Testimony before the Columbus, Ohio City Council
Regarding Banning the Sale of Flavored Tobacco and Vapor Products
Lindsey Stroud, Director
Consumer Center
Taxpayers Protection Alliance
November 9, 2022

Council President Hardin, President Pro Tempore Brown and Members of Columbus City Council:

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.

For the past several years, policymakers at the local, state, and federal levels have been trying to address the so-called "youth vaping epidemic," with many introducing legislation that attempts to ban the sale of flavored tobacco and vapor products. While their intentions are laudable, such policies fail to consider youth use of both tobacco and vapor products is declining, nor the reasons why youth are using tobacco and vape products. Moreover, in localities and states with existing flavor bans, an increase in young adult smoking is happening despite a national overall decline. Rather than instituting draconian bans that ignore innovations in tobacco harm reduction products, Columbus lawmakers should empower their state lawmakers to invest more than 2.1 percent of existing tobacco monies towards tobacco control programs including education, prevention and cessation.

Key Points:

- Only 3.7 and 12.5 percent of Ohioan youth reported past-month use of combustible cigarettes and vapor products, respectively, in 2020-21.
- Youth vaping peaked in Ohio in 2018-19 when 15.7 percent of students reported past-month e-cigarette use. Between 2018-19 and 2020-21, youth e-cigarette use declined by 20.4 percent.
- Youth are not using e-cigarettes because of flavors.
- Among Franklin County students that had ever used an e-cigarette in 2019-20:
    - 52.4 percent used them because a friend had
    - 26.4 percent used them because they "were bored"
    - 15.4 percent used them because of flavors

    - 14.4 percent used them because a family member had
- Among Ohio youth that had ever used an e-cigarette in 2020-21:
    - 46.9 percent used them because a friend had
    - 27.2 percent used them because they "were bored"
    - 22.2 percent used them because of flavors
    - 18.3 percent used them because a family member had
- Flavored vapor bans correlate with increases in youth and young adult smoking.
    - Youth combustible cigarette use increased in San Francisco after implementing a flavored e-cigarette ban.
    - Between 2020 and 2021, smoking rates among young adults decreased on average by 19.7 percent among all states minus Florida, yet nine states experienced increases. Three states including Massachusetts, New York and Rhode Island saw increases in smoking rates after banning the sales of flavored e-cigarettes in 2020.
- Columbus vapor product retailers do a good job in not selling to minors. Between 2020 and 2022, only two vape and tobacco shop retailers were issued orders from the FDA for selling to minors. This accounts for 22 percent of all vape shop retail inspections during the same time period, 1.1 percent of retail violations and less than one percent of all inspections.
- E-cigarettes' market emergence is associated with low young adult smoking rates. In 2021, among current smokers in Ohio, only 9.9 percent current smokers were 18 to 24 years old – a 59.3 percent decrease from 2012 when e-cigarettes became available across the U.S. Further, since 2018, smoking rates among young adults have decreased by 34 percent, with average annual declines of 11 percent.
- Ohio continues to allocate very little of tobacco-related settlement payments and taxes on tobacco control programs, including education and prevention.
- In 2020, the Buckeye State collected $830.5 million in state cigarette excise taxes and $306.3 million in tobacco settlement payments, yet allocated $12.3 million (1.1 percent) to tobacco control. In 21 years, for every $1 the state received in tobacco-related payments, it spent $0.02 funding tobacco control programs.

Youth Use of Tobacco/Vape Products is Declining in Ohio

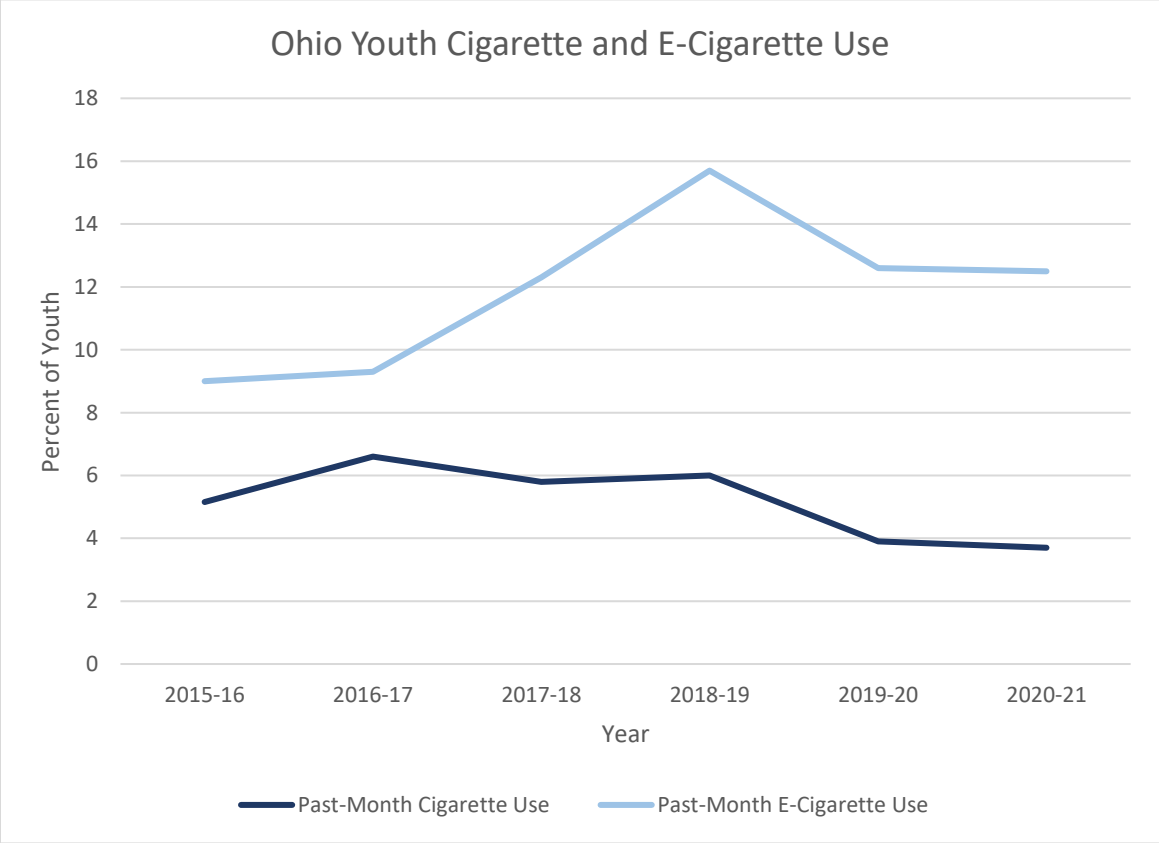
The Ohio Healthy Youth Environments Survey (OHYES) is a statewide survey conducted by the Ohio Department of Education, Ohio Mental Health and Addiction Services and Ohio Department of Health and is "designed to measure the health risk behaviors and environmental factors that impact youth health and safety."[1] The survey collects data from school-aged Ohio residents on various factors including alcohol, tobacco and substance use to physical health and activity and dietary habits.

Unfortunately, Franklin County data for the 2020-21 school year is unavailable at this time, but statewide (according to OHYES) in 2020-21, a miniscule 3.7 and 12.5 percent of all Ohio students reported past-month combustible cigarette and vapor product use, respectively, defined as having used either a cigarette or vape on at least one occasion in the 30 days prior to the survey.[2] Even better, between 2019-20 and 2020-21, youth use of cigarettes and vapor products declined by 5.1 and 0.8 percent, respectively.

As youth use of combusted tobacco products (arguably the most harmful form of tobacco) decreases, many lawmakers have turned their attention towards novel tobacco products, specifically e-cigarettes.

It seems that in Ohio, youth vaping peaked in 2018-2019 when 15.7 percent of students reported using an e-cigarette on at least one occasion in the 30 days prior to the survey. Between 2018-19 and 2020-21, past month e-cigarette use declined by 20.4 percent.[3]

Lawmakers should refrain from policies that harm adults attempting to quit smoking and do not consider that other policies are working at reducing both cigarette and vaping rates among youth.

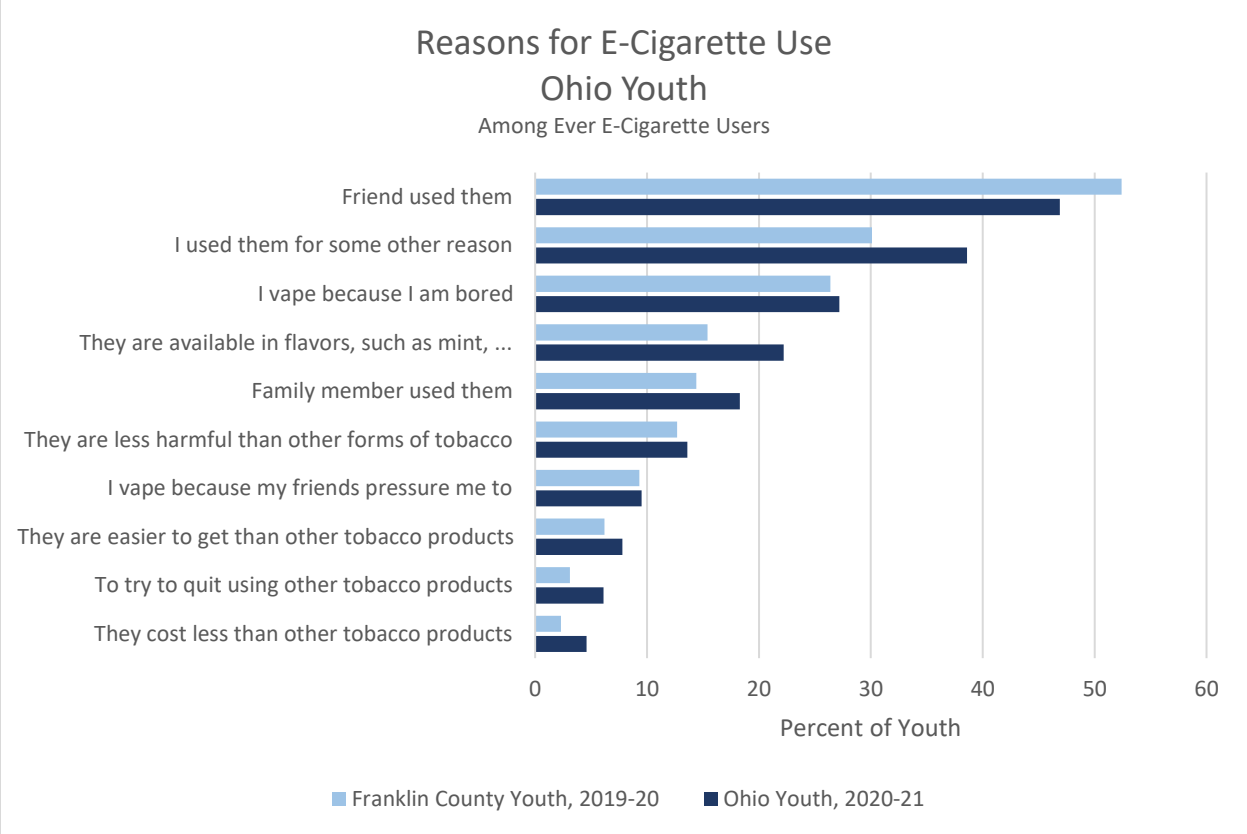


Youth Are Not Using E-Cigarettes Because of Flavors

Many e-cigarette opponents argue that youth are attracted to these novel tobacco products because of flavors. State and national surveys of both youth ever and current e-cigarette users indicate that flavors are not the main reason for trying and using e-cigarettes.

According to the 2019-2020 OHYES, among Franklin County students that had ever used an e-cigarette, 52.4 percent had used them because a friend had, 26.4 percent had used e-cigarettes because they were bored, 15.4 percent reported using them because of flavors, and 14.4 percent because a family member had.[4]

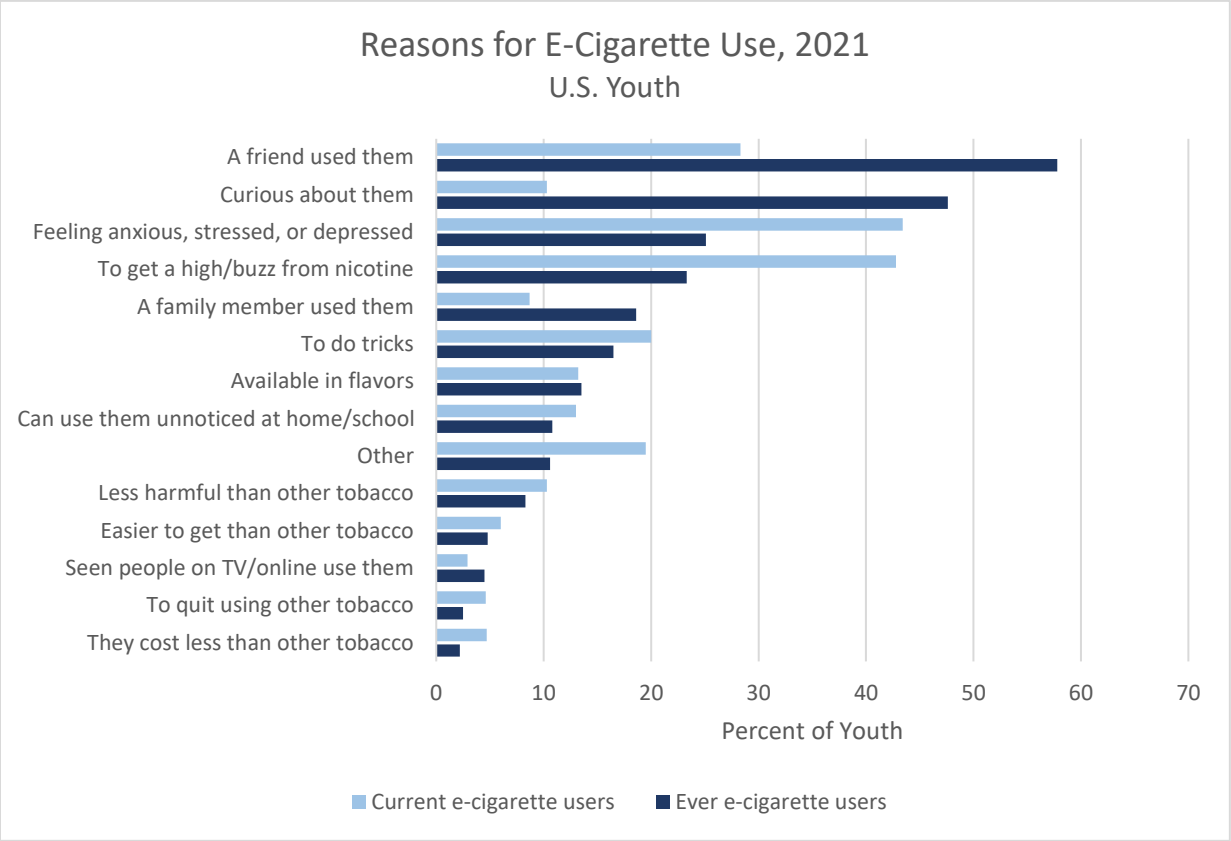
In 2020-2021, according to OHYES, among all Ohio students that had reported ever using a vapor product, 46.9 percent had used them because a friend had used them, 27.2 percent had used them because they "were bored", 22.2 percent had used them because of flavors and 18.3 percent reported using them because a family member had.[5]



This is like national surveys. In 2021, according to the National Youth Tobacco Survey, among middle and high school students that reported ever using e-cigarettes, 57.8 percent had tried them

because a friend used them, 47.6 percent had tried e-cigarettes because they were curious about them, 25.1 percent reported trying them because they were "feeling anxious, stressed, or depressed," 18.6 percent had tried vaping because a family member vapes and only 13.5 percent of American students reported ever trying e-cigarettes because they were "available in flavor, such as menthol, mint, candy, fruit or chocolate."[6]

Among current e-cigarette users, defined as having used an e-cigarette on at least one occasion in the 30 days prior to the survey, 43.4 percent cited feelings of anxiety, depression and/or stress as a reason for e-cigarette use, 42.8 percent cited using them to get a buzz from nicotine, 28.3 percent had used them because a friend had, and only 13.2 percent cited flavors as a reason for current e-cigarette use.[7]



Should lawmakers truly care about reducing youth use of both tobacco and vapor products, it is imperative that they understand the reasons why youth are using such products. Student surveys in Ohio and across the United States indicate the flavors are not the reason why youth are using e-cigarettes and policies that address only flavors are unlikely to reduce youth use.

Flavored Vape Bans Correlate with Increases in Combustible Cigarette Use

Flavor bans have had little effect on reducing youth e-cigarette use and may lead to increased combustible cigarette rates, as evidenced in San Francisco, California.[8]

In April 2018, a ban on the sale of flavored e-cigarettes and vapor products went into effect in San Francisco and in January, 2020, the city implemented a full ban on any electronic vapor product. Unfortunately, these measures have failed to lower youth tobacco and vapor product use.

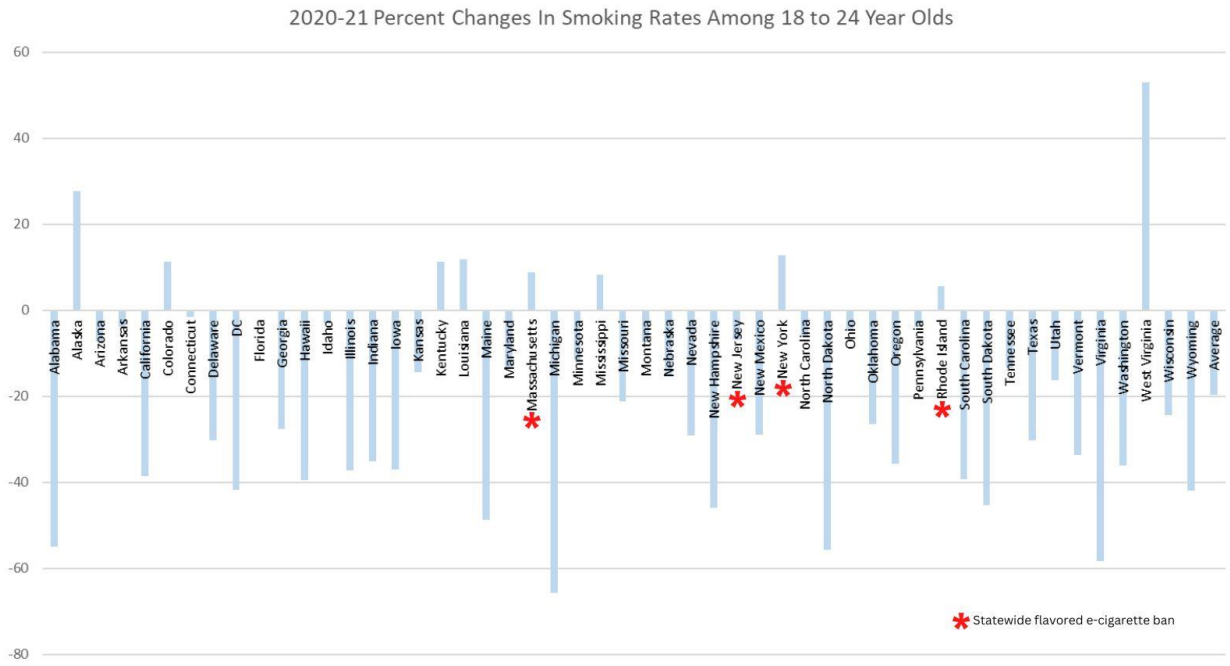
Data from an analysis of the 2019 Youth Risk Behavior Survey show that 16 percent of San Francisco high school students had used a vapor product on at least one occasion in 2019 – a 125 percent increase from 2017 when 7.1 percent of San Francisco high school students reported using an e-cigarette.[9] Daily use more than doubled, from 0.7 percent of high school students in 2017, to 1.9 percent of San Francisco high school students reporting using an e-cigarette or vapor product every day in 2019.

Worse, despite nearly a decade of significant declines, youth use of combustible cigarettes seems to be on the rise in San Francisco. In 2009, 35.6 percent of San Francisco high school students reported ever trying combustible cigarettes. This figure continued to decline to 16.7 percent in 2017. In 2019, the declining trend reversed and 18.6 percent of high school students reported ever trying a combustible cigarette. Similarly, current cigarette use increased from 4.7 percent of San Francisco high school students in 2017 to 6.5 percent in 2019.

Worse, statewide flavor bans have led to increases in smoking rates among young adults.[10] In 2021, according to data from the CDC, in 2021, only 7.4 percent of all American adults aged 18 to 24 years old were currently smoking, and smoking rates among young adults decreased, on average, by 19.7 percent from 2020 to 2021. Only nine states experienced an increase to young adult smoking rates, with three of them having current flavored e-cigarette bans in effect.

In Massachusetts, 7.4 percent of 18- to 24-year-olds were current smokers in 2021. This is an 8.8 percent increase from 2020 when only 6.8 percent of young adults in the Bay State were currently smoking. In New York, young adult smoking rates increased by 12.7 percent from 5.5 percent in 2020 to 6.2 percent in 2021. In Rhode Island, between 2020 and 2021, smoking rates among young adults aged 18 to 24 years old increased by 5.7 percent.

Of the four states with active flavored e-cigarette bans, only New Jersey saw a reduction (6.8 percent) in young adult smoking rates. This is significantly lower than the average rate of reduction among all U.S. young adults.



Lawmakers must refrain from policies that make increased use of combustible cigarettes, as indicated by various local and state flavored e-cigarette bans from across the country.

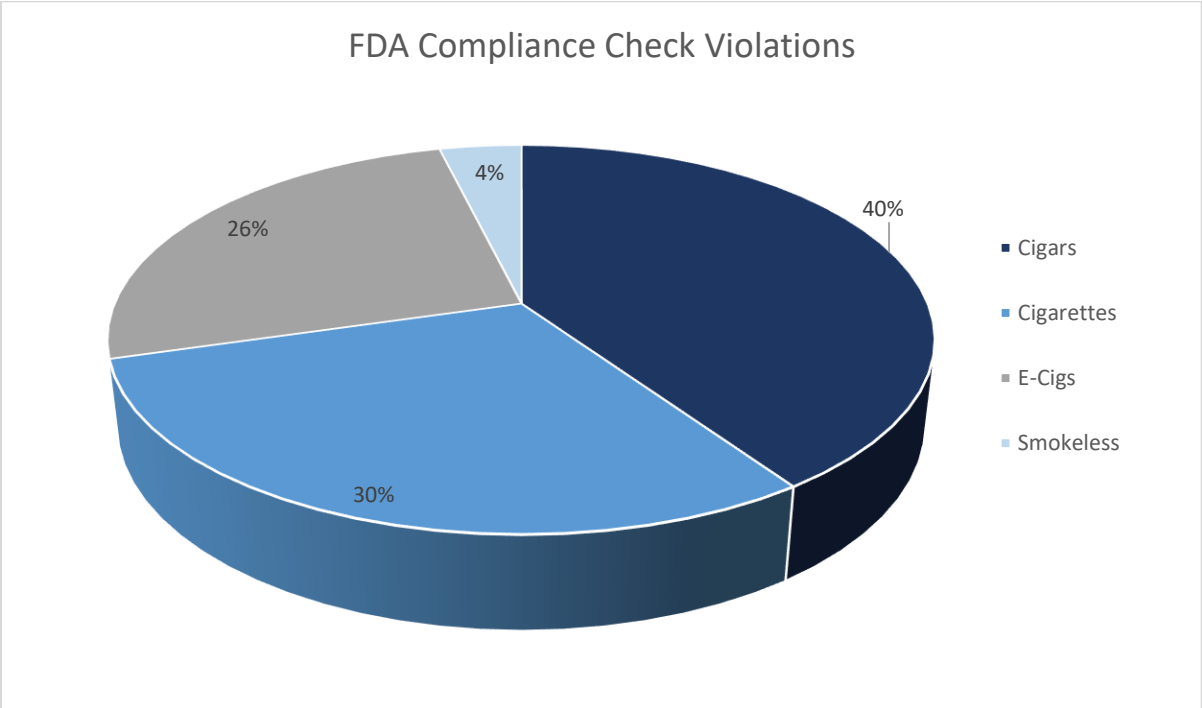
Columbus Retailers Do Good Job Not Selling to Minors

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.[11]

From August 2012 to September 2022, FDA conducted 1,503 inspections in tobacco retailers located in Columbus, OH. Only 184, or 12.2 percent, resulted in the sales of tobacco products to minors.

Of the sales to minors, 74 (40.2 percent of violations and 3.7 percent of inspections) were sales of cigars, 55 (30 percent of violations and 3.7 percent of inspections) were sales of cigarettes and 47 (25.5 percent of violation and 3.1 percent of inspections) were sales of e-cigarettes and vape products.

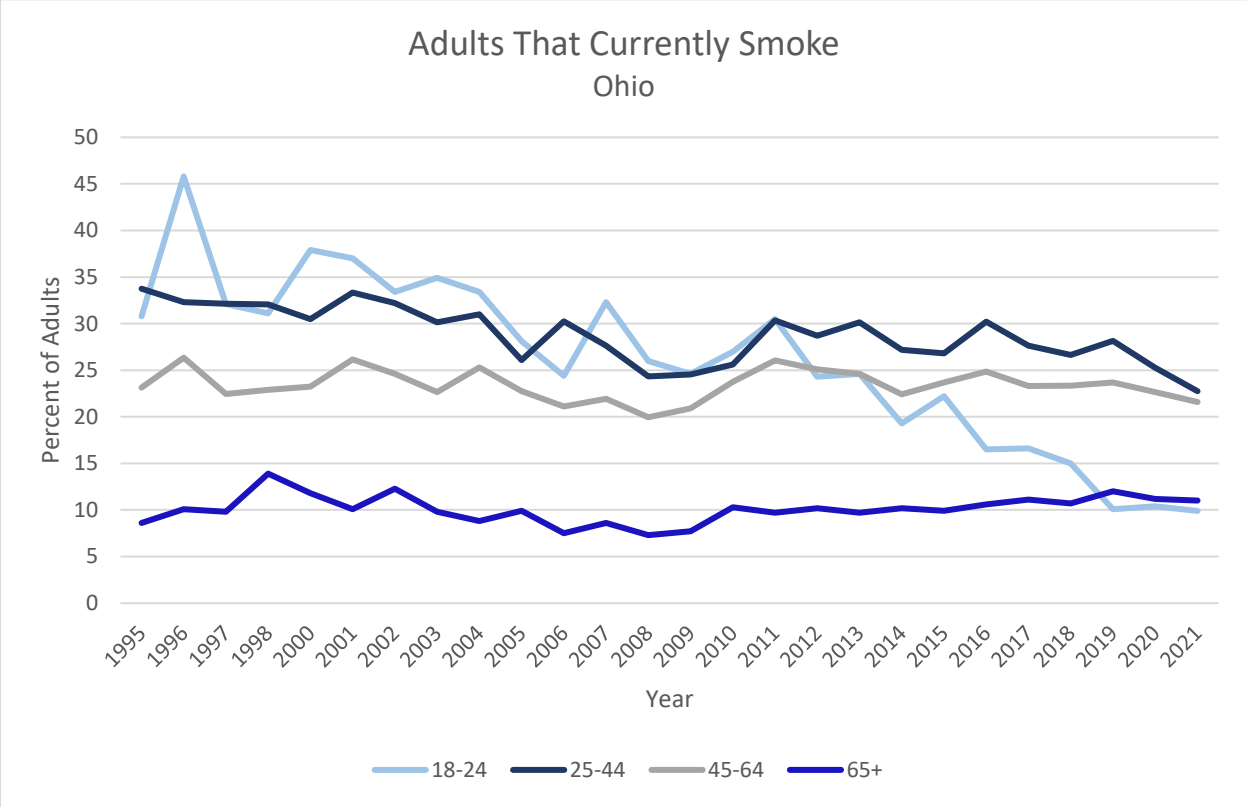
Of retailers with "vape" in their retail name, the FDA conducted inspections on nine such retailers, including standalone vape shops and vape and tobacco stores. Of the inspections, two resulted in sales to minors, accounting for 22 percent of vape shop inspections, and 1.1 percent of all violations.



E-Cigarette Market Emergence Correlates with Significant Declines in Young Adult Smoking Rates

As a novel tobacco harm reduction product, many e-cigarette opponents have erroneously claimed that youth use of vapor products leads to increases in combustible cigarette use. As previously noted, youth cigarette use has steadily declined, and there have been no increases in young adult smoking rates, as evidenced by survey data from the Centers for Disease Control and Prevention's annual Behavioral Risk Factor Surveillance System surveys.

In 2021, among 18 to 24 years old in Ohio, only 9.9 percent were currently smoking. This was a 4.8 percent decline from 2020. Further, since 2012, when e-cigarettes became available across the entire U.S. marketplace, smoking rates have decreased by 59.3 percent with average annual declines of 9.5 percent. Contrastingly, between 2001 and 2010, young adult smoking rates in Ohio decreased by only 27 percent, with average annual declines of 2.4 percent. It should also be noted that since 2018, when the U.S. surgeon general issued an alarm about a youth vaping epidemic, young adult smoking rates in Ohio have declined by 34 percent, with average annual declines of 11 percent.



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.[12]

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 does not correlate with increases in youth cigar use.[13] 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 no show a correlation between increased sales of flavored cigars and cigarettes and youth use of those products.

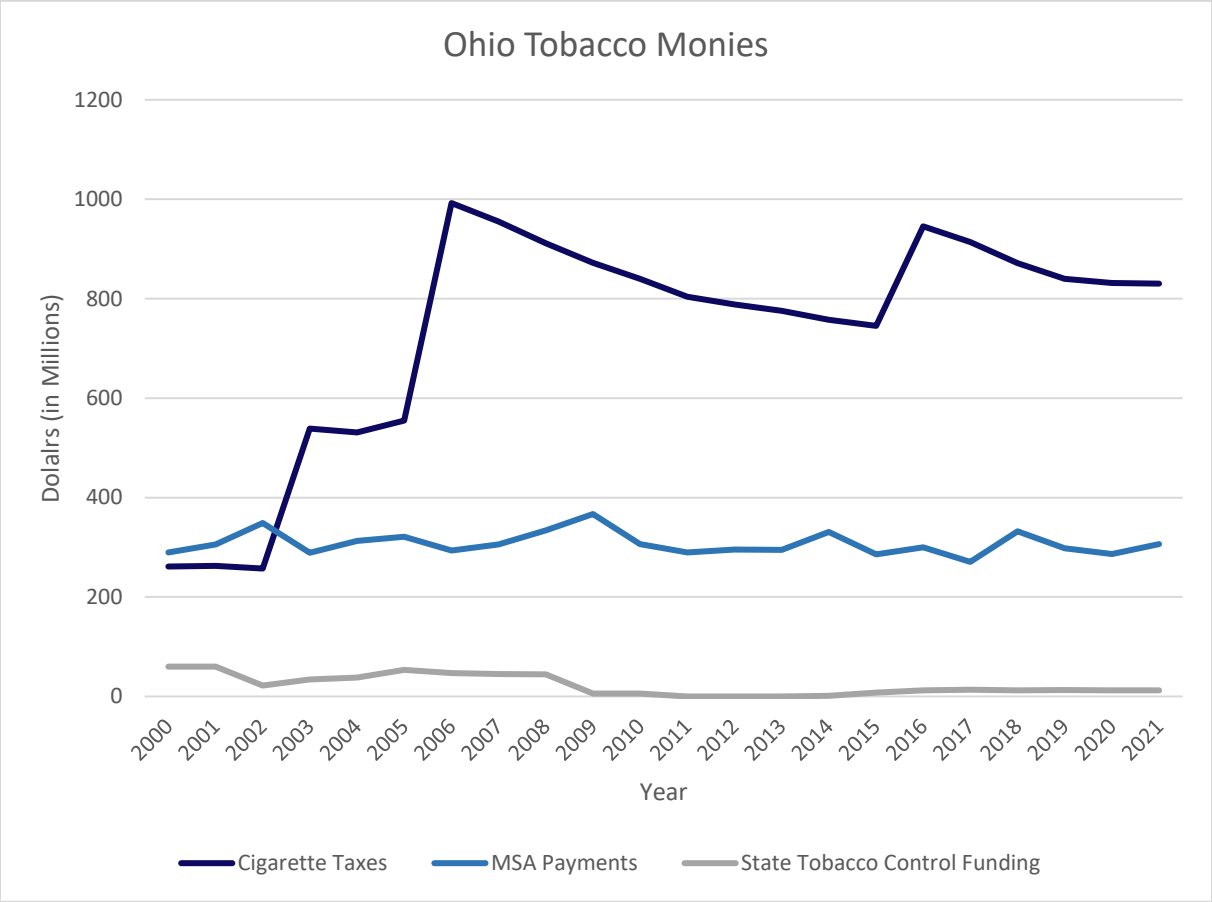
Ohio Needs to Invest More Tobacco Moneys into Education, Cessation and Prevention

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 Ohio 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.

Between 2000 and 2021, Ohio collected an estimated $16.1 billion in cigarette taxes.[14] During the same 20-year period, the Buckeye State increased the tax rate on cigarettes three times. The last tax increase raised the rate by $0.35, to $1.60 per pack. Further, during the same period, the Buckeye State collected $6.8 billion in MSA payments.[15] In fact, Ohio collected over $22.8 billion in 21 years, all attributable to adults who purchased cigarettes in the state.

The state has allocated very little of those tobacco monies towards tobacco control programs. Between 2000 and 2021, only Ohio allocated only $500.8 million in state funding towards tobacco control. This is only 3.1 percent of what the state collected in cigarette taxes and only 7.4 percent of what it received in MSA payments. In fact, for every $1 Ohio received from cigarette taxes and MSA payments, it allocated just 2.1 cents on programs to prevent and help persons quit smoking.



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

Conclusion

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

TAXPAYERS PROTECTION ALLIANCE

Thank you for your time.

---

[1] Ohio Department of Education *et* al, "What exactly is OHYES!," *Ohio Healthy Youth Environments Survey*, https://ohyes.ohio.gov/About.
[2] Ohio Department of Education *et* al., "OHYES! Entire State Report for 2020-2021," *Ohio Healthy Youth Environments Survey*, 2021, https://ohyes.ohio.gov/Portals/0/assets/Results/AllOHYES/2020-2021.pdf.
[3] Ohio Department of Education *et* al., "OHYES! Entire State Report for 2018-2019," *Ohio Healthy Youth Environments Survey*, 2020, https://ohyes.ohio.gov/Portals/0/assets/Results/AllOHYES/All%20OHYES!%202018-2019.pdf?ver=2020-04-24-084127-307.
[4] Ohio Department of Education *et* al., "OHYES! Report for Franklin County – 2019-2020," *Ohio Healthy Youth Environments Survey*, 2020, https://ohyes.ohio.gov/Portals/0/assets/Results/County/2019-2020/Franklin%20County%20-%202019-2020.pdf.
[5] Ohio Department of Education *et* al, *supra* note 2.
[6] Andrea S. Gentzke *et* al., "Tobacco Product Use and Associated Factors Among Middle and High School Students — National Youth Tobacco Survey, United States, 2021," *Morbidity and Mortality Weekly Report*, Centers for Disease Control and Prevention, March 11, 2022, https://www.cdc.gov/mmwr/volumes/71/ss/ss7105a1.htm#:~:text=Reasons%20for%20E%2DCigarette%20Use,23.3%25)%20(Table%206).
[7] *Ibid*.
[8] Lindsey Stroud, "Vaping Up, Smoking Increasing Among Teens in San Francisco – Despite Bans," *Tobacco Harm Reduction 101*, July 28, 2020, https://www.thr101.org/research/2020/vaping-up-smoking-increasing-among-teens-in-san-francisco-despite-bans.
[9] Centers for Disease Control and Prevention, "San Francisco, CA 2017 Results," *High School Youth Risk Behavior Survey*, 2017, https://nccd.cdc.gov/youthonline/App/Results.aspx?LID=SF.
[10] Lindsey Stroud, "Statewide Flavored E-Cigarette Bans Have Led to Increases in Young Adult Smoking," *Townhall*, October 21, 2022, https://townhall.com/columnists/lindseystroud/2022/10/20/statewide-flavored-e-cigarette-bans-have-led-to-increases-in-young-adult-smoking-n2614807.
[11] U.S. Food and Drug Administration, "Compliance Check Inspections of Tobacco Product Retailers," December 21, 2021, https://www.accessdata.fda.gov/scripts/oce/inspections/oce_insp_searching.cfm. Accessed January 15, 2021.
[12] 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/.
[13] 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/.
[14] Orzechowski and Walker, "The Tax Burden on Tobacco Historical Compilation Volume 54," 2021. Print.
[15] Campaign for Tobacco-Free Kids, "Appendix A: History of Spending for State Tobacco Prevention Programs," 2021, https://www.tobaccofreekids.org/assets/factsheets/0209.pdf.