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The US Food and Drug Administration made national headlines when, following legislation passed by Congress in 2009, it sought to compel cigarette manufacturers to devote half of the front and back of each pack to health warnings and graphic images of potential damage, such as diseased lungs. At first glance, many would argue that this is beneficial for people. Many countries have already adopted similar regulations. But are such regulations constitutional? Even if they are, is there any evidence that such speech regulations benefit consumers?

On the question of constitutionality, the verdict is in. In November 2011, a federal court struck down the FDA regulations as a violation of the First Amendment. Last March, Attorney General Eric Holder said that the government would not appeal the decision to the Supreme Court.

The government's decision not to appeal the judgment is a welcome recognition that mandated speech is at odds with the First Amendment concerns. There is no fine print in the First Amendment to the constitution. No conditions impinge on freedom of speech, which includes the right to decide what not to say.

Despite the First Amendment's clear language, for nearly 80 years of the 221-year life of the Bill of Rights, lawmakers have restricted the speech of sellers. Moreover, courts have frequently acquiesced. Lawmakers and judges have nullified the First Amendment based only on their judgments that the benefits of speech restrictions will outweigh the costs.



This brings us to the second, question. Is there evidence that mandatory disclaimers work? A recent issue of the *Journal of Public Policy & Marketing* published the results of an experiment we conducted to measure the effects of mandatory disclaimers on consumers' decisions. Our fieldworkers showed two advertisements for dentists offering implant dentistry to 317 people who were recruited in a Florida shopping mall. All subjects were shown an ad for a dentist who made no claim to have credentials for performing implant dentistry and another ad for a dentist certified by the American Academy of Implant Dentistry (AAID). Half of the subjects were shown a version of the credentialed dentist's ad that included a disclaimer that the state of Florida had mandated. The disclaimer stated that the American Dental Association did not recognise the AAID as 'a bonafide specialty accrediting organisation.'

Our fieldworkers asked the subjects which dentist they would recommend to a friend in need of implant dentistry services. The subjects exposed to the mandatory disclaimer were more likely to recommend the dentist without implant dentistry credentials. Moreover, they drew false and damaging inferences about the credentialed dentist, apparently believing they were being warned that there was something suspect about the credentials. Our findings convinced a Florida court that the disclaimer was unjustified.

Was the Florida disclaimer unusual in causing harm to consumers? No, quite the opposite. Previously published experiments show that admonishments to change or avoid behaviours typically have effects opposite to the original intention. For example, in a laboratory experiment, 155 subjects exposed to an advertisement (picture of a bottle or can of alcoholic beverage with label) with the US Surgeon General's warning displayed underneath, rated benefits as greater and risks as lower than subjects who were given the advertisement without the warning. In addition, male subjects exposed to the warning reported higher drinking intentions than those who were not.



Indeed, all of the eighteen experimental studies we found that provided evidence that was relevant to the effects of mandatory disclaimers found that they confuse people. Additionally, in all of the fifteen studies that examined perceptions, attitudes, or decisions, the disclaimers were ineffective or harmful.

Our examination of the evidence has found no support for the idea that governments can help consumers by imposing speech mandates. Subjecting the Bill of Rights to even properly conducted cost-benefit analysis is, however, surely contrary to the intentions of the framers, who sought to protect hard-won rights in perpetuity. The framers' understanding of human nature has stood the test of time.

Free speech is the right of everyone; there is no reason to deny that right to sellers.