

November 3, 2015

Hon. Joe Pitts, Chairman
Subcommittee on Health
Committee on Energy and Commerce
U.S. House of Representatives
Washington, DC 20515

Hon. Gene Green, Ranking Member
Subcommittee on Health
Committee on Energy and Commerce
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Pitts and Ranking Member Green:

Re: Opposition to H.R. 2017, the Common Sense Nutrition Disclosure Act of 2015

The undersigned organizations are writing to express opposition to H.R. 2017, the Common Sense Nutrition Disclosure Act of 2015. The bill would undermine the Food and Drug Administration's (FDA) menu labeling regulations, which require chain restaurants and similar food establishments to provide consumers with calorie information for standard food and beverage items on menus and menu boards. We join the many public interest and health organizations that have written in opposition to the numerous anti-consumer provisions of this bill.

In addition, we strongly oppose Section 3 of the bill, which preempts civil litigation for violations of this federal law as well as any state laws that may exist. The bill does not replace state remedies with federal remedies. It eliminates all remedies and provides total immunity to any unscrupulous business that may violate this law.

As some experts have written, "Congress historically has considered preemption of state law a rather drastic step that should be taken only where clearly necessary for a federal statutory program to work"¹ because if used too casually, it greatly disturbs the balance of power between the federal and state systems. Clearly, there is no need for radical preemptive language contained in H.R. 2017. Litigation in this field is not creating problems for businesses. In fact, it does not even exist.

Yet immunity will have a destructive impact. For the tort system's deterrence function to work, wrongdoers must know that certain types of conduct will not be tolerated. The prospect of tort liability is one of the best ways to ensure compliance with the law.

¹ William Funk et al., "The Truth about Torts: Using Agency Preemption to Undercut Consumer Health and Safety," Center for Progressive Reform (September 2007), http://www.progressivereform.org/articles/Truth_Torts_704.pdf.

We strongly oppose H.R. 2017 and in particular, Section 3. This provision interferes with traditional state authority and shields chain restaurants and similar food establishments from any legal accountability for violating this important law.

Sincerely,

Alliance for Justice

Center for Justice & Democracy

National Association of Consumer Advocates

National Consumers League

Public Citizen