

ISSUE BRIEF

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Government Control of Your Diet: Threats to “Freedom to Eat”

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Many politicians and self-appointed nutrition czars see Americans as incapable of making decisions about a basic necessity of life: eating. Therefore, they feel that government at all levels must try to control their diets. This control means trying to direct people to eat a certain way or expressly prohibiting or banning the consumption of certain foods.

Government should respect the voluntary choices made by individuals when it comes to their diets. The current path of government intervention is leading to greater restrictions on citizens’ freedoms that could eventually result in federal food bans.

The Government-Control Mindset. Two former Agriculture Secretaries, Dan Glickman and Ann Veneman, recently demonstrated the government-control mindset when writing about the Obamacare menu labeling requirement¹:

But changing individual behavior is only possible when supported by an environment that helps make the healthy choice the easy choice.... When families go to restaurants, movie theaters, sports arenas and supermarkets, they should have the

option to eat healthier food and the calorie information they need to make informed choices between various food options.²

The primary justification made for government intervention is the public’s inadequate information regarding nutrition. In fact, the Food and Drug Administration (FDA) claims that inadequate information is a market failure justifying Obamacare’s menu labeling rule.³

In reality, the public already has plenty of information. Restaurants and other businesses respond to consumer demand for nutritional information. Entire industries are built around the public’s demand for dieting and healthy living, from diet sodas to weight-loss programs. The public is inundated with marketing messages regarding health and well-being. When people do not buy the “right” foods, this is not evidence of inadequate information; it is evidence of choices based on complex personal preferences.

Another justification made for government intervention is third-party health care costs.⁴ The allegedly unhealthy habits raise costs for government health care programs; therefore, taxpayers supposedly have an interest in encouraging healthy living.

However, these costs exist *because* of government intervention. If there is a concern for taxpayer costs, government programs such as Medicare can be reformed accordingly.⁵ For private third-party costs, government-imposed restrictions on private insurers and their coverage options can be lifted. Once the government intervention is removed, there are no health care costs to third parties.

Two U.S. Department of Agriculture economists captured the extreme implications of using

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increased taxpayer costs for health care as the basis for government intervention:

Tapping the public purse for health-care expenses does not by itself demonstrate an efficiency problem [i.e., a market failure]. If it did, there would be no end to the number of risky behaviors that we might want to discourage and no end to the public sector's control over individual choices. Many activities, including skiing, unprotected sex, and home repairs involving power tools, raise health-care expenses. Eating raw oysters is clearly a more risky proposition than eating many other foods.⁶

Heads They Win, Tails You Lose. The government is actually concerned about a “public failure,” not a market failure, when it comes to dietary choices. The public is “failing” the government because the public is not doing what the government expects and wants people to do.

For example, when the FDA analyzed the Obamacare menu labeling rule, it acknowledged the competitiveness of the restaurant industry, consumer demand for nutrition information, and the fact that nutrition information is in fact provided to restaurant patrons.⁷ This is all clear evidence that the market is working as intended.

The FDA, though, tried to look past this evidence. To the FDA, the nutrition information was not “sufficient” because the public did not take the FDA's desired actions.⁸ The FDA is working backwards.

If mandatory menu labeling does not work, this failure will likely be used as a justification for more intrusive government intervention, as illustrated by a recent USDA-funded study. Even though the authors acknowledged that their “results provide little hope that calorie recommendations will salvage the apparent weak or nonexistent effect of menu labeling in the field,” they recommended going further and suggested:

[Policies could include] the controversial use of bans or limits, but perhaps a more promising approach would be to incentivize restaurants and manufacturers to promote high-margin, healthier items. This could include, for example, a small discount for a person ordering a combo meal along with a diet soft drink or water rather than a regular soft drink.⁹

There is an underlying arrogance that presumes the government knows what is healthy. The food pyramid released in 1992 is evidence of what happens when the federal government simply tries

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1. For a more detailed discussion of the Obamacare menu labeling requirement, see Daren Bakst, “Obamacare's Menu Labeling Law: The Food Police Are Coming,” Heritage Foundation *Issue Brief* No. 4008, August 6, 2013, <http://www.heritage.org/research/reports/2013/08/obamacare-s-menu-labeling-law-the-food-police-are-coming>.
 2. Dan Glickman and Ann M. Veneman, “A Comprehensive Menu Labeling Standard Is Needed to Support Healthy Choices,” The Huffington Post, April 15, 2013, http://www.huffingtonpost.com/dan-glickman/a-comprehensive-menu-labe_b_3086649.html (accessed August 26, 2013).
 3. Food and Drug Administration, *Food Labeling: Nutrition Labeling of Standard Menu Items in Restaurants and Similar Retail Food Establishments Notice of Proposed Rulemaking, Preliminary Regulatory Impact Analysis*, Docket No. FDA-2-11-F-0172, March 2011, p. 44, <http://www.fda.gov/downloads/Food/IngredientsPackagingLabeling/UCM249276.pdf> (accessed August 26, 2013).
 4. See, for example, Michael McCarthy, “The Economics of Obesity,” *The Lancet*, December, 2004, [http://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(04\)17613-7/fulltext](http://www.thelancet.com/journals/lancet/article/PIIS0140-6736(04)17613-7/fulltext) (accessed August 26, 2013).
 5. For some general Medicare reforms, see Robert E. Moffit, “The First Stage of Medicare Reform: Fixing the Current Program,” Heritage Foundation *Background* No. 2611, October 17, 2011, <http://www.heritage.org/research/reports/2011/10/the-first-stage-of-medicare-reform-fixing-the-current-program>; Robert E. Moffit, “The Second Stage of Medicare Reform: Moving to a Premium Support Program,” Heritage Foundation *Background* No. 2626, November 28, 2011, <http://www.heritage.org/research/reports/2011/11/the-second-stage-of-medicare-reform-moving-to-a-premium-support-program>.
 6. Elise Golan and Fred Kuchler, “Is There a Role for Government in Reducing the Prevalence of Overweight and Obesity?,” *Choices*, 3rd Quarter, 2004, <http://www.choicesmagazine.org/2004-3/obesity/2004-3-03.htm> (accessed August 26, 2013). The economists were not officially writing on behalf of the USDA.
 7. FDA, *Food Labeling*.
 8. *Ibid.*
 9. Julie S. Downs et al., “Supplementing Menu Labeling with Calorie Recommendations to Test for Facilitation Effects,” *American Journal of Public Health*, July 18, 2013, <http://ajph.aphapublications.org/doi/pdf/10.2105/AJPH.2013.301218> (accessed August 26, 2013).

to educate the public, even without imposing any mandates. The food pyramid recommendations were based on poor science, such as not distinguishing between good and bad fats and promoting a large consumption of carbohydrates. Politics also appeared to play a major role in the creation of the food pyramid, which was influenced by food special-interest groups.¹⁰

Ways to Stop the Food Ban Train. The nation is on a path toward federal food bans. New York City has already tried to impose a ban on sugary drinks in sizes larger than 16 ounces. A state appellate court shot down the ban on process grounds, and Mayor Michael Bloomberg has claimed he will take his fight to the highest New York court.¹¹

Food bans may not even be the end. When the government can mandate individual action as it has in Obamacare, it is not far-fetched to think that it could try to mandate that people go to the gym or enroll in a diet program.

The only way to get off this path to food bans is for politicians at all levels of government to start respecting the private choices of individuals and to respect individual freedom. There are some lines the government should never cross. This certainly

includes seeking to control what people eat. For instance, the federal government should:

- Stop creating and funding new labeling mandates and any other requirements that presume that consumers do not have the necessary information to make informed food choices.
- Prohibit federal funding to state and local governments that would be used to impose food bans. The federal government should not force taxpayers to subsidize these violations of individual freedom.

Respect Individual Liberty. The government should not intervene in the most basic and private aspects of our lives—even if there were some alleged indirect social cost. In a free society, people are entitled to live as they deem fit, especially in their personal lives, absent clear and direct harm to others. If the government can control what the public eats, it is difficult to imagine what it could not do.

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10. *Frontline*, “Reassessing the Food Pyramid,” April 8, 2004, <http://www.pbs.org/wgbh/pages/frontline/shows/diet/themes/pyramid.html> (accessed August 29, 2013).

11. See Daren Bakst, “NYC Soda Ban Shot Down Again: Bad Day for the Food Police,” The Heritage Foundation, *The Foundry*, <http://blog.heritage.org/2013/08/01/nyc-soda-ban-shot-down-again-bad-day-for-the-food-police/>.