



Commentary: For Black Americans, menthol ban will mean more police encounters

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In more than 30 years in policing, I have never seen such a high level of sustained tension between police and communities as we are currently experiencing. It has been building since the murders of Eric Garner and George Floyd, and continuing through Tyre Nichols' murder. But as we look to transform policing, New York is considering legislation prohibiting the sale of flavored tobacco products, including menthol cigarettes. This ban will hinder what progress we have made in trying to reduce the over-policing of people of color.

African Americans and other people of color make up the largest demographic of menthol tobacco users. In fact, of those African Americans who use tobacco products, 85 to 90 percent say they prefer menthol cigarettes. This begs the question: Why would lawmakers consider legislation to prohibit menthol tobacco, yet allow the preferred products of their white adult counterparts to remain legal? That will discriminate against the Black and Latino adults who choose to use menthol.

Moreover, the consequences of such a racially discriminatory ban increase the chances of negative interactions between law enforcement and African Americans.

Supporters of this legislation cite the Health Department as the responsible authority, stating that individuals will not be subject to enforcement. What these supporters don't say is that the Health Department does not have the capacity to enforce such legislation. In every state that has attempted such prohibition, the result has been an increase in illegal cigarette sales, violence between persons selling illicit cigarettes, and more negative interactions between police and citizens as they respond to investigate and address criminal activity associated with illegal cigarette sales.

Additionally, such legislation creates an opportunity for pretextual stops because it will now be possible to stop a citizen to determine what type of cigarette they are smoking and inquire where they purchased it. Pretextual stops are frequently used to further other investigations, and they have been proven to disproportionately impact Black and Hispanic people.

Pretextual stops involving tobacco between unarmed Black men and police have continued to occur in New York and around the nation. Here in New York, Eric Garner is a prime example of a pretextual stop gone awry, which tragically resulted in his death. These are not isolated incidents but examples of the challenges facing policing in America.

Speaking on behalf of myself and other current and retired members of law enforcement across the country, I strongly encourage Gov. Kathy Hochul to choose a different path. A more just and more meaningful solution would be to expand anti-smoking education, prevention, and cessation resources.

Our lawmakers have an opportunity to reconsider a prohibition of flavored tobacco products that will only increase New York's thriving illegal marketplace and further exacerbate the division and distrust that exists between our communities — especially communities of color — and policing in America.

LEAP is a national organization working for criminal justice reform.

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