
Testimony: HF 3032
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Chair Halverson, members of the committee, thank you for the opportunity to submit testimony on House Bill 3032. My name is Guy Bentley, and I'm the director of consumer freedom at the Reason Foundation, a nonprofit think tank. My research focuses on the regulation and taxation of tobacco products.

Proposals to ban the sale of all flavored e-cigarettes to reverse the rise of youth vaping have been made all but obsolete by actions taken at the federal level. In December, the tobacco age was raised to 21 across the nation. In January, the Food and Drug Administration (FDA) banned the sale of all fruit and sweet flavors in the pod and cartridge-based e-cigarettes, which are the most popular products among youth.

Furthermore, data released by the Centers for Disease Control and Prevention in December (CDC) shows flavors are not the leading reason why youth initiate vaping. According to the CDC, the primary reason was "curiosity," followed by "friend or family member used them," with "they are available in flavors, such as mint, candy, fruit, or chocolate" coming a very distant third.¹ Just as the availability of flavored marijuana, alcohol, or condoms fails to predict drug use, underage drinking, or sexual behavior, the same is true for e-cigarettes.

The scientific evidence from both the United States and European Union has proved beyond any reasonable doubt that e-cigarettes are safer than combustible cigarettes and are significantly more successful in helping smokers quit than traditional nicotine replacement therapies.^{2,3,4} Prohibition would not just fuel illicit markets and shut down businesses; it would slow the decline in adult smoking. A study by Yale School of Public Health found "a ban on flavored e-cigarettes would drive smokers to combustible cigarettes, which have been found to be the more harmful way of getting nicotine."⁵

¹ Wang TW, Gentzke AS, Creamer MR, et al. Tobacco Product Use and Associated Factors Among Middle and High School Students — United States, 2019. *MMWR Surveill Summ* 2019;68(No. SS-12):1–22. https://www.cdc.gov/mmwr/volumes/68/ss/ss6812a1.htm#T6_down

² Royal College of Physicians. "Nicotine without the smoke: Tobacco harm reduction." London RCP, 2016. <https://www.rcplondon.ac.uk/projects/outputs/nicotine-without-smoke-tobacco-harm-reduction-0>

³ Stephens WE. "Comparing the cancer potencies of emissions from vapourised nicotine products including e-cigarettes with those of tobacco smoke." *Tobacco Control* 2018;27:10-17. <https://tobaccocontrol.bmj.com/content/27/1/10>

⁴ Hajek, Peter et al. "A Randomized Trial of E-Cigarettes versus Nicotine-Replacement Therapy." *N Engl J Med* 2019; 380:629-637 <https://www.nejm.org/doi/full/10.1056/NEJMoa1808779>

⁵ Buckell J, Marti J, Sindelar JL. "Should flavours be banned in cigarettes and e-cigarettes? Evidence on adult smokers and recent quitters from a discrete choice experiment." *Tobacco Control*. 2019;28:168-175. <https://tobaccocontrol.bmj.com/content/28/2/168.citation-tools>

Writing on e-cigarette flavor bans last year, Professor Michael Siegel of Boston University School of Public Health said: “By creating barriers to a much healthier product, these laws will simply force former smokers to return to cigarette smoking.” According to a study published in the National Bureau of Economic Research, Minnesota’s e-cigarette tax has already caused 32,000 more adults to continue smoking. An e-cigarette flavor ban would exacerbate this already worrying trend.

As for menthol cigarettes, again, the argument for prohibition is not supported by the data. A recent study produced by Reason Foundation shows states with the largest volume of menthol cigarettes as a proportion of all cigarettes sold have the lowest youth smoking rates.⁶ One third of Minnesota high school students who smoked in the past 30-days smoked menthol.⁷ Menthol smoking among high school students plummeted by 22 percent between 2014 and 2017. If the youth smoking rate continues to decline at the present rate, the percentage of youth smoking menthol cigarettes will be at or near zero in short order.

Survey data shows that among youth that does smoke, menthol cigarettes are no more popular than regular cigarettes. Prohibition would, however, disproportionately discriminate against African American adult smokers. Although African American adults smoke no more than nonhispanic whites, the majority smoke menthol cigarettes. Prohibition presents a significant profit opportunity for criminals to supply the product from neighboring states.

The National Organization of Black Law Enforcement Executives (NOBLE), Grand Council of Guardians (GCGNY), National Association of Black Law Enforcement Officers (NABLEO), and Law Enforcement Action Partnership (LEAP) consistently make the case that prohibitions of all kinds disproportionately affect communities of color and that in the case of menthol cigarettes it's truer than most.⁸ On public health grounds, there is no more reason to prohibit menthol cigarettes than non-menthol cigarettes. Consideration of menthol prohibition must be made in the context of rapidly falling youth smoking rates, lack of association between the volume of menthol cigarettes sold and youth smoking rates, and the costs of prohibition.

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⁶ Bentley, Guy, Rich, Jacob. “Does Menthol Cigarette Distribution Affect Child or Adult Cigarette Use?” Reason Foundation: Policy Study. January 30, 2020.

<https://reason.org/policy-study/does-menthol-cigarette-distribution-affect-child-or-adult-cigarette-use/>

⁷ Evered SR. “Teens and Tobacco in Minnesota: Highlights from the 2017 Minnesota Youth Tobacco Survey.” Minnesota Center for Health Statistics, Minnesota Department of Health, February 2018.

https://www.health.state.mn.us/data/mchs/surveys/tobacco/teen_tobacco17.pdf

⁸ Franklin, Neil. “Ban on Menthol Cigarettes Would Have Unintended Consequences.” *City Limits*. December 2, 2019.

<https://citylimits.org/2019/12/02/opinion-ban-on-menthol-cigarettes-would-have-unintended-consequences/>