Tobacco and Vapor Retail Association of Oregon

VOTE NO ON SENATE BILL 702A

Senate Bill 702A, would effectively ban the retail sale of flavored products containing tobacco and/or nicotine except in OLCC liquor stores. If the idea of this amended bill is to sell age-restricted products to places where only adults can go, a better alternative exists – the already existing network of private 21+ tobacco and vape stores where only customers at least 21 years of age may be on property, a network that can be more easily monitored than the network of outlets where minors may currently try to obtain age-restricted products.

As there are more 21+ stores than OLCC liquor stores in Oregon, adults who use flavors to wean themselves off of tobacco (or simply to exercise their bodily autonomy) would have less difficulty purchasing legal flavors in the regulated market than would be the case under SB702A. In turn, this would bring about fewer of the serious unintended negative consequences that either SB702A or a complete flavor ban would bring. Such an approach would also save hundreds of 21+ small businesses and the thousands of employees they sustain. It should be noted that many of these businesses and employees, are recent legal immigrants and members of minority communities.

VAR21 believes that, even as amended, SB702A will bring about many of the unintended consequences (outlined below) that a complete statewide flavor ban would realize because of the sparseness of OLCC liquor stores relative to 21+ stores. If SB702A were to be amended again to restrict flavor sales to 21+ stores instead of OLCC liquor stores, we believe it would minimize the number of adults who might turn to more dangerous tobacco, street, or internet products. We also believe that it would minimize the loss of jobs and tax revenue. Finally, since flavors would no longer be sold at the many locations where minors frequent, enforcement of such a law would be easier to accomplish effectively.

While well intended by its sponsors, either a complete flavor ban, or 702A as currently written, would backfire in that it would fail to achieve its stated objective of stopping flavored smoking and vaping by minors, would realize significant and socially harmful unintended consequences, would reduce freedom for adults while reducing their access to important smoking cessation tools, and blow a hole in Oregon's budget, ultimately, for nothing. Below you will find talking points which are documented further in this document.

A. Worried About Minors? There Are Alternatives to Bans. If the primary motive of SB702 supporters is to keep minors from purchasing flavored tobacco/vape products, there are things short of a ban which can be done that would not harm Oregon financially and would not generate the negative unintended consequences of a ban described below. Specifically:

1. **Card Every Purchaser of Age-Restricted Products and Verify IDs.** HB 2055, which VAR21 favors, would enable retailers to card every customer attempting to purchase age-restricted products regardless of their apparent age. Legislation could be enacted requiring

retailers to do so, also requiring the use of electronic devices to scan for fake IDs. The substance of HB2055, which did not make it out of the House Judicial Committee, should be added to SB702A.

2. **Limit the Sale of Flavors to 21+ Stores.** So called "21+ Stores," like the ones represented by VAR21, do not allow any minor customers on property. Limiting the sale of fruit and candy flavored products containing tobacco and/or nicotine can remain available to adults looking for tobacco cessation aids while making it harder for minors to obtain them. SB702A should be amended to sell flavors through 21+ stores instead of through OLCC liquor stores.

3. **Hold Trained Employees Liable Along With Owners for Violations.** Sometimes, employees who are planning to quit because they have secured employment elsewhere, or are otherwise unconcerned about losing their jobs, can be less diligent about screening customers for age eligibility. If trained employees are made to be liable alongside store owners for selling age-restricted products to minors, this leakage would stop.

4. **Require Employees Selling Flavored Products to be 21 Years Old.** In most aspects of life there is typically a big gap in maturity between 18 year old and 21 year old employees. Requiring that age-restricted products be sold to customers by persons 21 years of age more would make it more likely that retail employees will be more thorough with respect to screening customers.

B. SB702A Blasts a Hole in the State Budget. According to the SB702's initial Revenue Impact Statement, $360.1 million in tax revenue would be lost during the next three biennia if the bill would have passed as initially written. The amended SB702A does not yet have a revenue impact statement, but we expect the loss in tax revenues to remain significant. In light of the recently released revenue forecast, the state is not in a position to lose tax revenue with a product restriction that is not likely to achieve its stated goals.

While some suggest SB 702 or SB702A could save more money than it would cost in tax revenue because of positive health impacts, this argument is based on the false assumption that those who want flavored products would not be able to find them on the black market or on the internet which has been shown to be the case with respect to other attempted flavor bans (see attached documentation). *History has shown that heavy restrictions or bans of flavors cause the loss of tax revenue, fail to realize intended health benefits, and increase crime related to black market commerce.*

C. SB702A Will Do More Harm than Good. SB702A will not stop demand, it will only reduce legal supply and grant a near-monopoly to killers and social predators. The supply vacuum will be filled as customers, including minors, go to the streets where they will buy more dangerous unregulated products, obtain smuggled products, turn to the Internet where product may or may not be regulated and may or may not be laced with deadly drugs, return to more dangerous tobacco-flavored products, turn to harder drugs, or experiment by making their own product. Our already strained law enforcement community, which already deals with the black market, will become even further strained. Predictably, poor and disadvantaged neighborhoods, already dealing with over-policing, will likely suffer most. *SB702 does nothing to mitigate these impacts.*

D. Adults Would Face Reduced Access to an Appealing and Effective Smoking Cessation Tool. It is widely recognized that flavored vaping products contain a net health benefit relative to traditional tobacco products. Flavored vapes have been an increasingly popular alternative for adults wanting to wean themselves off of traditional tobacco products.

The British National Health Service, which many progressives want to emulate, has launched "Swap to Stop," a program which provides participants with free flavored vaping products in exchange for tobacco products turned in by those same participants. Almost one in five smokers will receive a "Swap to Stop" kit, and the program's goal is to reduce the number of tobacco smokers from 13% to 5% by the year 2030. SB702A would make it difficult to realize the full potential of such a net public health benefit because of the relative scarcity of OLCC liquor stores as opposed to the existing network of 21+ stores.

It is often said that, if the true motive is to limit the rights of adults, use the motive of "protecting children" as a pretense. As mentioned above, there are other ways to protect children without restricting adult rights.

E. Still Worried About Minors? There are Bigger Fish to Fry Than Flavors. Alcohol is a much larger problem among minors and causes more social problems such as drunk driving. While tobacco and vaping products are kept behind counters and under controlled and monitored glass displays, any minor can walk into a grocery or convenience store, open cooler doors, and shoplift wine, beer, and hard alcohol products like "hard" lemonade and other drinks containing up to 14% alcohol. So called "buzz balls," or canned cocktails sold in a cute ball shape, are within easy reach at grocery stores. *SB702A doesn't address any of this.*

F. A Ban on Flavored Tobacco/Vape Products Hurts Minority Communities. Many of the smoke and vape shops impacted by SB702A are owned by members of minority communities and employ members of minority communities. SB702A won't just fail to solve the problems it is designed to solve, it will also destroy many minority-owned businesses and throw their employees out of work. Increased black market activity will also, as it always is, be concentrated in minority neighborhoods that are already over-policed.

G. Voting "NO" on SB702A is Consistent with the Concept of Bodily Autonomy. Democrats in particular are championed for supporting the concept of bodily autonomy when it comes to other areas of public policy carrying medical impacts. Voting "NO" on SB702 is therefore consistent with the concept of bodily autonomy. Voting "YES" on SB702 could have the impact of undermining one's credibility when dealing with other issues that are relevant to bodily autonomy.

H. Where Will Proponents Be When SB702 Backfires? Among other groups, this ban is being pushed by groups like "Flavors Hook Oregon Kids" which is a well-funded coalition of a number of well known organizations. Many of these organizations are well-intended and do good work in our communities. If SB702A or a statewide flavor ban is enacted, these groups will no doubt trumpet its enactment as a victory to their respective donors and clients.

But where will they be when the unintended consequences of SB702A hit society? Where is their plan to subsidize public resources to deal with SB702A's unintended consequences? This is a classic case of an issue where one side is lining up to back a "feel good" measure that won't work

as intended and will backfire in a variety of ways. Don't respond to the money by enacting bad policy. VOTE NO on SB702A. Please consider the documentation which follows. Thank you.

Respectfully,

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INDEPENDENT DOCUMENTATION OF POINTS RAISED IN THIS DOCUMENT:

https://www.dropbox.com/scl/fi/ipemey1tqv2aoi26cwgw7/SB702-Independent-Documentation.pdf?rlkey=q60vi9z0vval85qze19iimidt&dl=0

reason
FREE MINDS AND FREE MARKETS

Massachusetts' Tobacco Ban Went as Badly as You'd Expect

And now the state thinks it needs to crack down even more.

JACOB GRIER |
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In November 2019, Massachusetts became the first state in the U.S. to ban the sale of all flavored tobacco and nicotine products, including flavored electronic cigarettes and menthol cigarettes. Four additional states have since imposed flavor bans on some products and similar policies are under consideration in many other jurisdictions. Such bans are popular among legislators and anti-smoking groups, but the latest data from Massachusetts highlight the ban's unintended consequences. The state's experiment in prohibition has led to thriving illicit markets, challenges for law enforcement, and prosecution of sellers.

Massachusetts' Multi-Agency Illegal Tobacco Task Force publishes an annual report providing insight into how the state's high taxes and flavor prohibitions affect the illicit market. As opponents of the flavor ban predicted, the law has incentivized black market sales of menthol cigarettes and flavored e-cigarettes ("ENDS," or "electronic nicotine delivery systems," in the parlance of regulators). "The Task Force identifies the cross-border smuggling of untaxed flavored ENDS products, cigars, and menthol cigarettes as the primary challenge for tobacco enforcement in the Commonwealth," according to the report. "Inspectors and investigators

are routinely encountering or seizing menthol cigarettes, originally purchased in surrounding states, and flavored ENDS products and cigars purchased from unlicensed distributors operating both within and outside the Commonwealth."

The Massachusetts Department of Revenue reports conducting more than 300 seizures in FY 2022, compared to 170 in 2021 and just 10 in 2020. Many of these involve substantial amounts of products and missed tax revenue. For example, a single search warrant yielded "a large quantity of untaxed ENDS products, [other tobacco products], and Newport Menthol cigarettes affixed with New Hampshire excise tax stamps" representing an estimated $940,000 in unpaid excise taxes.

Revenue officials are seizing so many illicit products, in fact, that they are running out of room to store them. The "Task Force's increased investigative and enforcement activities during the past year have led to the seizure of large quantities of illegal tobacco products, resulting in a strain on the Task Force's storage capacity," says the report. But fear not, they are working on leasing additional space "that will significantly increase storage capacity and allow for continued increased enforcement."

Official seizures represent only a fraction of the illicit trade, so the actual extent of illegal products and lost revenue is certainly larger. The state's report notes that tobacco tax revenue has fallen by approximately 22.6 percent over three years. This is partially due to declining rates of smoking, but the authors acknowledge that smuggling of untaxed products may also be a factor.

A recent analysis of sales data by Reason Foundation, the nonprofit that publishes *Reason*, found that the decline in cigarette sales in Massachusetts coincided with substantial increases in sales in counties bordering the state.

Advocates of flavor bans downplay the potential for criminal prosecutions, but the experience in Massachusetts demonstrates that opponents are right to highlight this concern. The Task Force takes note of multiple criminal investigations leading to indictment or prosecution. Although violating the flavor ban is not in itself punishable by imprisonment, forcing these products onto illicit markets results in sellers violating state tax law. In Massachusetts, this is a felony punishable by up to five years in prison.

It's only a matter of time (if it hasn't happened already) before the first American will be sentenced to prison for selling menthol cigarettes or flavored e-cigarettes. It's likely to happen in Massachusetts, where two men were arraigned last month on charges including tax evasion, money laundering, conspiracy to commit tax evasion, and flavor ban violation.

This is exactly what groups including the American Civil Liberties Union, the Drug Policy Alliance, and the National Association of Criminal Defense Lawyers warned would happen under a federal menthol ban in a public letter in 2021. More recently, the New York State Sheriffs' Association wrote Gov. Kathy Hochul last month objecting to a proposed ban on menthol cigarettes on the basis that it will encourage smuggling. "We believe the proposed flavored tobacco ban and excise tax increase will only exacerbate this problem and provide hundreds of millions of dollars in additional illicit profit to criminals and criminal organizations," wrote Peter Kehoe, the Association's executive director. (New York already bans flavored e-cigarettes.) Massachusetts provides ample reason to conclude that this is a reasonable expectation.

The experience in Massachusetts has vindicated concerns that flavor bans will lead to illicit markets, arrests, and incarceration. Coupled with foregone tax revenue, evidence that the public health benefits may be less than promised, and the risk that banning flavored vaping products will deter smokers from switching to safer sources of nicotine, the unintended consequences of these policies are significant.

The Massachusetts Task Force report concludes with a series of legislative proposals responding to the flood of illicit products. If you were hoping that these proposals might include repealing flavor bans and making it legal to sell flavored vapes or menthol cigarettes to consenting adults, prepare to be disappointed. Instead, the Task Force suggests creating new felony criminal penalties for selling tobacco without a license, obtaining more inspection powers, and making it illegal for licensees to purchase tobacco products with cash.

Last year, while detailing our new era of nicotine and tobacco prohibition for *Reason*, I wrote that "there is a real risk that American tobacco policy will open a regressive new front in the war on drugs, just as the previous crackdown on psychoactive substances begins to wind down." By responding to the failures of its first-in-the-nation flavor prohibitions with a wish list for more police powers, this is the path Massachusetts appears poised to go down. States that wish to avoid making the same mistake should view Massachusetts as a warning, not a role model.

# # #

JAMA Internal Medicine | Original Investigation

Association Between Electronic Cigarette Use and Smoking Reduction in France

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IMPORTANCE The electronic cigarette (EC) has become popular among smokers who wish to reduce their tobacco use levels or quit smoking, but its effectiveness as a cessation aid is uncertain.

OBJECTIVE To examine the association of regular EC use with the number of cigarettes smoked per day, smoking cessation among current smokers, and smoking relapse among former smokers.

DESIGN, SETTING, AND PARTICIPANTS The CONSTANCES (Consultants des Centres d'Examens de Santé) cohort study, based in France, began recruiting participants January 6, 2012, and is currently ongoing. Participants were enrolled in CONSTANCES through 2015, and included 5400 smokers (mean [SD] follow-up of 23.4 [9.3] months) and 2025 former smokers (mean [SD] follow-up of 22.1 [8.6] months) at baseline who quit smoking in 2010, the year in which ECs were introduced in France, or afterward. Analyses were performed from February 8, 2017, to October 15, 2018.

MAIN OUTCOMES AND MEASURES The association between EC use and the number of cigarettes smoked during follow-up was studied using mixed regression models. The likelihood of smoking cessation was studied using Poisson regression models with robust sandwich variance estimators. The association between EC use and smoking relapse among former smokers was studied using Cox proportional hazards regression models. All statistical analyses were adjusted for sociodemographic characteristics, duration of follow-up, and smoking characteristics.

RESULTS Among the 5400 daily smokers (2906 women and 2494 men; mean [SD] age, 44.9 [12.4] years), regular EC use was associated with a significantly higher decrease in the number of cigarettes smoked per day compared with daily smokers who did not use ECs (−4.4 [95% CI, −4.8 to −3.9] vs −2.7 [95% CI, −3.1 to −2.4]), as well as a higher adjusted relative risk of smoking cessation (1.67; 95% CI, 1.51-1.84]). At the same time, among the 2025 former smokers (1004 women and 1021 men; mean [SD] age, 43.6 [12.1] years), EC use was associated with an increase in the rate of smoking relapse among former smokers (adjusted hazard ratio, 1.70; 95% CI, 1.25-2.30).

CONCLUSIONS AND RELEVANCE This study's findings suggest that, among adult smokers, EC use appears to be associated with a decrease in smoking level and an increase in smoking cessation attempts but also with an increase in the level of smoking relapse in the general population after approximately 2 years of follow-up.

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Supplemental content

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Cigarette smoking has been identified as a cause of cancer incidence and mortality since the end of World War II[1] and remains a major public health problem today.[2,3] Most smokers initiate tobacco use in adolescence[4] and attempt to quit at around 30 years of age (especially women) or after 50 years of age.[5] Pharmacotherapies (nicotine replacement therapy [NRT], bupropion hydrochloride, and varenicline tartrate) and behavioral therapies have been shown to be effective in helping smokers quit.[6-8] However, the appeal of smoking cessation aids is relatively low,[9] and most quit attempts are done "cold turkey" (ie, stopping nicotine consumption all at once), without professional assistance or treatment,[10-13] which may be because smoking cessation aids have a financial cost or because smokers lack knowledge about their effectiveness and safety. There are also other reasons for not using smoking cessation aids; for example, some smokers believe that quitting without help gives them greater satisfaction and a feeling of self-control, strength, and autonomy.[10] However, studies show that smokers who use smoking cessation aids are more likely to remain abstinent.[14]

Electronic cigarettes (ECs), sometimes also referred to as electronic nicotine delivery systems, have become popular in recent years. In the United States, approximately 15.3% of adults have used ECs,[15] as have 14.6% of adults in Europe[16] (41.7% of adults in France[17]). Approximately 3.2% of persons in the United States use ECs regularly,[15] as do 1.8% of persons in Europe[16] (3.8% of persons in France[17]). Electronic cigarettes are generally used by smokers who consider them to be less harmful than conventional cigarettes[18,19] and try to reduce or quit their cigarette consumption.[12] In some countries, such as France, ECs have become the leading smoking cessation method (27% of smokers who try to quit use ECs), ahead of NRT (18%).[12] However, the effectiveness of ECs as a smoking reduction and cessation aid is still a subject of controversy.[20-24] Randomized clinical trials have shown that ECs are as effective as[21] or more effective than[25] NRT with regard to smoking reduction or cessation. On the other hand, there is also evidence that concurrent use of ECs and NRT may hamper smoking cessation.[26] However, prior studies have been based on relatively small samples or were conducted for short follow-up periods and have limited external validity.

One of the major concerns regarding the consequences of EC use is that it might reduce smokers' motivation to quit[27] by providing a cue for smoking relapse.[28] Thus, paradoxically, EC users might need a larger number of quit attempts to achieve successful smoking cessation. Because former smokers may relapse at different rates, some after only a few days and others after several months,[29] it is necessary to follow the consequences of EC use over extended periods of time. To date, population-based evidence of long-term smoking trajectories after EC use is limited.

Moreover, most studies have focused on the association between EC use and smoking cessation among smokers who are trying to stop smoking[21,22] (ie, among those most motivated to quit). However, in the general population, smokers use ECs for various reasons—to reduce smoking level, to "smoke" indoors, to reduce tobacco-related expenses, to reduce health risks, or simply out of curiosity.[30,31] Recent studies have examined the effect of EC use in the general population,[23,32] but they have mostly been cross-sectional or short-term.

The aim of our study, based on the French CONSTANCES (Consultants des Centres d'Examens de Santé) cohort, was to investigate whether, in a community sample with prospective follow-up, EC use is associated with changes in the number of cigarettes smoked, with smoking cessation rates among smokers, and with smoking relapse among former smokers.

Key Points

Question Is electronic cigarette use associated with smoking reduction in the general population?

Findings This cohort study found that, among daily smokers in France, regular (daily) electronic cigarette use is associated with a significantly higher decrease in the number of cigarettes smoked per day as well as an increase in smoking cessation attempts. However, among former smokers, electronic cigarette use is associated with an increase in the rate of smoking relapse.

Meaning Daily electronic cigarette use appears to be helpful in initiating smoking cessation among persons who intend to quit tobacco; however, in the general population, its efficacy with regard to smoking abstinence in the long term is uncertain.

Methods

Study Design, Settings, and Participants

The CONSTANCES cohort was designed as a randomly selected sample of 200 000 adults drawn from France's compulsory health insurance scheme (Caisse nationale d'assurance maladie), which covers about 85% of persons living in France (excluding farmers and self-employed workers). Recruitment started January 6, 2012, and is currently ongoing, among persons 18 to 69 years of age who live throughout France; the sociodemographic and economic characteristics of participants' districts of residence are very similar to the French average. The sampling base at inclusion is composed of all persons meeting eligibility criteria; to obtain a sample comparable to the French population, an unequal probability sampling scheme overrepresenting men, younger participants, and those belonging to socioeconomically disadvantaged groups, who generally tend to have low participation levels in epidemiologic surveys, was implemented.[33,34] Every year, participants are invited to complete a paper and pencil or web-based questionnaire and additionally undergo a medical examination every 4 years.[33,34] Participants involved in the first wave of recruitment had more follow-up questionnaires than those recruited at later stages. The CONSTANCES cohort received the approval of the French legal authorities (Commission nationale de l'informatique et des libertés) that ensure ethical review, including an evaluation of participants' written informed consent, data confidentiality, and safety.[33]

Our investigation is based on CONSTANCES cohort participants included in the study through 2015, and who had at least 1 completed follow-up questionnaire (n = 40 311). A total

of 19 912 participants (49.4%) were nonsmokers, 6423 (15.9%) were current smokers (at least 1 cigarette per day), and 13 976 (34.7%) were former smokers at the time of inclusion in CONSTANCES (eFigure in the Supplement).

We focused on current smokers and former smokers who reported having quit smoking from 2010 onward (the year that ECs were commercially introduced in France; n = 2046). After excluding participants with no data on EC use (1023 current smokers and 21 former smokers), our final analytical sample comprised 5400 current smokers and 2025 former smokers with at least 1 year of follow-up (mean [SD] follow-up of 2.6 [0.7] years for current smokers and 2.5 [0.6] years for). First, among current smokers, we studied the association between EC use and the number of cigarettes smoked as well as smoking cessation. Second, among former smokers, we studied the association between EC use and smoking relapse.

Variables

Outcomes

The 4 study outcomes examined are (1) the number of cigarettes smoked per day, (2) the difference between the number of cigarettes smoked per day at baseline and the number of cigarettes smoked per day at follow-up, (3) smoking cessation among smokers (ie, 0 cigarettes per day in any year of follow-up), and (4) cigarette smoking relapse among former smokers (≥1 cigarette per day reported on any follow-up questionnaire).

Exposure: EC Use

Participants reported current regular (daily) EC use (yes or no) (822 [15.2%] smokers and 176 [8.7%] former smokers) and the date of initiation of regular EC use, which made it possible to calculate the duration of regular EC use. For each participant, we evaluated EC use prospectively, irrespective of the type of device (rechargeable vs disposable; data on device type were not usable because of missing data). Because data on motives for using EC were not collected, EC use in our study is not restricted to only those who want to stop smoking. Among the 822 smokers who used an EC during the study, 194 (23.6%) had started using ECs prior to study baseline.

The duration of EC use has been shown to be associated with smoking cessation.[35] In secondary analyses, we studied the association between the duration of EC use (<1 year vs ≥1 year) and smoking patterns.

Covariates

Our statistical analyses controlled for covariates previously shown to be associated with either tobacco cessation or EC use: sex, age,[33] marital status (single vs cohabiting or married), educational level[36] (≤high school vs higher education), employment status (employed, unemployed, or retired), citizenship (non-French vs French), household income[36] (<€1500 [$1694.50], €1500-€2799 [$1694.50-$3162], or≥€2800 [$3163] per month), financial difficulties (yes vs no), alcohol abuse (Alcohol Use Disorders Identification Test score), number of cigarettes smoked per day at the time of inclusion,[37] number of pack-years of smoking (lifetime tobacco exposure; a pack-year is defined as 20 cigarettes smoked every day for 1 year), depressive symptoms measured by the Center for Epidemiologic Studies–Depression scale, lifetime history of depression (yes vs no), respiratory problems in the preceding 12 months (yes vs no), lifetime history of cardiovascular disease (yes vs no), and lifetime history of cancer (yes vs no). In addition, we controlled for participants' year of inclusion in the CONSTANCES cohort, the duration of follow-up, and prior lifetime episodes of smoking cessation[37] (none, <1 year, or ≥1 year).

Statistical Analysis

To identify covariates associated with both the study exposure and the study outcomes, we conducted univariate logistic and linear regression analyses. All *P* values were from 2-sided tests and results were deemed statistically significant at $P < .05$.

Association of EC Use With Smoking Reduction or Quitting

Among daily smokers, the association of EC use with the number of cigarettes smoked per day with the difference in the number of cigarettes smoked per day between baseline and follow-up was estimated using mixed linear models adjusted for sociodemographic characteristics such as sex, age, marital status, educational level, and income; substance use, including alcohol abuse; number of cigarettes smoked per day; number of pack-years of smoking; and health characteristics, such as depressive symptoms and respiratory problems. The variables included in the final model were selected using the least absolute shrinkage and selection operator method.[38]

To determine the likelihood of smoking cessation being associated with EC use, we used Poisson regression models with robust sandwich variance estimators, adjusted for sociodemographic characteristics, duration of follow-up, and previous smoking cessation attempts. This method was preferred to logistic regression, for which the adjusted odds ratios would have overstated the participants' relative risk[39] of quitting smoking (28% of smokers reported quitting in any year of follow-up). Because the associations between EC use and cigarette smoking can vary with individuals' sex, age, duration of previous smoking cessation attempts, and educational level, we additionally performed analyses stratified on these characteristics.

Association of EC Use With Smoking Relapse in Former Smokers

To test whether EC use is associated with later smoking relapse, we focused on former smokers who quit tobacco in or after 2010, and we used Cox proportional hazards regression models adjusted for sociodemographic characteristics, including sex, age, marital status, educational level, and income; alcohol use; cigarette use; and health conditions, such as depressive symptoms and respiratory problems. To estimate the time to event (relapse or regular smoking), we calculated the number of months between the inclusion in the CONSTANCES cohort and the follow-up questionnaire in which the participant reported regular smoking. Among former smokers who did not relapse, data were censored at the last follow-up questionnaire available. We verified the proportional hazards assumption both graphically and statistically.

Table 1. Characteristics of Smokers and Former Smokers According to EC Use Status, CONSTANCES Cohort Study, 2012-2017

Characteristic	Active Smokers at Study Baseline			Former Smokers Since 2010		
	EC Users (n = 822)	Nonusers (n = 4578)	*P* Value	EC Users (n = 176)	Nonusers (n = 1849)	*P* Value
Sociodemographic characteristics						
Male sex, No. (%)	423 (51.5)	2071 (45.2)	.001	111 (63.1)	910 (49.2)	<.001
Age at inclusion period, mean (SD), y	45.9 (11.6)	44.7 (12.5)	.01	44.6 (10.6)	43.5 (12.2)	.23
Duration of follow-up, mean (SD), mo	26.2 (9.5)	22.9 (9.1)	<.001	21.9 (8.9)	22.2 (8.6)	.65
Marital status: in a civil partnership or married, No. (%)	403 (49.0)	2142 (46.8)	.02	94 (53.4)	1018 (55.1)	.79
Educational level: no tertiary education, No. (%)	377 (45.9)	2092 (45.7)	.93	63 (35.8)	682 (36.9)	.77
Citizenship: non-French, No. (%)	14 (1.7)	117 (2.6)	.29	2 (1.2)	38 (2.1)	.26
Monthly household income: <€1500 [$1695], No. (%)	132 (16.1)	752 (16.4)	.85	14 (8.0)	177 (9.6)	.52
Financial difficulties, No. (%)	269 (32.7)	1277 (27.9)	.05	61 (34.7)	534 (28.9)	.17
Alcohol and Tobacco use						
Alcohol abuse, No. (%)[a]	134 (16.4)	621 (13.6)	.09	24 (13.6)	136 (7.4)	.05
No. of cigarettes smoked at baseline, median (IQR)	11.0 (8-17)	10.0 (5-15)	<.001	0	0	NA
Cigarette pack-years, median (IQR)[b]	15.0 (7-25)	9.0 (4-18)	<.001	14.5 (8-23)	9.0 (4-18)	<.001
Made previous attempt to quit smoking, No. (%)	594 (72.3)	3147 (68.7)	.04	NA	NA	NA
Stopped smoking during follow-up, No. (%)	339 (41.2)	1180 (25.8)	<.001	NA	NA	NA
Relapsed smoking during follow-up, No. (%)	NA	NA	NA	55 (31.3)	297 (16.1)	<.001
Health characteristics						
Depressive symptoms (CES-D score), median (IQR)	12.0 (7-19)	10.0 (5-17)	<.001	10.0 (5-17)	9.0 (5-15)	.01
History of depression, No. (%)	199 (24.2)	911 (19.9)	.005	34 (19.4)	316 (17.3)	.47
Respiratory problems, No. (%)	646 (78.6)	3116 (68.1)	<.001	103 (58.5)	1035 (56.0)	.52
History of cardiovascular problems, No. (%)	137 (16.7)	655 (14.3)	.07	23 (13.1)	272 (14.8)	.55
History of cancer, No. (%)	28 (3.4)	157 (3.4)	.97	6 (3.4)	79 (4.3)	.57

Abbreviations: CES-D, Center for Epidemiologic Studies–Depression scale; CONSTANCES, Consultants des Centres d'Examens de Santé; EC, electronic cigarette; IQR, interquartile range; NA, not applicable.

[a] Determined via Alcohol Use Disorders Identification Test score.

[b] Lifetime tobacco exposure: a pack-year is defined as 20 cigarettes smoked every day for 1 year.

Because the level of EC use increased and because the devices used evolved over time, we performed supplementary analyses, stratifying our sample on the year of smoking cessation.

Missing Data and Multiple Imputations

Overall, less than 2% of data were missing, except for data on number of pack-years of smoking, which were unavailable for 718 of 7425 participants (9.7%). Missing data on all covariates were imputed using multiple imputations (10 imputations per missing value) with fully conditional specification.[40] All data analyses were conducted using SAS, version 9.4 (SAS Institute Inc).

Results

Study Population Characteristics

In our study, smokers (n = 5400) were followed up for a mean (SD) period of 23.4 (9.3) months, during which 822 (15.2%) reported regular (daily) use of an EC. As shown in **Table 1**, univariate analyses show that, compared with the 4578 nonusers, EC users were more likely to be male (423 [51.5%] vs 2071 [45.2%]), older (mean [SD] age, 45.9 [11.6] vs 44.7 [12.5] years), and in a civil partnership or married (403 [49.0%] vs 2142 [46.8%]) and were followed up for a longer period (mean [SD], 26.2 [9.5] vs 22.9 [9.1] months). Electronic cigarette users were heavier smokers (mean [SD], 12.9 [6.8] vs 10.0 [6.6] cigarettes per day; 17.5 [14.1] vs 12.6 [12.1] pack-years of smoking) and were more likely to have previously made an attempt to quit smoking (594 [72.3%] vs 3147 [68.7%]). Electronic cigarette users were also more likely to have depressive symptoms (mean [SD] Center for Epidemiologic Studies-Depression scale score, 14.1 [10.3] vs 12.2 [9.5]), a history of depression (199 [24.2%] vs 911 [19.9%]), or respiratory problems (646 [78.6%] vs 3116 [68.1%]).

Former smokers (n = 2025) were followed up for a mean (SD) period of 22.1 (8.6) months, during which 176 (8.7%) reported regular EC use (Table 1). Electronic cigarette users were more likely than the 1849 non-users to be male (111 [63.1%] vs 910 [49.2%]), have higher levels of tobacco smoking (mean [SD], 16.9 [12.6] vs 12.9 [13.7] pack-years) and lower levels of alcohol-related problems (mean [SD] Alcohol Use Disorders Identification Test score, 16.9 [12.6] vs 12.9 [13.7]), as well as higher levels of depressive symptoms (mean [SD] Center for Epidemiologic Studies-Depression scale score, 12.6 [9.8] vs 10.9 [8.6]).

Table 2. Longitudinal Changes in Cigarette Smoking as a Function of EC Use, CONSTANCES Cohort Study, 2012-2017[a]

Analysis	Estimate (95% CI) EC Users (n = 822)	Nonusers (n = 4578)	*P* Value
Univariate			
No. of cigarettes smoked per day, β	11.2 (10.8 to 11.7)	9.8 (9.6 to 10.0)	<.001
Difference in No. of cigarettes per day between baseline and follow-up, β	−4.0 (−5.1 to −2.8)	−1.8 (−2.9 to −0.7)	<.001
Smoking cessation, RR	1.59 (1.45 to 1.76)	1 [Reference]	<.001
Adjusted[b]			
No. of cigarettes smoked per day, β	11.2 (10.5 to 11.8)	12.2 (11.6 to 12.8)	<.001
Difference in No. of cigarettes per day between baseline and follow-up, β	−4.4 (−4.8 to −3.9)	−2.7 (−3.1 to −2.4)	<.001
Smoking cessation, RR	1.67 (1.51 to 1.84)	1 [Reference]	<.001

Abbreviations: CONSTANCES, Consultants des Centres d'Examens de Santé; EC, electronic cigarette; RR, relative risk.

[a] Univariate and multivariate mixed linear and Poisson regression models with robust variance.

[b] Adjusted for age, sex, educational level, income, financial difficulties, marital status, number of cigarettes smoked at baseline, number of pack-years of smoking, duration of previous quit attempts, history of depression and depression at baseline, and respiratory problems.

EC Use and Longitudinal Changes in Cigarette Smoking

In a univariate mixed linear model (**Table 2**), EC users smoked significantly more cigarettes per day than nonusers (11.2 [95% CI, 10.8-11.7] vs 9.8 [95% CI, 9.6-10.0]). However, after controlling for demographic, socioeconomic, substance use-related characteristics, and health characteristics, we found that the estimated number of cigarettes smoked per day was significantly lower among EC users than among nonusers (11.2 [95% CI, 10.5-11.8] vs 12.2 [95% CI, 11.6-12.8]). After adjustment for all covariates, EC users decreased the number of cigarettes smoked significantly more during the course of follow-up than did nonusers (-4.4 [95% CI, -4.8 to -3.9] vs -2.7 [95% CI, -3.1 to -2.4] cigarettes per day).

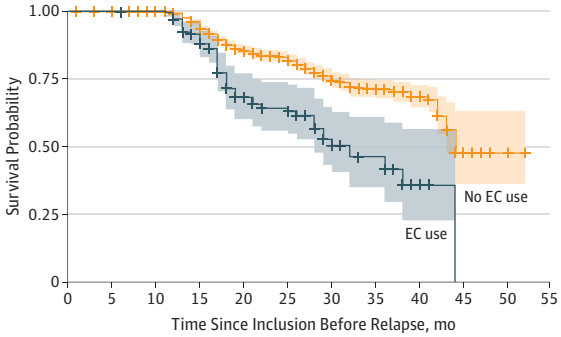
EC Use and Cigarette Smoking Cessation

In both univariate and multivariate models, EC users were more likely to quit smoking during follow-up compared with nonusers (univariate relative risk, 1.59 [95% CI, 1.45-1.76]; multivariate relative risk, 1.67 [95% CI, 1.51-1.84]) (Table 2). In additional analyses, this association was stronger among participants who used ECs for more than 1 year (adjusted relative risk, 2.03 [95% CI, 1.82-2.27]) than among those who used ECs for less than 1 year (adjusted relative risk, 1.33 [95% CI, 1.15-1.54]) (eTable 1 in the Supplement). We found no statistical interaction between EC use and sex, age group, duration of prior smoking cessation, or educational level (eTable 2 in the Supplement).

Smoking Relapse in Former Smokers

Overall, compared with former smokers who did not use ECs, those who did were more likely to relapse to smoking (adjusted hazard ratio, 1.70 [95% CI, 1.25-2.30]) (**Figure**). This hazard ratio decreased with time from 1.70 (95% CI, 1.25-2.30) among persons who quit as of 2010 (n = 2025) to 0.94 (95% CI, 0.57-1.52) among persons who quit as of 2013 (n = 601) (**Table 3**).

Figure. Time to Smoking Relapse According to Current Regular Electronic Cigarette (EC) Use Among Former Smokers (n = 2025), CONSTANCES Cohort Study, 2012-2017



No. at risk

EC use	176	173	56	23	3	0
No EC use	1849	1835	830	300	84	2

The shaded area indicates 95% CIs. CONSTANCES indicates Consultants des Centres d'Examens de Santé.

Discussion

Main Findings

Studying longitudinal associations between EC use and tobacco smoking patterns in a large population-based cohort study, we found that EC use was associated with a reduction in smoking level as well as an increased probability of smoking cessation. However, we also observed that, over time, EC users who quit tobacco tended to relapse to smoking more frequently than did nonusers. Thus, while EC use can help persons reduce their smoking levels in the short term, there is no evidence that it is an efficacious smoking cessation aid in the long term.

Limitations and Strengths

Our investigation has weaknesses that need to be acknowledged. First, our study was not designed to test whether ECs are efficacious with regard to tobacco smoking reduction. We had no information on the motives underlying EC use nor the extent to which participants intended to quit smoking. Previous studies have shown that the main reason for EC use among adults is the intention to reduce or quit smoking[30] and that ECs are the most used aid for smoking cessation in France (no aid, 52%; ECs, 27%; NRT, 18%).[12] Moreover, we controlled for previous smoking cessation attempts, and our results are consistent with those of other researchers who suggest that EC use

Table 3. Models for Smoking Relapse as a Function of EC Use Among Former Smokers Who Stopped Smoking From 2010, CONSTANCES Cohort Study, 2012-2017

Year[a]	Former Smokers, No.	EC Users, No. (%)	HR (95% CI)[b]	*P* Value
Univariate model				
2010	2025	176 (8.7)	2.34 (1.75-3.12)	<.001
2011	1636	166 (10.1)	1.96 (1.45-2.64)	<.001
2012	1176	149 (12.7)	1.39 (1.00-1.95)	.05
2013	601	97 (16.1)	0.84 (0.53-1.33)	.46
Adjusted model[c]				
2010	2025	176 (8.7)	1.70 (1.25-2.30)	<.001
2011	1636	166 (10.1)	1.57 (1.15-2.16)	.005
2012	1176	149 (12.7)	1.21 (0.85-1.72)	.29
2013	601	97 (16.1)	0.94 (0.57-1.52)	.79

Abbreviations: CONSTANCES, Consultants des Centres d'Examens de Santé; EC, electronic cigarette; HR, hazard ratio.

[a] Year when participants quit smoking (eg, 2012) corresponds to former smokers who stopped smoking in 2012 or later (excluding those who stopped before 2012).

[b] Cox proportional hazards regression analysis.

[c] Adjusted for age, sex, educational level, income, financial difficulties, marital status, Alcohol Use Disorders Identification Test score, number of pack-years, number of cigarettes smoked before cessation, and year of smoking cessation.

is associated with an increase in the reduction of tobacco consumption over time.[32] Therefore, it is likely that, among regular smokers, ECs primarily serve to help decrease tobacco use levels.

Second, participants' nicotine dependence was not measured, but our analyses controlled for the number of cigarettes smoked per day and the number of pack-years of smoking, which can be considered as valid proxies.[41] Similarly, smoking was self-reported, which could induce bias, but such measures are generally considered valid.[42] Results of the Fagerström test for nicotine dependence were also not available. Third, the mean duration of follow-up was 23 months, which is longer than in most previous studies, but it could be argued that it should be even longer because smokers often need several quit attempts before achieving successful long-term smoking cessation.[43]

Fourth, participants reported current EC use and the date of initiation, from which we derived the duration of EC use. However, the daily frequency of EC use (eg, number of puffs) was not documented. Previous studies have shown that smoking cessation is primarily associated with extensive EC use.[20,24] Similarly, we were not able to evaluate EC users' nicotine intake or examine whether it is associated with smoking behavior. Most participants reported using ECs with nicotine, but the information regarding the nicotine dosage of the e-liquid was often missing. In future studies, it will be important to assess the frequency of EC use and associated nicotine levels via questionnaires or other direct means of data collection.

Despite these limitations, our study has important strengths. We assessed the association between EC use and smoking among smokers and former smokers prospectively in a large population sample, for approximately 2 years of follow-up on average. We were able to take into consideration the duration of EC use, which seems to play a role in smoking cessation. However, our main contribution to the existing literature is the finding of an elevated rate of smoking relapse among former smokers who use ECs.

Our results are in line with those of other studies showing that EC use can help reduce tobacco smoking[32,44,45] and encourage smoking cessation.[23,25] The decrease in tobacco consumption among smokers irrespective of EC use observed in national surveys[17] suggests that recent policies, such as the ban on smoking in public places, the reimbursement for NRT, and the increase in the price of tobacco products, have been successful. We found that smokers who used ECs decreased their smoking significantly more than nonusers and that they had a significantly higher probability of quitting smoking during follow-up. A recent randomized clinical trial showed that, among smokers trying to quit smoking, EC use was associated with a higher level of 1-year abstinence compared with NRT (relative risk, 1.83 [95% CI, 1.30-2.58]; $P < .001$).[25] Unfortunately, we had no information on the reasons for EC use, but previous studies indicate that, in France, 82% of smokers and 89% of former smokers who use ECs consider them an aid to quit smoking or prevent a relapse.[46] It would be interesting to further explore whether this smoking reduction or cessation is observed mainly among smokers who use ECs as a cessation tool or is observed also among those who use ECs for other reasons. In additional analyses, we found that smoking cessation was associated with duration of EC use, which is consistent with findings from previous studies.[35]

Although the EC users in our study were more likely to be male, there were no sex differences in the association between EC use and smoking cessation. Previous research showed no sex differences[47] or higher levels of smoking cessation among men,[48] but these studies were conducted prior to the introduction of ECs. In particular, women are more likely than men to quit smoking before the age of 50 years, while the opposite is true after 50 years.[47] Because men and women have different patterns of use and expectancies regarding ECs,[49] future research should focus on possible sex differences with regard to long-term patterns of smoking cessation.

Although EC use among smokers is associated with an increased probability of attempts to quit smoking, its use by former smokers, on the other hand, is linked to a higher

likelihood of smoking relapse. This finding may be due to higher nicotine dependency among EC users or the fact that EC use may contribute to maintaining individuals' levels of nicotine addiction over time. In particular, in the case of technical problems with an EC (eg, low battery or lack of e-liquid) or if an EC does not give the same pleasure as conventional cigarettes,[50-52] individuals may revert to smoking cigarettes.

However, levels of smoking relapse were not increased among former smokers who quit in recent years. Measures of plasma nicotine levels have showed that, compared with older models of ECs, the new generation delivers higher levels of nicotine to the bloodstream.[53,54] This finding may be an explanation as to why smokers who recently quit smoking and switched to ECs are less likely to relapse than those who quit earlier. Although we found a higher probability of relapse among former smokers who used ECs than among nonusers, the question of whether this difference could be associated with a shorter period of follow-up, technical improvements in ECs over time, or a change in the profile of EC users will need to be evaluated in future studies.

Conclusions

Among current smokers, EC use is associated with a decrease in the number of cigarettes smoked and with an increase in cessation attempts, especially if EC use lasts more than 1 year. However, among former smokers, EC use is associated with a higher likelihood of relapse to smoking. Although EC use may help individuals decrease smoking levels and initiate smoking cessation, it is not clear whether it leads to complete long-term cessation.

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OXFORD ACADEMIC JOURNAL ARTICLE

High School Seniors Who Used E-Cigarettes May Have Otherwise Been Cigarette Smokers: Evidence From Monitoring the Future (United States, 2009–2018)

Natasha A Sokol, ScD, Justin M Feldman, ScD

Nicotine & Tobacco Research, Volume 23, Issue 11, November 2021, Pages 1958–1961, https://doi.org/10.1093/ntr/ntab102
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Abstract

Introduction

Studies have indicated that youth who use e-cigarettes are more likely to progress to cigarette smoking; however, the likelihood that these youth would have used tobacco products in the pre-vaping era is unclear.

Aims and Methods

This study sought to determine whether youth who used e-cigarettes in 2014–2018 would have likely been smokers in the period preceding e-cigarette availability. Analyzing Monitoring the Future 12th grade data (United States, 2009–2018), we forecasted the prevalence of current smoking with logistic regression-derived propensity scores. Models predicted smoking for all subsequent years, incorporating sociodemographic, family, alcohol, and school-related variables, and a linear time trend. We compared forecasted to observed smoking prevalence annually, and prevalence of current e-cigarette use among nonsmokers across smoking propensity tertiles.

Results

Until 2014, observed smoking prevalence mirrored forecasted prevalence. Afterward, forecasted rates consistently overestimated prevalence. Among nonsmoking youth, e-cigarette use was lowest among those with lowest predicted probability of cigarette smoking (3.8%; 95% confidence interval [CI]: 3.3, 4.4) and highest among those with highest probability (23.5%; 95% CI: 22.2, 24.9).

Conclusions

Youth e-cigarette use has increased rapidly, with high prevalence among nonsmoking youth. However, the decline in current smoking among 12th graders has accelerated since e-cigarettes have become available. E-cigarette use is largely concentrated among youth who share characteristics with smokers of the pre-vaping era, suggesting e-cigarettes may have replaced cigarette smoking.

Implications

Among nonsmoking youth, vaping is largely concentrated among those who would have likely smoked prior to the introduction of e-cigarettes, and the introduction of e-cigarettes has coincided with an acceleration in the decline in youth smoking rates. E-cigarettes may be an important tool for population-level harm reduction, even considering their impact on youth.

Massachusetts Flavored Tobacco Ban Has Severe Impact on Tax Revenue

January 19, 2021

Ulrik Boesen

Since June 1, 2020, Massachusetts has banned the sale of flavored tobacco products, including menthol cigarettes. When signing the ban into law, Gov. Charlie Baker (R) argued that the ban, which is the broadest in the country, was enacted to limit youth uptake of nicotine products. While youth uptake is a very real concern which deserves the public's attention, outright bans could impede historically high smoking cessation rates. Lawmakers must thread the needle between protecting adult smokers' ability to switch and barring minors' access to nicotine products.

Aside from public health concerns, a ban on flavored tobacco, especially when including cigarettes, has significant tax implications and could result in unintended consequences such as increased smuggling. In Massachusetts, more than 21 percent of cigarettes smoked were purchased out of state in 2018 (latest data).

Tobacco excise taxes are already an unstable source of tax revenue. Further narrowing the tobacco tax base by banning a portion of tobacco sales altogether could worsen the instability of this revenue source while driving up the costs of administration and law enforcement associated with the ban, especially if the lost revenue is made up by raising the tax rate on the remaining tobacco tax base.

Other states that are considering implementing a similar ban may want to consider the lessons from Massachusetts. Maryland is one of these states,

but if its experience mirrors Massachusetts, it could prove an extraordinarily expensive exercise. In fact, the bill could be even larger in Maryland than in Massachusetts as, according to industry data, 55 percent of smokers in the state smoke menthol products (in Massachusetts that figure was only 34 percent).

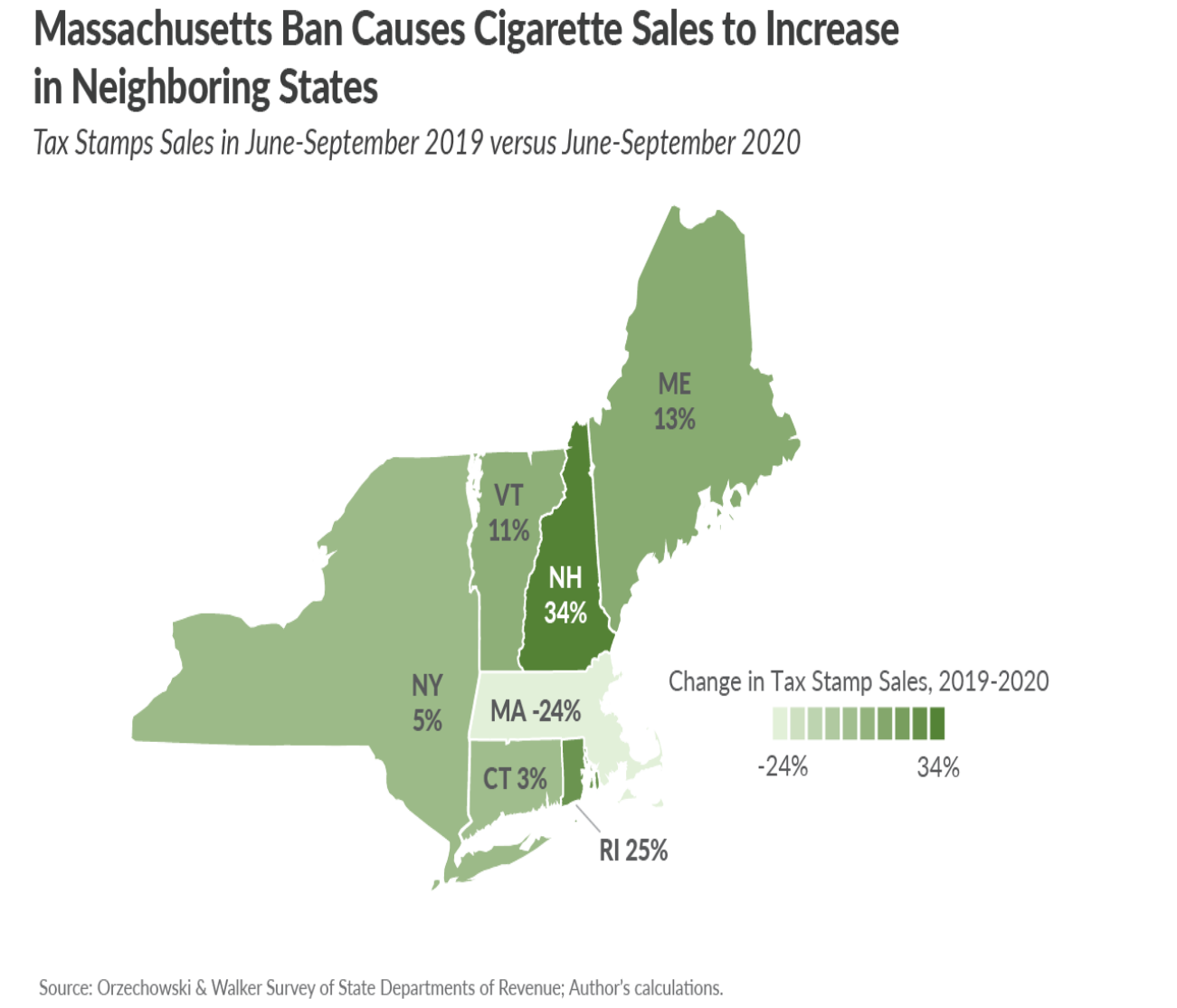
Seven months into Massachusetts' flavor ban, early data is available for the real-world effects. If we only look at Massachusetts, the figures may look like a public health success story at first: sales of cigarette tax stamps in the Bay State have declined 24 percent comparing June-November 2020 to the same months of 2019. In the first half of 2020, Massachusetts only experienced a decline of roughly 10 percent compared to the first half of 2019.

Those numbers would seem to back up the best argument for implementing a ban: limiting use of tobacco and nicotine. Unfortunately, if we dig a little deeper, it becomes evident that Massachusetts' flavor ban has not limited use, just changed where Bay Staters purchase cigarettes. In fact, sales of cigarette tax stamps in the Northeast (Massachusetts as well as Connecticut, Maine, New Hampshire, New York, Rhode Island, and Vermont) have stayed remarkably stable, even increased a bit, following Massachusetts' ban when compared to sales in 2019.

From June 1, 2020 to September 30, 2020, 230,797,000 stamps were sold in the region. For the same period in 2019, that number was 225,897,000. This slight increase trends against the national figures, where sales in 2020 were projected to decline around 2 percent. In other words, Massachusetts sales plummeted, but not because people quit smoking—only because those sales went elsewhere.

If we look at individual states, we can see that increases are skewed. The increase in sales in the Northeast region is most notable in Rhode Island and

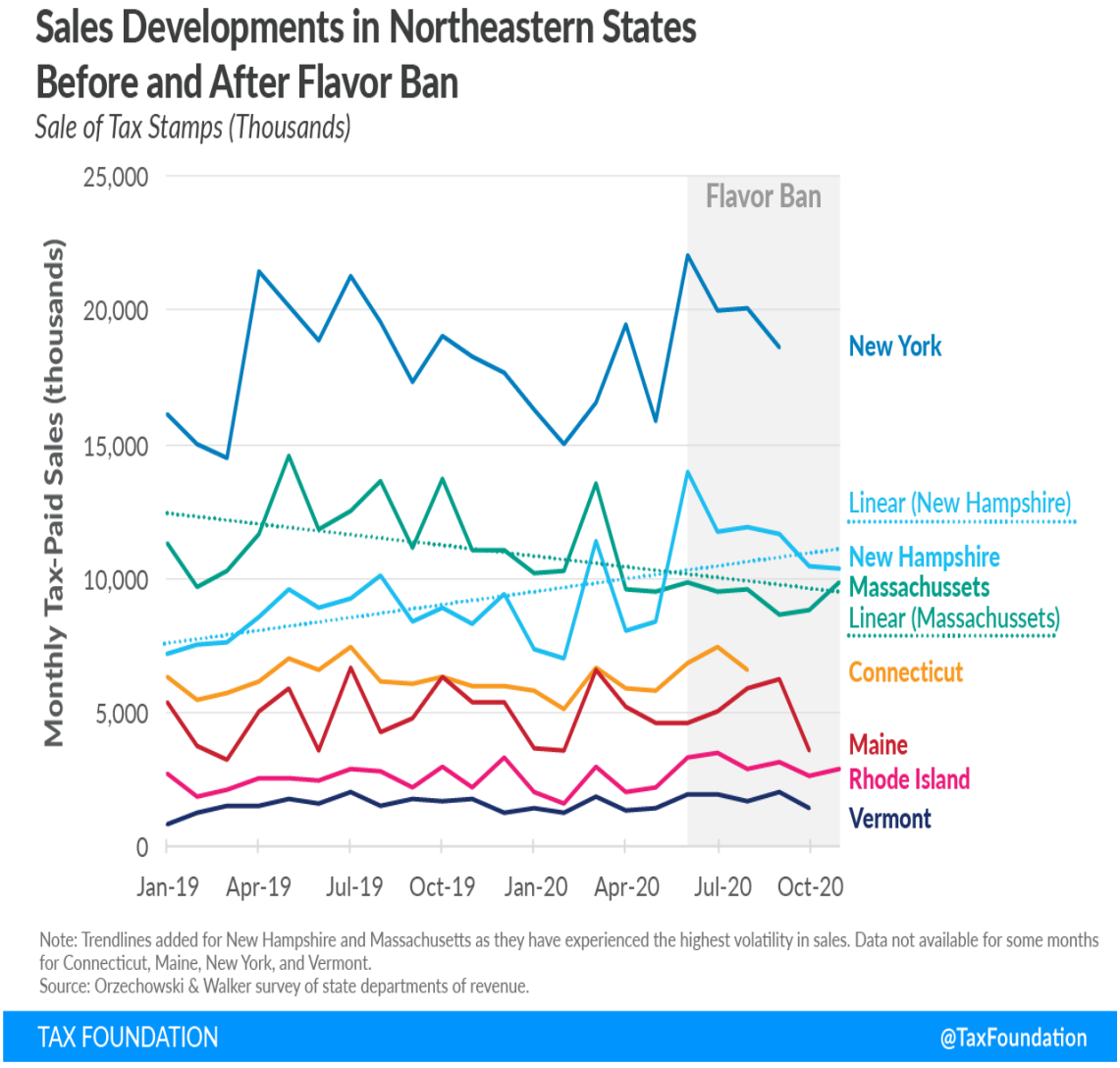
New Hampshire, but all have seen increased sales immediately following the ban. Unsurprisingly, New Hampshire benefits the most as that is already the state in the nation with the highest outflow of cigarettes.



The declining and increasing sales obviously impact excise tax revenue in all these states. Massachusetts collected $557 million in cigarette and other tobacco products (OTP) excise taxes in FY 2019 ($515 million from cigarettes). For FY 2020, sales decreased 10 percent in the first half of 2020 which translates to a decline in revenue of roughly $50 million.

While this is still in the early days, assuming FY 2021's accelerated decline of over 20 percent continues through the rest of the fiscal year, the cost of the flavor ban could end up being approximately $120 million for FY 2021 (not including sales tax losses). Over $100 million is a significant cost to the state, especially considering that sales are simply shifting to other states, not actually being eliminated.

In December 2019, the Massachusetts Department of Revenue estimated the ban would decrease collections by the slightly lower $93 million in FY 2021. Whichever proves right, that revenue is now being collected by Massachusetts neighbors.



Furthermore, these figures only account for cigarettes. According to Massachusetts' own Illegal Tobacco Task Force, smokeless tobacco is commonly smuggled into the state due to the state's high excise rates (210 percent of wholesale value). Because of the flavor ban, this smuggling activity is expected to increase. The available data for FY 2021 (through November 2020) indicates that legal sale of smokeless tobacco and OTP in the state is already down 35 percent compared to the previous year.

State tax coffers are not all that is impacted by this ban, however. Bans impact the large number of small business owners operating vape shops, convenience stores, and gas stations. Policymakers should not lose sight of the law of unintended consequences as they set tax rates and regulatory regimes for nicotine products.

All in all, early signs indicate that the ban will not decrease tobacco consumption in the state. It is not in the interest of Massachusetts to pursue a public health measure that merely sends tax revenue to its neighboring states without improving public health—nor should this approach be copied by other states. In addition, the ban on flavored tobacco highlights the complications of contradictory tax and regulatory policy, the instability of excise taxes that go beyond pricing in the cost of externalities, and the public risks of driving consumers into the black market through excessive taxation or regulation.

Testimony of Cascade Policy Institute

Multnomah County Board of Commissioners
Agenda Item PH.1 Agenda Item R.6
November 28, 2022 December 1, 2022

As policymakers, you surely know that any policy proposal must answer at least three questions:

1. What is the problem we are trying to solve?
2. Is it really a problem?
3. Does our proposed policy do anything to solve the problem?

The proposed ban on flavored nicotine products seeks to solve a problem that does not exist. If passed, the ordinance will do nothing to reduce teen nicotine use while needlessly imposing huge burdens on Multnomah County businesses still struggling to recover from the pandemic and survive the county's years-long crime and vandalism crisis.

Multnomah County has a teen drug and alcohol crisis, not a tobacco problem

The most recent Oregon Health Authority Student Health Survey reports among Multnomah County 11th graders, since 2015:[1]

- **Vaping product use has declined** by 7.8 percentage points, with only 8.2% of teens using vaping products in the past 30 days in 2020; and
- **Cigarette use has declined** by 2.8%, with only 4.2% of teens using cigarettes in the past 30 days in 2020;

In contrast, **Multnomah County teens are more than twice as likely to drink alcohol and/or use marijuana** than they are to use vaping products. **Moreover, teens who use alcohol or marijuana use these substances an average of two out of every three days**. This is despite strict laws—and enforcement of those laws—restricting the distribution and sale of alcohol and marijuana.

Substance use among Multnomah County 11th Graders

	Cigarettes	Vape	Marijuana	Alcohol
0 days	95.8%	91.8%	81.1%	78.5%
1 or 2 days	2.5%	2.7%	6.6%	14.2%
3 to 5 days	0.6%	2.1%	4.9%	4.8%
6 to 9 days	0.1%	0.8%	2.1%	0.8%
10 or more days	1.1%	2.6%	5.3%	1.7%
Any use	4.2%	8.2%	18.9%	21.5%
Average number of days among users	4.4	8.1	19.1	21.4

While not explicitly stated, the text of the proposed ordinance suggests one of the problems to be solved is the retail sale of nicotine-containing products to persons under the age of 21. Nevertheless, the ordinance would ban the sale of flavored products to anyone—including adults over the age of 21.

A ban on flavored products will not reduce teen tobacco use, and may increase combustible cigarette use

Research on San Francisco's ban on flavored products found increases in purchases from the Internet or through the mail increased after the ban, as well as increased purchases from retailers outside of San Francisco.[2]

Multnomah County's ordinance will do nothing to meaningfully reduce teen use of nicotine products in the county. In fact, research published last year by the American Medical Association suggests that **a local ban on flavored products led to increased smoking** of combustible products among high school students:

> San Francisco's ban on flavored tobacco product sales was associated with increased smoking among minor high school students relative to other school districts. … This raises concerns that reducing access to flavored electronic nicotine delivery systems may motivate youths who would otherwise vape to substitute smoking.[3]

A comprehensive review of the academic research concludes, "published evaluation studies of US flavored and menthol sales policies **had not yet provided unequivocal evidence of effects on ultimate intended outcomes of these policies** (e.g., reduction in tobacco use prevalence among youth)."[4]

In the end, the proposed ordinance will do nothing to reduce teen nicotine use, while imposing incredible financial burdens on struggling businesses that are currently selling a legal product to legal purchasers. They will be deprived not only of the revenues from the sale of tobacco and vapor products, but also be deprived of the revenues from ancillary sales on drinks, snacks, and prepared food. Is the moral panic over teen nicotine use worth the price of shuttering small businesses?

I urge you to oppose the ordinance banning the sale of flavored nicotine products.

Respectfully submitted by:

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BLOG

CDC Confirms Black Markets, not "Vaping," Caused Outbreak

Michelle Minton • *01/16/2020*

CONSUMER FREEDOM

A new report from the U.S. Centers for Disease Control and Prevention (CDC) puts the final nail in the coffin of the idea that the spate of lung injuries that occurred beginning last summer were caused by "vaping." The CDC admitted this week that the injuries appear to be exclusively linked to marijuana vapes—not nicotine e-cigarettes, most of which were purchased on the black market, a fact that CEI knew nearly six months ago.

According to the latest CDC findings, only one in six of the patients with the vaping-related lung injuries reported purchasing THC vapes from commercial sources. Some news outlets have interpreted this to mean that approximately 16 percent of the cases involved legally purchased cannabis vapes. But, as Jacob Sullum at Reason points out, this is incorrect. The CDC's definition of "commercial" includes not only licensed dispensaries, but also pop-up shops, which are decidedly *illegal* in states with legal marijuana. Furthermore, the definition includes "stores," without clarifying what this means. It is possible "store" includes bodegas and corner shops, which have been known to sell illegal drugs.

Thus, excluding the 3 percent of consumers who bought their THC at pop-up shops and the 2 percent who purchased them at "stores" other than dispensaries, only 11 percent of the cases reported buying their products at commercial outlets. Even that figure may be inflated, as it only reflects behavior *reported* by patients who may, for whatever reason, choose not to report purchasing or using cannabis products obtained from non-commercial sources.

As Sullum notes, it is still entirely possible that some of the cases were caused by legally purchased cannabis at licensed outlets. The manufacturers of cannabis products or components may have unkowingly adulterated their products with the ingredient or ingredients that caused the lung injuries. They should be held accountable for this, as all legal purveyors would be. But that does not mean that cannabis vapes—certainly not vaping as an entire category—is dangerously underregulated. Even sellers of vegetables sometimes err, causing widespread outbreaks of dangerous food-borne pathogens. The response in those cases is neither panic nor a leap to ban all lettuce. It merely calls for better standards and, perhaps, different types of oversight.

Instead of such a measured response to improve consumer safety, the outbreak of "vaping-linked" lung injuries prompted hysteria, leading to passage of bans on nicotine e-cigarettes—not even responsible for the outbreak—and a federal prohibition on all flavored e-cigarettes (excluding only tobacco and menthol.) These bans were pushed by dogmatic anti-tobacco interests, who exploited the early confusion over the outbreak.

The evidence that black market cannabis—not nicotine—vapes were the cause of the illnesses led the CDC this week to finally drop its long-standing unhelpful recommendation that people avoid all e-cigarette and vaping products. But, this concession has done little to slow the march toward a new drug war on e-cigarettes. Even this latest confession from CDC, is unlikely to cause any reversals in state or federal policy on e-cigarettes.

Instead of instituting better safety regulations and incentivizing consumers to purchase products legally, U.S. lawmakers have chosen to embrace prohibition, once again. As I wrote in July, this will do nothing to prevent future outbreaks caused by black market products. In fact, by creating an even larger black market, including not only cannabis, but also nicotine e-cigarettes, bans all but guarantee that future outbreaks will be more frequent and widespread.

(This post was updated on January 21, 2020.)

BLOG

FDA's Juul Ban Part of Deadly War on Nicotine

By: **Michelle Minton** • *06/23/2022*

The U.S. Food and Drug Administration (FDA) today announced that it denied the application of Juul Labs, maker of the Juul e-cigarette, to market its…

BLOG

Banning Menthol Cigarettes Will Do Nothing to Promote Racial Justice

Michelle Minton • *05/26/2022*

CONSUMER FREEDOM

Photo Credit: Getty

Public support for the War on Drugs has never been lower, due in no small part to increased awareness about the devastation drug criminalization causes, particularly for people and communities of color. Yet, when Food and Drug Administration (FDA) announced plans last month to outlaw the sale of menthol cigarettes—the type of cigarette black smokers overwhelmingly prefer—supporters declared it a victory for racial justice and equity. In truth, the push to outlaw menthol cigarettes has little to do with racial justice.

Cigarette smoking is a dangerous habit. And, though fewer Americans than ever currently smoke, the benefits of that decline haven't been equally distributed. In many populations, the prevalence of smoking is twice that or more of the national average, like indigenous Americans, those living in poverty, residents of rural communities, homeless people, and individuals with mental health or emotional challenges. Some groups, like black Americans, also suffer disproportionately high levels of smoking-related illness and death, despite smoking at similar or even lower levels than other groups. Menthol cigarettes, anti-tobacco advocates argue, are at least partly to blame for such disparities, thus banning their sale will help.

By some estimates, up to 85 percent of black smokers choose menthols—compared to just 30 percent of white smokers—so the push to prohibit their sale on racial justice grounds might have some merit, were there credible evidence that menthol cigarettes caused greater harm than non-menthols. But there isn't. Decades of research fail to substantiate claims that menthol cigarettes are more attractive, easier to smoke, more addictive, harder to quit, or more toxic to health than non-mentholated cigarettes. Furthermore, though tobacco companies almost certainly have targeted the marketing of menthols at black consumers—which might be one reason menthols are more popular with black smokers—it doesn't appear to have caused higher smoking or smoking-related health disparities.

For one thing, the proportion of black adults who smoke is roughly the same as the proportion of white adults who smoke, although black smokers tend to initiate their smoking at a later age and smoke fewer cigarettes throughout the day compared to white smokers. Black youth aren't more likely to smoke than other youth, with the prevalence of cigarette smoking among black students substantially lower than those in all other ethnic groups. And menthols don't appear especially appealing to the 1.5 percent youth who do smoke, with 60 percent of high schoolers and 65 percent of middle schoolers who smoke reportedly choosing non-mentholated cigarettes.

Another claim often made is that menthol cigarettes are more addictive or harder to quit. Though some studies found lower quit rates among menthol smokers, differences in cessation vanish when researchers account for other factors that influence the likelihood that smokers will attempt and succeed in quitting, like income and education.

There is also no evidence that menthol cigarettes are more toxic or harmful to health, something even the Centers for Disease Control and Prevention and Prevention—until very recently—admitted on its website, noting that menthols "are just as dangerous as non-menthol cigarettes" (though this language was removed soon after FDA's announced menthol ban). In fact, some studies have found menthol smokers are *less* likely than non-menthol smokers to develop certain smoking-related diseases, like lung cancer, though this is likely due to the lower number of cigarettes menthol smokers tend to consume. What all of the evidence suggests is that menthol cigarettes, have little, if anything, to do with ongoing racial health disparities.

More likely, such disparities stem from broader forms of social, economic, and political inequalities. For example, people who report higher levels of stress, feelings of being stigmatized, and instances of racial discrimination are more likely to smoke and less likely to quit. Smokers who are economically disadvantaged are also less likely to have the resources necessary to find, utilize, and afford adequate care, reducing their chances of successfully treating smoking-related illnesses.

Furthermore, minority groups (racial or otherwise) also have less political power, which means their needs receive less attention. That might explain why the debate over e-cigarettes, has fixated on the small and mainly hypothetical risks such products might pose to "the youth" instead of the very real and life-saving benefits that lower-risk substitutes for smoking would almost certainly have for the millions of adults—primarily in marginalized groups—who still smoke. Outlawing the sale of menthol cigarettes won't solve any of those lingering systemic forms of bias. In all likelihood, it will many of them worse.

A key argument made by menthol ban supporters is that a ban will benefit black people most because they will be more motivated to quit smoking when they can no longer legally obtain their cigarette of choice. They are so convinced of this that they refuse to discuss the possible downsides of criminalizing yet another substance associated with people of color. Instead, they brush off fears that the ban will lead to the sorts of discriminatory policing caused by every other drug prohibition as nothing more than Big Tobacco rhetoric aimed at protecting its profits. But, it isn't just Big Tobacco raising these concerns.

Civil rights groups, like the ACLU, criminal justice and drug policy reformers, families of victims of police brutality, law enforcement groups, and harm reduction advocates have come out against the menthol ban. While they certainly don't disagree that smoking is dangerous, they argue that outlawing menthol cigarettes will do more harm than good. Instead of promoting smoking cessation, they fear the ban will increase illicit cigarette sales, lead to more over-policing in minority communities, and set the stage for more violent interactions between people of color and law enforcement.

Even anti-tobacco groups, like the Campaign for Tobacco-Free Kids, once shared these fears and opposed a menthol ban because they knew it would increase illicit tobacco sales. And, given our country's history of discriminatory enforcement of both drug and tobacco laws, such fears seem justified. At the very least, they deserve serious public discussion. But, that isn't happening.

Even in the unlikely event that the ban prompted the large decreases in smoking that proponents predict, it still wouldn't obviate the need to consider its potential downsides. But anti-tobacco advocates have no interest in genuinely considering the negative impact a menthol ban could have on the very people, communities, and causes they claim to care about.

For example, they repeatedly respond to questions about the ban's criminal justice implications by claiming that the FDA won't take enforcement action on individual consumers, only the businesses involved in illegally producing, transporting, or selling menthol cigarettes. But such arguments don't address how other federal agencies, state authorities, and local police might choose to enforce this ban or how they might respond to the spike in illicit tobacco sales the ban will almost certainly cause.

Currently, menthol cigarettes make up over a third of legalcigarette sales in the U.S. It is highly unlikely that outlawing their legal sale will make that demand disappear. Instead, menthol smokers who don't want to quit smoking entirely and don't want to switch to equally harmful non-menthol cigarettes will seek out non-legal sources for menthol cigarettes. With the illicit tobacco trade already rampant throughout the country, that won't be much of a challenge.

Bootlegged cigarettes are big business in America, particularly in high-tax states like New York (where over 60 percent of cigarettes sold are illicit) and even more so in low-income neighborhoods, like Harlem and the South Bronx (where over 80 percent of cigarettes consumed come from illicit sources). Eliminating legal sales of menthol cigarettes will only drive more consumers into these underground markets, marking them larger, more accessible for both adults and minors (since street dealers typically don't verify their customers' age), and make the problem more visible. When that happens, it will likely be the same groups currently promoting a menthol ban on racial justice grounds who will begin pressuring authorities to crack down on violators.

For a glimpse of this future, one need only look at what the Campaign for Tobacco-Free Kids (CTFK)—a leader of the anti-tobacco movement—offered in 2018 on strategies for reining in the illicit tobacco market. Among other things, CTFK recommends increasing the number of "agents looking for illegal sales," expanding the definitions of illegal activity, reducing thresholds for prosecutions, and making penalties for violators harsher, including bigger fines and longer prison sentences for those found guilty and the seizure of money, cars, and even homes of suspected violators. CTFK states: "If the consequences of getting caught are worse and the potential for getting caught higher then potential violators might think twice."

This is from a group that signed a statement in 2020, along with many other anti-tobacco groups, on the need to *decriminalize* tobacco in order to address "systemic racism in the enforcement of commercial tobacco control." But it is entirely consistent with the anti-tobacco movement's practice of exploiting buzzwords and hot topics to advance their cause. It is also consistent with the tradition of favoring "gentler" public health approaches for substance use issues viewed as primarily affecting white suburban communities, while at the same time advocating for harsher, criminal laws on everyone else.

Prohibition, sky-high taxes, and other punitive tactics aren't the only way to promote smoking cessation. Another approach would be to adopt policies rooted in harm reduction, such as encouraging smokers to switch to lower-risk alternatives, like e-cigarettes, snus, or heated tobacco products. If the FDA would approve mentholated versions of these less harmful substitutes, it would give menthol smokers who don't wish to quit a safer and legal option without causing the damage created by criminalization (and would mitigate illicit menthol cigarette sales if they were banned).

Similar strategies have been successful and widely embraced when it comes to other issues, like legalizing cannabis, offering clean needles to intravenous drug users to prevent the spread of disease, opioid replacement therapy, and naloxone distribution to prevent overdose. But the anti-tobacco establishment continues to reject harm reduction for tobacco, seemingly unwilling to accept anything other than total abstinence from nicotine. In fact, these groups' advocacy is a major reason why the FDA has not approved a single e-cigarette flavored to

taste like menthol (or any other flavor besides "tobacco") and likely never will, in spite of all the evidence that such products are relatively safe, effective for smoking cessation, and can vastly improve the health of smokers who use them as a substitute for combustible cigarettes.

Anti-tobacco activists have only recently adopted the language of "justice," even thougk the policies they advocate are already leading to discrimination and police violence. But, the campaign to criminalize menthol cigarettes looks far less like racial justice than it does racial *subordination.* As described by Roy L. Brooks in his book, *The Racial Glass Ceiling*, racial subordination is "any act that ignores or discounts matters of keen importance for racial advancement for the sake of pursing an important (nonracist) matter."

Few would disagree that reducing the death and disease caused by smoking is an important goal. But, is it so important that we should criminalize menthol cigarettes despite the harm it might do to people of color, as well as the ongoing efforts to advance racial, social, and economic equity? Anti-tobacco advocates seem to believe so.

CITY JOURNAL

End the Vaccine Mandates

By: **Joel Zinberg** • *11/27/2022*

One year ago, the Center for Medicare & Medicaid Services (CMS) issued an interim final rule requiring 15 types of health-care facilities that…

HEALTH AND SAFETY

The New York Post

Biden Wastes Billions on COVID Boosters No One Wants

By: **Joel Zinberg** • *11/25/2022*

When it comes to wasting money, the Biden administration has few peers. Earlier in the year, Team Biden re-purposed billions of dollars to buy 170…

HEALTH AND SAFETY

The New York Post

Team Biden's Extending the COVID Emergency Again — to Expand the Welfare State

YaleNews

Ban on flavored vaping may have led teens to cigarettes, study suggests

The study shows, a San Francisco approved ballot measure banning the sale of flavored tobacco products in 2018 may have had the opposite effect intended.

By Michael Greenwood | MAY 25, 2021

(© stock.adobe.com)

When San Francisco voters overwhelmingly approved a 2018 ballot measure banning the sale of flavored tobacco products — including menthol cigarettes and flavored

vape liquids — public health advocates celebrated. After all, tobacco use poses a significant threat to public health and health equity, and flavors are particularly attractive to youth.

But according to a new study from the Yale School of Public Health (https://publichealth.yale.edu/) (YSPH), that law may have had the opposite effect. Analyses found that, after the ban's implementation, high school students' odds of smoking conventional cigarettes doubled in San Francisco's school district relative to trends in districts without the ban, even when adjusting for individual demographics and other tobacco policies.

The study, published in JAMA Pediatrics (https://jamanetwork.com/journals/jamapediatrics/fullarticle/2780248) on May 24, is believed to be the first to assess how complete flavor bans affect youth smoking habits.

"These findings suggest a need for caution," said Abigail Friedman (https://publichealth.yale.edu/profile/abigail_friedman/), the study's author and an assistant professor of health policy at YSPH. "While neither smoking cigarettes nor vaping nicotine are safe per se, the bulk of current evidence indicates substantially greater harms from smoking, which is responsible for nearly one in five adult deaths annually. Even if it is well-intentioned, a law that increases youth smoking could pose a threat to public health."

Friedman used data on high school students under 18 years of age from the Youth Risk Behavior Surveillance System's 2011-2019 school district surveys. Prior to the ban's implementation, past-30-day smoking rates in San Francisco and the comparison school districts were similar and declining. Yet once the flavor ban was fully implemented in 2019, San Francisco's smoking rates diverged from trends observed elsewhere, increasing as the comparison districts' rates continued to fall.

To explain these results, Friedman noted that electronic nicotine delivery systems have been the most popular tobacco product among U.S. youth since at least 2014, with flavored options largely preferred.

"Think about youth preferences: some kids who vape choose e-cigarettes over combustible tobacco products *because* of the flavors," she said. "For these individuals as well as would-be vapers with similar preferences, banning flavors may remove their primary motivation for choosing vaping over smoking, pushing some of them back toward conventional cigarettes."

These findings have implications for Connecticut, where the state legislature is currently considering two flavor bills: House Bill 6450 would ban sales of flavored electronic nicotine delivery systems, while Senate Bill 326 would ban sales of any flavored tobacco product. As the U.S. Food and Drug Administration recently announced that it will ban flavors in all combustible tobacco products within the next year, both bills could result in a Connecticut policy that is similar to the complete ban enacted in San Francisco.

The San Francisco study does have limitations. Because there has been only a short time since the ban was implemented, the trend may differ in coming years. San Francisco is also just one of several localities and states that have implemented restrictions on flavored tobacco sales, with extensive differences between these laws. Thus, effects may differ in other places, Friedman wrote.

Still, as similar restrictions continue to appear across the country, the findings suggest that policymakers should be careful not to indirectly push minors toward cigarettes in their quest to reduce vaping, she said.

What does she suggest as an alternative? “If Connecticut is determined to make a change before the FDA’s flavor ban for combustible products goes into effect, a good candidate might be restricting all tobacco product sales to adult-only — that is 21-plus — retailers,” she said. “This would substantively reduce children’s incidental exposure to tobacco products at convenience stores and gas stations, and adolescents’ access to them, without increasing incentives to choose more lethal combustible products over non-combustible options like e-cigarettes.”

This work was supported by a grant from the National Institute on Drug Abuse of the National Institutes of Health and FDA Center for Tobacco Products (CTP) (https://www.fda.gov/tobacco-products/research/yale-center-study-tobacco-product-use-and-addiction-flavors-nicotine-and-other-constituents) . The content is solely the responsibility of the author and does not necessarily represent the official views of the National Institutes of Health or the Food and Drug Administration.

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Surgeon General’s Report: Not Enough Evidence to Support a Menthol Ban

One of the report's less-publicized conclusions is that there is not enough evidence to conclude that banning menthol cigarettes would reduce smoking.

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Director of Consumer Freedom
February 21, 2020

As soon as next week, Congress may vote on a bill that would ban the sale of all flavored tobacco products. Among the products on the chopping block are menthol cigarettes. A ban of all flavored tobacco products would represent the most significant prohibition in three generations, so, as members of Congress weigh the pros and cons of the ban, it’s worth highlighting a recent report from the Surgeon General on smoking cessation.

A mammoth document of 700 pages, the report examines the health impact of individual-, system-, and population-level interventions in the context of smoking cessation. One of the report’s less-publicized conclusions is that there is not enough evidence to conclude that banning menthol cigarettes would cause more people to quit smoking.

“*The evidence is suggestive but not sufficient to infer that restricting the sale of certain types of tobacco products, such as menthol or other flavored products, increases smoking cessation, especially among certain populations,*” says the report.

The report also fails to review any potential costs associated with menthol prohibition. Menthol cigarette bans have not been implemented outside of a few small jurisdictions. Brazil banned menthol cigarettes in 2012, but implementation was held-up due to litigation. In May, menthol cigarettes will be prohibited throughout the European Union. As of yet, there is no real-world evidence showing how the prohibition of menthol will impact smoking rates, the illicit tobacco market, or broader criminal activity.

On public health grounds alone, a menthol ban offers few benefits. It's frequently claimed that menthol cigarettes pose a unique threat to youth because they are allegedly more attractive and harder to quit. But the evidence fails to bear this out. In fact, according to a recent analysis by Reason Foundation, states with higher volumes of menthol cigarettes sold, relative to regular cigarettes, have the lowest youth smoking rates.
Menthol cigarettes are no more prevalent among youth than regular cigarettes. According to an analysis of the National Youth Tobacco Survey (NYTS) data for the years 2014-2018, the percentage of high school smokers using menthol cigarettes fell from 54.5 percent to 46.1 percent. The number of high schoolers smoking menthol cigarettes every day is now so low it can't be measured with any accuracy. In 2019, the overall youth smoking rate fell to its lowest level on record: 5.8 percent.

Menthol cigarettes are no more, or less, dangerous than their tobacco flavored counterparts. A study of 85,806 people published in the Journal of the National Cancer Institute found menthol and nonmenthol smokers showed equal odds of quitting, and lung cancer incidence was, in fact, lower in menthol smokers.

"I don't think there is enough scientific evidence to justify a ban of menthol cigarettes in comparison with nonmenthol cigarettes," said study author William J. Blot, Ph.D.
Menthol prohibition would, however, have a disproportionate impact on African Americans. Of African Americans who smoke, the vast majority, both youth, and adults use menthol products. But few are aware of the fact that black high school students smoke at lower rates than their white and Hispanic peers. Black and white adults, on the other hand, smoke at similar rates.

Given the popularity of menthol products among African American smokers, any action taken to clamp down on a subsequent illicit market for menthols would have a disproportionate impact on this community. The National Organization of Black Law Enforcement Executives (NOBLE), National Association of Black Law Enforcement Officers (NABLEO), Law Enforcement Action Partnership (LEAP), and the National Newspaper Publishers Association (NNPA), have made the case that menthol prohibition disproportionately affects communities of color. Prohibition can end the legal supply of a product but cannot stop the demand for it.

Because H.R.2339 would ban menthol in safer nicotine alternatives like e-cigarettes, current menthol smokers may be more likely to buy menthol products from the black market or switch to an equally deadly cigarette than they otherwise would be if the bill banned menthol cigarettes alone. On public health grounds, an effective, evidence-based case for prohibition of these products has yet to be made. Banning menthol cigarettes would be arbitrary, discriminatory, and provide a multibillion-dollar profit opportunity to organized crime.

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