FORCED SPEECH: IN DEFENSE OF TOBACCO COMPANIES

Julie LaVille’s article in the Saint Louis University Law Journal, “A Warning Worth a Thousand Words”, can be accurately summed up by its conclusion paragraph. It states that because cigarette smoking is a leading cause of death and most current smokers had their first cigarette before turning eighteen, the United States Supreme Court should “break away” from the historical deception of tobacco companies and find graphic labels constitutional. However, such a decision would require that the Court break away from the constitution and the freedoms it protects.

It’s easy to dislike tobacco companies. They profit by selling an addictive and dangerous drug that kills thousands. However, this makes them no less deserving of First Amendment protection. Rather, because their unpopular speech is more likely to be censored, they have a special need for First Amendment protection.

LaVille argues that the government shouldn’t have to show that a free speech restriction would actually achieve its stated goal. This standard could create a lose-lose situation because it allows the government to restrict freedom without making the public healthier. One of the D.C. Circuit’s biggest problems with the FDA’s graphic labels is that there is little evidence that the labels will reduce smoking deaths. However, even if that is the case, the labels are still not justified because reducing smoking deaths is not a fundamental government function. The basic purpose of government should be to protect individuals from force or fraud. Protecting individuals from themselves is a less noble goal which is at odds with one’s right to ownership of his or her body. While tobacco will probably never be completely prohibited, labeling laws, cigarette taxes, and smoking bans are slowly chipping away at one’s right to use and sell tobacco.

While tobacco is clearly harmful, there is also evidence to suggest that certain foods contribute to some of the other leading causes of preventable deaths.

3. LaVille, supra note 1 at 260.
death such as obesity, heart disease, and hypertension. Children are highly susceptible to the allure of these foods, but do not understand the consequences of consuming them. Unlike tobacco use among children, which is at a record low, obesity among children is growing. Should the government require graphic labels on Twinkie packages?

Labeling dangerous products is well intentioned, but it is hard to determine what deserves a label and where to draw the line. It is not practical to expect the government to accurately and impartially determine what is healthy and what is dangerous in a way that is responsive to the latest scientific findings. Once some products like tobacco and alcohol are labeled, choosing not to label other potentially dangerous products like cars and candy bars may be seen as a stamp of approval.

Rather than undertake the never-ending endeavor of labeling dangerous products, the government should simply allow companies to be held liable for individual instances of fraud. Cigarette packages are not deceptive because they make no false claims. It is appropriate to prohibit companies from making false statements, but forcing them to make certain statements goes beyond the government’s fundamental goal of protecting individuals from fraud because there is no deception to combat in such situations. While there is nothing wrong with wanting to reduce unhealthy behavior, it should not be done at the cost of eroding constitutional freedoms.

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