



MACKINAC CENTER
FOR PUBLIC POLICY

February 18, 2020

Representative Laurie Halverson
Committee Chair
House Commerce Committee
578 State Office Building
St. Paul, MN 55155

Dear Representative Halverson:

My name is Michael LaFaive, and I am senior director of fiscal policy at the Mackinac Center for Public Policy, a Michigan-based research institute. I am writing today to offer a warning about the unintended consequences of HF 3032, which would result in the prohibition of flavored cigarettes and vaping products. That warning involves the massive uptick in smuggling of these items, as well as other lawlessness.

I am the co-author of several studies about cigarette taxes and smuggling in North America and have testified on this subject (in 2015) in St. Paul. We have found that cigarette excise taxes are so high in some states that they lead to *de facto* prohibition. The product remains technically legal, but the tax-induced prices are so high that some related consequences of the tax mimic the actual era of alcohol Prohibition.

These include wide-spread smuggling, theft, violence against people and police, murder-for-hire cases and public corruption, too. I attach, along with this letter, a book chapter I wrote on this very subject titled, "Prohibition by Price." Prohibition, it is important to remind you, was facilitated by the Volstead Act, a law shepherded through Congress by Minnesotan Andrew Volstead.

Since 2008 the Mackinac Center has estimated the degree to which cigarettes are smuggled in the United States, including the roles that Mexico and Canada play. We find that in 2017, 35% of all the cigarettes consumed in Minnesota were a function of tax evasion and avoidance, or smuggling.

That is the sixth highest rate in the country, involving a product that currently is perfectly legal. Outlawing menthol cigarettes, however will be the equivalent of hanging out a dinner bill and yelling "come and get it" to America's criminal classes, who could count on reaping significant profits.

Minnesota is already familiar with some of the big smuggling arrests. The Pioneer Press recently noted that five major busts have occurred near the St. Croix truck weigh station alone since 2016.

The flavor ban bill before you would outlaw menthol cigarettes, which by one measure account for 30% of the cigarette market. If Minnesota's already-high excise taxes haven't already thwarted menthol smokers from lighting up, neither will a ban. It will only enrich organized crime cells and other states' treasuries as consumers and smugglers turn to them in search of product they want. Banning menthol outright — combined with the state's high excise tax regime on legal smokes — risks turning Minnesota into the "Land of 10,000 Smugglers."

It is impossible at this time for me to tell what an outright ban on menthols will do to overall smuggling rates. The data we use in our analysis is typically two years old. What I can say is that, according to an

industry database, San Francisco banned the sale of menthol cigarettes and sales increased 20% in neighboring San Mateo shortly thereafter. Maybe the San Francisco ban and leap in sales down the road is just a coincidence, but I very much doubt it.

Lawmakers must also realize that those who smuggle cigarettes won't ignore vaping products as an additional source of revenue. The products will travel along the same supply chains shuttling smokes into the state.

I do wish that I could be present today. I would look around for the law enforcement personnel who will be required to enforce the ban you are considering. Theory, evidence and practical experience tell us that a river of flavored tobacco and vaping products will run through Minnesota should it embrace the ban. If prisons in Minnesota can't keep out heroin, cigarettes, cell phones and other contraband, how can the state keep popular products from crossing its porous borders?

Andrew Volstead championed the prohibition of alcohol. After he lost his 1922 bid for re-election, he returned to Minnesota. Weeks before his signature law was repealed, a reporter noted that Volstead "wish(ed) people would learn that Prohibition and all its developments are all in the past ..." for him. Daniel Okrent, author of "Last Call: The Rise and Fall of Prohibition," added that Volstead would later in life say that he regretted being known for the Volstead Act.

It is my hope that this committee looks at these bans with eyes wide open. Public policy does not happen in a vacuum. There are unintended consequences to laws and sometimes they do more harm than good. The ban on flavored tobacco and vaping products is a likely case in point.

Sincerely,



Michael LaFaive
Senior Director of Fiscal Policy
Mackinac Center for Public Policy