

# ANYTHING BANNED BECOMES A POLICING ISSUE: WHY THE FDA MENTHOL BAN IS NOT GOOD FOR COMMUNITIES OF COLOR

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Currently, three groups are debating the FDA's pending ban on menthol cigarettes; those who are uninformed, those who say the products should be banned for health reasons and those who don't understand that such a ban creates a law enforcement issue. It is imperative that the unintended consequences of bans and prohibitions be understood by policymakers contemplating passing legislation that will impact the interactions between Black and Hispanic Americans and police.

## For Those Who Are Uninformed

President Biden's FDA is poised to announce a nationwide ban on all menthol cigarettes, ending the legal sale and purchase of menthol flavored tobacco. Some advocates may say that menthol

products are more harmful than any other cigarette, but research shows that all tobacco products are equally harmful. Moreover, menthol cigarettes are not the preferred cigarette in America, non-menthol cigarettes are.

A study by the Journal of the National Cancer Institute found that "menthol cigarettes are no more, and perhaps less, harmful than nonmenthol cigarettes."

In addition, the Master Settlement Agreement (MSA) of 1998 prevents tobacco companies from directly or indirectly advertising to youth, restricting advertisement solely to "Point of Sale" at stores licensed to sell tobacco products. So why would the FDA aim to ban only menthol-flavored tobacco products, especially considering the majority of Black and Latino smokers prefer menthol? The reasoning behind the ban is misguided, non-scientific and rooted in the historical targeting of people of color.

## For Those Who Claim That the Prohibition Is Solely Motivated by Health

The best solution for a public health issue like tobacco smoking is education, treatment and counseling. The government knows this approach well, as it's led to tremendous declines in smoking

since the 1960s. According to [Statista](#), from 1965 to 2019, the prevalence of cigarette smoking in the U.S. has decreased from about 42% to 14%. Resources like quit-smoking websites, hotlines, medications and text message programs contributed to this decrease, as well as common tobacco control policies like warning labels, advertising bans and smoke-free environments.

### For Those Who Don't Understand That Prohibitions Are Police Matters

The federal government has not yet released their blueprint for enforcement of this proposed ban, however, under federal guidelines tobacco related incidents fall under the jurisdiction of the ATF (Alcohol Tobacco and Firearms), an agency that works independently and in conjunction with local law enforcement agencies to combat tobacco related offenses.

The FDA and ban advocates acknowledge that there will be an increase in trafficking of unregulated cigarettes nationwide. This will create a road map for organized criminal enterprises, like gangs and terrorist cells, to expand their operations within communities of color where individuals will be seeking their tobacco product of choice as a result of the ban. History has proven that prohibitions and bans do not solve the issue. Subsequently, this will force traditionally law-abiding citizens, particularly elderly individuals, who prefer menthol products to the streets to seek illegal, unregulated tobacco products, and, in turn, increasing their risk of becoming victims of street crimes.

Police officers I have spoken with say this will become one more tool for officers to “stop and frisk” or “racially profile” individuals in communities impacted by the ban. Understanding that policing in America is a business designed to keep people and communities safe, any illegal product becomes a catalyst to solving the larger issue of trafficking. This will ensure a proactive police approach to solving the trafficking concerns, which entails targeting individual possessors of contraband and illegal cigarettes for intel to pursue the larger organized criminals. This is a proven police

tactic that will, unfortunately, target individuals whose only crime is their choice of cigarette. This commonly used policing strategy completely disarms the ban advocates' stance that the ban will not impact individuals in possession of the banned menthol products.

The undefined direction of enforcement efforts potentially opens the door to a federal taskforce to handle the inevitable increase in criminal activities. This is reminiscent of the War on Drugs and has the potential for RICO (Racketeer Influenced and Corrupt Organizations Act) charges, which disproportionately impacted Black and Hispanic communities. “RICO” comes with enhanced jail sentences for any organized crime from the lowest levels of a street dealers to nationwide criminal organizations.

Information is power. It is imperative that the unintended consequences of the menthol ban are understood and taken into consideration by all parties involved in the decision-making process. It's important to note that health concerns are more effectively managed through education, treatment and counseling and that any ban creates a law enforcement matter.

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