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San Francisco Voters End the Sale of Flavored Tobacco Products Despite Strong Industry Opposition

Y. Tony Yang, ScD, LLM, MPH and

Professor, Center for Health Policy and Media Engagement, George Washington University, 1919 Pennsylvania Avenue NW, Suite 500, Washington, DC 20006.

Stanton Glantz, PhD

Center for Tobacco Control Research and Education, University of California, San Francisco, 530 Parnassus Avenue, Suite 366, San Francisco, CA 94143.

On 5 June 2018, voters in San Francisco, California, defied a \$12 million campaign funded almost entirely by the R.J. Reynolds Tobacco Company (RJR) and supported implementation of a law prohibiting the sale of flavored tobacco products, including menthol cigarettes and flavored vaping liquids—the first such comprehensive ban in the United States (1). The prohibition had been passed unanimously by the City’s Board of Supervisors in 2017 and was originally scheduled to take effect in April 2018, but shortly after the mayor signed it into law, RJR started collecting signatures to force a referendum. The company succeeded, suspending the law until the June 2018 election.

Motivated by the failure of the U.S. Food and Drug Administration (FDA) to address menthol cigarettes and, later, flavored e-cigarettes, health advocates had won passage of the law by highlighting the evidence that flavors entice young people to try tobacco products, including e-cigarettes (2). In 2013 and 2014, 80.8% of youths aged 12 to 17 years who had ever used tobacco initiated use with a flavored product (2). Concern over health disparities resulting from the tobacco industry’s targeting of African Americans with menthol cigarettes was another animating force. Among African Americans, 85% of all smokers and 71% of middle school– and high school– aged smokers use menthol cigarettes, compared with 29% and 51%, respectively, among white smokers (3). African Americans have the highest incidence and mortality and the shortest survival of any racial or ethnic group for most tobacco-related cancer, which led the San Francisco Cancer Initiative to prioritize working for policy change to end the sale of flavored tobacco products (4).

RJR manufactures Newport, the best-selling menthol cigarette brand and the second most popular cigarette brand among youth smokers (5). Recalling the tobacco industry’s unsuccessful effort to roll back San Francisco’s workplace smoking restrictions in 1983 (6),

Corresponding Author: Y. Tony Yang, ScD, LLM, MPH, Professor, Center for Health Policy and Media Engagement, George Washington University, 1919 Pennsylvania Avenue NW, Suite 500, Washington, DC 20006, ytyang@gwu.edu.

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RJR sought to shift the venue from the Board of Supervisors, where community organization was influential, to an election, where money would give it an advantage.

Recognizing the national implications of the fight, former New York City Mayor Michael Bloomberg contributed \$2.3 million to support the campaign to uphold the law, known as Proposition E (7). Other major donors included the Tobacco-Free Kids Action Fund, the American Cancer Society, and the American Heart Association (7). Proponents argued that Proposition E would protect San Francisco's children from candy-flavored tobacco products specifically marketed to them, many of which look like popular candies (1). Furthermore, flavoring—especially menthol's cooling and soothing sensation—masks the natural harshness of tobacco smoke, making it easier to consume tobacco and promoting youth initiation (8). More than 40% of middle school and high school students who smoke use flavored cigarettes or little cigars (9). Moreover, between 2011 and 2015, use of e-cigarettes—which come in literally thousands of youth-friendly flavors and also contain nicotine—increased by more than 800% among youths (8).

RJR did its best to stay out of sight, declining media interviews and hiding behind local merchants; menthol cigarettes were not even mentioned until late in the campaign (1). Echoing well-worn tobacco industry campaign themes, opponents of Proposition E contended that prohibition simply would not work, comparing it to the unsuccessful prohibition of alcohol and the failure of the “War on Drugs” to curb marijuana use (8). Citing California's recent decision to raise the legal age for tobacco purchase to 21 years, opponents argued that there was no need to ban flavored tobacco products to keep them away from children. They also pointed out that banning flavored hookah tobacco and shisha would inhibit Middle Easterners from participating in a traditional cultural practice (8). In addition, they argued that the law represented governmental overreach and restriction of adult choice (8). Despite predictions of a close outcome, Proposition E was backed by 68% of voters and took effect on 20 July 2018 (1).

There is reason to expect that Proposition E will help decrease tobacco use in San Francisco. After the Canadian province of Ontario implemented a menthol cigarette ban in 2017, a telephone survey found that more people reported attempting to quit smoking than had done so before the ban (10). Although 14.5% (95% CI, 10.3% to 20.1%) of the 206 study participants reported that they had planned to quit before the law took effect, 29.1% (CI, 23.3% to 35.8%) reported attempting to do so within the first month after implementation (10). The study had limits: It was small, could not confirm behavior, and may not have been representative of the population because of telephone sampling. Further, the demographic characteristics of menthol users in Ontario differ from those in the United States, where menthol use is much higher and is concentrated in African Americans and other groups. Nevertheless, Proposition E may have a larger benefit in San Francisco because the Ontario law was not com-prehensive (it excluded e-cigarettes) and menthol is not marketed as heavily to African Americans in Canada as it is in the United States.

Despite the breadth of Proposition E, there are potential pitfalls. For example, in Ontario, although there was no increase in use of contraband tobacco, there were reports of smokers using aftermarket additive flavorings, such as flavor cards, which can be placed into tobacco

packages to infuse flavor. It is important that San Francisco implement its law to prevent such workarounds.

Despite challenges from tobacco companies, states and localities have clear authority to restrict the sale of flavored tobacco products to reduce tobacco use and its harms to citizens. At least 2 states and more than 100 localities have passed restrictions on the sale of flavored tobacco products, although laws differ in their applicability to specific products and store types. However, Proposition E represents a major step forward because it is the nation's first comprehensive ban on the sale of flavored tobacco, and it has already inspired others to follow (1).

San Francisco voters showed that with appropriate support for public health campaigns, it is possible to overcome more heavily financed efforts by Big Tobacco if there is enough funding to spread the message. RJR's attempt to roll back the law illustrates how critical flavors are to the tobacco industry's efforts to hook children and keep adults smoking, a lesson that public health advocates should take to heart. In the absence of FDA action, other cities should prioritize passing similar legislation in order to safeguard against addiction and preventable death, especially among vulnerable and minority populations.

References

1. Hoffman J San Francisco Voters Uphold Ban on Flavored Vaping Products. The New York Times. 6 2018:A1 Accessed at www.nytimes.com/2018/06/06/health/vaping-ban-san-francisco.html on 8 August 2018.
2. Ambrose BK, Day HR, Rostron B, Conway KP, Borek N, Hyland A, et al. Flavored tobacco product use among US youth aged 12–17 years, 2013–2014. JAMA. 2015;314:1871–3. [PMID:] doi: 10.1001/jama.2015.13802 [PubMed: 26502219]
3. Corey CG, Ambrose BK, Apelberg BJ, King BA. Flavored tobacco product use among middle and high school students—United States, 2014. MMWR Morb Mortal Wkly Rep. 2015;64:1066–70. [PMID:] doi:10.15585/mmwr.mm6438a2 [PubMed: 26421418]
4. Hiatt RA, Sibley A, Fejerman L, Glantz S, Nguyen T, Pasick R, et al. The San Francisco Cancer Initiative: a community effort to reduce the population burden of cancer. Health Aff (Millwood). 2018;37:54–61. [PMID:] doi:10.1377/hlthaff.2017.1260 [PubMed: 29309234]
5. Perks SN, Armour B, Agaku IT. Cigarette brand preference and pro-tobacco advertising among middle and high school students – United States, 2012–2016. MMWR Morb Mortal Wkly Rep. 2018;67: 119–24. [PMID:] doi:10.15585/mmwr.mm6704a3 [PubMed: 29389916]
6. Glantz SA, Balbach ED Tobacco War: Inside the California Battles. Berkeley: Univ California Pr; 2000.
7. City & County of San Francisco Ethics Commission. Campaign Finance Dashboards – June 5, 2018 and November 6, 2018 Elections. Accessed at <https://sfethics.org/ethics/2018/03/campaign-finance-dashboards-june-5-2018-and-november-6-2018-elections.html> on 8 August 2018.
8. Voter's Edge California. Prohibiting Tobacco Retailers from Selling Flavored Tobacco Products. Accessed at https://votersedge.org/ca/en/ballot/election/area/69/measures/measure/3131?election_authority_id=38#basics on 17 September 2018.
9. King BA, Tynan MA, Dube SR, Aranzola R. Flavored-little-cigar and flavored-cigarette use among U.S. middle and high school students. J Adolesc Health. 2014;54:40–6. [PMID:] doi:10.1016/j.jadohealth.2013.07.033 [PubMed: 24161587]
10. Chaiton M, Schwartz R, Cohen JE, Soule E, Eissenberg T. Association of Ontario's ban on menthol cigarettes with smoking behavior 1 month after implementation. JAMA Intern Med. 2018;178: 710–1. [PMID:] doi:10.1001/jamainternmed.2017.8650 [PubMed: 29507934]