

**Testimony before the Westchester County Board of Legislators
Regarding Banning the Sale of Flavored Tobacco Products**

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Consumer Center
Taxpayers Protection Alliance
November 28, 2022**

Chairwoman Borgia, Vice Chairwoman Barr and Legislators:

Thank you for your time today to discuss the issue of banning flavored sales of tobacco and vapor products. My name is Lindsey Stroud, and I am Director of the Taxpayers Protection Alliance's (TPA) Consumer Center. TPA is a non-profit, non-partisan organization dedicated to educating the public through the research, analysis and dissemination of information on the government's effects on the economy. TPA's Consumer Center focuses on providing up-to-date information on adult access to goods including alcohol, tobacco and vapor products, as well as regulatory policies that affect adult access to other consumer products, including harm reduction, technology, innovation, antitrust and privacy. I am also a Visiting Fellow with the Independent Womens Forum and a board member with the American Vapor Manufacturers.

For the past several years, policymakers at the local, state, and federal levels have been trying to address youth tobacco product use by banning the sale of flavors. While such efforts are laudable, they fail to take into account the significant declines in youth tobacco product use and retailers' efforts to prevent access. While New York lawmakers are tying flavored tobacco products to racial equity issues, there are significantly more White adults that are currently smoking both in percentage of race and as cigarette smokers. Banning flavored tobacco products does nothing to address this disparity. Further, should lawmakers truly wish to eradicate all tobacco product use, they ought to implore state lawmakers to utilize existing tobacco monies on programs to both prevent youth use and help adults quit smoking.

Key Points:

- Tobacco product use among New York youth is at all-time lows. In 2019, only 14.7 percent of high school students had ever tried a cigarette and only 4.2 percent were currently smoking. Further, only 6.7 percent had smoked a cigar in the month prior.
- Nationally, youth tobacco product use has continued to decline between 2019 and 2022.
- In 2022, only 1.9 percent of middle and high school students had smoked cigars in the past month, only 1.6 percent had smoked cigarettes and only 1.2 percent had used smokeless tobacco.
- Between 2019 and 2022, past month cigar use declined by 64.2 percent, past-month cigarette use declined by 62.8 percent, and past-month smokeless tobacco use decreased by 62.9 percent.

- Other national surveys find that youth use of all tobacco products has reached recorded lows.
- Smoking rates among adults continue to decline in New York. In 2021, only 12 percent of adults were currently smoking. This is a 44.2 percent decrease from 1995 when 21.45 percent of adults were currently smoking.
- Westchester County retailers do a good job of not selling to minors. Between March 2015 to July 2022, FDA conducted 1,806 inspections in tobacco retailers located in Westchester County, NY. Only 343 (or 19 percent) resulted in the sales of tobacco products to minors.
- There is no evidence to suggest that youth smoking rates are high in states with larger proportions of menthol cigarette sales. In fact, states with higher rates of current youth smoking correlates with lower rates of mentholated cigarette sales.
- There are more White adults who are currently smoking than minorities. In 2021, among all White adults, 12.9 percent were currently smoking compared to 11.3 percent of Black adults and 11.3 percent of Hispanic adults.
- Further, White adults account for the largest share of adults that were currently smoking in 2021. In that year, over 1.1 million White New York adults were currently smoking, making up 65 percent of state's smoking population, compared to 325,000 Hispanic adults (18.4 percent) and over 245,000 Black adults (13.8 percent).
- New York continues to allocate very little of tobacco-related settlement payments and taxes on tobacco control programs, including education and prevention.
- In 2021, the Empire State collected \$919.9 million in state cigarette excise taxes and \$764.4 million in tobacco settlement payments, yet allocated \$39.8 million (2.4 percent) to tobacco control. In 20 years, for every \$1 the state received in tobacco-related payments, the state spent \$0.02 funding tobacco control programs.

Youth Use of Tobacco/Vape Products is Declining

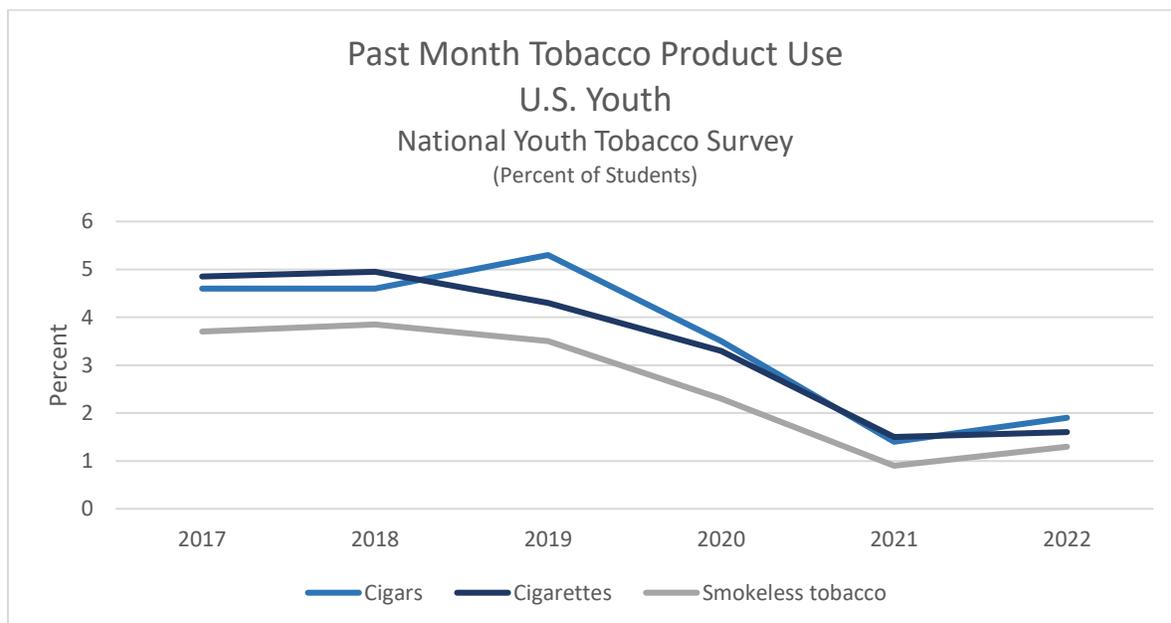
While updated data has yet to be released from the Centers for Disease Control and Prevention (CDC), youth use of tobacco products in New York has declined in recent years.

In 2019, according to the CDC's Youth Risk Behavior Survey, among New York high school students, only 14.7 percent reported ever trying a combustible cigarette.¹ This is a 78.4 percent decrease from 1997 when more than two-thirds (68.1 percent) reported trying cigarettes. Further, in 2019, only 4.2 percent were currently smoking, which was a whopping 87.2 percent decrease from 1997 when nearly one-third (32.9 percent) had smoked a cigarette in the month to the survey.

Similarly, youth use of other tobacco products is down as well. In 2019, only 6.7 percent of high school students had smoked a cigar in the month prior to the survey, this is a 50.7 percent decline from 1999 when 13.6 percent were currently using cigars.

While there is not more recent data from New York youth, nationally, youth tobacco product use continues to decline and has reached recorded lows.

According to the National Youth Tobacco Survey, in 2022, of all U.S. middle and high school students only 1.9 percent reported using cigars in the past month, 1.6 percent reported past-month use of combustible cigarettes, and only 1.2 percent had used smokeless tobacco.² Between 2019 and 2022, past month cigar use declined by 64.2 percent, past-month cigarette use declined by 62.8 percent and past-month smokeless tobacco use decreased by 62.9 percent.³



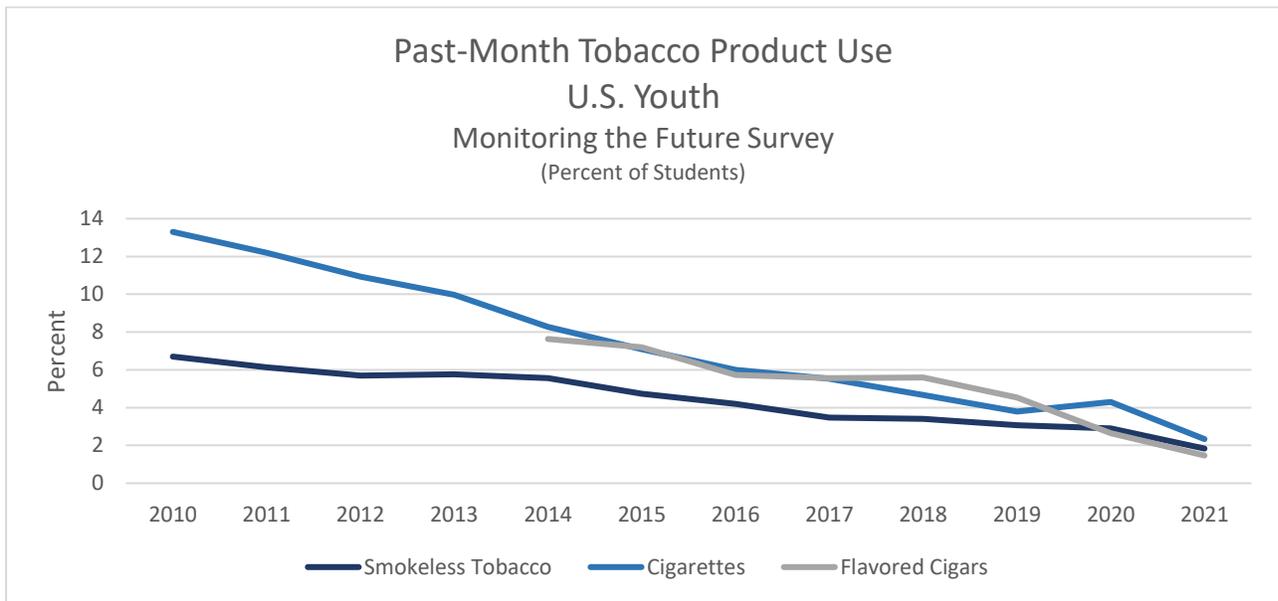
Other surveys find similar declines as well.

According to the Monitoring the Future Survey, in 2010, 7.1 percent of 8th graders, 13.6 percent of 10th graders, and 19.2 percent of 12th graders reported past-month combustible cigarette use.⁴ Among 12th graders, between 2010 and 2021, cigarette smoking declined by 78.7 percent, among 10th graders by 86.8 percent and among 8th graders by 84.5 percent.

There are similar declines in cigar use. In 2014, 4.1 percent of 8th graders, 6.9 percent of 10th graders, and 11.9 percent of 12th graders reported past-month flavored cigar use.⁵ Between 2014 and 2021, among 12th graders, flavored cigar smoking declined by 84 percent to 1.9 percent,

among 10th graders by 78.3 percent to only 1.5 percent, and among 8th graders by 75.6 percent to one percent of 8th graders using cigars in the past month.

Similarly, in 2021, only 1.6 percent of 8th graders, 1.7 percent of 10th graders and 2.2 percent of 12th graders reported using smokeless tobacco products in the past-month.⁶ Smokeless tobacco use among 12th graders has decreased by 74.1 percent between 2010 and 2021, by 77.3 percent among 10th graders and by 61 percent among 8th graders.

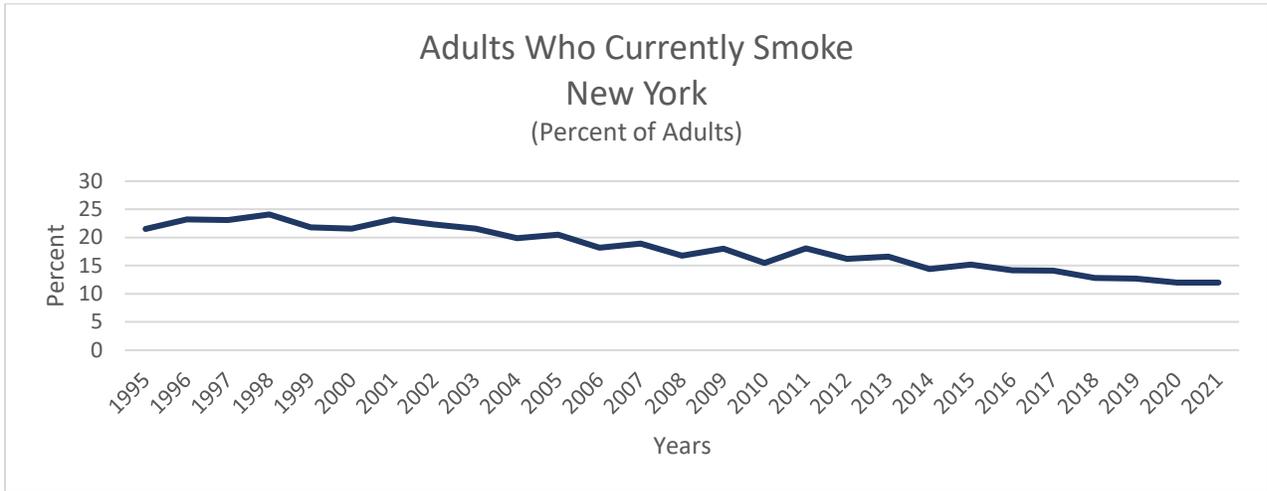


Lawmakers should refrain from policies that do not consider that other policies are working at reducing tobacco use rates among youth.

Smoking Rates Declining Among New York Adults

In 2021, according to data from the annual Behavioral Risk Factor Surveillance System survey (BRFSS) conducted by the Centers for Disease Control and Prevention, 12 percent of New Yorkers were currently smoking, amounting to more than 1.8 million adults.⁷

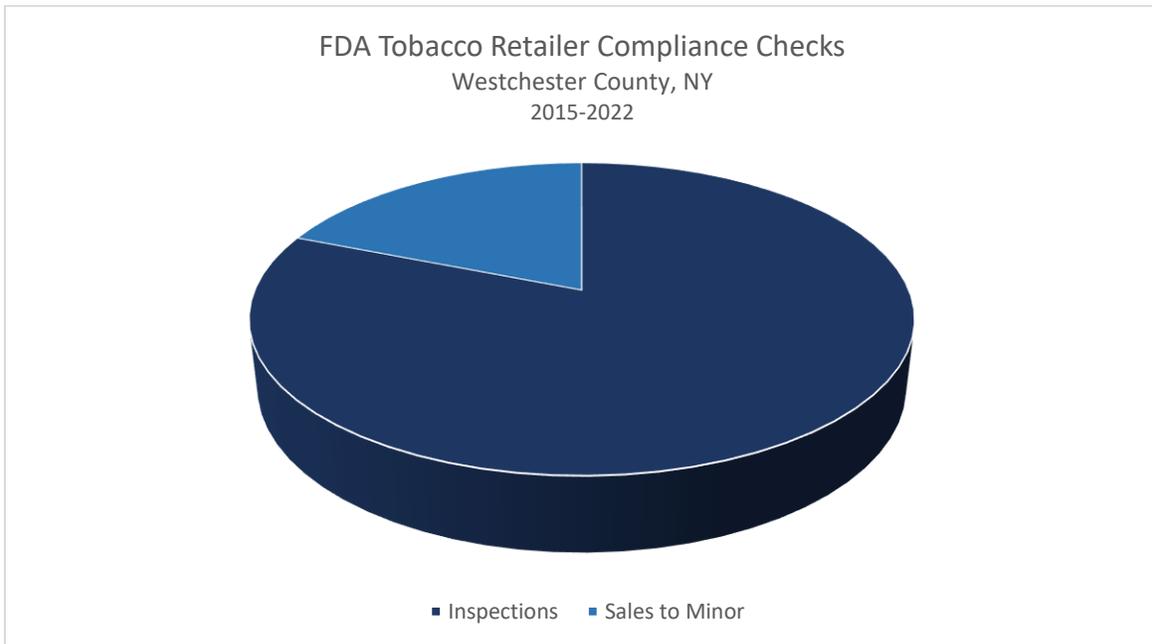
Smoking rates in the Empire State have significantly declined since 1995 when the BRFSS first began reporting combustible cigarette use. That year, 21.5 percent of New York adults were then-currently smoking. Between 1995 and 2021, smoking rates have decreased by 44.2 percent, with average annual decreases of 1.9 percent.



Westchester County Retailers Do Good Job Not Selling to Minors

The U.S. Food and Drug Administration (FDA) regularly performs tobacco compliance checks in which the agency uses a minor to attempt to purchase tobacco products including cigars, cigarettes, e-cigarettes, and smokeless tobacco.⁸

From March 2015 to July 2022, FDA conducted 1,806 inspections in tobacco retailers located in Westchester County, NY. Only 343, or 19 percent, resulted in the sales of tobacco products to minors.



There is No Correlation with Increased Flavored Cigar and Cigarette Sales and Youth Tobacco Use

Many proponents of flavored tobacco bans point towards a supposed youth-appeal of menthol and other flavors, yet data from the CDC finds that greater menthol cigarette and flavored cigarette sales correlates with lower instances of youth cigar and cigarette use.

Rates of current smoking among high school students, only one (Mississippi) was in the top ten for menthol sales. Between 2011 and 2015, 16.8 percent of high school students were current smokers in Mississippi and during the same period 37.2 percent of cigarette sales were menthol.⁹

In fact, states with the highest rates of current youth smoking correlated with lower rates of mentholated cigarette sales. For example, Kentucky ranked #1 for youth smoking rates, with 19.6 percent of high school students being current smokers. Comparatively, only 23.5 percent of cigarette sales were menthol during the same period. Further, Rhode Island, which ranked fifth for menthol sales (38 percent of cigarette sales were menthol) had the lowest current smoking rates, with only 8.1 percent of high school students being defined as current smokers.

The data holds true for ever-use as well with lower menthol cigarette sales correlating with increased ever-use of cigarettes. For example, of the top ten states with high ever-cigarette use, only three (Alabama, Mississippi, and South Carolina) had high rates of menthol cigarette sales. Alternatively, five states with high youth ever-use (Kentucky, New Mexico, Oklahoma, West Virginia, and Wyoming) were in the bottom ten for menthol cigarette sales. For example, Kentucky ranked #1 in youth ever cigarette use, yet only 23.5 percent of cigarette sales were menthol.

Similarly, increased percentages of flavored cigar sales do not correlate with increases in youth cigar use.¹⁰ According to data from the CDC, between 2011 and 2015, North Dakota reported higher rates of flavored cigars and cigarillos sales, yet, among high school students, North Dakota ranked low for current cigar use. In fact, between 2011 and 2015, only 11.5 percent of North Dakota high school students reported using cigars on at least one occasion in the 30 days prior to the survey, which is lower than the national average of 12.6 percent. Coincidentally, states with low percentages of flavored cigars and cigarillos sales correlated with increased rates of youth cigar use, including Alabama, Arkansas, Mississippi, Montana, South Carolina, and Tennessee.

When addressing youth use of cigar and cigarette products, policy makers must rely on facts and data. Despite rhetoric, analyses of the CDC's own data do not show a correlation between increased sales of flavored cigars and cigarettes and youth use of those products.

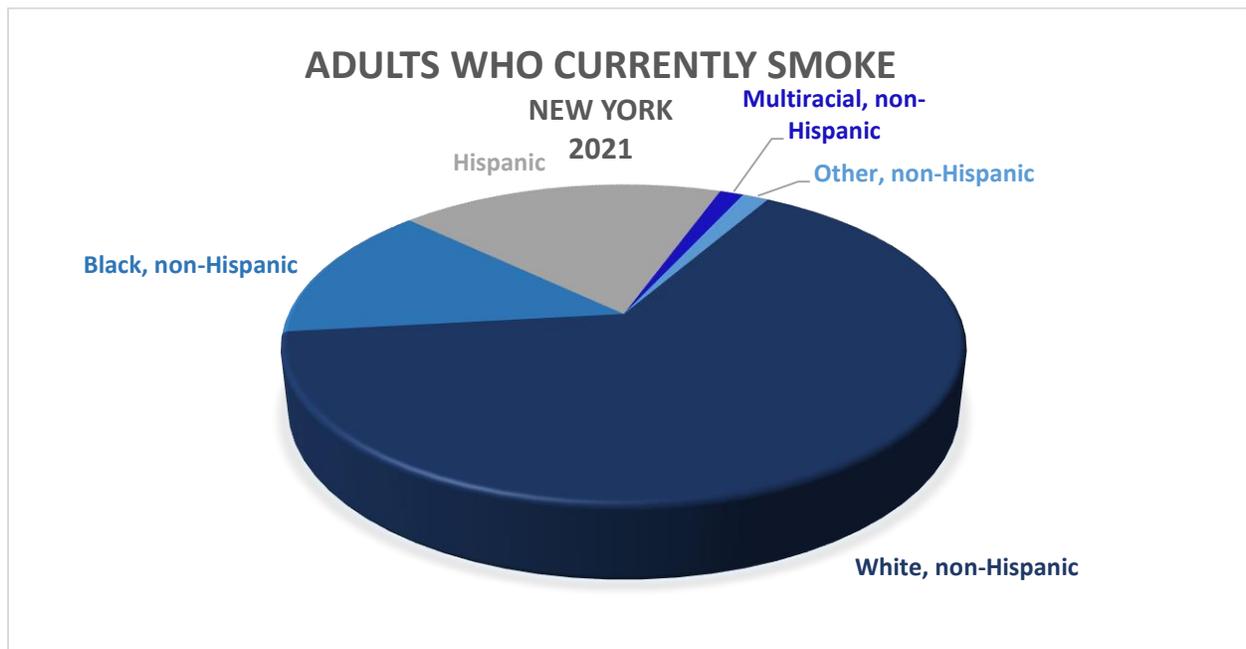
There Are More White Adults Who Smoke Than Minorities

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Many lawmakers look towards tobacco and believe that smoking disproportionately impacts communities of colors, specifically Black and Hispanics. While it is true that in New York, Multiracial, non-Hispanic adult smoke higher percentage than their White counterparts, but there are far more White adults who are smokers in the state and a greater percentage of White adults were currently smoking in 2021, compared to other races.

In 2021, according to data from the CDC’s BRFSS, all New York adults, Multiracial, non-Hispanic adults reported smoking at a greater percentage of their identified race at 18.9 percent, compared to 17.9 percent of American Indian, or Alaska Native, non-Hispanic adults, 12.9 percent of White adults, 12.8 percent of Other, non-Hispanic adults, 11.3 percent of Black adults and 11.3 percent of Hispanic adults.¹¹

Yet, White adults made up a significantly larger percentage of New York’s total adult smoking population. In fact, in 2021, more than 1.1 million White adults were currently smoking (65 percent), compared to more than 325,000 Hispanic adults (18.4 percent) and over 245,000 Black adults (13.8 percent).



Again, while addressing racial equity is important, banning flavored tobacco products seems unlikely to address the fact that White New York adults accounts for nearly two-thirds of the state’s smoking population.

New York Needs to Invest More Tobacco Moneys into Education, Cessation and Prevention

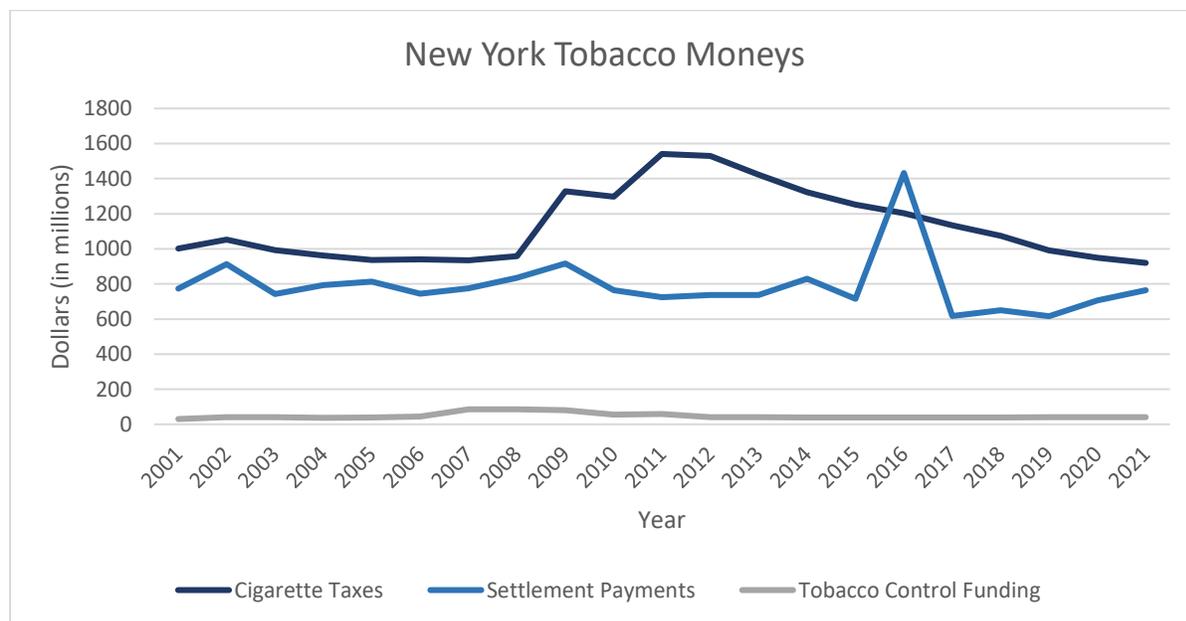
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Rather than enacting prohibitionist policies that fail to consider why youth are using tobacco and vapor products, local policymakers should urge state leaders to invest more funding towards tobacco control programs, including education, cessation, and prevention. There is more than enough money from existing tobacco monies to provide adequate funding for such programs.

For example, each year New York receives hundreds of millions of dollars in cigarette taxes. In addition, there are annual payments due to the state as part of the 1998 tobacco lawsuit, commonly known as the Master Settlement Agreement (MSA). The state receives a percentage of the portion of cigarette sales in that state.

New York currently imposes a \$4.35 state excise tax on cigarettes and in 2021 the Empire State collected \$919.9 million in state excise tax revenue from combustible cigarettes.¹² This was a 3.1 percent decline from 2020's \$949.6 million. Between 2001 and 2021, New York received more than \$23.7 billion in excise taxes attributable to combustible cigarettes. New York also collected \$764.4 million in settlement payments in 2021, an 8.2 percent increase from 2020's \$706.6 million.¹³ Since 2001, the Empire State has collected nearly \$16.6 billion in tobacco settlement payments.

While New York collected nearly \$1.7 billion in tobacco-related monies in 2021, the state allocated only \$39.3 million in state funding towards tobacco control programs, including cessation, education, and youth prevention efforts.¹⁴ This amounts to 5.2 percent of taxes and 4.3 percent of settlement payments. In 2021, for every \$1 the state received in tobacco monies, it spent only \$0.02 on tobacco control efforts.



Rather than instituting bans, lawmakers should invest more tobacco monies towards programs to prevent New Yorkers from smoking and help adults quit.

Conclusion

Youth tobacco product use continue to decline without prohibitive actions. Rather than banning the sale of flavored tobacco products, Westchester County lawmakers ought to implore their state to invest more tobacco monies towards programs to prevent youth use and help adults quit.

Thank you for your time.

¹ Centers for Disease Control and Prevention, “New York 2019 Results,” High School YRBS, 2019, <https://nccd.cdc.gov/Youthonline/App/Results.aspx?LID=NY>. Accessed November, 28 2022.

² Eunice Park-Lee *et al.*, “Tobacco Product Use Among Middle and High School Students – United States, 2022,” *Morbidity and Mortality Weekly Report*, Centers for Disease Control and Prevention, November 11, 2022, <https://www.cdc.gov/mmwr/volumes/71/wr/mm7145a1.htm?>.

³ Teresa W. Wang *et al.*, “Tobacco Product Use and Associated Factors Among Middle and High School Students – United States, 2019,” *Morbidity and Mortality Weekly Report*, Centers for Disease Control and Prevention, December 6, 2019, <https://www.cdc.gov/mmwr/volumes/68/ss/ss6812a1.htm>.

⁴ University of Michigan, “Cigarettes: Trends in 30 Day Prevalence of Use in Grades 8, 10, and 12,” Monitoring the Future study, 2021, <https://monitoringthefuture.org/data/Prevalence2021/Cigarettes.htm>.

⁵ University of Michigan, “Flavored Little Cigars: Trends in 30 Day Prevalence of Use in Grades 8, 10, and 12,” Monitoring the Future study, 2021, <https://monitoringthefuture.org/data/Prevalence2021/FlavoredCigars.htm>.

⁶ University of Michigan, “Smokeless Tobacco: Trends in 30 Day Prevalence of Use in Grades 8, 10, and 12,” Monitoring the Future study, 2021, <https://monitoringthefuture.org/data/Prevalence2021/SmklessTob.htm>.

⁷ Centers for Disease Control and Prevention, “BRFSS Prevalence & Trends Data,” 2021, <https://www.cdc.gov/brfss/brfssprevalence/>.

⁸ U.S. Food and Drug Administration, “Compliance Check Inspections of Tobacco Product Retailers,” December 21, 2021, https://www.accessdata.fda.gov/scripts/oc/inspections/oc_insp_searching.cfm. Accessed January 15, 2021.

⁹ Lindsey Stroud, “FDA’s Misguided War on Menthol Cigarettes: Delays Consumer Access to Tobacco Harm Reduction,” Taxpayers Protection Alliance, August 8, 2022, <https://www.protectingtaxpayers.org/consumer-center/policy-papers/fdas-misguided-war-on-menthol-cigarettes-delays-consumer-access-to-tobacco-harm-reduction/>.

¹⁰ Lindsey Stroud, “FDA’s Misguided War on Flavored Cigars: Delays Consumer Access to Tobacco Harm Reduction,” Taxpayers Protection Alliance, August 8, 2022, <https://www.protectingtaxpayers.org/consumer-center/policy-papers/fdas-misguided-war-on-flavored-cigars-delays-consumer-access-to-tobacco-harm-reduction/>.

¹¹ Centers for Disease Control and Prevention *supra* note 7.

¹² Orzechowski and Walker, “The Tax Burden on Tobacco Historical Compilation Volume 56,” 2021. Print.

¹³ Campaign for Tobacco-Free Kids, “Actual Annual Tobacco Settlement Payments Received by the States, 1998 – 2021,” January 11, 2022, <https://www.tobaccofreekids.org/assets/factsheets/0365.pdf>.

¹⁴ Campaign for Tobacco-Free Kids, “Appendix A: History of Spending for State Tobacco Prevention Programs,” 2021, <https://www.tobaccofreekids.org/assets/factsheets/0209.pdf>.