. See, e.g., *The History of Tobacco Marketing: It's a Scary Story*, TSET: TOBACCO STOPS WITH ME, <https://stopswithme.com/history-tobacco-marketing-scary-story> [https://perma.cc/QKM9-LQA5] (explaining that tobacco companies sponsored popular sporting events and outreach events like “Girls’ Night Out” to market their products).

95. See *Collection: Joe Camel Cartoons*, STAN. RSCH. INTO THE IMPACT OF TOBACCO ADVERT., <https://tobacco.stanford.edu/cigarettes/cartoons/joe-camel-cartoons/> [https://perma.cc/6WGE-P8PK].

96. Master Settlement Agreement at 19 (1998); see also *The Master Settlement Agreement*, NAT’L ASS’N ATT’YS GEN., <https://www.naag.org/our-work/naag-center-for-tobacco-and-public-health/the-master-settlement-agreement/> [https://perma.cc/Q6SB-5DT8] (“In 1998, 52 state and territory attorneys general signed the Master Settlement Agreement (MSA) with the four largest tobacco companies in the U.S. to settle dozens of state lawsuits brought to recover billions of dollars in health care costs associated with treating smoking-related illnesses.”).

97. See Kristen Jones & Gary A. Salzman, *The Vaping Epidemic in Adolescents*, 117 MO. MED. 56, 56 (2020).

98. *Id.*

99. *Id.*

100. *Id.*

101. *Id.*

102. See *Timeline: Significant Events in the History of Juul*, REUTERS (Sept. 25, 2019, 9:24 PM EDT), <https://www.reuters.com/article/business/timeline-significant-events-in-the-history-of-juul-idUSKBN1WA2LI/> [https://perma.cc/64CJ-WES4].

103. See Jones & Salzman, *supra* note 97, at 57.

use a USB charging dock, which can charge the device in an hour.<sup>104</sup> JUUL pods are inserted into the top of the device, serving as the mouthpiece, and contain different flavors.<sup>105</sup> JUUL pods do not contain tobacco;<sup>106</sup> instead, the JUUL device heats a liquid, usually containing nicotine, to create an aerosol that can be inhaled.<sup>107</sup> The term “vaping” refers to using the device, whereas an e-cigarette is the device itself.<sup>108</sup>

E-cigarettes are well-known for their unique flavor combinations.<sup>109</sup> JUUL carried flavors such as Fruit, Cucumber, Crème, Mango, and Mint.<sup>110</sup> These products quickly exploded in popularity among youth users.<sup>111</sup> Traditional cigarette usage had plummeted in recent decades, usage among teens had dropped from 70% in 1991 to 58% in 2003, and further decreased to roughly 30% by 2017.<sup>112</sup> But the “explosive rise of adolescents’ vaping” has accompanied a “renormaliz[ation in] smoking” and led to “a drastic increase in e-cigarette use among high schoolers.”<sup>113</sup> In 2017 and 2018 alone, the *New England Journal of Medicine* reported a 10% increase in adolescent e-cigarette usage.<sup>114</sup>

Advertisements by JUUL regularly featured young models holding JUUL products.<sup>115</sup> JUUL purchased billboards, purchased advertising space on several youth-focused websites like Nickelodeon, the Cartoon Network, Seventeen, and marketed on several educational websites used by middle and

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104. *The JUUL Device*, JUUL, <https://www.juul.com/learn/device> [<https://perma.cc/LZ3X-AWBA>].

105. *See What is a JUUL Pod?*, JUUL, <https://www.juul.com/learn/pods> [<https://perma.cc/QWA5-PCMG>].

106. *See id.* (“We use pharmaceutical grade nicotine and benzoic acid, which, when combined, create a nicotine salt, which helps provide cigarette-like satisfaction.”).

107. *See Electronic Cigarettes*, JT SCI., <https://www.jt-science.com/our-approach/product-design/electronic-cigarettes> [<https://perma.cc/GGW3-TW8E>].

108. *Fast Facts on Oral Health: E-Cigarettes and Vaping*, ILL. DEP’T OF PUB. HEALTH, DIV. OF ORAL HEALTH (Dec. 3, 2020), <https://dph.illinois.gov/content/dam/soi/en/web/idph/files/fast-facts-e-cigarettes-or-vaping.pdf> [<https://perma.cc/JY6P-L28C>].

109. *See Jones & Salzman, supra* note 97, at 57 (“Pods come in fun packaging and the different pods are flavored to be attractive to adolescents, with everything from mint to gummi bear to frosted sugar cookie. This is especially concerning because studies have shown that flavor is one of the most important factors adolescents consider in trying e-cigarettes.”).

110. *See Discontinued JUUL Products*, JUUL, <https://www.juul.com/discontinued-flavors> [<https://perma.cc/B5Y9-K9MV>].

111. *See Jones & Salzman, supra* note 97.

112. *Id.*

113. *See id.*

114. *Id.*

115. *See, e.g.,* Sheila Kaplan, *Juul Bought Ads Appearing on Cartoon Network and Other Youth Sites, Suit Claims*, N.Y. TIMES (Feb. 12, 2020), <https://www.nytimes.com/2020/02/12/health/juul-vaping-lawsuit.html> [<https://perma.cc/5UCW-U9MR>] (showing Massachusetts JUUL advertisements that feature young women holding JUUL devices).

high school students.<sup>116</sup> According to a lawsuit filed by Massachusetts, JUUL rejected proposals to brand its products to adults by using images of retro items like clunky telephones and Atari joysticks with a sleek e-cigarette held next to it.<sup>117</sup> In lieu of that campaign, JUUL released its campaign titled “Vaporized.”<sup>118</sup> “Vaporized” pictured young adults “being cool, smiling, joyously jumping, and kissing while vaping.”<sup>119</sup> The advertisements featured bright colors and a bright, happy aesthetic.<sup>120</sup>

In response to the growing number of youth users using re-fillable devices, in 2018, the FDA organized the largest coordinated enforcement effort in its history and sent 1,300 warning letters and civil money penalty complaints to retailers who illegally sold JUUL and other e-cigarettes to minors during a nationwide undercover blitz.<sup>121</sup> Furthermore, the FDA issued a warning in 2019 to JUUL that it explicitly engaged in “labeling, advertising, and/or other activities directed to consumers,” where JUUL represented that its products “present a lower risk of tobacco-related disease or are less harmful than one or more other commercially marketed tobacco products.”<sup>122</sup> The FDA’s letter stated that “[t]he JUUL representative speaking with students at his presentation stated that a student ‘. . . should mention JUUL to his [nicotine-addicted] friend . . . because that’s a safer alternative than smoking cigarettes, and it would be safer for a kid to use.’”<sup>123</sup>

Later in 2020, the FDA issued an enforcement policy to remove all flavored cartridge or pod-based e-cigarettes except tobacco and methanol from the market.<sup>124</sup> However, a loophole developed; because the legislation only applied to re-fillable systems like JUUL, companies began to manufacture disposable e-cigarettes and sell products online.<sup>125</sup> Disposable e-cigarettes did not have to comply with the flavor ban.<sup>126</sup> For instance, the

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116. *Id.*

117. *Id.*

118. *Id.*

119. *Collection: Vaporized*, STAN. RSCH. INTO THE IMPACT OF TOBACCO ADVERT., <https://tobacco.stanford.edu/pods/juul/vaporized/> [<https://perma.cc/VE4W-BVW8>].

120. *See id.*

121. *See* U.S. FOOD & DRUG ADMIN., WARNING LETTERS AND CIVIL MONEY PENALTIES ISSUED TO RETAILERS FOR SELLING JUUL AND OTHER E-CIGARETTES TO MINORS (2018).

122. U.S. FOOD & DRUG ADMIN., WARNING LETTER JUUL LABS, INC. (2019).

123. *Id.* (brackets in original).

124. Amira Yassine et al., *Did JUUL Alter the Content of Menthol Pods in Response to US FDA Flavour Enforcement Policy?*, 31 TOBACCO CTRL. 234, 234 (2022).

125. *See* Carrie Macmillan, *The Juul E-Cigarette Ban: Will It Make a Difference?*, YALE MED. (July 6, 2022), <https://www.yalemedicine.org/news/juul-e-cigarette-ban> [<https://perma.cc/E8QT-57WU>] (“But there was a loophole . . . Because disposable e-cigarettes were not restricted by the FDA’s new policy, sales of flavored disposable products surged, particularly for Vuse and another brand called Puff Bar.”).

126. *Id.*

brand Lost Mary currently carries disposable e-cigarettes with flavors like “Blue Razz Ice” and “Triple Mango.”<sup>127</sup>

### III. NICOTINE POUCH PRODUCT DEVELOPMENT

#### A. History

Swedish manufacturers created early versions of nicotine pouches by crafting pre-portioned “pouches” of the centuries-old Swedish snus.<sup>128</sup> The original tobacco pouch product contained tobacco leaf.<sup>129</sup> However, this would change in the early 2000s when Swedish companies advanced production to extract nicotine from tobacco plants and place the extracted nicotine into the pouch; this led to the first tobacco-free nicotine pouch,<sup>130</sup> which is now the industry standard.<sup>131</sup> The pouches are small, white, and do not contain any tobacco leaf, stem, or dust.<sup>132</sup> Nicovum is credited with the development of nicotine pouches as a form of Nicotine Replacement Therapy (“NRT”) to help smokers quit smoking.<sup>133</sup>

The first nicotine pouch brand to widely distribute in the United States was ZYN and was founded by Swedish Match North America, a subsidiary of Philip Morris.<sup>134</sup> ZYN dominates the United States market share by units sold.<sup>135</sup> It peaked at 92.6% in July 2019 and 78.7% in June 2020.<sup>136</sup> By 2022, ZYN led the overall market share with 58.8%, followed by On! at 24.6%, Velo at 12.1%, and Rogue at 4.8%.<sup>137</sup> ZYN products contain white powdered

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127. LOST MARY BM600, <https://www.lostmary.com/product/LOST-MARY-BM600-Disposable-Pod-Device.html> [<https://perma.cc/83ET-Z8W4>].

128. Anthony Ponichtera, *The History of Nicotine Pouches*, NICOKICK (June 13, 2023), <https://nicokick.com/us/pouch-perfect/news/brief-history-of-nicotine-pouches> [<https://perma.cc/H7YL-2Q4T>].

129. *See id.*

130. NORDIC SPIRIT, *supra* note 4.

131. *See, e.g., Our Smoke-Free Products*, PHILIP MORRIS INT’L, <https://www.pmi.com/our-business/smoke-free-products> [<https://perma.cc/4STR-8FY8>] (showing that a major tobacco company only offers pouches, as opposed to snus and tobacco leaf pouches).

132. Ponichtera, *supra* note 128.

133. Sudhanshu Patwardhan & Karl Fagerström, *The New Nicotine Pouch Category: A Tobacco Harm Reduction Tool?*, 24 NICOTINE & TOBACCO RSCH. 623, 625 (2022).

134. *Id.* at 623; SWEDISH MATCH, <https://www.swedishmatch.com/> [<https://perma.cc/VXJ4-6FXK>] (“Swedish Match is a subsidiary of Philip Morris International.”).

135. Pamela M. Ling et al., *Tobacco-Derived Nicotine Pouch Brands and Marketing Messages on Internet and Traditional Media: Content Analysis*, JMIR FORMATIVE RSCH., Feb. 15, 2023, at 3.

136. *Id.*

137. Anuja Majmundar et al., *Nicotine Pouch Sales Trends in the US by Volume and Nicotine Concentration Levels from 2019 to 2022*, Nov. 15, 2022, JAMA NETWORK OPEN, at 1.

nicotine along with food-grade additives, fillers, a stabilizer, sweeteners, and flavorings.<sup>138</sup> As of May 2025, ZYN offers eight flavors, which include: cool mint, peppermint, wintergreen, spearmint, cinnamon, coffee, citrus, and menthol.<sup>139</sup> ZYN also offers two flavors in an unflavored line; these flavors are “smooth” and “chill.”<sup>140</sup> The FDA does not currently recognize nicotine pouches as an approved NRT.<sup>141</sup> Furthermore, few researchers have studied nicotine pouch products to determine their long-term effects on an individual’s health.<sup>142</sup> However, it is readily apparent that nicotine pouches are popular, with sales increasing by an estimated 600% between 2019 and 2022.<sup>143</sup>

From 2019 to 2022, 2.9% of United States adults reported using nicotine pouches.<sup>144</sup> There is also evidence to indicate underage individuals are using nicotine pouches.<sup>145</sup> A 2023 study showed that 400,000 youths in the United States reported using nicotine pouches, which is twice the amount from 2021.<sup>146</sup> Furthermore, there is growing concern in the medical community over its addictiveness, with 73% of young people who have tried nicotine pouches becoming habitual users.<sup>147</sup> Although there are several nicotine pouch brands, including On! and Velo, ZYN has gained the largest fan base.<sup>148</sup>

### B. Social Media and Marketing

Perhaps the reason behind ZYN’s popularity in the United States is its use of social media to attract new and habitual nicotine users.<sup>149</sup> ZYN has a large social media presence across mainstream social media platforms including X

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138. See Patwardhan & Fagerström, *supra* note 133.

139. *All Products*, ZYN, <https://us.zyn.com/all-products/> [<https://perma.cc/BHE7-Q96A>].

140. *Id.*

141. *ZYN 101: What to Know About Big Tobacco’s Latest Addiction*, AM. LUNG ASS’N: EACH BREATH (July 31, 2024), <https://www.lung.org/blog/zyn-nicotine-addiction> [<https://perma.cc/7KXP-YYBP>] [hereinafter *ZYN 101*] (explaining that nicotine pouches are not an “FDA-approved quit medication”).

142. See *Nicotine Pouches: Are They Safer Than Chewing, Smoking or Vaping?*, NEB. MED. UNIV. HEALTH CTR., <https://health.unl.edu/nicotine-pouches-are-they-safer-chewing-smoking-or-vaping/> [<https://perma.cc/F9ST-RW6H>] (“The long-term health impact of nicotine pouches is still unknown.”).

143. *ZYN 101*, *supra* note 141.

144. See *id.*

145. See *id.*

146. *Id.*

147. See *id.*

148. *Id.*

149. See *id.* (explaining how ZYN’s popularity very well is due to “Zynfluencers” promoting the brand online).

(formerly known as Twitter), TikTok, Reddit, and Instagram.<sup>150</sup> Mentions of ZYN on social media have increased across the web by nearly 80% during the first quarter of 2024.<sup>151</sup> Total impressions have risen by 22% from 17 million to 21 million over the same time period.<sup>152</sup> Additionally, total reach has increased 32% from 6.4 million to 8.4 million.<sup>153</sup> The hashtag “ZYN” has reached over 700 million views as of early 2024 on TikTok alone.<sup>154</sup> With almost half of all 1.2 billion TikTok users being ages twenty-four or younger, it may be inferred that ZYN product videos are reaching young populations.<sup>155</sup>

While ZYN has its own social media platforms, a large portion of its online engagement originates from unofficial promotions from individual users.<sup>156</sup> A “ZYNfluencer” is a social media creator who dedicates at least some of his or her platform to promoting ZYN products without any form of compensation.<sup>157</sup> The network of ZYNfluencers has widely pushed ZYN products to online users through creative ads.<sup>158</sup> ZYNfluencers often enthusiastically promote ZYNs or other nicotine pouch brands.<sup>159</sup> Despite naming content creators “ZYNfluencers,” ZYN does not partner with or pay

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150. See *Zyn Rewards Program Follows Big Tobacco's Marketing Playbook*, TRUTH INITIATIVE (July 2, 2024), <https://truthinitiative.org/research-resources/tobacco-industry-marketing/zyn-rewards-program-follows-big-tobaccos-marketing> [https://perma.cc/XV8J-5MV8] [hereinafter TRUTH INITIATIVE]; see also April Rubin, *Meet “Zynfluencers”: Smokeless Nicotine Pouches are Having a Moment*, AXIOS (July 18, 2024), <https://www.axios.com/2024/07/13/zyn-nicotine-pouch-popularity-influencers-congress> [https://perma.cc/7FHS-K3DD] (explaining that ZYN's social media presence has risen and is similar to the teen vaping boom in the 2000's).

151. TRUTH INITIATIVE, *supra* note 150.

152. *Id.*

153. *Id.*

154. *Under the “ZYNFLUENCE”*, AM. LUNG ASS'N (June 13, 2024), <https://rptfc.org/wp-content/uploads/2024/06/PA-Tobacco-Coalition-Zyn-Presentation.pdf> [https://perma.cc/V3EK-HPTR].

155. See *id.*

156. See, e.g., Shane O'Neill, *How ZYN Became ‘In’ Amid Right-Wing Fervor for Nicotine*, WASH. POST (Aug. 15, 2024), <https://www.washingtonpost.com/style/of-interest/2024/08/15/zyn-nicotine-pouches-culture/> [https://perma.cc/NQ6S-8JT3] (detailing how conservative social media personalities promote ZYN on their own, without any direct affiliation with the brand).

157. See John Semley, *Meet the Zynfluencers: How Nicotine Pouches Ignited a New Culture War*, THE GUARDIAN (Feb. 12, 2012, 7:00 AM EST), <https://www.theguardian.com/business/2024/feb/12/meet-the-zynfluencers-how-nicotine-pouches-ignited-a-new-culture-war> [https://perma.cc/L7TT-26QS].

158. See, e.g., O'Neill, *supra* note 156 (describing one group of influencers delivering Tucker Carlson a gigantic tin of Zyn via helicopter, others tossing tins to their favorite musicians on stage, and one influencer's statement that Zyn “coursing through his veins” makes a man “an unstoppable force”).

159. See *id.*; see also, e.g., Ratch (@theratch), TIKTOK (Mar. 17, 2024), <https://www.tiktok.com/@theratch/video/7347366163745082667> [https://perma.cc/8VZB-UWZM].

social media influencers to represent its brand in the United States.<sup>160</sup> A spokesperson from Philip Morris stated, “We don’t have any kind of promotional relations or contracts with anyone [promoting ZYNs] online . . . We do get requests for partnership. We deny every single one of them.”<sup>161</sup> Key ZYNfluencer talking points include nicotine’s ability to improve focus, and that nicotine pouches offer a discrete, easy way to get buzzed.<sup>162</sup> Meanwhile, ZYN users are called “ZYNners” and have stated “ZYNning is not sinning.”<sup>163</sup>

Popular celebrities have publicly supported and endorsed using ZYN products online. Tucker Carlson, a former television personality, declared “ZYN is not a sin,” and claimed it could “enhance[e] male vitality and mental acuity.”<sup>164</sup> Joe Rogan, host of the *Joe Rogan Experience*, claimed that ZYN, and other pure nicotine products, are safe for consumption because the product does not contain the same delivery system as cigarettes; Rogan also claimed they are not addictive, and suggested that a person may quit in two to three days.<sup>165</sup> Bert Kreischer, a comedian, promoted ZYN on his podcast by comparing ZYN to another pouch brand on air.<sup>166</sup> These celebrity appearances have driven engagement with ZYN as a brand because videos of Bert Kreischer, Tucker Carlson, and Joe Rogan discussing ZYN have been reposted and viewed hundreds of thousands, if not millions, of times.<sup>167</sup>

Furthermore, the social media platform, TikTok, has short-form videos of high school students using nicotine pouches under the hashtag “ZYN.” In one

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160. O’Neill, *supra* note 156.

161. Semley, *supra* note 157.

162. ZYN 101, *supra* note 141.

163. Associated Press, *Zyn Nicotine Pouches Are All Over TikTok, Sparking Debate*, MEDPAGE TODAY (Mar. 4, 2024), <https://www.medpagetoday.com/popmedicine/cultureclinic/109002> [<https://perma.cc/UR8R-USFF>]; Alex Demas, *No, the Vatican Didn’t Declare ‘Zyn Is Not a Sin’*, THE DISPATCH (June 21, 2024), <https://thedispatch.com/article/no-the-vatican-didnt-declare-zyn-is-not-a-sin/> [<https://perma.cc/QD5D-VKUX>].

164. Associated Press, *supra* note 163.

165. The Joe Rogan Experience MMA Show, #154 with Matt Serra, Din Thomas & John Rallo, THE JOE ROGAN EXPERIENCE, at 00:54–03:24 (Apr. 4, 2024), <https://www.jrepodcast.com/episode/jre-mma-show-154-with-matt-serra-din-thomas-john-rallo/> [<https://perma.cc/ZJ78-4HDU>].

166. 2 Bears 1 Cave with Tom Segura & Bert Kreischer, *The Bears Are Back | 2 Bears, 1 Cave Ep. 212*, YMH STUDIOS, at 06:25–10:00 (Nov. 20, 2023), <https://www.youtube.com/watch?v=ddEB0q3EImM> [<https://perma.cc/CFX7-TB2K>].

167. See Kyle Forgeard (@kyleforgeard), *We gave Tucker Carlson the world largest Zyn container*, INSTAGRAM (Dec. 21, 2023), <https://www.instagram.com/kyleforgeard/p/C1H4143OUAv/> [<https://perma.cc/8SZ2-N69Q>] (over 480,000 likes, with views even higher); Lexi Ciccone (@TheLexiCiccone), *Joe Rogan saying hi to Tucker as he pops a Zyn*, X (Nov. 11, 2023), <https://x.com/TheLexiCiccone/status/1723562158825320517?lang=en> [<https://perma.cc/GC9G-N5CZ>] (over 180,000 views); The Joe Rogan Experience MMA Show, *supra* note 165 (roughly eleven million views per episode); 2 Bears 1 Cave with Tom Segura & Bert Kreischer, *supra* note 166 (over 600,000 views).



video, an underage user is shown trying a new nicotine pouch flavor from the brand “SQX” while sitting in a high school classroom.<sup>168</sup> Another video by the username “@theratch” has over 11 million views, and depicts a man pouring nine cans of flavored nicotine pouches into a jar and mixing them together.<sup>169</sup> A different video made by @theratch has over 7 million views, and shows a man putting a ZYN pouch in his mouth and sipping an energy drink.<sup>170</sup>

Discussion of underage ZYN usage is reflected in videos and the comments under many videos.<sup>171</sup> A video with over 1.1 million views and 215 thousand likes showed two women dancing in front of a truck with the caption, “these boys are so good at figuring out how to buy beer and [Z]yns underage but they still can’t figure out how to buy us flowers.”<sup>172</sup> Hundreds of comments on the video described why commentators go to great lengths to secure nicotine products instead of purchasing flowers.<sup>173</sup> Commentors under another video indicated that underage users tried ZYNing in school, with one TikTok commenter stating, “[I] [p]opped a [Z]yn during class one time and got a 105 on my math final.”<sup>174</sup> A TikTok user replied to the comment and said, “[M]e in physics.”<sup>175</sup> Another comment on the post read, “My teacher heard me close my can and just [said,] ‘I don’t even care, I’m not gonna stop you just don’t let me see it.’ [C]ool guy.”<sup>176</sup>

ZYN’s United States Instagram account (“@zynusa”) is one of the brand’s official social media pages.<sup>177</sup> Its page is a series of advertisements

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168. Zynderman (@harryzynderman), *Mid Class Review*, TIKTOK (Sept. 20, 2024), <https://www.tiktok.com/@harryzynderman/video/7416793676254317866> [https://perma.cc/6S-N4WJ] (using #zynreview, and #fortnite, presumably targeted at a younger audience).

169. Ratch (@theratch), *Candy Jar Full*, TIKTOK (June 26, 2024), <https://www.tiktok.com/@theratch/video/7384861374398090527> [https://perma.cc/A77K-S2SV].

170. Ratch, *supra* note 159 (using #zyn and #zynbabwe).

171. *See, e.g.*, Zynderman, *supra* note 168; Semisauced (@semisauced), *And most of Ya’ll are Double and Triple Deckies*, TIKTOK (Mar. 2, 2023), <https://www.tiktok.com/@semisauced/video/7213482011107921194?lang=en> [https://perma.cc/5M3G-YJFJ] (including comments from presumably underage users saying “I took a 27 [milligram] in math today” and “I run 6 millys [i.e., milligram pouches] in school”).

172. Grace K (@grace\_pajs), *How Dat Make Sense*, TIKTOK (Sept. 9, 2024), [https://www.tiktok.com/@grace\\_pajs/video/7413768974690733355](https://www.tiktok.com/@grace_pajs/video/7413768974690733355) [https://perma.cc/SP4F-FCVH].

173. *See id.* (example comment: “Beer and zyns don’t leave me”).

174. *See* Noelle Cheney (@noellelovessloths), *Tween and Teen Students Really Need to Get Their Nicotine Addictions Under Control*, TIKTOK (May 23, 2024), [https://www.tiktok.com/@noellelovessloths/video/7372314875009436974?\\_r=1&\\_t=8s6i9zJtn5O](https://www.tiktok.com/@noellelovessloths/video/7372314875009436974?_r=1&_t=8s6i9zJtn5O) [https://perma.cc/UW85-GHRT].

175. *Id.*

176. *Id.*

177. *See* ZYN USA (@zyn\_usa), INSTAGRAM, [https://www.instagram.com/zyn\\_usa/](https://www.instagram.com/zyn_usa/) [https://perma.cc/T4HH-NLHA].

that uses still images and videos.<sup>178</sup> ZYN frequently posts about new reward opportunities, including new product launches, limited-edition t-shirts, and free trip opportunities.<sup>179</sup> An underlying theme in its posts include exploring the outdoors.<sup>180</sup> For example, one advertisement posted in September 2024 shows a car with camping gear and is captioned, “Let’s get out of town. Where’s your favorite weekend road trip destination?”<sup>181</sup> A post from October 4, 2024, depicted a grill, a rack of ribs, and a can of three milligram cinnamon ZYNs.<sup>182</sup> Its caption reads, “Be the hero at your next tailgate.”<sup>183</sup> An example of a video ad includes a post from Spring 2024 and depicts an animated image of a woman, a man, and a dog picnicking under cherry blossom trees.<sup>184</sup> The image zooms in on a can of peppermint ZYNs and is captioned, “What’re you packing for your first picnic of the year? What variety goes best with your picnic plans? Pack in the comment basket and let us know!”<sup>185</sup>

There is growing concern over the reach and community ZYN has created through its unique social media presence, culture, and identity.<sup>186</sup> Some online users have criticized ZYN’s reach stating it targets vulnerable users and leads to engagement.<sup>187</sup> Other users cited underage use, nicotine addiction, and normalization of substance use as concerns of ZYN’s marketing and social media presence.<sup>188</sup>

In addition to ZYN’s extensive online marketing campaigns, ZYN has also extended its reach by offering a robust rewards program.<sup>189</sup> The rewards

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178. *Id.*

179. *See id.*

180. *See id.*

181. ZYN USA (@zyn\_usa), *Let’s Get Out of Town. Where’s Your Favorite Weekend Road Trip Destination?*, INSTAGRAM (Sept. 6, 2024), [https://www.instagram.com/p/C\\_la\\_Wdvmw7/](https://www.instagram.com/p/C_la_Wdvmw7/) [<https://perma.cc/N4AL-ETKE>].

182. ZYN USA (@zyn\_usa), *Be the Hero at Your Next Tailgate*, INSTAGRAM (Oct. 4, 2024), <https://www.instagram.com/p/DatwBwbJG2D/> [<https://perma.cc/ZCJ6-J25M>].

183. *Id.*

184. ZYN USA (@zyn\_usa), *What’re You Packing for Your First Picnic of the Year?*, INSTAGRAM (Apr. 20, 2024), [https://www.instagram.com/p/C5\\_qO1Qs6wx/](https://www.instagram.com/p/C5_qO1Qs6wx/) [<https://perma.cc/-KJBB>].

185. *Id.*

186. *See* Rubin, *supra* note 150 (discussing how Zyn’s recent online popularity “has gotten attention from Congress and regulators”).

187. *See generally, e.g.*, Ashwinn (@shwinnabego), *Lets Talk About Zyn Rewards and This Classic Marketing Strategy*, TIKTOK (May 31, 2024), <https://www.tiktok.com/@shwinnabego/video/7375258615755803950> [<https://perma.cc/5AXV-G49J>] (discussing how Zyn “gamif[ies] the system with a rewards program” that increases loyalty and direct-to-consumer communication for an “already addictive product”).

188. *See* O’Neill, *supra* note 156 (“Health experts are concerned that [Zyn’s are] hooking young people . . . . There’s a lot of fear and concern over whether this is going to be the next Juul . . .”).

189. *See Shop Rewards*, ZYN, <https://us.zyn.com/ZYNRewardsStore/> [<https://perma.cc/WWD3-4MWM>]; *see also* Ashwinn, *supra* note 187.

program encourages users to redeem a unique code on the back of each purchased can.<sup>190</sup> Each can may be redeemed for fifteen points.<sup>191</sup> ZYN rewards points may be used to purchase over fifty different items, including gift cards, ZYN branded merchandise, or even an evening with Dierks Bentley.<sup>192</sup> Point redemption values range from 1080 points for a ZYN branded sweatshirt to 9,900 points for a Traeger Tailgater 2.0 Grill/Smoker.<sup>193</sup> ZYN also offers a platform called “ZYN Cares,” which gives users the option to donate points to causes such as housing access and nature preservation.<sup>194</sup> In addition to the traditional rewards program and ZYN Cares, ZYN launched its “Go For It Campaign” to give ZYN lovers the chance to win a trip.<sup>195</sup> Trips may include fishing, hiking, sailing, or another activity that the person loves doing with a ZYN pouch.<sup>196</sup>

In October 2024, ZYN celebrated its fourth year of operations in the United States.<sup>197</sup> ZYN released limited edition products, held a site-wide 10%-off sale for ZYN Rewards purchases, and offered a beach vacation giveaway.<sup>198</sup> Each day, ZYN offered its rewards members a new promotion.<sup>199</sup> On October 8, 2024, ZYN had a “spin to win” game, where rewards members could click to spin a wheel and collect prizes.<sup>200</sup> On October 10, 2024, each rewards purchase came with a free bottle opener gift with each purchase while supplies lasted.<sup>201</sup>

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190. See *ZYN Rewards*, ZYN, <https://us.zyn.com/ZYNRewards/> [<https://perma.cc/V258-HCNW>].

191. *Id.*

192. See *id.*; Mary C. Crabtree, *Zyn Users Can Cash in Their Rewards for Two Tickets to a Dierks Bentley Show in Nashville*, WHISKEY RIFF (Sept. 26, 2024), <https://www.whiskeyriff.com/2024/09/26/zyn-users-can-cash-in-their-rewards-for-two-tickets-to-a-dierks-bentley-show-in-nashville/> [<https://perma.cc/2JGH-Y62B>]. Dierks Bentley is a country music artist from Nashville, Tennessee.

193. *Shop Rewards*, *supra* note 189.

194. AM. LUNG ASS'N, *supra* note 154.

195. *Id.*

196. *Id.*

197. See E-mail from Zyn Rewards to author (Oct. 8, 2024, 12:27 PM EDT), [<https://perma.cc/L3F7-QPDF>] (on file with author).

198. *Id.*

199. See *Zyn Rewards 4th Anniversary Promotion Official Rules*, ZYN, <https://us.zyn.com/4thAnniversaryOfficialRules/> [<https://perma.cc/TTF2-3UBK>].

200. See *id.* (discussing “Instant Win Games”); E-mail from Zyn Rewards to author (Oct. 8, 2024, 1:54 PM EDT) [<https://perma.cc/ZM6C-GRVM>] (on file with author) (showing results of a “spin to win” type of game).

201. See *Zyn Rewards 4th Anniversary Promotion Official Rules*, *supra* note 199.

## IV. WHAT HAPPENS NOW?

A. *The Impact of Social Media Campaigns on Nicotine Pouch Use*

Nicotine pouch product regulation is the only way for South Carolina to curb tobacco companies' current strategy to place tobacco products in the hands of children and those susceptible to predatory advertising practices. The tobacco industry's history has shown it has a pattern of escaping liability by releasing "new and improved products" and marketing them in such a way that evades authority. From movie star endorsements in the 1940s, movie product placement in the 1980s, cartoon characters in the 1990s, and young models holding vapes in the 2000s, Big Tobacco has creatively kept generations of users hooked on its products, and nicotine pouches are no different. Even if Philip Morris does not pay ZYNfluencers, there is a new pattern of social media platforms pushing viral videos exposing nicotine products to young people without age verification or regard of existing tobacco restrictions. The South Carolina General Assembly's prompt and immediate action is necessary to prevent nicotine pouches from becoming the cigarette of the 1940s, the flavored cigarette of the 1990s, and the vape of the 2000s.

The South Carolina General Assembly needs to take swift action to protect South Carolina youth and young adults from exploitative marketing strategies that are commonplace online. The explosive growth in popularity of ZYN and other nicotine pouch brands begs the question: what can we do to stop it?

Legislative action could remediate and slow the growth of nicotine pouch products by placing specific limitations on what advertising is permitted and what kinds of imaging is permissible on social media platforms. First, the South Carolina General Assembly should require social media platforms to enforce their Terms of Service and Community Guidelines. Most social media platforms, including TikTok, Instagram, and YouTube, currently have policies prohibiting or limiting youth access to tobacco and related products;<sup>202</sup> however, it does not appear that these policies are being closely followed or are offering necessary protections to limit children's access to tobacco imagery. This is apparent with several underage users discussing their use in TikTok comment sections.<sup>203</sup> With little effort, a video of children using

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202. *Restricted Goods and Services*, META, <https://transparency.meta.com/policies/community-standards/restricted-goods-services/> [<https://perma.cc/TYD5-S777>]; *Child Safety Policy*, YOUTUBE HELP, [https://support.google.com/youtube/answer/2801999?hl=en&ref\\_topic=9282679](https://support.google.com/youtube/answer/2801999?hl=en&ref_topic=9282679) [<https://perma.cc/62MM-AAMT>]; *Regulated Goods and Commercial Activities*, TIKTOK (Apr. 17, 2024), <https://www.tiktok.com/community-guidelines/en/regulated-commercial-activities> [<https://perma.cc/UG5A-N9A9>] (effective May 17, 2024).

203. See *supra* notes 171-176 and accompanying text.

nicotine pouches in a school classroom was located while researching this article.<sup>204</sup>

Philip Morris made a statement to USA Today in response to its products being attractive to young users.<sup>205</sup> A spokesperson stated,

Nicotine products should only be used by legal-aged adults, which means those 21-plus. Swedish Match, which makes ZYN, has robust marketing practices in place to help ensure access only to those 21-plus. That includes not using social media influencers. Swedish Match data shows the vast majority [of purchasers] are previous consumers of traditional oral, vaping, and cigarette products with others coming from other nicotine product categories.<sup>206</sup>

Although there is no evidence ZYN pays social media users to promote its products, it is clear these unpaid social media users have pushed nicotine products to new users and will continue to until legislative action is taken.<sup>207</sup> ZYN and similar nicotine pouch brands have rapidly adapted their social media marketing strategies.<sup>208</sup> Like the tobacco advertising campaigns that used movies like *Superman II*,<sup>209</sup> unsuspecting social media users may be pushed ads without knowing the product's feature is intended to have a persuasive effect on their purchasing decisions.<sup>210</sup> This is highly problematic because many social media users are susceptible to believing deceptive advertising practices.<sup>211</sup> Given the fact that many of these videos are made by users without ZYN directly paying for their content, it is up to social media companies to enforce its own policies to ensure videos are not being shown or are viewable by underage users. ZYNfluencers have created a difficult

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204. See Zynderman, *supra* note 168, to view the video referenced.

205. See Hannah Yasharoff, *Are Zyn Pouches Bad for You? What Experts Want You to Know*, USA TODAY (Apr. 10, 2024, 7:20 PM ET), <https://www.usatoday.com/story/life/health-wellness/2024/04/10/are-zyns-bad-for-you/73207432007/> [<https://perma.cc/WT48-8C64>].

206. *Id.*

207. See O'Neill, *supra* note 156 (showing how the hype for Zyn generated by social media has increased demand enough to cause a nationwide shortage for the product); Rubin, *supra* note 150 (discussing how Zyn's recent online popularity "has gotten attention from Congress and regulators").

208. See generally O'Neill, *supra* note 156 (showing the unique online culture featuring online personalities).

209. See *SUPERMAN II*, *supra* note 91.

210. Cf. *Timeline of Tobacco Industry Hollywood Involvement*, *supra* note 77 (discussing how film advertisements were utilized "because the audience is totally unaware of any sponsor involvement").

211. See generally *Tobacco Industry Marketing*, CTR. FOR DISEASE CONTROL & PREVENTION (May 14, 2021), [https://www.cdc.gov/tobacco/data\\_statistics/fact\\_sheets/tobacco\\_industry/marketing/index.htm#print](https://www.cdc.gov/tobacco/data_statistics/fact_sheets/tobacco_industry/marketing/index.htm#print) [<https://perma.cc/375Q-A9WV>] (demonstrating tobacco advertising and promotion influences young people).

regulatory hurdle because it is unlikely creators are considering tobacco laws when creating content about products they use day-to-day. Rather than attacking tobacco companies, placing pressure on social media companies may snub the virality and trendiness of nicotine products. This very likely could prevent hundreds of thousands of users from accessing deceptive advertisements.

A recent global campaign called #SponsoredbyBigTobacco called out tobacco companies for using advertising that directly targets young users.<sup>212</sup> According to the report, tobacco companies leveraged online influencers to reach young people online by using direct marketing from Instagram accounts, paid advertising, contests, and sports and music sponsorships.<sup>213</sup> Just as cigarette companies hired musicians, actors, and professional athletes in the 1940s and 1950s to promote cigarette brands,<sup>214</sup> tobacco companies seek out influencers engaged in a variety of interests to reach as many people as possible—and it’s working.<sup>215</sup> As of December 1, 2023, social media marketing for Velo nicotine pouches, Vuse e-cigarettes, and IQOS heated tobacco products have been viewed more than 3.4 billion times across Facebook, Instagram, X, and TikTok.<sup>216</sup> The report stated 40% of the views are from people under twenty-five years of age.<sup>217</sup>

The Centers for Disease Control and Prevention (“CDC”) reported that tobacco company advertising and promotion influences young people to start using tobacco.<sup>218</sup> Most of these ads make tobacco products appealing and may increase a child’s desire to begin using the product, especially if the product is shown by a person the child believes is a role model.<sup>219</sup> Legislative action could require social media companies to impose an age restriction requirement where users would be required to verify their age before viewing content containing tobacco products. A similar approach has been taken by some states, including Montana and North Carolina, to limit underage access to pornographic content.<sup>220</sup> Social media websites should require users to have

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212. *Tobacco Industry Ads Generate Billions of Views and Reach Millions of Kids on Instagram, Facebook, X and TikTok*, CAMPAIGN FOR TOBACCO-FREE KIDS (Dec. 8, 2023), [https://www.tobaccofreekids.org/press-releases/2023\\_12\\_08-social-media-report](https://www.tobaccofreekids.org/press-releases/2023_12_08-social-media-report) [https://perma.cc/P7Q7-7K75] [hereinafter *Tobacco Industry Ads*].

213. *Id.*

214. See Ramirez, *supra* note 69.

215. See *Tobacco Industry Ads*, *supra* note 212.

216. *Id.*

217. *Id.*

218. *Tobacco Industry Ads*, *supra* note 211.

219. *Id.*

220. James Factora, *Pornhub Pulls Access in Some States Due to Strict New Age Verification Laws*, THEM (Jan. 9, 2024), <https://www.them.us/story/pornhub-access-restricted-north-carolina-montana> [https://perma.cc/L3LM-YC2Z]. This proposition is not an

an account with an inputted birthday that will “unlock” age restricted content once a user reaches a certain age. Although some users will lie about their age, this measure will prevent users without accounts from viewing content under the radar and place at least one limitation on viewing tobacco content.

For instance, the TikTok video by “@theratch” featuring a bowl of nicotine pouches could only be viewed by accounts with a profile registered to a person with a birthday making them twenty-one years old or older. Furthermore, comments from accounts registered to users under the permitted age cap discussing tobacco consumption would be removed. Moreover, posts by Tucker Carlson and Joe Rogan featuring nicotine pouches would be inaccessible by underage people. Taking these measures is a step in the right direction in dismantling the online culture surrounding nicotine pouch products and preventing new underage users from being influenced to purchase the latest nicotine product.

Clearly, big tobacco companies are determined to push their products to as many users as possible and are not showing any signs of slowing down their social media presence. Yolonda C. Richardson, president and CEO of the Campaign for Tobacco-Free Kids stated,

Tobacco companies are among the most sophisticated advertisers in the world – marketing that reaches millions of kids does not happen by accident. Governments need to urgently address online and ensure that social media companies are held legally accountable for the tobacco and nicotine marketing appearing on these platforms.<sup>221</sup>

#### *B. The ZYN Rewards Program*

The South Carolina General Assembly should also consider how specific rewards programs may impact a user’s desire to continue using nicotine products. Rewards programs and sweepstakes are known to have an impact on the continued usage of a product or service.<sup>222</sup> An empirical study on the effectiveness of branded rewards programs found that programs are more

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endorsement of requiring social media users to show a physical driver’s license or other government-issued document.

221. *Tobacco Industry Ads*, *supra* note 212.

222. See *Here’s Why Reward Programs Work for Retailers*, DECISION SCIS. INST., <https://decisionsciences.org/reward-programs/> [<https://perma.cc/RLS8-LBEV>]; see also TRUTH INITIATIVE, *supra* note 150 (“Brand loyalty rewards programs have historically been a key tactic in tobacco advertising.”). See generally Monire Jalili & Michael S. Pangburn, *Understanding the Value of Delayed Discounts in Retail Rewards Programs*, 54 DECISION SCIS. 952 (2021) (evaluating and reporting the success of various types of rewards programs).

effective in categories of items are that purchased “heavily and frequently.”<sup>223</sup> The study used beer as an example.<sup>224</sup> Members in branded rewards programs were generally less price sensitive than nonmembers and are more likely to purchase more of the product short-term.<sup>225</sup> Another study concluded there is a significant positive impact of loyalty programs on customer retention; it was especially true when the customer participated in a loyalty program and had customer satisfaction with the product.<sup>226</sup>

This evidence suggests that ZYN’s rewards program, featuring prizes like branded shirts and offering free bottle openers with a rewards purchase, may have an impact on user’s decision to keep using the brand and the product itself.<sup>227</sup> Furthermore, nicotine pouches contain an addictive substance—nicotine;<sup>228</sup> this compounds the problem of having a generous rewards program because users are hooked on an addictive product and are encouraged to purchase more of the product to earn a “reward.”

Furthermore, there is emerging evidence nicotine pouch products are not completely harmless to users. Preliminary studies are suggesting use may cause exposure to heavy metals.<sup>229</sup> The first comprehensive study analyzing the chemical components in nicotine pouch products was published in mid-2023; it found harmful and potentially harmful constituents in two nicotine pouch product brands in comparison with regular smokeless tobacco products and NRT products.<sup>230</sup> The study found at least two heavy metals present in the product, including chromium and nickel.<sup>231</sup> While the study did state that nicotine pouches contained the least amount of heavy metals when compared to other products tested, it is still concerning that ZYN and similar products have chemicals linked to cancer that individuals ingest during use.<sup>232</sup>

Vaughan Rees, the director of the Center for Global Tobacco Control, believes “products like ZYN may be appealing to young people because they

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223. See Chen Lin & Douglas Bowman, *The Impact of Introducing a Customer Loyalty Program on Category Sales and Profitability*, 64 J. RETAILING & CUSTOMER SERVS., Jan. 2022, at 11.

224. *Id.*

225. See *id.*

226. See Andy Chin Woon Fook & Omkar Dastane, *Effectiveness of Loyalty Programs in Customer Retention: A Multiple Mediation Analysis*, 10 JINDAL J. BUS. RSCH. 7, 7 (2021).

227. See *supra* notes 222-226 and accompanying text.

228. *Is Nicotine Addictive?*, NAT’L INST. ON DRUG ABUSE (Jan. 2020), <https://nida.nih.gov/publications/research-reports/tobacco-nicotine-e-cigarettes/nicotine-addictive> [https://perma.cc/T5UX-QPQ2].

229. See Susanne Back et al., *Harmful and Potentially Harmful Constituents (HPHCs) in Two Novel Nicotine Pouch Products in Comparison with Regular Smokeless Tobacco Products and Pharmaceutical Nicotine Replacement Therapy Products (NRTs)*, 17 BMC CHEMISTRY, 2023, at 1, 6.

230. See *id.* at 1.

231. See *id.* at 6.

232. See *id.* at 6–8.



are less dangerous than smoking[,]” however, this does not mean the product is without risk.<sup>233</sup> He stated nicotine is related to cardiovascular disease in adults and, “Teens and young adults who do not smoke or vape should avoid this product.”<sup>234</sup> While the product may be a useful tool for people to quit smoking, ZYN’s rewards program encourages consistent use and brand loyalty, which appears to counter the argument that it is mostly used as a smoking cessation tool and has negative health consequences. The rewards program features chances to win free trips, free gifts, and exclusive events for rewards members, which seems to indicate ZYN is attempting to build brand loyalty by encouraging people to purchase ZYN for the chance to participate in its robust program.<sup>235</sup> This fact combined with the known and unknown health consequences of nicotine pouches,<sup>236</sup> creates the troubling reality that users may be entrapped in a cycle of use to the detriment of public health. Thus, the South Carolina General Assembly should take prompt action and limit or ban nicotine product loyalty rewards programs.

### C. *The South Carolina General Assembly’s Regulatory Response*

The South Carolina General Assembly currently defines “tobacco product” as “any product containing, made of, or derived from tobacco or nicotine that is intended for human consumption or is likely to be consumed, whether inhaled, absorbed, or ingested by any other means including, but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, or snus.”<sup>237</sup>

Although the General Assembly would seem to have nicotine pouches included in its tobacco enforcement statute, it has not sufficiently curbed the marketing practices of major pouch brands. The definition of “tobacco product” was amended in 2023 in a manner that added some clarity, with

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233. *Zyn Pouches Safer Than Smoking, but Still Pose Risks*, HARV. SCH. OF PUB. HEALTH (Nov. 22, 2024), <https://www.hsph.harvard.edu/news/hsph-in-the-news/zyn-pouches-safer-than-smoking-but-still-pose-risks/> [<https://perma.cc/B47J-MGND>].

234. *Id.*

235. See *supra* notes 189-203, 222-226 and accompanying text for discussion on ZYN Rewards and the effectiveness of reward programs in building customer loyalty.

236. See Gina VanThomme, *What to Know About Nicotine Pouches*, UNIV. OF TEX. MD ANDERSON CANCER CTR. (Jan. 16, 2025), <https://www.mdanderson.org/cancerwise/what-to-know-about-nicotine-pouches.h00-159773289.html> [<https://perma.cc/9CES-SQNK>] (discussing how nicotine is known to be addictive, potentially disrupt brain development, impact the cardiovascular system, cause oral health issues, on top of the much researchers still do not know).

237. S.C. CODE ANN. § 16-17-501(8)(a) (2023).

pouches seemingly being included in the amended version.<sup>238</sup> However, the General Assembly added confusion by introducing the term “alternative nicotine product” without a definition into select areas of South Carolina’s tobacco enforcement statutes.<sup>239</sup> The General Assembly’s intent behind adding “alternative nicotine product” is unclear. A possible explanation is to create a specific category for synthetic nicotine products. This could create the mistaken impression that nicotine pouches may be an “alternative nicotine product” as opposed to a “tobacco product,” which would limit legal restrictions placed on manufacturers. The General Assembly should take prompt action to include “nicotine pouch” in its list of covered products in the “tobacco product” definition to make it clear that nicotine pouches are included in the definition. It clears any potential confusion as to whether synthetic nicotine products are considered a “tobacco product” in South Carolina and is another means to put nicotine pouch manufacturers on notice that South Carolina is taking a firm stance against flavored nicotine products being sold to underage consumers. Even if including nicotine pouches in the definition seems redundant, it is made clear that nicotine pouch products are not any less harmful than other traditional tobacco products, unlike what Philip Morris, a part owner of ZYN, continues to claim to its 36.5 million users.<sup>240</sup>

Second, the South Carolina Legislature should include a section in its tobacco enforcement statute requiring social media companies to remove videos or comments from accounts registered to individuals who do not meet the statutory age for purchasing tobacco products and impose strict age verification standards to ensure underage individuals are not able to view tobacco product imaging. The section should also include restrictions on rewards programs that may be offered by tobacco brands. ZYN’s rewards program is promoted on its official social media page<sup>241</sup> and any user may access the program by inputting codes found on the back of each can purchased.<sup>242</sup> Users may be encouraged to purchase more nicotine pouches than they might have originally without the program in place. Placing a limit on the rewards program would likely decrease the number of units sold and

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238. See Omnibus Tobacco Enforcement Act of 2023, 2023 S.C. Acts No. 38. See prior version at S.C. CODE ANN. § 16-17-501(5) (2019) (amended 2023), which defined “Tobacco product” as “a product that contains tobacco and is intended for human consumption. ‘Tobacco product’ does not include an alternative nicotine product.”

239. See S.C. CODE ANN. § 16-17-500(B) (2023) (“It is unlawful to sell a tobacco product or an *alternative nicotine product* . . . .” (emphasis added)); see also *id.* § 16-17-501 (2023) (including no reference to alternative products).

240. *Our Smoke-Free Products*, *supra* note 131 (showing the number of smoke-free Philip Morris users).

241. ZYN USA, *supra* note 177.

242. See *ZYN Rewards*, *supra* note 190.

decrease brand loyalty, thereby lowering demand for a highly addictive product.

Finally, the General Assembly should pass a resolution stating nicotine pouch products like ZYN are encouraging youth to begin using nicotine products through its online culture. Flavored nicotine products have attracted young users to use tobacco products in the past,<sup>243</sup> and it may be inferred that the same could be said about nicotine pouches. The General Assembly's hard stance against ZYN products may encourage the United States Congress and the FDA to act against manufacturers that are taking advantage of social media's young audience<sup>244</sup> and are promoting addictive products with known negative health effects. It may encourage Congress to limit which flavors manufacturers may sell.

#### V. CALL TO ACTION

Nicotine pouch products have reached at least 400,000 youths in the United States, with many of these youths being habitual users.<sup>245</sup> ZYN, the largest manufacturer of nicotine pouch products, has continued to sell more products since its debut in the United States in 2019.<sup>246</sup> Given its explosive success and large internet platform, the South Carolina General Assembly should take prompt action to prevent its continued marketing, sale, and distribution to underage users. The General Assembly should:

- (1) include "nicotine pouch" in its list of tobacco products under the definition of "tobacco product" in S.C. Code Ann. § 16-17-501(6)(a);
- (2) amend S.C. Code Ann. § 16-17-500 to include age restrictions on social media content featuring tobacco products and regulate tobacco reward programs; and
- (3) pass a resolution to declare nicotine pouches are encouraging youth to begin using nicotine products because of predatory social media marketing strategies.

Nicotine usage is a threat to public health and a threat to the children who are enticed to try a risk-free, cool, discrete product. Nicotine pouches, like e-cigarettes, is an attempt by the tobacco industry to re-package nicotine

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243. See Wolfe, *supra* note 48; Lewis & Wackowski, *supra* note 51, at 244.

244. See Senator Chuck Schumer (D-N.Y.), for example, is already calling for FDA and FTCA investigations into Zyn. O'Neill, *supra* note 156.

245. ZYN 101, *supra* note 141.

246. Majmundar et al., *supra* note 137.

products in new, innovative way to entice new users to the product. Despite clear evidence that nicotine pouches are not a recognized cessation tool, Philip Morris has been accused of claiming ZYN may be used to quit traditional tobacco products.<sup>247</sup>

The only way to protect vulnerable populations is to push the General Assembly to promptly enact legislation to address the rising concern.

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247. See, e.g., Riley Brennan, *Consumer Class Action Accuses ZYN Oral Nicotine Pouch Manufacturers of Misleading Advertising*, THERECORDER, (Apr. 8, 2024, 11:49 AM), <https://www.law.com/therecorder/2024/04/08/consumer-class-action-accuses-zyn-oral-nicotine-pouch-manufacturers-of-misleading-advertising/?slreturn=20250320160340> [https://perma.cc/64GC-CDC7] (detailing consumer class action filed against Philip Morris International and Swedish Match North America accusing them of marketing ZYN as a “‘nicotine-cessation device,’ despite knowing it isn’t a proven or authorized cessation device”); see also U.S. Food & Drug Admin., FDA News Release: FDA Authorizes Marketing of 20 ZYN Nicotine Pouch Products After Extensive Scientific Review (Jan. 16, 2025) (approving marketing of ZYN noting “The applicant [presumably Philip Morris International] also provided evidence from a study showing that a substantial proportion of adults who use cigarette and/or smokeless tobacco products completely switched to the newly authorized nicotine pouch products . . .”).