

Trump campaign urges White House to soften proposed flavored vape ban

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Oct. 25, 2019 at 3:50 p.m. EDT

President Trump’s campaign manager Brad Parscale has privately warned the president that his plans to reduce youth vaping by banning flavored e-cigarettes could backfire in the 2020 election — placing Trump’s reelection campaign in the middle of a governmental debate over a major public health issue.

The political lobbying effort comes as the Trump administration is considering whether to continue allowing menthol- and mint-flavored e-cigarette products, according to three people familiar with the deliberations. Allowing these sales would mark a major retreat from a proposed ban announced in September on “all non-tobacco” flavors. Government data shows that nearly two-thirds of high schoolers who use e-cigarettes use mint or menthol flavors.

Parscale has commissioned internal campaign polling to argue that Trump supporters who use e-cigarettes could abandon the president if he follows through on a ban, according to a person familiar with the effort who spoke on the condition of anonymity to discuss internal deliberations.

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Instead, this person said, Parscale has suggested reframing the issue away from flavors to other steps that the government can take to prevent youth use of the products, including a ban on sales of e-cigarettes to anyone under 21, a requirement that stores limit access by locking the products up, and stiffer penalties for selling to underage consumers.

The White House is discussing allowing menthol and mint flavors — a position that would benefit the largest e-cigarette producer, Juul Labs — or allowing only menthol on the theory that it is less sweet and the sole flavor permitted in cigarettes, said two people familiar with the deliberations. No final decision has been made. Those discussions were first reported by Bloomberg News.

Anti-tobacco activists and health groups were livid about the prospect of the White House's backtracking on the flavors.

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“Excluding menthol would be huge — it means that kids will buy menthol,” said Desmond Jenson, an attorney with the Public Health Law Center at the Mitchell Hamline School of Law in St. Paul, Minn. “If you give them one flavor, that’s what they will buy. It doesn’t solve the problem.”

Scott Gottlieb, who served as Trump’s first FDA commissioner, said Friday that the harm to youths of allowing mint and menthol flavors outweighs the benefit to adults of having flavored options.

“If mint and menthol e-cigs remain on the market, the biggest beneficiaries are tobacco companies like Altria and Reynolds which mass-produce these products, harming kids who are largely using these brands,” Gottlieb said. “Data suggests that adults who use e-cigs to successfully quit smoking aren’t using these same products.”

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The Food and Drug Administration declined to comment on whether the administration is considering excluding mint and menthol from its proposed ban. In a statement, it said that the agency in coming weeks will finalize a policy that would “clear the market of unauthorized e-cigarette products in flavors that appeal to kids. The FDA plans to share more on the specific details of the plan and its implementation soon.”

A spokeswoman for the Department of Health and Human Services said she could not comment on the policy while it is still being drafted.

Inside the White House, members of the president’s family, including first lady Melania Trump and senior adviser Ivanka Trump, have been helping to lead the push for a crackdown on youth use of e-cigarettes. The first lady has called e-cigarette use by children a “growing epidemic” with an estimated 5 million underage users.

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“We need to be proactive before this gets out of control,” Melania Trump announced at an Oct. 9 White House event with former teenage users of the products.

The first lady was also present for the Sept. 11 Oval Office announcement by HHS Secretary Alex Azar and acting FDA commissioner Norman “Ned” Sharpless about the proposed ban. Under the plan, flavored products would be required to come off the market and could not return unless specifically cleared by the FDA.

“The youth are drawn to flavored e-cigarettes, including mint and menthol,” Azar said at the event, citing recent research.

Parscale reached out to President Trump after that event to say that the decision was being made too quickly and that Trump needed more data, according to a person familiar with the conversation.

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After the outreach from Parscale, Trump released a cryptic tweet on Sept. 13, which suggested the possibility of a different approach than the one Azar had announced in the Oval Office.

“While I like the Vaping alternative to Cigarettes, we need to make sure this alternative is SAFE for ALL!” Trump wrote. “Let’s get counterfeits off the market, and keep young children from Vaping!”

A Washington Examiner op-ed written by a pro-vaping conservative activist, Paul Blair, with the headline “Banning flavored e-cigarettes might cost Trump reelection,” was circulated at the White House and considered the “opinion of the campaign,” according to a White House official involved in the process.

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“We were getting crushed by the e-cig industry that first 48 hours,” said the official, who called Parscale’s intervention “annoying.”

Trump advisers compiled a binder of evidence supporting the idea of strong new measures to combat youth vaping, according to a person familiar with the effort. The documents included public polling, supportive editorials, statements from the scientific and medical community, and statements from elected leaders. White House officials have said that banning e-cigarette flavors could help Trump with voters outside his core base, including suburban moms.

At the same time, there have been public signs of a crack in White House support for banning all flavors, as Azar and the White House press office originally announced.

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Senior White House adviser Kellyanne Conway suggested to reporters Friday that menthol could be viewed as a type of tobacco flavoring.

“I think the conversation is less about flavors and more about adults and youth,” she said. “I recognize that menthol tastes like tobacco. Many adults like menthol.”

Conservative activists and trade groups organized a protest by e-cigarette users at a recent Trump rally in Dallas and have said that any attempt to restrict flavors would take away the freedoms of adults.

“Flavors are vaping. Vaping is flavors,” said Grover Norquist, the president of Americans for Tax Reform, who declined to say whether he or his group have received funding from the e-cigarette industry. “It is a vote-moving issue in the same way being a home-schooler is or concealed carry.”

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Greg Conley, president of the American Vaping Association, said in a statement that while he is “heartened” to see the White House beginning to back off the flavor ban, “carving out certain flavors to benefit one company simply will not be effective at achieving any of the White House’s goals.”

Conley said in an interview Thursday that mint and menthol account for a relatively low proportion of the sales at vape shops and that exempting them would not save retailers from financial peril. “It won’t satisfy the voters that Trump is trying to appease,” he said.

Rather than a flavor ban, many in the vaping industry would prefer tougher sales restrictions that keep e-cigarettes out of the hands of kids, he said.

Juul, the largest e-cigarette company, has removed all flavors from the market except tobacco, menthol and mint, and it said recently that it was reviewing whether to suspend sales of the latter two. Mint and menthol accounted for almost 60 percent of Juul’s \$3.3 billion in retail sales in the United States last year, according to a Wells Fargo analyst report from last month.

Juul spokesman Austin Finan said the company will continue to refrain from lobbying the administration on its e-cigarette flavor policy and “will fully support and comply with the final policy.”

The company has employed a number of former Trump White House officials, including former counselor to the president Johnny DeStefano, former vice presidential adviser Rebeccah Propp and former communications adviser Josh Raffel.

Altria, the tobacco giant that has a 30 percent stake in Juul, also has said that it is opposed to youth vaping and that it would not lobby against the administration's e-cigarette proposal. "We're not lobbying in opposition to the administration's current e-vapor proposal, and we look forward to reviewing the FDA's new e-vapor guidance when it is issued." Juul's top executive was replaced last month with a former Altria executive.

Jeff Miller, a lobbyist with close ties to Vice President Pence, reported that his firm was paid \$60,000 by Altria from July through September 2019 to lobby HHS, the Executive Office of the President and the White House on "issues related to the regulation of tobacco products including . . . [the] WH Administration Initiative to ban flavored vaping products."

Altria reported paying its in-house lobbyists more than \$2 million to lobby Congress, the FDA, the White House and the Office of Management and Budget on issues including "FDA Guidance on E-Vapor."

A person familiar with Altria's lobbying strategy said the disclosures reflect efforts to gather information — not to take a position on the White House proposed ban.

"They've been clear: Don't get involved in any of the flavor ban issues at all. They just want to know what's going on," said the person, who spoke on the condition of anonymity because they were not authorized to talk publicly. "We make calls to our contacts in government to say, 'Hey, what's going on with the issue, what are you hearing, what do you think they're going to do?'"

The intelligence-gathering has made clear, the person said, that "there's disagreement among folks in the White House. The concern is, there's a lot of adults that switched to mint and menthol to quit smoking. So how do you handle that?"

But Matt Myers, president of the Campaign for Tobacco-Free Kids, said any rollback of the ban to exclude mint and menthol would amount to a “get-out-of-jail-free card” for Juul and “represents the worst of special interest politics.”
