

Banning Menthol Cigarette Manufacture and Sale in the United States Countering Tobacco Industry-driven Misperceptions

Jennifer L. Brown¹, Panagis Galiatsatos², and Enid Neptune²

¹Department of Health, Behavior and Society, Institute for Global Tobacco Control, Johns Hopkins Bloomberg School of Public Health, Baltimore, Maryland; and ²Division of Pulmonary and Critical Care Medicine, Johns Hopkins School of Medicine, Baltimore, Maryland

ORCID ID: 0000-0001-7418-1172 (J.L.B.).



Banning Menthol Cigarettes

In April 2022, the U.S. Food and Drug Administration (FDA) proposed rules that would prohibit the manufacture and sale of menthol cigarettes and all flavored cigars. Public comments on the new rules were accepted by the FDA through the beginning of August 2022. The FDA is now reviewing public comments and is tasked with making a final decision. Banning menthol cigarettes and flavored cigars is an important step to protect public health and advance health equity in the United States by decreasing smoking initiation, encouraging smoking cessation, and reducing menthol tobacco–caused disease and death, particularly among African Americans, who are disproportionately affected.

The action to ban menthol cigarettes is long overdue. A ban on menthol cigarettes was specifically excluded from a ban on flavored cigarettes implemented by the 2009 Family Smoking Prevention and Tobacco Control Act. The 2011 Tobacco Products Scientific Advisory Committee evaluation

of the health effects of menthol versus nonmenthol cigarettes, the 2013 independent review of menthol cigarettes by the FDA, and the World Health Organization's 2016 advisory note on banning menthol in tobacco products addressed the negative health effects of menthol-flavored tobacco products and stressed the importance of banning them for the benefit of public health. Other jurisdictions, including Canada, the European Union, and the United Kingdom, have heeded this advice and banned the manufacture and sale of menthol cigarettes. In 2019, Massachusetts became the first U.S. state to ban all flavored tobacco product sales, including menthol cigarettes.

Tobacco Industry Opposition

The tobacco industry strongly opposes a ban on menthol cigarettes in the United States; this is not surprising, given the product's large market share (36% of all cigarettes in 2018). In their protest of the ban, the tobacco industry argues that the ban unfairly targets African Americans and will lead to further criminalization of individuals in this community, that it will create a market for illicit cigarettes, that adults should be able to make their own choices, and that the menthol cigarette ban could have negative economic implications. This commentary addresses the false narratives promulgated by the tobacco industry to deter the menthol ban, focusing on those targeting the African American community and those tied to specious economic implications.

Response to Tobacco Industry Arguments

Criminalization of African Americans

Eighty-five percent of African American adults who smoke use menthol cigarettes as compared with 39% of the general smoking population, as found by the 2018 National Survey on Drug Use and Health. The high number of African Americans who smoke menthol cigarettes is by design. This disparity is the result of intentional and targeted tobacco industry marketing of menthol cigarettes to African Americans. Since the 1940s, tobacco companies have used targeted messaging and marketing of menthol cigarettes, such as placement of ads in magazines with a majority Black readership and ads and promotions in neighborhoods with more Black residents, to sell menthol tobacco (1).

The FDA rule on menthol cigarettes will not be enforced against individuals who possess or use menthol cigarettes. The rule prohibits the manufacture and sale of menthol cigarettes by retail enterprises. The tobacco industry continues to perpetuate misinformation and fearmonger, claiming that the rule will lead to further criminalization of African Americans. They state that as a consequence of a federal menthol ban, Black youth will be targeted by police ostensibly looking for the possession of menthol cigarettes and involvement in the illicit menthol cigarette market (2). Issues of overpolicing are serious but are not attached to the regulation of a tobacco product additive, especially one that confers

(Received in original form October 10, 2022; accepted in final form January 13, 2023)

Correspondence and requests for reprints should be addressed to Enid Neptune, M.D., Division of Pulmonary and Critical Care Medicine, Johns Hopkins School of Medicine, 1800 Orleans Street, Sheikh Zayed Tower, Baltimore, MD 21287. E-mail: eneptune@jhmi.edu.

Ann Am Thorac Soc Vol 20, No 6, pp 785–787, Jun 2023

Copyright © 2023 by the American Thoracic Society

DOI: 10.1513/AnnalsATS.202210-855PS

Internet address: www.atsjournals.org

long-term harms to the community of concern. However, the industry perpetuates this narrative to benefit their own policy agenda with the aid of several Black law enforcement organizations that receive monetary support from the tobacco lobby. The irony of Black law enforcement aligning the troublesome issue of overpolicing in underresourced communities with menthol regulation instead of “issues” within their forces cannot be ignored.

Market for Illicit Cigarettes

The tobacco industry frequently raises the issue of illicit trade as an argument to oppose tobacco control regulations. Evidence from the first jurisdiction to ban menthol cigarettes, the Canadian province of Nova Scotia, shows that there was no increase in illicit cigarettes after the 2015 ban, based on data on contraband seizure volume provided by the Provincial Tax Commission (3). Experts argue that a menthol ban in the United States may even decrease illicit trade (4).

A Ban Will Target African Americans Who Smoke Cigarettes and Limit Freedom of Choice

Opponents of menthol regulation often cite such legislation as targeting African Americans and constraining their freedom to make individual behavioral choices. However, there is precedent for the ban, and a ban will reduce tobacco-related health disparities. This is true of tobacco-related disparities not only by race and ethnicity but also by age, sex, income, and sexual identity because adolescents; women; people with lower incomes; and individuals who identify as lesbian, gay, bisexual, and/or transgender smoke menthol cigarettes at disproportionately high rates (5, 6).

The tobacco industry is using the argument of targeted policy to address a problem that they created through intentional targeting of specific demographics. Although tobacco control policies have been effective in reducing tobacco use overall in the United States, menthol tobacco use has not decreased at the same rate (7). A menthol ban will benefit all menthol smokers, providing them with positive health benefits (8). A recent simulation study estimated that with a ban on menthol-flavored cigarettes and cigars, there would be a 15% decline in smoking by 2026, equating to a reduction in 650,000 smoking- and vaping-caused deaths and

11.3 million life-years lost by 2060 (9). African Americans are expected to receive even greater benefits from a ban (10). By not acting to regulate menthol cigarettes, tobacco-related disparities will continue.

The “freedom” argument has been used to challenge many public health and public policy initiatives that have clear health and safety benefits, such as vaccination, coronavirus disease mitigation practices, and motorcycle helmet requirements. A ban on menthol cigarettes will not restrict one’s right to smoke; rather, it will remove a product from the market that increases the initiation of smoking and is more addictive than cigarettes without menthol (11). The limitation of cigarette choice is well within the spectrum of prior tobacco control policies that have constrained the venues in which smoking is allowed, eliminated nonmenthol flavor additives to combustible tobacco products, and implemented an age requirement for tobacco product purchase to protect the population’s right to health. Furthermore, choice is merely a distracting argument when a behavior confers addiction, a state that compromises choice. Menthol cigarettes are more addictive than nonmenthol cigarettes, and there is the potential that menthol has an impact on the addictive potential of products that include nicotine as an ingredient (11).

Negative Economic Implications

The discussion of local economics also warrants attention. Stores that sell tobacco products are overly represented in socioeconomically disadvantaged neighborhoods, which have a high concentration of minority residents, especially in urban areas (12, 13). Tobacco industry supporters frequently inflate estimates of the economic costs of menthol bans to oppose regulation, as voiced by U.S. Senator Richard Burr in a 2019 floor speech (14). However, the industry focuses solely on the costs accrued to retail stores that sell tobacco products without any consideration of the positive effects of a ban on healthcare costs, workplace productivity, and broad downstream consequences of reduced secondhand smoke exposure among children. The economic benefits and sustainability of replacing tobacco products with health-promoting inventory are never incorporated into industry models. Economic considerations of a menthol ban would be best served by granular assessments over periods of time that can

incorporate long-term benefits and model health-affirming retail choices, recently demonstrated in a New York City assessment and a return-on-investment analysis of Canadian legislation (15, 16). The tobacco industry has avoided such assessments in its economic arguments.

Moving Forward

Tobacco companies give funds to Black leaders, Black-owned media, and Black law enforcement organizations to spread this misinformation among communities of color. The recent heightened desperation of the tobacco industry with imminent regulation has resulted in greater oppositional visibility of prominent African Americans such as Al Sharpton, who has undermined menthol regulation for years (2, 17). In the past, tobacco companies gave substantial funds to the Congressional Black Caucus (18), but multiple Caucus members now support the regulation. Nonetheless, the cynical targeting of the Black community as the disproportionate consumer of menthol cigarettes and as a mouthpiece to serve the industry agenda is abhorrent and requires assertive messaging and actions to counter this tobacco industry interference (see below). Several African American organizations, such as the African American Tobacco Control Leadership Council, the National Association for the Advancement of Colored People, and multiple Black healthcare organizations, are strong supporters of the proposed FDA legislation on menthol (19).

How You Can Support the FDA Rule on Menthol

The current moment in menthol regulation is auspicious and time limited. A looming query is the following: What should the lung health workforce do to support the FDA Rule on Menthol?

First, strategize to fight misinformation. Presenting the clear health benefits of menthol regulation, although important, is not sufficient. The tactics of the tobacco industry need to be discussed in stark relief, noting their cynical intent, both historic and ongoing, to exploit the African American community with targeting of harmful products and misinformation. Racial discussions are divisive. These are difficult conversations even for African American healthcare providers, researchers, and public

health workers. However, avoiding this issue facilitates the dissemination of misinformation. Available media forums should be used to challenge the false narratives.

Second, determine the status of menthol regulation in your state. There is always a need for healthcare providers and lung and tobacco control researchers to play a role in advocacy of tobacco regulation on a legislative level. A good place to start is the local chapter of the American Lung Association, which has been active in small and large jurisdictions. Consultation with the leadership of the American Thoracic Society Tobacco Action Committee and American Thoracic Society Health Policy Committee is helpful in securing guidance on “advocacy 101.”

Third, as an expert on lung health and/or tobacco control, engage the local

stakeholders. The economic considerations of the policy are important and merit mutually respectful discussions with retail owners who may have long-term relationships with the residents of their communities. Economic mitigation working groups can also be convened to align interests and construct workable solutions. The participation of local lung health experts in these community discussions is usually highly valued.

Fourth, become educated in the history of the tobacco epidemic. This complicated history is a template for so many other public health challenges, from the opioid epidemic to the gun rights movement to cannabis legalization to the most recent youth vaping problem. Awareness of the historic landscape can fortify preemptive defenses of emerging tobacco control policies.

Fifth, identify ancillary efforts to improve the success of the rule. Tobacco treatment tools need to be intensified in all communities with a high prevalence of menthol tobacco use (20). Investment requirements, as well as timely monitoring of efficacy, should be assured. Smoking cessation programs are most effective when customized, low cost, and widely available.

The menthol ban will not be maximally effective if it is misconstrued as an anti-African American policy that is highly discriminatory and hurts local economics. The pulmonary community needs to combat forces opposing menthol regulation to ensure its success and to show that Black lives truly matter. ■

Author disclosures are available with the text of this article at www.atsjournals.org.

References

- Gardiner PS. The African Americanization of menthol cigarette use in the United States. *Nicotine Tob Res* 2004;6(Suppl 1):S55–S65.
- Baumgaertner E, Stockton B, Lindsay R. How Big Tobacco used George Floyd and Eric Garner to stoke fear among Black smokers. *Los Angeles Times* [accessed 2022 Dec 19]. Available from: <https://www.latimes.com/world-nation/story/2022-04-25/inside-big-tobaccos-strategy-to-stoke-fear-among-black-smokers-facing-menthol-bans>.
- Stoklosa M. No surge in illicit cigarettes after implementation of menthol ban in Nova Scotia. *Tob Control* 2019;28:702–704.
- Schroth KRJ, Villanti AC, Kurti M, Delnevo CD. Why an FDA ban on menthol is likely to survive a tobacco industry lawsuit. *Public Health Rep* 2019;134:300–306.
- Villanti AC, Mowery PD, Delnevo CD, Niaura RS, Abrams DB, Giovino GA. Changes in the prevalence and correlates of menthol cigarette use in the USA, 2004–2014. *Tob Control* 2016;25(Suppl 2):ii14–ii20.
- Ganz O, Delnevo CD. Cigarette smoking and the role of menthol in tobacco use inequalities for sexual minorities. *Nicotine Tob Res* 2021;23:1942–1946.
- Delnevo CD, Giovenco DP, Villanti AC. Assessment of menthol and nonmenthol cigarette consumption in the US, 2000 to 2018. *JAMA Netw Open* 2020;3:e2013601.
- Mendez D, Le TTT. Consequences of a match made in hell: the harm caused by menthol smoking to the African American population over 1980–2018. *Tob Control* 2022;31(4):569–571.
- Levy DT, Meza R, Yuan Z, Li Y, Cadham C, Sanchez-Romero LM, et al. Public health impact of a US ban on menthol in cigarettes and cigars: a simulation study. *Tob Control* [online ahead of print] 2 Sep 2021; DOI: 10.1136/tobaccocontrol-2021-056604.
- Levy DT, Cadham CJ, Sanchez-Romero LM, Knoll M, Travis N, Yuan Z, et al. An expert elicitation on the effects of a ban on menthol cigarettes and cigars in the United States. *Nicotine Tob Res* 2021;23:1911–1920.
- Wickham RJ. The biological impact of menthol on tobacco dependence. *Nicotine Tob Res* 2020;22:1676–1684.
- Galiatsatos P, Brigham E, Krasnoff R, Rice J, Van Wyck L, Sherry M, et al. Association between neighborhood socioeconomic status, tobacco store density and smoking status in pregnant women in an urban area. *Prev Med* 2020;136:106107.
- Galiatsatos P, Kineza C, Hwang S, Pietri J, Brigham E, Putcha N, et al. Neighbourhood characteristics and health outcomes: evaluating the association between socioeconomic status, tobacco store density and health outcomes in Baltimore City. *Tob Control* 2018;27:e19–e24.
- Dennis S. GOP senator lights up Trump's FDA chief on menthol cigarette ban. *Bloomberg News Wire* 2019 [accessed 2022 Oct 4]. Available from: <https://www.bnnbloomberg.ca/gop-senator-lights-up-trump-s-fda-chief-on-menthol-cigarette-ban-1.1207501>.
- Li Y, Sisti J, Flórez KR, Albrecht SS, Viswanath A, Davila M, et al. Assessing the health and economic impact of a potential menthol cigarette ban in New York City: a modeling study. *J Urban Health* 2021;98:742–751.
- Tarride JE, Blackhouse G, Guindon GE, Chaiton MO, Planinac L, Schwartz R. Return on investment of Canadian tobacco control policies implemented between 2001 and 2016. *Tob Control* [online ahead of print] 10 Aug 2021; DOI: 10.1136/tobaccocontrol-2021-056473.
- Goodman JD. When Big Tobacco invoked Erik Garner to fight a menthol cigarette ban. *New York Times* 2019 July 14 [accessed 2022 Dec 15]. Available from: <https://www.nytimes.com/2019/07/14/nyregion/fur-menthol-bans-lobbyists.html>.
- Saul S. Blacks in Congress split over menthol cigarettes. *New York Times* 2008 July 25 [accessed 2022 Dec 22]. Available from: <https://www.nytimes.com/2008/07/25/business/25menthol.html>.
- Mills SD, McGruder CO, Yerger VB. The African American Tobacco Control Leadership Council: advocating for a menthol cigarette ban in San Francisco, California. *Tob Control* 2021;30:e150–e153.
- Leventhal AM, Dai H, Higgins ST. Smoking cessation prevalence and inequalities in the United States: 2014–2019. *J Natl Cancer Inst* 2022;114:381–390.