

**Rahn K. Bailey, MD, DFAPA, ACP**  
Bailey Psychiatric Associates, PA  
2656 South Loop West, Suite 250  
Houston, TX 77054

Tel: 281-614-9515 Website: [www.baileypsych.com](http://www.baileypsych.com) email: [office@baileypsych.com](mailto:office@baileypsych.com)

May 3, 2021

Maine Public Hearing:

My name is Rahn Kennedy Bailey. I am a clinical and forensic psychiatrist and past president of the National Medical Association, the largest and oldest national organization representing African American physicians in the United States. I am currently Chairman of the Board of Trustees of the NMA Cobb Research Institute, which focuses on the lessening of racial and ethnic healthcare disparities.

I have been asked by RAI to share my experience on the issues raised by the proposed ban of menthol cigarettes, including the effects that such a ban will have on the African American community. I present these facts not to endorse smoking menthol cigarettes, or any cigarettes. I strongly discourage smoking with all of my patients and have, in fact, assisted thousands of patients in stopping smoking. I present these facts to clear up the misperceptions that would lead to further danger and injury in addition to the physical illnesses caused by smoking. My bottom line conclusion is that, however well-intentioned, a proposed ban on menthol cigarettes will create yet another framework for the legalized discrimination against African Americans, who are already disproportionately affected by similarly well-intentioned laws.

As a physician who has dedicated a career in lessening disparities in the African American community, I have seen first-hand the unintended consequences of well-intentioned laws. While I applaud the motivation behind this proposed ordinance, the risks associated with it far outweigh the potential benefits.

Considering the current data on smoking, one must ask: is singling out menthol cigarettes truly necessary? U.S. adult and youth smoking are at historic lows and falling across all races and ethnicities. The smoking of all cigarettes, including menthol, is declining.

But I understand that the proposed ban is premised on the belief that menthol cigarettes are more dangerous than non-menthol cigarettes. The scientific research reaches a different conclusion. Specifically, menthol cigarettes do not carry greater disease risk than non-menthol cigarettes; menthol cigarettes are not more addictive than non-menthol cigarettes.

Beyond whether the ban is justified based on the scientific data, bans do not eliminate smoking. Illicit cigarettes currently make up billions of dollars of lost tax revenue.

When San Francisco banned menthol cigarettes, menthol sales went to adjacent counties. The San Francisco menthol ban did NOT reduce consumer demand, it just shifted it to places where it was not banned.

A graver danger lies in providing another legal reason to scrutinize and harass the African American community, who already justifiably feel they are treated unfairly. Although the ban is directed at retailers, enforcement could be used as a pretext for confronting consumers. What would stop law enforcement from harassing such consumers as part of an investigation to determine the identity of the supplier?

Unfortunately, this is not a remote possibility. Eric Garner was killed by the police while enforcing a law against selling loose cigarettes. Mr. Garner's death was a tragic and unnecessary consequence of a misguided law.

I present these facts not as one who is in favor of cigarette smoking, I present them to you, asking you to avoid far greater harms than the ones this law is intended to avoid. Please keep these facts in mind as you determine whether a menthol cigarette ban is a good idea. Thank you for your time and consideration.

**Full Statement:**

Before I address the consequences of a menthol ban, I have to ask: is the singling out of menthol cigarettes truly necessary? Let's look at the facts—U.S. adult and youth smoking are at historic lows and falling across all races and ethnicities. Adult smoking is falling across all races and ethnicities. Youth menthol smoking is at historic lows and falling. Menthol smoking by African-American youth is at historic lows and falling. Bottom line: the smoking of all cigarettes is declining.

Focusing on menthol specifically, the push to ban menthol cigarettes is based on the assertion that there are material differences between menthol cigarettes and regular cigarettes. It is claimed that menthol cigarettes are more dangerous than non-menthol cigarettes. However, the scientific research conducted on this issue demonstrates the opposite. Specifically, 1) menthol cigarettes do not carry greater disease risk than non-menthol cigarettes; 2) menthol cigarettes are not more addictive than non-menthol cigarettes. Menthol smokers smoke either the same or fewer number of cigarettes as non-menthol smokers and have no more difficulty quitting than non-menthol cigarettes.

But beyond whether the ban is justified based on the scientific data, there are real concerns regarding the consequences of a menthol ban. Two major reasons for concern are: 1) the creation of illicit market of menthol cigarettes, and 2) the over-policing of black communities, where menthol constitutes a disproportionate share of the tobacco market.

There is a faulty assumption that if menthol cigarettes are banned, a large segment of African Americans would quit smoking or switch to non-menthol cigarettes. However, history shows us that cigarette bans and de facto bans in the form of high taxes lead to illicit markets, as smokers turn to other sources for their cigarettes of choice. Illicit cigarettes make up 8.5% –20% of all sales. That's 1.25-2.91 billion packs annually and 2.95 to 6.92 billion dollars of lost tax revenue.

There is no reason to think a ban on menthol cigarettes would have different results. In fact, we have compelling evidence that it won't. When San Francisco banned menthol cigarettes, only a small percentage of menthol smokers shifted to non-menthol brands. Sales data shows that virtually all San Francisco menthol sales went to adjacent counties. The San Francisco menthol ban did NOT reduce consumer demand, it just shifted it to places where it was not banned.

The second reason for concern over banning menthol is the disproportionate effect that such a ban will have on communities of color. Outlawing menthol provides another legal reason to scrutinize and harass the African American community, who already feel they are treated unfairly. Such a ban unnecessarily stokes the legitimate distrust of law enforcement by the African American community. A recent study compiled and analyzed a dataset detailing nearly 100 million traffic stops carried out by 21 state patrol agencies and 35 municipal police departments over almost a decade. It found that African Americans were pulled over more than

white drivers by 20% even though African Americans make up just 13.4% of the population. Additionally, African Americans are incarcerated at nearly six times the rate of white Americans. Whatever the reasons for these disparities, the perception of the African American community of being unfairly targeted is real.

Some have argued that the menthol ban applies only to the suppliers of cigarettes, not the consumers. But consumers of menthol cigarettes would be users of an illegal product, so intertwined with the intended target of the law, that run-ins with law enforcement are inevitable. It doesn't take much of an imagination to see how the enforcement of a ban against suppliers could be used as a pretext for confronting a consumer. What would stop law enforcement from harassing such consumers as part of an investigation to determine the identity of the supplier? Additionally, each state and municipality can pass a law that criminalizes the consumer of menthol cigarettes. In 2016, Santa Clara County, California first banned menthol cigarettes along with all e-cigarette products. The City of Santa Clara took it a step farther by adding a possession provision to its version.

I mentioned that perceptions of the African American community being unfairly targeted by law enforcement are real. When it comes to cigarette bans, these aren't just perceptions. They are suspicions grounded in fact. On July 17, 2014, Eric Garner, an African American, was approached by a plainclothes police officer on a sidewalk in Staten Island who accused him of selling "loosies" in violation of New York state law. On video, Mr. Garner expressed his frustration at being constantly confronted by police. We know the tragic conclusion, the death of Mr. Garner by the police while enforcing a law against selling loose cigarettes. This past April, a Rancho Crodova Californian deputy was caught on video beating a 14-year-old African American boy over a Swisher tobacco cigarette. Some would refer to these incidents as examples

of unintended consequences. It would depend on who is being asked as to how intended it was. One thing is for certain, Mr. Garner's death was definitely a consequence, a tragic and unnecessary consequence of a misguided law.

I present these facts not as one who is in favor of cigarette smoking, nor do I present these facts as remote possibilities or for the purpose of fear mongering. I present them to you today as inevitabilities. I present them to you, asking you to avoid far greater harms than the ones this law is intended to avoid. Please keep what I have spoken to you in mind as you determine whether a menthol cigarette ban is a good idea. Thank you for your time and consideration.

Sincerely,

**Rahn K. Bailey, MD**

Rahn K. Bailey, MD, DFAPA, ACP

## Bibliography

Adult Cigarette Prevalence -National Health Interview Survey, Centers for Disease Control and Prevention; Youth Prevalence for 2019 includes survey data from Jan-Sep, 2019; Youth Cigarette Prevalence -Monitoring the Future Survey, University of Michigan, National Institute on Drug Abuse.

National Health Interview Survey data (2009-2017).

Youth Cigarette Prevalence -Monitoring the Future Survey, University of Michigan, National Institute on Drug Abuse (any past use in past 30 days; note 2019 data on menthol preference not yet available).

Youth Cigarette Prevalence -Monitoring the Future Survey, University of Michigan, National Institute on Drug Abuse (any past use in past 30 days).

FDA, "Preliminary Scientific Evaluation of the Possible Public Health Effects of Menthol Versus Nonmenthol Cigarettes," p. 6 (2013).

Hyland A, Garten S, Giovino GA, Cummings KM. Mentholated cigarettes and smoking cessation: findings from COMMIT. *Tobacco Control*. 2002(11): 135-139.

Muscat JE, Richie Jr JP, Stellman SD. Mentholated cigarettes and smoking habits in whites and blacks. *Tobacco Control*. 2002(11): 368-371.

Fu SS, Okuyemi KS, Partin MR, Ahluwalia JS, Nelson DB, Clothier BA, Joseph AM. Menthol cigarettes and smoking cessation during an aided quit attempt. *Nicotine & Tobacco Research*. 2008(10): 457-462.

Fagan P, Moolchan ET, Hart Jr A, Rose A, Lawrence D, Shavers VL, Gibson JT. Nicotine dependence and quitting behaviors among menthol and non-menthol smokers with similar consumptive patterns. *Addiction*. 2010(105): 55-74.

Frost-Pineda K, Muhammad-Kah R, Rimmer L, Liang Q. Predictors, indicators, and validated measures of dependence in menthol smokers. *Journal of Addictive Diseases*. 2014(33): 94-113.

National Academies of Sciences, Engineering, and Medicine, *Understanding the US Elicit Tobacco Market: Characteristics, Policy Context, and Lessons from International Experiences* 9 (2015)

