



# FLAVORED TOBACCO BANS: FACT VS. FICTION



Prohibiting the sale of all flavored commercial tobacco products<sup>1</sup> will advance public health, reduce health inequities, and save lives. Numerous jurisdictions across the United States have already taken steps to restrict the sale of flavored tobacco products.

This fact sheet answers commonly asked questions about flavored tobacco bans, while debunking common myths about these public health measures and underscoring their effectiveness.

## Q: Why ban flavored tobacco products?

**A:** One reason is that the industry entices youth with flavors to get them addicted to tobacco products — nearly 9 out of 10 youth who have tried tobacco start with a flavored product, and more than half of youth use products with “ice” or “iced” in the name.<sup>2</sup> In addition, menthol and



other cooling flavors make combustible cigarettes less harsh, so people are more easily addicted and have a harder time quitting. More than 43 percent of U.S. adults who smoke use menthol cigarettes. Youth, people of color, and people with low incomes use menthol products the most.<sup>3</sup>

Comprehensive flavor bans on tobacco products in the U.S. and elsewhere have been successful in reducing smoking rates and saving lives.



**Q: Do flavor bans work?**

**A:** Yes. Comprehensive flavor bans on tobacco products in the U.S. and elsewhere have been successful in reducing smoking rates and saving lives.<sup>4</sup> Studies have shown that flavor bans, supported by reduced advertising and marketing, counter-marketing educational campaigns, and high levels of enforcement, lead to a decrease in youth tobacco use and initiation.<sup>5</sup> Further, if people do not start smoking by the age of 25, they are unlikely to start smoking at all.<sup>6</sup> Recent models simulating a nationwide menthol ban have estimated a 35.7 percent decrease in all types of cigarette use by Black adults within five years of being implemented.<sup>7</sup> A national flavor ban could save as many as 650,000 lives over four decades,<sup>8</sup> including 255,000 Black Americans.<sup>9</sup>

**Q: Won't flavor bans fuel illicit trade?**

**A:** No. The evidence suggests that it is unlikely that any significant illicit market would develop because of a flavor ban. Several large jurisdictions have adopted flavored tobacco sales prohibitions without the feared increase in illicit sales.<sup>10</sup> For example, studies from Canada on that nation's ban of flavored cigarettes, including menthol cigarettes, found that bans did not create a surge in illegal sales of menthol or non-menthol products.<sup>11</sup> Plus, surveys show that

large percentages of people who smoke menthol cigarettes would choose to quit smoking altogether if menthol products could no longer be bought legally.<sup>12</sup>

## **Q: Does banning menthol unfairly target communities of color?**

**A:** No, for decades the tobacco industry has targeted communities of color with menthol products. The industry is notorious for appropriating Black culture, saturating urban neighborhoods with coupons and cheap prices, and sponsoring publications, cultural events, educational institutions, and civic leaders.<sup>13</sup> The industry buys political influence and spreads misinformation for profit.<sup>14</sup> It co-opts racial justice talking points and recruits prominent civil rights leaders to amplify its message.<sup>15</sup>

Also, communities of color have higher rates of use of menthol tobacco products than White populations.<sup>16</sup> This has resulted in a disproportionate number of tobacco-related diseases in these communities, which only exacerbates existing health disparities.<sup>17</sup>

At the federal level, the Family Smoking Prevention and Tobacco Control Act has already banned all flavors besides menthol since 2009. Strong lobbying interests ensured that the Act included an exception for menthol but the Act also specifically gave the FDA authority to ban menthol as well if it chose to do so. A national ban of menthol cigarettes would not single out communities that use menthol cigarettes but rather would treat such products in the same way as all other flavored cigarettes.

Systemic racism and the over-policing of communities of color are real, disturbing social issues that must be addressed.<sup>18</sup> But federally, the FDA's proposed menthol standard would regulate manufacturers, distributors, and retailers, not individual consumers. And with respect to local regulations, well-crafted comprehensive flavor ban policies can avoid criminalizing individuals who smoke by focusing on the sale of flavored commercial tobacco products, not the purchase, use or possession of such products.<sup>19</sup> According to the Americans for Nonsmokers' Rights Foundation and other national groups that track the enforcement of menthol and other flavor bans, there are no records of flavor bans resulting in the increased criminalization of communities of color, especially African Americans, in the more than 100 U.S. municipalities that have adopted menthol or other flavor bans.<sup>20</sup>



## Q: Wouldn't banning flavored tobacco products harm small businesses?

**A:** This is an argument that the tobacco industry frequently raises to impede tobacco control efforts. For example, many restaurant owners initially opposed laws that prohibited smoking in places like restaurants and bars, insisting that such laws would decrease their business, when evidence suggested that such smoking bans do not decrease sales.<sup>21</sup> Similarly, retailers have opposed efforts to raise the taxes or prices of tobacco products, arguing that they will lose business because customers will simply purchase the same products in a nearby jurisdiction that offers lower prices. Again, evidence indicates that higher tobacco taxes do not negatively impact retailers like convenience stores.<sup>22</sup>

In reality, banning flavored products does not single out small businesses for harm. Evidence from states with flavor restrictions like Massachusetts, New York, and Rhode Island indicates that their flavor bans did not harm retail businesses — they did not lead to a reduction of

tobacco or convenience stores, for example, or a reduction in employees or wages.<sup>23</sup> Retailers could maintain or grow sales by replacing flavored tobacco products with more profitable items. Other options with high profit margins include fresh prepared foods, coffee drinks, and produce.

### **Q: What about other flavored products like cannabis?**

**A:** An argument has been made that a ban of flavored tobacco products does not treat tobacco and other products like cannabis with parity. That is, most flavor restrictions only regulate tobacco products, permitting manufacturers, distributors, and retailers to sell cannabis products with flavors, like flavored cannabis vapes.

There are compelling reasons to treat flavored tobacco products and flavored cannabis products similarly, as flavors in both cases can make initiation more likely and cessation more difficult. Simply because there would be similar benefits to restricting flavored cannabis products, however, does not mean that separate efforts should not be taken to restrict access to flavored tobacco products. *Both* restrictions of flavored tobacco products and restrictions of flavored cannabis hold potential to advance public health goals.

### **Q: Shouldn't we fund education and cessation efforts instead of banning the sale of flavored products?**

**A:** To fully address the problem, *both* measures can be done simultaneously. Well-funded, accessible, culturally competent cessation programs serve an important role in reducing inequities and supporting individuals in their quit journey. Individuals can speak with a quit smoking coach by calling 1-800-QUIT-NOW. In addition, treatment and cessation are more effective when a combination of approaches is used. This includes combining education and cessation resources with other tobacco control measures like limiting or prohibiting access to tobacco products to discourage people from using or initiating use of tobacco and reducing or eliminating tobacco marketing and internet sales.

### **Q: Do state and local governments even have the power to ban flavored products?**

**A:** Yes. Federal law clearly gives state and local governments authority to regulate the sale of tobacco products. Several states have already restricted the sale of flavored tobacco products, including Maine, Maryland, Rhode Island, New York, Massachusetts, Utah, and California.

Beyond these statewide laws, well over a hundred municipalities across the country have also enacted flavored tobacco restrictions.

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## Endnotes

- 1 The Public Health Law Center recognizes that traditional and commercial tobacco are different in the ways they are planted, grown, harvested, and used. Traditional tobacco is and has been used in sacred ways by Indigenous communities and tribes for centuries. Comparatively, commercial tobacco is manufactured with chemical additives for recreational use and profit, resulting in disease and death. For more information, visit <http://www.keepitsacred.itcml.org>. When the word “tobacco” is used throughout this document, a commercial context is implied and intended.
- 2 Jan Birdsey et al., *Tobacco Product Use Among U.S. Middle and High School Students — National Youth Tobacco Survey, 2023*, 72 MORBIDITY & MORTALITY WKLY. REP. 1173 (2023).
- 3 Sarah D Mills, et al., *The Impact of Menthol Cigarette Bans: A Systematic Review and Meta-Analysis*, 20 NICOTINE & TOBACCO RES. 1 (2024).
- 4 Public Health Law Center, *Accelerating Endgame Policies: Debunking the Industry's Illicit Trade Arguments* (2023), <https://www.publichealthlawcenter.org/sites/default/files/resources/Accelerating-Endgame-Policies-Debunking-Industry-Illicit-Trade-Arguments.pdf>.
- 5 Public Health Law Center, *San Francisco's Flavored Tobacco Products Policy: Case Study* (2022). <https://www.publichealthlawcenter.org/sites/default/files/resources/Menthol-Case-Studies-San-Francisco.pdf>; *Massachusetts' Flavored Tobacco Products Policy: Case Study* (2022), <https://www.publichealthlawcenter.org/sites/default/files/resources/Menthol-Case-Studies-Massachusetts.pdf>; *Chicago's Flavored Tobacco Products Policy: Case Study* (2022). <https://www.publichealthlawcenter.org/sites/default/files/resources/Menthol-Case-Studies-Chicago.pdf>; see also Christopher J. Cadham et al., *The Actual and Anticipated Effects of a Menthol Cigarette Ban: A Scoping Review*, 20 BMC PUB. HEALTH 1055 (2020).
- 6 Corinne G. Husten, *Smoking Cessation in Young Adults*, 97 AM. J. PUB. HEALTH 1354-6 (2007).
- 7 See Mona Issabakhsh et al., *Public Health Impact of a U.S. Menthol Cigarette Ban on the Non-Hispanic Black Population: A Simulation Study*, 33 Tobacco Control 126–30 (2024); see also Jamal T. Jones et al., *Smoking Cessation Prevalence by Menthol Cigarette Use and Select Demographics Among Adults in the United States, TUS-CPS, 2003–2019*, 36 PREVENTATIVE MED. REPS. 1–10 (2023).
- 8 David T. Levy, et al., *Public Health Impact of a U.S. Ban on Menthol Cigarettes and Cigars: A Simulation Study*, 32 TOBACCO CONTROL e37 (2023).
- 9 See *Public Health Impact of a U.S. Menthol Cigarette Ban*, *supra* note 7.
- 10 See *Accelerating Endgame Policies*, *supra* note 4.

- 11 Janet Chung-Hall et al., *Illicit Cigarette Purchasing after Implementation of Menthol Cigarette Bans in Canada: Findings from the 2016–2018 ITC Four Country Smoking and Vaping Surveys*, TOBACCO CONTROL 1–3 (2023).
- 12 See *Accelerating Endgame Policies*, *supra* note 4.
- 13 See Truth Initiative, *Menthol: Facts, Stats and Regulations* (2024), <https://truthinitiative.org/research-resources/traditional-tobacco-products/menthol-facts-stats-and-regulations>; see also Center for Black Health & Equity, *Health Justice in Tobacco Control*, [https://www.savingblacklives.org/\\_files/ugd/29e3b2\\_6b08d979ab1e4e249f720f1ddd81182c.pdf](https://www.savingblacklives.org/_files/ugd/29e3b2_6b08d979ab1e4e249f720f1ddd81182c.pdf).
- 14 Public Health Law Center, *The Tobacco Industry and the Black Community: The Targeting of African Americans* (2021), <https://www.publichealthlawcenter.org/sites/default/files/resources/Tobacco-Industry-Targeting.pdf>.
- 15 See *Menthol: Facts, Stats and Regulations*, *supra* note 13; Kathryn Heley et al., *Targeted Tobacco Marketing in 2020: The Case of #BlackLivesMatter*, TOBACCO CONTROL 1–4 (2021).
- 16 Ctrs. for Disease Control & Prevention, *Menthol Smoking and Related Health Disparities* (2023), [https://www.cdc.gov/tobacco/basic\\_information/menthol/related-health-disparities.html](https://www.cdc.gov/tobacco/basic_information/menthol/related-health-disparities.html).
- 17 *Id.*
- 18 See *Health Justice in Tobacco Control*, *supra* note 13.
- 19 *Id.*; see also Center for Black Health & Equity, *Tobacco Control Enforcement for Racial Equity: Decriminalizing Commercial Tobacco Addressing Systemic Racism in the Enforcement of Commercial Tobacco Control* (2021), [https://www.centerforblackhealth.org/\\_files/ugd/d3f0ee\\_42089ef47f8a498a91f08073adce2d4f.pdf](https://www.centerforblackhealth.org/_files/ugd/d3f0ee_42089ef47f8a498a91f08073adce2d4f.pdf).
- 20 See, e.g., Americans for Nonsmokers Rights Foundation, *Municipalities Prohibiting the Sale of Flavored Tobacco Products* (2024), <https://no-smoke.org/wp-content/uploads/pdf/flavored-tobacco-product-sales.pdf>; see also Public Health Law Center, *U.S. Sales Restrictions of Flavored Tobacco Products* (2024), <https://www.publichealthlawcenter.org/sites/default/files/resources/US-sales-restrictions-flavored-tobacco-products.pdf>.
- 21 Laura Cornelsen et al., *Systematic Review and Meta-Analysis of the Economic Impact of Smoking Bans in Restaurants and Bars*, 109 ADDICTION 720 (2014).
- 22 Jidong Huang & Frank J. Chaloupka, *The Economic Impact of State Cigarette Taxes and Smoke-Free Air Policies on Convenience Stores*, 22 TOBACCO CONTROL 91 (2013).
- 23 John Tauras & Frank Chaloupka, *The Economic Effects of Cigarette Sales and Flavor Bans on Tobacco Retail Businesses*, TOBACCONOMICS (2023), <https://tobacconomics.org/research/the-economic-effects-of-cigarette-sales-and-flavor-bans-on-tobacco-retail-businesses/>.
- 24 Public Health Law Center, *U.S. Sales Restrictions on Flavored Tobacco Products* (2024), <https://www.publichealthlawcenter.org/sites/default/files/resources/US-sales-restrictions-flavored-tobacco-products.pdf>.