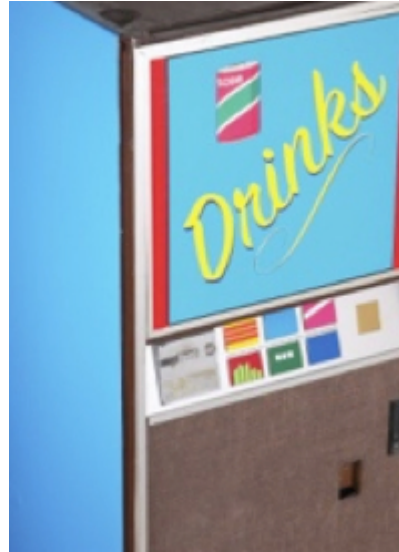




Written by [Michael Tennant](#) on August 30, 2010

ObamaCare: Counting Calories, Not Costs

You may have been aware that the Patient Protection and Affordable Health Act, better known as ObamaCare, mandates that chain restaurants with at least 20 locations display nutritional information about the items on their menus. You may not, however, have been aware that the same law also requires vending-machine operators to display calorie counts for all items in their machines.



Section 4205 of the act states: “In the case of an article of food sold from a vending machine that ... is operated by a person who is engaged in the business of owning or operating 20 or more vending machines, the vending machine operator shall provide a sign in close proximity to each article of food or the selection button that includes a clear and conspicuous statement describing the number of calories contained in the article.”

[According](#) to CNSNews.com, the Food and Drug Administration has ruled that both the restaurant and vending-machine provisions “took effect on the day Obama signed the bill.” While the FDA “has laid out detailed instructions for how chain restaurants should display the calorie counts of each menu item, along with definitions of each term involved in the regulation,” says the report, it “has not managed to give similarly detailed guidance to vending machine operators. In fact, the FDA guidance produced on the question thus far has only reiterated the law’s mandate” that vending-machine operators post calorie counts for the items in their machines.

The result has been confusion among vending-machine operators, according to Neal Monroe of the National Automated Merchandising Association, which represents such operators. Monroe told CNSNews that “he was told by the FDA that they were ‘still trying to get their arms around’ how to implement the provisions of the law.”

The FDA [says](#) that it anticipates issuing official guidance in December, but Monroe says the agency told him they “can’t promise any guidance or regulations until March of next year” — an entire year after the bill became law.

To its credit, the FDA seems to recognize the difficult situation its delay is creating for both restaurant owners and vending-machine operators, and has announced that it “expects to refrain from initiating enforcement action until after a time period established in the final guidance.” It also requests “comments on the appropriate time period for enforcement after the issuance of final guidance.”

This writer respectfully suggests a time period of approximately one year, for three reasons.

First, such mandates are entirely outside the federal government’s enumerated powers in the Constitution. Though the political hacks who pushed ObamaCare through Congress actually had the



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audacity to claim that the law is constitutional because individuals' healthcare "substantially affects interstate commerce" (Section 1501), this is a ludicrous assertion. If the Interstate Commerce Clause empowers Congress to mandate everything from the purchasing of health insurance to the labeling of vending-machine items, then Congress's power is virtually unlimited — a far cry from the [view](#) of James Madison that the federal government's powers under the Constitution were to be "few and defined."

Second, the law interferes with the rights of private property and free exchange. Vending machines, as private property, should not be forced to display anything their owners do not wish them to display. Vending-machine customers, by the very act of purchasing items that do not display calorie counts in advance, signify their acceptance of that state of affairs. If customers demanded calorie counts, machine operators would post them.

Third, the new mandate is going to increase costs for both vending-machine owners and, in turn, customers — a bad idea anytime but especially during an economic downturn. Monroe told CNSNews that "a vending operator who has just 20 machines is making less than \$4,000 a year in profit. And these regulations cost between \$3 and \$100 per machine." Operators will have to find space in their already cramped machines for the new labeling, have the new labels created and installed, and then change them every time they change the selections in the machine. It's easy to sit in Washington and dream up these supposedly beneficent rules and regulations. It's much harder for the little guy who's barely scraping by to adhere to all of them — yet he is the one who will take what Monroe described as "a pretty tough economic hit" from ObamaCare.

Of course, vending-machine operators aren't the only Americans who will be taking a hit as a result of this monstrosity. We will all be suffering from it sooner or later in the form of higher taxes, increased health-insurance premiums, and lower-quality healthcare. ObamaCare needs to be [repealed](#), whether through an act of Congress or through state nullification.

What's good for the goose is good for the gander, too. If vending-machine customers must be made aware of the negative qualities of their selections before purchasing them, then congressmen and senators ought to be forced to consider the costs in cash and liberty of every bill before they vote on it. Sadly, just as the vending-machine mandate is unlikely to dissuade most people from buying a candy bar, so this suggested congressional mandate — given the current makeup of Congress — is unlikely to make much difference in which laws are passed. The bums, as it were, need not only to be thrown out but to be replaced with people with a passion for freedom.





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