



Ben Crump Warns of Racial Bias in Proposed Menthol Cigarette Ban

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The Biden administration has indicated that it is planning on banning menthol-flavored cigarettes as part of a larger effort to prohibit flavored tobacco products. While these measures are intended to protect children, who are often enticed to become smokers through the availability of products like flavored e-cigarettes, the inclusion of menthol cigarettes is also expected to have a racialized impact, as 85 percent of Black smokers favor these over non-menthol cigarettes. Despite the potential for positive health benefits for Black people, some scholars and activists have warned that this proposed ban could have negative unintended consequences for the Black community. As we get closer to the ban being put in place, civil rights attorney Benjamin Crump has joined the voices warning against the ban, and the famed lawyer sat down with Blavity News to explain his opposition to the new regulation.

"Unintended consequence" of a good-intentioned law

Crump warned that “the old saying ‘the road to hell is paved with good intentions’” is an appropriate way to think about this proposal, noting that the menthol cigarette ban could have very serious “unintended consequences” for the Black community. Specifically, Crump warned that implementing the ban would be “creating another pretextual reason for the police to have interactions that lead to Black people being convicted felons, or even worse ending up like Patrick Lyoya,” referring to the 26-year-old Black man who was fatally shot in the head by a police officer after a traffic stop earlier this month. Crump is now representing Lyoya’s family.

Noting that “you can’t visually tell a menthol cigarette from a non-menthol cigarette from 20 feet away,” Crump warns that police would use the ban to confront Black people simply for smoking in public or for selling cigarettes. Such interactions, Crump notes, could easily lead to an “Eric Garner situation,” referring to the fact that Garner was killed by a police officer in 2014 after being stopped for selling individual cigarettes.

The danger of criminalizing more Black people

“Just because you say there’s a ban doesn’t mean there isn’t going to be a demand for them,” Crump said in response to the Biden administration’s motivation for the cigarette restriction. “Nicotine is an addictive drug,” Crump added. “If you ban them all tomorrow, this doesn’t mean people will stop having a desire to get something they’re addicted to, so they’ll go to the black market.”

Once that happens, Crump argues, “you have Black people becoming convicted felons for selling loose cigarettes.” Comparing the new regulation to laws criminalizing marijuana, Crump said that the new regulations “could have a tremendous impact” on the Black community by criminalizing a common activity in a racially biased way.

Asked about the potential health benefits to Black Americans that might come by deterring some of them from smoking, Crump counters. “But at what cost?” He reflected on the 1990s tough-on-crime legislation as a useful comparison. “Everybody said ‘oh this is a good thing and then you looked at it 20 years later and half the community was in prison.’”

Legal and political dangers of the menthol cigarette ban

When asked if there was a different way to address smoking among Black people and the advertising that targets the Black community for products like menthol cigarettes, Crump said that “it goes back to education.” Focusing on smoking as a public health issue, as what’s been done with white smokers and white-focused public health crises like the opioid epidemic would also be helpful. “The same way that white people smoke cigarettes, you need to try to be health advocates for Black people in the same manner,” Crump said. Contrasting the response to opioids to the proposed menthol ban, Crump warns against a double standard, with “our issues being criminal justice issues and their issues being public health issues.”

Crump urged the Biden administration to pause its plans and “engage in a commission to study this matter” and examine the potential unintended consequences of the proposed ban. Otherwise, he warned, “you end up with something else being associated with President Biden’s name like the 1994 crime bill is associated with his name.” Beyond damaging Biden’s legacy, Crump also noted that the legislation could hurt Democrats in the next election. “You don’t want another issue to make Black people not want to come out to the polls and support the Democratic candidates because somebody said now they’ve made it against the law to smoke the cigarettes that the cigarette industry has made me addicted to, and now they’re going to call me a criminal for having this health issue.”

While defending smoking may not seem similar to representing victims of police brutality, Crump argued that his current stance is an extension of his larger work. “As a civil rights attorney, first and foremost, you want to make sure you have laws being passed that won’t disproportionately impact Black people in America,” Crump said. “And I’m concerned that if we aren’t careful, we might repeat the mistakes we made in the past.” He reiterated that “good-intentioned laws” like the 1990s anti-crime legislation, “have unintended consequences” and added that “I don’t want to make that same mistake.”

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