

**NUTRITION LABELING ON
MENU BOARDS AND MENUS:
A RECIPE FOR FAILURE**

By
Professor Patrick Basham
Dr. John C. Luik
The Democracy Institute

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ABOUT THE AUTHORS

Professor Patrick Basham lectures on health care politics in the Government Department at the Johns Hopkins University. He is the founding Director of the Democracy Institute, a Washington-based public policy research organization.

Basham previously served as a Senior Fellow at the Cato Institute, where he is currently an Adjunct Scholar. Prior to joining Cato, he served as the founding Director of the Social Affairs Center at the Fraser Institute, Canada's leading economic think tank, where he led the Institute's research in the areas of consumer choice and social policy regulation. He wrote his Cambridge University PhD on American and British political marketing.

The author and editor of several books, numerous scholarly articles and research studies, and hundreds of magazine and newspaper articles, Basham has written extensively about health, diet, and obesity. In 2006, London's Social Affairs Unit published his most recent book, *Diet Nation: Exposing the Obesity Crusade*, coauthored with Gio Gori and John Luik.

Basham lectures on both sides of the Atlantic and appears regularly on radio and television, including the BBC, CNN, Fox News, MSNBC, and Sky News. His articles have appeared in the *New York Times*, *Washington Post*, *USA Today*, *New York Post*, *New York Daily News*, *Newsday*, *CBS News Online*, *Forbes*, *American Spectator*, *National Review Online*, *FoxNews.com*, *Sunday Telegraph*, and *The Independent*.

John C. Luik has taught philosophy and management studies at a number of universities, has been Senior Associate of the Niagara Institute of the Conference Board of Canada with responsibility for its work in public policy and leadership and organizational change, and has worked as a consultant for governmental institutions, professional organizations, and corporations in the United States, Canada, Europe, Asia, Africa, the Middle East and Latin America.

He was educated on a Rhodes Scholarship at the University of Oxford where he obtained his B.A., M.A., and D. Phil degrees. His academic interests include public policy, particularly the use of science in policy and the issue of government intervention to change risky behaviors, the ethics of advertising and business, and philosophy. His popular writings have appeared in *TCS*, *The Washington Times*, *The American Spectator*, *The Globe and Mail*, *Spiked*, *The Sunday Telegraph*, *The Financial Post*, *The Western Standard* and *National Review Online*. He is the author of numerous scholarly articles and eight books.

His most recent books are *A Picture of Health? Why Graphic Health Warnings Don't Work*, and (with Patrick Basham and Gio Gori) *Diet Nation: Exposing the Obesity Crusade*. He has previously authored four publications for Washington Legal Foundation: *Dispelling the Myth: Advertising Bans and Alcohol Consumption*, *Losing More than Weight: Unscientific "War" on Obesity Will Trim Personal Freedoms*, *Ideology Masked As Scientific Truth: The Debate About Advertising And Children*, and *Science Through the Looking-Glass: The Manipulation of "Addiction" & Its Influence Over Obesity Policy*.

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INTRODUCTION

Concern about the United States' population's weight gain has led to a variety of policy proposals about how best to deal with what is often referred to as the "fattening of America." One proposal receiving increased prominence is requiring restaurants to include on their menus or menu boards the fat, sodium, and calorie counts for all of their offerings. The California legislature recently passed a law requiring menu labeling, but the bill was vetoed by Governor Arnold Schwarzenegger who termed it impractical and inflexible. Congress has considered the Menu Education and Labeling Act, which would require chain restaurants with twenty or more outlets to provide certain nutritional information. The Food and Drug Administration has also begun studying whether national standards for provision of nutritional information on restaurant menus are necessary, and New York City has reintroduced its menu labeling legislation after the original statute was overturned.

The proponents of this policy believe that consumers are generally uninformed (particularly of the calorie count) about their restaurant meals. Therefore, providing consumers with this information will make a substantial difference to both what and how much they eat, and, consequently, to their weight. As New York City Health Commissioner Thomas Frieden put it when introducing the revised labeling law, “The big picture is that New Yorkers don’t have access to calorie information.”

This WORKING PAPER argues that the research on consumer behavior, information provision, the use of warnings in general, and the use of warnings specifically on menu labeling demonstrates that these assumptions are wrong. As summarized below, the scientific evidence strongly suggests that menu labeling is impractical, ineffective, potentially counter-productive for certain consumers, and highly inappropriate.

I. IMPRACTICAL

Advocates of nutrition labeling often argue that, as with packaged foods purchased in grocery stores, it is an easily implemented process. However, this is not the case.

The reality of restaurant eating is that, far from standard offerings, customers increasingly customize their choices in terms of size, content, method of preparation, accompanying dishes, sauces and toppings. For example, the choice of toppings for a hamburger can change the final

calorie count, not to mention the fat and sodium content, by approximately 40 percent. A Wendy's hamburger, for example, can be prepared in over 200 ways, each with a different calorie count. For example, even in restaurant chains with standardized offerings, the number of fries in a serving, and thus the calorie count, can vary significantly.

These variations also raise the prospect of litigation for negligence or fraud. According to an October 31, 2007 press release, Center for Science in the Public Interest commissioned an independent lab to test the calorie claims made by *Olive Garden* for certain dishes. The results, published in the NUTRITION ACTION HEALTH LETTER (Nov. 2007), found significant differences between the posted calories and the calorie count of the foods tested. Linguine alla Marinara, advertised as containing 550 calories, had instead 790 according to the lab analysis, while Capellini Pomodoro contained 990 calories as opposed to the 640 claimed by *Olive Garden*.

The National Restaurant Association has noted that a sandwich with five ingredients – bread, meat, cheese, lettuce, and tomato – can be prepared in 120 different ways, each one with a different calorie count. A sandwich with ten ingredients could produce 3.6 million permutations. A national restaurant chain that changed one of its sauces discovered that, in turn, this affected the nutritional composition of forty other menu items.

Providing simple calorie counts, let alone additional nutritional information for such a variety of offerings, is simply not practical.

The Canadian Restaurant and Foodservices Association provides two examples of how even “simple” menu items result in enormous nutritional complexity:

Example 1: “Breakfast Special” – 2 eggs, toast, and choice of ham, bacon or sausage, plus juice, coffee or tea. This would require minimal nutritional information for:

- Eggs scrambled, poached, fried, or boiled;
- White or whole grain toast, with or without butter, jam, peanut butter, or honey;
- Ham, bacon, or sausage or a combination of the three; or a
- Fruit bowl instead of meat;
- Orange, grapefruit, cranberry or apple juice; and
- Coffee or tea with or without milk, cream, and sugar.

Example 2: Medium Latte – This would require separate nutritional information depending on whether the drink was prepared with skim, 1%, 2%, whole, or soymilk, with or without sugar, and the choice of flavor shot. The calories in that latte depend on the type of milk being added and range from 160 to 260.

Moreover, the labeling requirement also runs afoul of the fact that many restaurants change their menus on a daily basis, offering, for example, specials of the day. These would require a daily nutritional

analysis, something that is neither feasible nor reasonable in terms of regulatory burden.

Paul Bachman and Davie Tuerck of Suffolk University's Beacon Hill Institute for Public Policy Research recently produced detailed cost estimates for menu analysis.¹ According to these researchers, "Estimates to provide the nutritional analysis run from \$50 to \$100 to analyze an item for calories only, and between \$220 and \$650 for a full nutritional analysis...Altogether, these costs represent a substantial burden to the effected chains. The Ruby Tuesday restaurant corporation, with over 700 locations, cited costs as a reason for abandoning their own pilot program of providing nutritional information on menus."

II. INEFFECTIVE

Unfortunately, it is not simply that menu labeling is impractical. The more serious problem for policymakers is that menu labeling is ineffective in terms of producing the behavioral changes that its proponents envision.

Tellingly, the American public's girth has grown somewhat even as information on food labels have increased. Over a decade of nutritional labeling, including calorie content, of processed food has failed to have any significant impact on obesity levels. As former Food and Drug Administration Commissioner, Dr. Lester Crawford told the 2004 World

¹Paul Bachman and David G Tuerck, *The Costs and Benefits of Implementing Proposed Legislation to Curb Obesity in Maine*, BHI Policy Study, Beacon Hill Institute for Public Policy Research (Mar. 2005).

Obesity Congress and Expo, “What we did in making nutrition labeling mandatory did not help obesity. In fact, some people would say it hurt...The first thing we notice is this contradiction about the fact that we had mandatory nutrition labeling for ten years, and the situation got steadily worse during that time.”²

The U.S. Department of Agriculture’s Economic Research Service conducted a study that analyzed the nutritional quality of five product categories before and after the Nutrition Labeling and Education Act. It found little change, contradicting the claims of the proponents of labeling that providing consumers with nutritional information would change both products and consumption habits.³

Furthermore, research has found that nutritional information has made no difference in food density choices. As the authors of a 2002 research study concluded, “In this population, explaining the concept of energy density and providing nutritional information during meals had no overall impact on the weight of food consumed.”⁴

For instance, multiple studies have found that providing nutritional labeling brings about no net nutritional gains because consumers have a

²Dr. Lester Crawford, World Obesity Congress and Expo, Washington D.C., July 12, 2004.

³F Kuchler et al., *Obesity Policy and the Law of Unintended Consequences*, AMBER WAVES, U.S. Department of Agriculture, Economic Research Service: 26-33 (June 2005).

⁴T Kral et al., *Does nutritional information about the energy density of meals affect food intake in normal-weight women?*, *APPETITE* (39): 132-145 (2002).

defined “nutrient budget.” This means that they tend to reward themselves for, for example, calorie or fat deprivation by increasing their calorie or fat content with another dish at the same meal or at a latter meal. Shide and Rolls⁵, Caputo and Mattes⁶, Chapelot et al.⁷ and Aaron et al.⁸ found that when subjects were told about a lower fat dish they then increased their subsequent energy intakes, resulting in no net reduction in calories or fat.

These findings were confirmed in a 2004 Food and Drug Administration analysis of the evidence on food labeling. This study by the Center for Food Safety and Applied Nutrition found that such factors as whether an individual was on a diet, attitudes toward nutrition, the price of food, health claim versus nutrition information, and taste (or perceived taste) were more salient than nutrition information in influencing consumer choice.⁹

⁵D. Shide and B. Rolls, *Information about the fat content of preloads influences energy intake in healthy women*, J. OF THE AMERICAN DIETETIC ASS'N (95): 993-998 (1995).

⁶F. Caputo and R. Mattes, *Human dietary responses to perceived manipulation of fat content in a mid-day meal*, INT'L. J. OF OBESITY (17) 237-240 (1993).

⁷D. Chapelot, et al., *Cognitive factors in the dietary response of restrained and unrestrained eaters to manipulation of the fat content of a dish*, APPETITE (25) 155-176 (1995).

⁸J. Aaron et al., *Paradoxical effect of a nutrition labeling scheme in a student cafeteria*, NUTRITION RESEARCH (15) 1251-1261 (1995).

⁹Center for Food Safety and Applied Nutrition, Food and Drug Administration, *Helping Consumers Lead Healthier Lives through Better Nutrition: A Social Sciences Approach to Consumer Information, Food Choices and Weight Management*, A Report from the Division of Market Studies Office of Scientific Analysis and Support (Jan. 2004).

Summarizing some of the studies on the effectiveness of labeling, Golan et al., from the U.S. Department of Agriculture, recently noted that, “These studies highlight the observation that consumers often make hasty food choices in grocery stores and usually do not scrutinize food labels. Researchers from Purdue University and the Ecole Nationale Supérieure de Génie Industriel in France found that most participants in a marketing experiment did not notice the ‘GMO’ (genetically modified organism) label on a food product until the label had been projected in large letters on a big screen.”¹⁰ They also note that warning fatigue – the ubiquity of warnings in general or too many warnings and information on a single product may “cause consumers to disregard the label completely.” As they observe, “And even if consumers do consider each piece of information on a label, they may find it difficult to rank the information according to importance.” For example, out of 10 warnings on a label, consumers may have difficulty picking out the most important. As a result, consumers may underreact to important information or overreact to less important information.”¹¹

These failures with respect to influencing consumer behavior have been replicated in studies in restaurant settings as well. For example, a British study published in 2000 in the journal, *Public Health Nutrition*,

¹⁰Elise Golan et al., *Do Food Labels Make a Difference? ... Sometimes*, AMBERWAVES: 11-17 (Nov. 2007).

¹¹*Id.*

found that providing information about healthy and unhealthy food “did not substantially affect expectations of sensory quality and acceptance, or overall energy and fat intake.” What providing information about healthy and unhealthy food did succeed in doing was to *decrease* the number of people selecting the healthier, lower-fat option.¹²

A study published in 2003 in the journal *Military Medicine*, researched the effectiveness of nutrition labeling and warnings in an Army cafeteria.¹³ The study found no significant difference in the sales of the labeled items.

In a study just published in the *Journal of Consumer Research*, Pierre Chandon and Brian Wansink found that restaurant customers already discriminated among fast food restaurants based on their understanding of the calorie count of the food and its healthiness, even in the absence of menu labeling. For example, in their study *Subway* meals were rated as significantly healthier than *McDonald's* meals.¹⁴

Holdsworth et al. conducted a workplace intervention in England in which the researchers provided the type of menu information about

¹²K Stubenitsky et al., *The influence of recipe modification and nutritional information on restaurant food acceptance and macronutrient intakes*, PUBLIC HEALTH NUTRITION (3): 201-209 (2000).

¹³A Sproul et al., *Does Point-of-Purchase Nutrition Labeling Influence Meal Selection: A Test in Military Cafeteria*, MILITARY MEDICINE (168): 556-560 (2003).

¹⁴Pierre Chandon and Brian Wansink, *The Biasing Health Halos of Fast-Food Restaurant Health Claims: Lower Calorie Estimates and Higher Side-Dish Consumption Intentions*, J. OF CONSUMER RESEARCH (34): 301-314 (2007).

healthier choices favored by so many labeling advocates.¹⁵ In the British context, this involved the Heartbeat Award (HBA), a national nutrition-labeling program designed to encourage the provision of healthier food choices, healthy eating and to change consumer eating behavior. This study is unique in that it tried to determine whether such information provision made any long-term difference. The researchers found that, “Overall, the HBA had a modest impact on dietary intake.” This is an understatement, to say the least. There was no statistically significant change in consumption of 16 of 20 foods studied and the authors, themselves, note in the study “the poor impact of the HBA scheme.”

In a review of twenty different nutritional labeling programs published in the *Journal of Human Nutrition and Dietetics*, Holdsworth and Haslam found that the programs “may not have an immediate effect on food choice” and there was no basis for concluding that the programs “resulted in long-term behavior changes.”¹⁶

For instance, included in the Holdsworth review are a series of studies by Mayer et al. which examined the effect of calorie labeling over a

¹⁵M Holdsworth et al., *Does the Heartbeat Award Scheme in England Result in Change in Dietary Behavior in the Workplace?*, HEALTH PROMOTION INTERNATIONAL (19): 197-204 (2004).

¹⁶M Holdsworth and C Haslam, *A Review of Point-of-Choice Nutritional Labeling Schemes in the Workplace, Public Eating Places and Universities*, J. OF HUMAN NUTRITION AND DIETETICS (11): 423-445 (1998).

four week period.¹⁷ The point of the intervention was to increase consumption of salads, low-fat milk and fruit. However, the study found that calorie labeling did not significantly lower overall calorie intake. Again, a study by Hoerr and Loudes which examined whether nutritional labeling of vending machine snacks would increase the sales of healthy choices found that healthy snacks were unpopular.¹⁸ Finally, a study on restaurant menu labeling examining whether labeling would result in changes in sales of low fat/low cholesterol foods found that the labeling had no statistically significant effect with taste – not nutrition or calories – being the primary reason given by patrons for their entrée choice.¹⁹

These failures have been confirmed in even more recent research that has focused on adolescent behavior. Yamamoto et al., for example, asked adolescent volunteers age 11-15 to order dinner from three different restaurant menus and then to order from a second set of modified menus which had the same items but included both calorie and fat content for each item on the menu. The vast majority of subjects did not change any of their orders even when provided the calorie and fat content information. As the authors concluded, "The provision of calorie and fat content

¹⁷J. Mayer et al., *A multi- component intervention for modifying food selections in a worksite cafeteria*, J. NUTR. EDUC. 19: 227-280 (1987).

¹⁸S. Hoerr and V. Loudes, *Can nutrition information increase sales of healthful vended snacks?*, J. SCH. HEALTH 63: 386-390 (1993).

¹⁹C. Albright et al., *Restaurant menu labeling: impact of nutrition information on entrée sales and patron attitudes*, HEALTH EDUCAT. QUARTERLY 17: 157-67 (1990).

information on the menus did not modify the food ordering behavior for the majority of adolescents."²⁰

As Jayachandran Variyam of the U.S. Department of Agriculture observed in 2005, "These findings suggest that the benefits of labeling may be small or uncertain at best."²¹ All of this suggests, as Fred Kuchler et al. of the U.S. Department of Agriculture's Economic Research Service notes, that the "effect of nutritional information on diet in FAFH [food away from home] settings may be modest."²²

There are a variety of reasons why menu labeling is ineffective in changing consumer behavior.

First, there is considerable evidence that consumers are not unaware of the nutrient content, including calories, of the food they consume away from home. In other words, the assumption of the advocates of menu labeling, such as New York City's Thomas Frieden, that there is a food information deficit is simply not true.

A 2003 Gallup Poll, for example, found that two-thirds of consumers believed that fast food was not healthy for them. Based on the results from the Diet and Health Knowledge Survey, the U.S. Department of Agriculture

²⁰J. Yamamoto et al., *Adolescent fast food and restaurant ordering behavior with and without calorie and fat content menu information*, J. OF ADOLESCENT HEALTH 37: 397-402 (2005).

²¹Jayachandran N Variyam, *Nutrition Labeling in the Food Away From Home Sector: An Economic Assessment*, Research Report No 4, U.S. Department of Agriculture, Economic Research Service (Apr. 2005).

²² *Supra* note 3.

reports “most U.S. consumers have basic nutrition knowledge and that they can discriminate among foods on the basis of fat, fiber, and cholesterol. Most are aware of health problems related to certain nutrients.”²³

In 2005, the U.S. Department of Agriculture’s Economic Research Service examined whether there was convincing evidence that obesity and overweight are the result of marketplace failure. The study concluded that, “The sheer volume of media coverage devoted to diet and weight makes it difficult to believe that Americans are unaware of the relationship between a healthful diet and obesity.”²⁴

Moreover, contrary to the claims that, for instance, New Yorkers “don’t have access to calorie information,” there are currently multiple sources of nutritional information available to consumers from tray liners, online calorie calculators to already existing in-store displays.

First, there is the general problem which plagues policy involving social marketing which is the assumption that providing information and ensuring that the information is recalled means that the information has been accepted and that it will influence behavior. Numerous health interventions come to grief over this faulty conflation of changing

²³Diet and Health Knowledge Survey, U.S. Dept. of Agric., 1994-1996.

²⁴F Kuchler et al., *Is There Evidence That Obesity and Overweight Are The Result of Market Failure?*, AMBER WAVES, U.S. Department of Agriculture, Economic Research Service, June 2005.

knowledge and changing behavior. Yet the justification for menu labeling rests squarely on such an assumption. But as Adler and Pittle note, “A central difficulty social marketers encounter is the tenuous relationship between increased knowledge and changes in attitude. A consumer’s ability to recall the specifics of an information campaign does not necessarily mean that the consumer agrees with the object of the campaign.”²⁵

Only one piece of research, published a year ago in the *American Journal of Public Health*, supports nutrition information on menu boards and menus.²⁶ This study concluded that, “Provision of nutrition information on restaurant menus could *potentially* [emphasis added] have a positive impact on public health by reducing the consumption of less-healthy foods.” Even the authors of this research supporting menu labeling acknowledge that consumers clearly recognize that less healthy food options have more calories and fat than more healthy options. This constitutes an implicit acceptance of the fact that the major goal of menu labeling – the provision of information for healthy eating and calorie restriction – has already been achieved.

²⁵R. Adler and R. Pittle, *Cajolery or Command: Are Education Campaigns an Adequate Substitute for Regulation?* YALE J. ON REGULATION 1: 159-193 (1984).

²⁶S Burton et al., *Attaching the Obesity Epidemic: The Potential Health Benefits of Providing Nutrition Information in Restaurants*, AM. J. OF PUBLIC HEALTH (96): 1669-1675 (2006).

Second, despite consumers' understanding of healthy eating, studies show that for many consumers, particularly in restaurant settings, taste rather than nutrient content or calories is the primary determinant in food selection. As Albright et al.'s restaurant patrons reported, "Taste was the primary reason given by patrons for their entrée choice, regardless of whether or not it was labeled."²⁷ Economists recently studied the attitudes and responses of restaurant diners to a healthy eating campaign. The study, presented to the American Agricultural Economics Association 2002 annual meeting, found that even such a healthy eating campaign aimed at improving nutrition in restaurant meals had a limited effect.²⁸ According to the researchers, this disappointing outcome is due to the fact that, "time-pressured, convenience-seeking diners, who place a high importance on taste, continue to view healthy menu items as less appealing options."

In effect, changing consumer eating habits is *not*, as suggested by the advocates of menu labeling, simply a matter of providing more information. Rather, eating habits are driven by a more fundamental issue: individual taste. As Acharya et al. write about their healthy dining

²⁷ *Supra* note 19.

²⁸R Acharya et al., *Restaurant Diners' Attitudes and Responses to a Healthy Dining Campaign*, paper presented to the American Agricultural Economics Association Annual Meeting, Long Beach, California, July 28 to 31, 2002.

study, “This would suggest that the dietary health message is understood, but there is still some reluctance to accepting healthy menu items.”²⁹

This research finding has considerable implications for evaluating the genuine, as opposed to the stated, motivation for pushing menu labeling. If, in fact, there is not an information deficit about nutrients and calories, that is, if most consumers know the difference between eating a doughnut and a green salad, then perhaps the real agenda of those championing menu labeling is not the neutral effort of providing information. Rather, it may be an ideologically driven attempt to coerce restaurants into changing their offerings in order to compel consumers into changing what they choose to eat.

Third, menu labeling is ineffective as a policy tool because consumers tend to not use labels in making food purchasing decisions. As agricultural economist Elise Golan and her colleagues wrote in their 2001 study of the economics of food labeling, menu labeling’s ineffectiveness stems from the fact that consumers often make hasty food choices and completely ignore food labels.³⁰ A study by Lorna Aldrich sought to understand how consumers use information in determining their

²⁹*Id.*

³⁰E Golan et al., *Economics of Food Labeling*, AGRICULTURAL ECONOMIC REPORT NO 793, U.S. Department of Agriculture, Economic Research Service, Jan. 2001.

purchases and consumption patterns.³¹ Aldrich found that a consumer's income, not labeling, was the key factor in determining which foods were purchased and consumed. In the real world, income cancelled out the effects of labeling information.

Perhaps, the most conclusive evidence of the empirically unsupported case for menu labeling is to be found in the candid comment of the one of the most vigorous champions of menu labeling, Dr. Michael Jacobson, executive director of the Center for Science in the Public Interest. Reacting to the decision of one restaurant voluntarily to adopt menu labeling, Dr. Jacobson told *Time* that, regrettably, "too many people will look past the calorie, fat, carb and fiber counts on the menu."³² Indeed, no critic of compulsory nutrition information on menu boards and menus could have put it better.

III. COUNTERPRODUCTIVE

Menu labeling also fails to work because many consumers see labeling, particularly about calories, as a form of government warning, that is, "Don't eat this food, it has too many calories!" The research evidence demonstrating the failure of such warnings is legion.

³¹L Aldrich, *Consumer Use of Information: Implications for Food Policy*, AGRICULTURAL HANDBOOK NO 715, U.S. Department of Agriculture, Economic Research Service, July 1999.

³²Michael Jacobson, quoted in *The Assault on Personal Choice*, TIME, June 4, 2004.

For example, warnings on alcohol labels are intended, like menu labels, to provide crucial information to potential consumers. Almost a decade after the federal government mandated warnings on alcohol labels, neither the risk perception nor the drinking behavior of those drinkers most likely to be a risk to themselves or to others has changed. In a study published in *Alcohol Health and Research World*, researcher Janet Hankin concluded that, “Among high risk drinkers, the label law clearly has *not* affected drinking behavior.”³³ Another study which looked at the effects on adolescents of warning labels on alcohol reported that “there was no beneficial change attributable to the warning in beliefs, alcohol consumption or driving after drinking.”³⁴

The reason that such label warnings fail is that for many consumers, particularly those who display what psychologists call “reactance,” that is, a high level of resistance to the demands of outside authority and control, the menu label with its implicit warning represents an attempt to unreasonably shape and control their behavior. Therefore, it makes these consumers more likely to ignore, rather than to pay attention to, the information on the label. In this manner, to the extent that they are perceived as soft warnings, labels can be profoundly counter-productive, as they can lead

³³J Hankin, *FAS Prevention Strategies: Passive and Active Measures*, ALCOHOL HEALTH AND RESEARCH WORLD (18): 62-66 (1994).

³⁴Mackinnon et al., *The alcohol warning and adolescents*, AM. J. OF PUBLIC HEALTH : 1589-1594 (2000).

not only to the information being ignored, but to behavior directly at odds with the health-based message. As Pawan observes, in some settings identifying menu items as low calorie or healthy can antagonize customers who see this as attempting to interfere with their freedom of choice.³⁵

Indeed, a recent survey of consumers' attitudes to calorie labeling in restaurants reveals a considerable indifference, if not resistance, to the idea. Krukowski et al. found that 44-57% of those surveyed reported that they were not likely to use food label information in restaurants if it were available.³⁶

In effect, menu labeling is a form of what researchers Chandon and Wansink have recently described as "finger-pointing toward food indulgences." As they argue, "This can be counterproductive because temptations abound, and willpower is notoriously fallible. The risk is that this accusatory approach may lead to demotivation and create a backlash."³⁷ Indeed, they suggest that rather than making the provision of information mandatory, a "less controversial solution would be to launch educational campaigns encouraging people to examine critically the health

³⁵A. Pawan, *Nutritional quality: a contract caterer's perspective*, J. R. SOC HEALTH 113: 324-26 (1993).

³⁶R. Krukowski et al., *Consumers many not use or understand calorie labeling in restaurants*, J. OF AM DIETETIC ASSOCIATION 106: 917-920 (2006).

³⁷Pierre Chandon and Brian Wansink, *The Biasing Health Halos of Fast-Food Restaurant Health Claims: Lower Calorie Estimates and Higher Side-Dish Consumption Intentions*, J. OF CONSUMER RESEARCH (34): 301-314 (2007).

claims associated with various restaurants and foods in addition to evaluating the quality and quantity of the ingredients.” As Adler and Pittle observe “audience attitudes may actually harden against the information conveyed in public interest messages.”³⁸

There is a second way in which menu labels can be counterproductive. Frequently, they provide unclear and, indeed, mixed nutritional messages to consumers. Based simply on calories, for instance, a glass of milk will show up with more calories than a soft drink, a yogurt with more calories than a bag of chips, and a bagel with more calories than a doughnut. Though the milk, yogurt, and bagel might offer superior nutrition, a consumer making a decision simply on a menu with calories might well opt for the less calorie-laden, yet less nutritionally balanced, choice.

IV. INAPPROPRIATE

This WORKING PAPER has argued that menu labeling is both impractical and, more crucially, ineffective, as well as potentially counterproductive for certain consumers.

There is, however, another problem with such proposals. These proposals are deeply inappropriate. This is because the evidence suggests that this is not regulation designed to provide information for “informed”

³⁸*Supra* note 25.

choices, but regulation designed to change supplier and consumer behavior based on the assumption that the regulator knows best.

Given that there is no compelling evidence that there is a market failure in terms of information provision, or that American consumers are profoundly and dangerously unaware of the caloric or nutritional consequences of their food choices, or, most crucially, that menu labeling will actually work, then labeling is nothing more than a form of soft stigmatization in which the government attempts to use calories to declare otherwise legal foods as in some way illegitimate. In effect calories are really a shorthand for the fact that certain foods are effectively “bad.” And since providing this sort of allegedly neutral information will probably not work to change consumer preferences, there will be continued pressure to replace or augment such information with full-fledged warnings, modeled no doubt on cigarette warnings, advising consumers to avoid certain inappropriate foods completely on the grounds that they lead to obesity, ill-health and death.

Such social engineering lies beyond the scope of appropriate regulation. If the debate over nutrition information and menu labeling demonstrates anything, it reveals that, as with so much in the national discussion about obesity, there is a major failure not in providing people with information about food, calories or nutrition, but in personal

motivation to change. In a liberal democracy, that is something that is well outside the government's regulatory orbit.