

AUTHORIZING THE USE OF EMANCIPATION HALL IN THE CAPITOL VISITOR CENTER FOR AN EVENT TO CELEBRATE THE 200TH ANNIVERSARY OF THE BIRTH OF FREDERICK DOUGLASS

Mr. HARPER. Mr. Speaker, I ask unanimous consent that the Committee on House Administration be discharged from further consideration of House Concurrent Resolution 102, and ask for its immediate consideration in the House.

The Clerk read the title of the concurrent resolution.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Mississippi?

There was no objection.

The text of the concurrent resolution is as follows:

H. CON. RES. 102

Resolved by the House of Representatives (the Senate concurring),

SECTION 1. USE OF EMANCIPATION HALL FOR EVENT TO CELEBRATE 200TH ANNIVERSARY OF BIRTH OF FREDERICK DOUGLASS.

(a) AUTHORIZATION.—Emancipation Hall in the Capitol Visitor Center is authorized to be used on February 14, 2018, for an event to celebrate the 200th anniversary of the birth of Frederick Douglass.

(b) PREPARATIONS.—Physical preparations for the conduct of the ceremony described in subsection (a) shall be carried out in accordance with such conditions as may be prescribed by the Architect of the Capitol.

The concurrent resolution was agreed to.

A motion to reconsider was laid on the table.

COMMON SENSE NUTRITION DISCLOSURE ACT OF 2017

Mr. UPTON. Mr. Speaker, pursuant to House Resolution 725, I call up the bill (H.R. 772) to amend the Federal Food, Drug, and Cosmetic Act to improve and clarify certain disclosure requirements for restaurants and similar retail food establishments, and to amend the authority to bring proceedings under section 403A, and ask for its immediate consideration in the House.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Pursuant to House Resolution 725, the amendment in the nature of a substitute recommended by the Committee on Energy and Commerce, printed in the bill, is adopted, and the bill, as amended, is considered read.

The text of the bill, as amended, is as follows:

H.R. 772

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Common Sense Nutrition Disclosure Act of 2017”.

SEC. 2. AMENDING CERTAIN DISCLOSURE REQUIREMENTS FOR RESTAURANTS AND SIMILAR RETAIL FOOD ESTABLISHMENTS.

(a) IN GENERAL.—Section 403(q)(5)(H) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343(q)(5)(H)) is amended—

(1) in subclause (ii)—

(A) in item (I)(aa), by striking “the number of calories contained in the standard menu item, as usually prepared and offered for sale” and inserting “the number of calories contained in the whole standard menu item, or the number of servings (as reasonably determined by the restaurant or similar retail food establishment) and number of calories per serving, or the number of calories per the common unit division of the standard menu item, such as for a multiserving item that is typically divided before presentation to the consumer”;

(B) in item (II)(aa), by striking “the number of calories contained in the standard menu item, as usually prepared and offered for sale” and inserting “the number of calories contained in the whole standard menu item, or the number of servings (as reasonably determined by the restaurant or similar retail food establishment) and number of calories per serving, or the number of calories per the common unit division of the standard menu item, such as for a multiserving item that is typically divided before presentation to the consumer”;

(C) by adding at the end the following flush text:

“In the case of restaurants or similar retail food establishments where the majority of orders are placed by customers who are off-premises at the time such order is placed, the information required to be disclosed under items (I) through (IV) may be provided by a remote-access menu (such as a menu available on the internet) as the sole method of disclosure instead of on-premises writings.”;

(2) in subclause (iii)—

(A) by inserting “either” after “a restaurant or similar retail food establishment shall”; and

(B) by inserting “or comply with subclause (ii)” after “per serving”;

(3) in subclause (iv)—

(A) by striking “For the purposes of this clause” and inserting the following:

“(I) IN GENERAL.—For the purposes of this clause”;

(B) by striking “and other reasonable means” and inserting “or other reasonable means”; and

(C) by adding at the end the following:

“(II) PERMISSIBLE VARIATION.—If the restaurant or similar food establishment uses such means as the basis for its nutrient content disclosures, such disclosures shall be treated as having a reasonable basis even if such disclosures vary from actual nutrient content, including but not limited to variations in serving size, inadvertent human error in formulation or preparation of menu items, variations in ingredients, or other reasonable variations.”;

(4) by amending subclause (v) to read as follows:

“(v) MENU VARIABILITY AND COMBINATION MEALS.—The Secretary shall establish by regulation standards for determining and disclosing the nutrient content for standard menu items that come in different flavors, varieties, or combinations, but which are listed as a single menu item, such as soft drinks, ice cream, pizza, doughnuts, or children’s combination meals. Such standards shall allow a restaurant or similar retail food establishment to choose whether to determine and disclose such content for the whole standard menu item, for a serving or common unit division thereof, or for a serving or common unit division thereof accompanied by the number of servings or common unit divisions in the whole standard menu item. Such standards shall allow a restaurant or similar retail food establishment to determine and disclose such content by using any of the following methods: ranges, averages, individual labeling of flavors or components, or labeling of one preset standard build. In addition to such methods, the Secretary may allow the use of other methods, to be determined by the Secretary, for which there is a reasonable basis (as such term is defined in subclause (iv)(II)).”;

(5) in subclause (x)—

(A) by striking “Not later than 1 year after the date of enactment of this clause, the Secretary shall promulgate proposed regulations to carry out this clause.” and inserting “Not later than 1 year after the date of enactment of the Common Sense Nutrition Disclosure Act of 2017, the Secretary shall issue proposed regulations to carry out this clause, as amended by such Act. Final regulations to carry out this clause, including any regulations promulgated before the date of enactment of the Common Sense Nutrition Disclosure Act of 2017, shall not take effect until such compliance date as shall be specified by the Secretary in the regulations promulgated pursuant to the Common Sense Nutrition Disclosure Act of 2017.”; and

(B) by adding at the end the following:

“(IV) CERTIFICATIONS.—Restaurants and similar retail food establishments shall not be required to provide certifications or similar signed statements relating to compliance with the requirements of this clause.”;

(6) by amending subclause (xi) to read as follows:

“(xi) DEFINITIONS.—In this clause:

“(I) MENU; MENU BOARD.—The term ‘menu’ or ‘menu board’ means the one listing of items which the restaurant or similar retail food establishment reasonably believes to be, and designates as, the primary listing from which customers make a selection in placing an order. The ability to order from an advertisement, coupon, flyer, window display, packaging, social media, or other similar writing does not make the writing a menu or menu board.

“(II) PRESET STANDARD BUILD.—The term ‘preset standard build’ means the finished version of a menu item most commonly ordered by consumers.

“(III) STANDARD MENU ITEM.—The term ‘standard menu item’ means a food item of the type described in subclause (i) or (ii) of subparagraph (5)(A) with the same recipe prepared in substantially the same way with substantially the same food components that—

“(aa) is routinely included on a menu or menu board or routinely offered as a self-service food or food on display at 20 or more locations doing business under the same name; and

“(bb) is not a food referenced in subclause (vii).”;

(7) by adding at the end the following:

“(xii) OPPORTUNITY TO CORRECT VIOLATIONS.—Any restaurant or similar retail food establishment that the Secretary determines is in violation of this clause shall have 90 days after receiving notification of the violation to correct the violation. The Secretary shall take no enforcement action, including the issuance of any public letter, for violations that are corrected within such 90-day period.”.

(b) NATIONAL UNIFORMITY.—Section 403A(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343-1(b)) is amended by striking “may exempt from subsection (a)” and inserting “may exempt from subsection (a) (other than subsection (a)(4))”.

SEC. 3. LIMITATION ON LIABILITY FOR DAMAGES ARISING FROM NONCOMPLIANCE WITH NUTRITION LABELING REQUIREMENTS.

Section 403(q)(5)(H) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343(q)(5)(H)), as amended by section 2, is further amended by adding at the end the following:

“(xiii) LIMITATION ON LIABILITY.—A restaurant or similar retail food establishment shall not be liable in any civil action in Federal or State court (other than an action brought by the United States or a State) for any claims arising out of an alleged violation of—

“(I) this clause; or

“(II) any State law permitted under section 403A(a)(4).”.

The SPEAKER pro tempore. The bill shall be debatable for 1 hour equally divided and controlled by the chair and

ranking minority member of the Committee on Energy and Commerce.

The gentleman from Michigan (Mr. UPTON) and the gentlewoman from Illinois (Ms. SCHAKOWSKY) each will control 30 minutes.

The Chair recognizes the gentleman from Michigan.

GENERAL LEAVE

Mr. UPTON. Mr. Speaker, I ask unanimous consent that all Members have 5 legislative days within which to revise and extend their remarks and insert extraneous material on H.R. 772.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.

Mr. UPTON. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this bill, H.R. 772, is a bipartisan piece of legislation introduced by Representatives CATHY McMORRIS RODGERS and TONY CÁRDENAS to amend the Food and Drug Administration's menu labeling rule that was issued in November of 2014.

The goal of the bill was to make implementation of the nutrition disclosure law useful for consumers and workable for food service establishments. The existing regulatory framework, which has not yet been implemented, is not only cumbersome for the food industry, but it also impedes businesses' ability to provide meaningful information that customers can use to make nutrition decisions.

The Common Sense Nutrition Disclosure Act is critical to avoid harming consumers' choices, jobs, and, certainly, small businesses. This bill was drafted to address the challenges of an overly prescriptive, one-size-fits-all approach to regulation affecting a very, very diverse industry.

We need to ensure that the law works for all food establishments: convenience stores, supermarkets, grocery stores, pizza shops. All have enormous challenges complying with the regulations as written.

This bill is going to provide those entities with the flexibility and, frankly, the certainty that they need to comply without compromising consumers' access to nutrition information. The Common Sense Nutrition Disclosure Act will establish a more reasonable standard for Federal regulations and allow nutritional information to be provided by a remote access menu for establishments where the majority of orders, in fact, are placed off premises.

□ 1245

Consumers should have this information when they are placing an order. A menu board may work for some businesses where customers order at the counter where they also pay, but for an establishment where most people now order online or from a phone, having the calorie information when they pick up their order won't be very helpful to that consumer.

This legislation also takes steps to preserve local foods and fresh items

that might be sold at just a few locations. To do so, the bill clarifies that menu labeling regulations are intended for standard menu items, defined as those items with substantially the same recipe prepared in substantially the same way with substantially the same food components that are routinely included on a menu or menu board or are routinely offered as a self-service food or food on display at 20 or more locations.

This bill also eliminates draconian penalties that are required in current law by removing criminal felony penalties for store managers and allowing restaurants and retailers to take corrective actions. This shields small-business owners and their employees from frivolous lawsuits based on inadvertent human error. No one ought to be criminalized for putting too many pickles on a sandwich or maybe not enough olives. This bill further clarifies that establishments will have 90 days to correct a violation before FDA brings enforcement action.

The food retail sector employs—let's face it—millions of Americans and provides access to affordable, healthy options. The Federal Government shouldn't impose arbitrary regulations that are going to cause unnecessary harm to businesses and consumers.

The businesses impacted by this bill widely support providing consumers with nutritional information to better inform their food decisions, but they want to do it in a practical and a commonsense way. This legislation provides clear guidance to small-business owners, ensuring compliance and, at the same time, delivering critical information.

Mr. Speaker, I want to thank my Energy and Commerce Committee colleagues for their work on both sides of the aisle. I urge its passage today, and I reserve the balance of my time.

Ms. SCHAKOWSKY. Mr. Speaker, I yield myself such time as I may consume, and I rise in opposition to H.R. 772.

This bill is completely unnecessary, overly prescriptive, and would deny consumers critical information about the food that they eat.

At a time when our country is facing an obesity epidemic—I would say, really, crisis—we should not be undermining efforts to educate consumers about the nutritional value of foods, including calories.

As a country, we pay a high price for obesity. It is estimated that medical costs for obesity top \$190.2 billion, annually. Childhood obesity alone is responsible for \$14 billion in direct medical costs. We should be embracing efforts to reduce this enormous cost to our healthcare system. A Harvard study found restaurant menu labeling could prevent up to 41,000 cases of childhood obesity and could save over \$4.6 billion in healthcare costs over 10 years.

So if you want to eat pizza and fries, that is great, but why not have the op-

portunity to know how many calories are in that pizza and fries? You should be able to have that information. More information for consumers is a good thing.

The menu labeling law that passed in 2010 requires chain restaurants with 20 or more locations to provide consumers with basic nutritional information like calorie content for standard food and beverage items on menus. Since then, the FDA has been working to implement this rule only to face numerous delays along the way.

Research has shown that calorie information can help people make healthier choices, and 80 percent of Americans support providing this type of calorie information on the menu. But far from common sense, the legislation we are considering today would undermine the law. H.R. 772 takes us backwards by undermining the law and further delaying consumer protections.

This is not about flexibility. This bill just gives cover to bad actors and special interests that do not want to comply with the law.

First, it would allow food establishments to display calorie information in ways that would only serve to confuse and mislead customers. It allows the food establishment to set arbitrary serving sizes and cut the calorie count way below what a normal person would eat. Without standardized calorie reporting for menu items, people will have a tough time figuring out and computing nutrition information and comparing across items. It is deceptive to label an entree or a muffin as multiple servings because we all know that they are mostly consumed by one person in one sitting.

Second, it would deny consumers the opportunity to view calorie information and other nutritional information regardless of how or where they purchase food from a chain restaurant. Not only does it allow deceptive serving size manipulation, this bill would allow food establishments to make that information difficult to find. Calorie labeling is not useful if it is posted somewhere that it will not be seen.

Provisions in this bill would deny customers nutritional information from not only inside a pizza chain, but inside fast-food and other chain restaurants if the majority of their orders are placed offsite, like on the telephone or online.

For example, under this bill, a restaurant or similar retail food establishment could have the option to only list nutritional information online or via some other remote-access menu, thereby denying consumers who order in a brick-and-mortar location access to the information. Speed limits are not useful if they are hidden on a highway, and calorie counts cannot help if they are concealed from the public.

Finally, it has been nearly 8 years since the original menu labeling requirements were passed, but this bill would once again delay the final menu labeling rules and send the FDA back

to the drawing board. The FDA has already put forth a proposed rule, solicited comments, and worked with stakeholders to finalize the menu labeling rule.

In fact, just this past November, FDA published new draft guidance intended to help answer any of the outstanding questions regarding compliance. This guidance included sample menus and pictures to help food establishments tackle how to label for a variety of ingredients like multiple pizza toppings.

This rule has been delayed long enough. The final menu labeling regulations should go into effect as scheduled in May of this year. Countless businesses, restaurants, and other retail food establishments have already invested time and money into compliance with the current menu labeling rules, and it would be irresponsible to further delay implementation of this important rule.

This bill is another handout to businesses and an affront to consumers. It will keep consumers in the dark about the nutritional information that they need and create consumer and industry confusion.

H.R. 772 would weaken an important tool intended to help Americans make informed food choices at a time when obesity and other nutrition-related health problems are at crisis levels. That is why countless consumer and public health organizations oppose this bill, including the American Cancer Society Cancer Action Network, the American Diabetes Association, the American Heart Association, the American Nurses Association, Center for Science in the Public Interest, Consumers Union, and the Trust for America's Health. All of these health organizations oppose this legislation because it is not good for the health of our country or for consumers.

Mr. Speaker, I reserve the balance of my time.

Mr. UPTON. Mr. Speaker, I know that I have other speakers, so I am going to stall a little bit for time here. I am told that some of them may be at Jimmy John's trying to get through that menu wondering if they should have olives or pickles or Dijon mustard or mayonnaise, but they are on their way.

I want to say we all want consumer information—we do—but we ought to be able to agree that food service establishments shouldn't face Federal criminal penalties for inadvertent failures to comply with the FDA's framework.

Under the Food, Drug, and Cosmetic Act, food labeling has to be truthful and non-misleading. Food labeling that doesn't meet FDA's standard for truthful and non-misleading is deemed misbranded. Under U.S. Code, introducing misbranded food into commerce is, in fact, a prohibited act, and the liable party shall be imprisoned for up to a year, fined not more than \$1,000, or both.

Food to which these menu labeling requirements apply is deemed mis-

branded if the FDA's rule requirement is not met, so it is not necessary that the person intentionally misleads customers. Under FDA's framework, merely adding that extra olive or pepperoni is going to render the calorie content on the menu misleading and the chef then becomes criminal.

Come on. People say that the FDA won't put people in jail over this, so I don't think there ought to be an issue codifying that in statute. The Common Sense Nutrition Disclosure Act will give folks an opportunity to correct inadvertent mistakes so long as they were acting in good faith, and they are going to make standards far more reasonable.

Mr. Speaker, I yield 2 minutes to the gentleman from the great State of Michigan (Mr. WALBERG), who is a member of the committee.

Mr. WALBERG. Mr. Speaker, I join my colleagues in supporting the Common Sense Nutrition Disclosure Act.

Under the Obama administration, the FDA put forward an unworkable, one-size-fits-all mandate on restaurants and retail food establishments for providing calorie and nutrition information to customers. As written, many businesses cannot comply with these rules and would be subject to onerous, arbitrary penalties.

H.R. 772 is a bipartisan solution that makes compliance possible by providing small businesses with greater flexibility to provide nutrition information in a way that best serves their customers. It ensures customers receive the nutrition information they want, but does so in a way that takes into account the diversity of restaurants and food products.

This commonsense bill takes a flexible approach that will actually increase access to information for customers and allow good, hardworking Michigan restaurants, grocers, and convenience stores to continue meeting the needs of consumers.

Mr. Speaker, I urge its passage.

Ms. SCHAKOWSKY. Mr. Speaker, how much time do I have remaining?

The SPEAKER pro tempore. The gentlewoman from Illinois has 23 minutes remaining.

Ms. SCHAKOWSKY. Mr. Speaker, I yield such time as she may consume to the gentlewoman from Connecticut (Ms. DELAURO).

Ms. DELAURO. Mr. Speaker, I thank the gentlewoman from Illinois for yielding the time.

Let me, first, dispel a couple of myths that have been suggested on the floor of the House.

One myth has been that small businesses are negatively impacted by the menu labeling requirements. Small businesses are unilaterally exempt from menu labeling requirements. The rule only applies to "covered establishments," meaning those that have 20 or more locations. This rule does not and never was intended to apply to small businesses. That is misinformation being given out by the majority.

The second item which I just heard momentarily about, penalties, menu labeling will be subject to the exact same mechanisms and penalties as those for packaged food. The FDA has maintained its commitment to compliance, outreach, and education and has waived enforcement for the first year.

Additionally, numerous State and local governments have menu labeling requirements, and not one chain restaurant has faced criminal liability—once again, misinformation being distributed by the majority.

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Mr. Speaker, I rise in opposition to this special interest-driven attack on popular and necessary menu labeling rules.

When we crafted the health reforms in the Affordable Care Act, we kept several critical goals in mind. We aimed to slow the staggering growth of healthcare spending, make preventive and wellness care more central to our health system, and give Americans access to more data so that they can make their own informed healthcare decisions.

Menu labeling is an essential tool to meet all three of those goals. That is why I have been a longtime champion of menu labeling, and I fought hard to secure its inclusion in the Affordable Care Act.

Congress passed standardized menu labeling in 2010. The goal was to arm Americans with the information they need to make informed nutritional decisions for themselves and their families.

The language was built on consensus and compromise. It was worked out between a variety of interests, including industry partners and the National Restaurant Association.

Industry has already had nearly 8 years of input for the implementation of the labeling rule, yet, with this misguided bill, certain sectors of the industry will tear down the progress that we have made. This bill would roll back and weaken this crucial step to combat the obesity epidemic in the United States. This is obstruction. American families are paying the price in their healthcare costs.

In 2015, sales at restaurants and bars surpassed spending at grocery stores for the first time. In a typical day, one-third of our children, 4 in 10 adolescents, and one-third of adults eat at a fast food restaurant. Americans are eating, on average, one-third of their calories outside of the home. Nutritional information must be made readily available where the consumer is at the point of purchase.

A health impact assessment from Los Angeles County found that menu labeling could avert 40 percent of the 6.75 million-pound average weight gain in the country. You think of that in terms of healthcare costs and the impact that decrease would have.

Our children are especially at risk. Today, more than one-third of our kids

and adolescents are overweight or obese. Children eat more than twice as many calories at a restaurant than they do at home. They consume less nutrients and more saturated fats. The impact on our kids alone should be reason enough to oppose a measure that undermines a consumer's ability to make informed, nutritious choices at mealtimes.

Menu labeling is popular. In a national poll, over 80 percent of Americans support menu labeling in chain restaurants. Over 100 nutrition and health organizations support menu labeling. Chains from Starbucks to Panera Bread to McDonald's are already implementing menu labeling. The rest of the industry must follow suit.

Consumers have a right to make an informed decision. It is disrespectful for the industry and their partners to argue that the American people cannot understand menu labeling. Give people the ability to make their choice.

You go in to eat, it has been a great day, you look at the board, you see something that you want, you look at the calories and say: Today, I think I will watch my calories. You order accordingly.

Other days, it is a bad day. You go in and you throw caution to the wind. You say: I am going to order whatever I can, no matter what the calorie count is.

This is about the right to choose and freedom of choice. That is what we are talking about here today. This bill denies consumers the right to nutritional information at that point of purchase. Even if 49 percent of orders are placed from in-store menus, food establishments could bury menu labeling online.

Multiple studies have shown that providing calorie menu labeling information can help Americans make lower calorie choices, but they cannot do this if they do not have the information they need.

This bill increases consumer confusion and allows restaurants to list deceptive portion sizes, listing an entree as multiple servings even though these items are most often consumed by one person.

It weakens enforcement and consumer protection, completely removes an establishment's incentive to comply with the menu labeling requirements, and removes the ability of individuals to hold retail food establishments accountable for violations to the food labeling law.

The existing law is already extremely flexible. I said restaurants with less than 20 locations. Mom-and-pop small businesses are excluded. I don't believe my colleagues on the other side of the aisle understand that. Read the legislation.

Let me mention something which has been very interesting, and that is about pizza companies. I come from New Haven, Connecticut, an Italian-American neighborhood. I know something about pizza.

What we have done with the industry is to work with them. The FDA opened the door to allow them what they asked for: to give a range of calories on a slice of pizza. They have done it.

These are FDA charts which demonstrate how easily you can put a label on the food so that people understand what the calories are. I will show this one. Calories are listed per slice. That is what the industry wanted. That is what we did. They have the ranges that they have for their various toppings.

Don't let the other side sell you a bill of goods. The FDA has conceded that they can list the calories in a single slice rather than an entire pizza.

This all illustrates that the Food and Drug Administration has already been working closely with the industry to address their concerns. We should let them work through this process, rather than complicating it with legislation that, in fact, would harm what we have been doing, what we have worked on all these years: meaningful, impactful work on menu labeling with a single stroke.

This is a special interest-driven bill. It is not the answer. I urge my colleagues to oppose it.

Mr. Speaker, I include in the RECORD a document that outlines the myths that are perpetrated by the majority and what the underlying facts are.

BUSTING THE MYTHS OF MENU LABELING

The Menu Labeling Rule provides consumers with nutritional information on the foods they purchase. This crucial information would give Americans a tool to make healthy choices. Nevertheless, the lobbying of special interest groups has resulted in H.R. 772, a bill based on nothing more than misleading myths.

MYTH No. 1: Small businesses are negatively impacted.

Small businesses are unilaterally exempt from menu labeling requirements. The rule only applies to "covered establishments," meaning those that have 20 or more locations. The rule does not, and never was intended, to apply to small businesses.

MYTH No. 2: Labeling requirements are burdensome and difficult to comply with.

In reality, nutritional labeling requirements are straightforward and easy to implement, which is why numerous food retailers are already labeling calories on their menus. Furthermore, FDA has sought eight years of industry input which has resulted in the most flexible disclosure requirements to date. Nutritional information for complex menu items can be disclosed in ranges, without the need to estimate exact calories for various combinations.

MYTH No. 3: Labeling requirements only create consumer confusion.

The Menu Labeling Rule actually reduces consumer confusion by providing nutritional information at the point of purchase, and ensures that portion sizes are listed realistically. The rule will allow for a standard nutritional information format which will facilitate consumer understanding. Without it, consumers will be subject to deceptive portion sizes which can lead to them making misinformed decisions based on misleading information.

MYTH No. 4: Enforcements and penalties for noncompliance are harsh and unreasonable.

Menu labeling will be subject to the exact same mechanisms and penalties as those for

packaged food. FDA has maintained its commitment to compliance outreach and education, and has waived enforcement for the first year. Additionally, numerous state and local governments have menu labeling requirements, and not one chain restaurant has faced a lawsuit.

MYTH No. 5: Menu Labeling Requirements are unpopular among American consumers.

Consumers have unequivocally maintained their support for menu labeling, with a recent poll showing support as high as 80 percent among Democrats, Republicans and Independents. Moreover, more than 100 public health organizations and health professionals have voiced their opposition to H.R. 772 because it would "undermine congressional intent to provide access to calorie labeling in a broad range of chain food service establishments."

Congressional Republicans have yet again bowed to special interest and created a carve-out for big food corporations who do not have the best interests of Americans at heart. Overwhelmingly, consumers want to know the nutritional information of the foods they are eating.

Please oppose H.R. 772—as well as any efforts that seek to undermine consumers.

Mr. UPTON. Mr. Speaker, might I ask how much time each side has remaining on this bill?

The SPEAKER pro tempore (Mr. LAMBORN). The gentleman from Michigan has 23 minutes remaining. The gentlewoman from Illinois has 14½ minutes remaining.

Mr. UPTON. Mr. Speaker, I yield myself 30 seconds.

Mr. Speaker, I might say the previous speaker, my friend, asked about what the original stakeholders had in mind before these regs were written.

I was one of those. This was my bill. This was a bipartisan bill offered by Jim Matheson and FRED UPTON a lot of years ago. It was never our intent to put people behind bars for having some misinformation based on the number of olives or pickles or Dijon or mayonnaise. It is just wrong. It was not our intent to do what the FDA has now done.

Mr. Speaker, I yield such time as she may consume to the gentlewoman from Washington (Mrs. McMORRIS RODGERS), the author of this bill and a member of our committee, where it passed 39-14.

Mrs. McMORRIS RODGERS. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, I rise today with legislation to address one of the most burdensome rules in the Obama administration.

When the FDA announced its final rule implementing a national menu labeling standard in 2014, the intent was twofold: deliver customers increased access to nutrition information and establish a uniform, single national standard.

However, in trying to establish this uniform standard, the FDA's 400-page rule attempts a one-size-fits-all approach to an industry as diverse as its ingredients.

Under the current rule, every deli and salad bar offering, every possible pizza topping combination will have to be calculated and their calorie count displayed on physical menus.

Last week, I was home in Spokane and visited My Fresh Basket. This newly opened grocery store is also a great place to eat lunch, with fresh, local options and made-to-order food. This rule would mean new physical signage every time this locally owned grocer changes the options they offer, which is just about every day.

This bill is not about the merits of calorie counts. This bill does not remove the requirement of calorie counts on menus. This bill certainly does not make it more difficult for customers to receive nutritional information.

This bill, at its very core, is about flexibility for businesses to meet the requirements of the rule and present this calorie information in a way that makes sense for them and their customers.

The one-size-fits-all approach proposed by the FDA is problematic for two reasons. First, the made-to-order portion of the food industry offers endless, constantly changing combinations of ingredients. For some sandwich shops and pizzerias, the possible variations are in the tens of millions.

The FDA wants these restaurants to put on paper all of these variations and their calorie counts and have it publicly displayed in the restaurant. It is unrealistic and it is not a good use of the businessowner's time.

Second, digital and online ordering is customers' preferred method for ordering. Nearly 90 percent of orders in some restaurants are placed without an individual ever stepping foot into the restaurant.

So tell me, how does it make sense to force a restaurant to have a physical menu with calorie listings when 90 percent of your customers aren't going to see it? How does it make sense to force a customer to navigate millions of combinations to find the nutrition information that matches their order?

This legislation provides flexibility in how restaurants provide the nutritional information. It makes it easier for customers to actually see and understand the information because it is displayed where customers actually place orders, including by phone, online, or through mobile apps.

By bringing this rule into the 21st century, customers can trust that they are getting reliable information in a way that is easy to access and is customer-friendly.

I also want to take this opportunity to clarify that this bill does not change the preemption provision in the underlying statute. This ensures that no State or political subdivision of a State may directly or indirectly establish or enforce any requirement for nutrition labeling of food that is not identical to the requirement laid out in the final regulations.

While some States may disagree, I am committed now and moving forward to ensuring that we have one unified menu labeling requirement.

Before I close, I want to thank all my colleagues and the stakeholders for

their hard work on this bipartisan legislation. This has been a team effort over a number of years now, and I appreciate their support.

Finally, I encourage my colleagues on both sides of the aisle to support this important amendment and to ultimately vote "yes" for the bipartisan Common Sense Nutrition Disclosure Act.

Ms. SCHAKOWSKY. Mr. Speaker, I yield 2 minutes to the gentleman from New York (Mr. ENGEL).

Mr. ENGEL. Mr. Speaker, I thank my friend from Illinois for yielding and for the good work she is doing on this and so many other bills.

Mr. Speaker, I rise in opposition to this bill.

In today's world, when technology allows us to constantly be logged into the workplace, it is understandable that Americans often find themselves seeking more convenient meals outside of the home.

But dining out should not be about sacrificing nutrition. I believe Americans should have all the tools necessary to make informed choices about what they eat and what they feed their families.

Why wouldn't we want that? Why wouldn't we let the consumer decide? Why would we try to rob some tools and take things away from them?

Menu labeling gives Americans those tools, and we have been making progress towards more transparent labeling for consumers. It is a good thing.

This bill, H.R. 772, would undo that process. It delays much-needed transparency and will cause confusion for both consumers and businesses, many of which have already started implementing existing menu labeling requirements.

So let's not turn back the clock. Menu labeling is both a vital public health tool and an important consumer protection. People are smart enough to make their own choices. If you want to make it impossible for them to know everything, then you are not allowing the consumer to make the final choice in an informed way. I don't see why we would want to do that.

Mr. Speaker, I urge my colleagues to vote "no."

□ 1315

Mr. UPTON. Mr. Speaker, I yield 2 minutes to the gentleman from Georgia (Mr. CARTER), a member of the Energy and Commerce Committee.

Mr. CARTER of Georgia. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, I rise today in support of my good friend Mrs. McMORRIS RODGERS' bill, the Common Sense Nutrition Disclosure Act. This legislation would make commonsense reforms to menu labeling and help ease the burden on businesses, while providing consumers with the information that they need.

The regulations, finalized by the Obama administration in 2014, pre-

sented incredible challenges to businesses and would cause some insurmountable challenges for them to be in compliance with the law. This bill would allow for a more targeted approach and provide relief, while ensuring people have the nutritional information they need to make educated decisions about their health.

Let's take a second to look at how exactly this bill benefits people across the country. This directs restaurants and food establishments to disclose visible information on calorie counts, the number of calories per serving, and accounts for online ordering with remote-access labeling directions. Self-service establishments will need to place signage with nutritional information for each food item.

Finally, it ensures that the nutritional disclosure of food contents would need to comply with current standards, ensuring that restaurants will adhere to a guideline that they know they can trust.

While this is good for consumers, it also makes important reforms for the establishments. It sets out protections to prevent frivolous lawsuits. It puts forth a good faith threshold so that businesses aren't ultimately penalized for what could be a small error from one of their employees. It gives establishments the flexibility in labeling that may not maintain the same item list at all of their locations.

This legislation is about ensuring integral parts of our communities aren't subjected to unfeasible regulatory expectations while providing transparency to customers.

I am proud to cosponsor this legislation, and I urge my colleagues to support the underlying legislation.

Ms. SCHAKOWSKY. Mr. Speaker, I yield 3 minutes to the gentleman from California (Mr. CÁRDENAS).

Mr. CÁRDENAS. Mr. Speaker, I thank the gentlewoman from Illinois for yielding me this time, and I also want to thank her so much for her diligence, her efforts, and her sincerity in trying to make this issue and this bill, and many bills on this issue, as good as possible.

Although we may disagree on the final version of this bill, again, it is my sincere wish that we will continue to work together as this issue will never go away because nutrition and the understanding of that for every American is paramount for our individual health and for communities as a whole.

Mr. Speaker, I rise in support of H.R. 772, the Common Sense Nutrition Disclosure Act of 2017. I am proud to colead this bill with my colleague, Congresswoman McMORRIS RODGERS. Americans increasingly realize the importance of having access to accurate nutritional information about the food we eat, and we need to make sure that businesses are providing this information.

However, no two food establishments, convenience stores, or grocery stores are identical, and the government

should take that into account as we implement guidelines on making nutritional information available.

As a former small-business owner myself, I know the costs and challenges associated with regulatory compliance. Not all businesses can afford a legal department to help them stay within the rules, despite their best intentions. This legislation would help businesses help consumers be smart about what they are eating.

The FDA's 2014 rule on nutrition disclosures is set to take effect in May of this year, though some issues remain unresolved. This bill will give FDA the authority to fix these issues and hold businesses to tough standards they can and shall meet.

Right now, the FDA rule exempts small businesses, but not those that sell to large suppliers. Those small businesses would have to undertake expensive nutritional analysis in order to comply with the law, even if they don't have the resources.

Another example is, right now, the FDA rule would require delivery restaurants to post nutritional information in their brick-and-mortar establishment instead of online, even though nobody would see it, especially those who go online to order their food. This bill fixes that.

Finally, this bill reins in out-of-proportion penalties in the current rule that would have severe, unintended consequences. No one should have to worry about losing their business if they mistakenly make sandwiches with too much meat or cheese.

Importantly, this bill makes sure the FDA is still able to enforce the law in situations in which businesses are misleading their customers. This bill doesn't include a time delay, meaning the FDA would be able to implement the nutrition disclosure rules sooner than later.

I urge my colleagues to join me in supporting this bill to help the businesses in districts like mine to help our constituents eat healthier.

Mr. UPTON. Mr. Speaker, I have no further speakers. I reserve the balance of my time.

Ms. SCHAKOWSKY. Mr. Speaker, I yield myself such time as I may consume while I am waiting for an additional speaker.

I want to hold up this board. This is an example that the FDA gave to businesses on how they could easily—we see all kinds of signs like this. Sometimes it is the price at the end of the item, and, in this case, it would be the calories.

So it talks about a slice of pizza. Now, I am feeling kind of chunky today, and I go into the pizza parlor, and it says that for cheese pizza, for the original, it is about 200 to 240 calories; for the thin and crispy, 150 to 190 calories; and for pan—now, we love our pan pizza, our deep-dish pizza in Chicago, but that is 260 to 300 calories.

So I am thinking: Yeah, I want pizza, but I think I am going to go with the

thin and crispy, which is going to save me at least 110 calories.

Now, what do I want on top? I am looking now at all the things, the meats and the veggies that can go on top, and each one of them has calories per slice listed there. Simple. I am a pretty good—you know, I can do math pretty well, and I can also compare. Do I want something that is up to 50 calories or something that is 20 calories? And I can look at this sign and make a decision for myself.

This is not too cumbersome. This is something that could easily be displayed. I go to a lot of restaurants that already are in compliance and have the calories, and if I am like between the pasta and the salmon—and, again, I want to make that decision. It is good for me to know what is the real difference in calories.

I want to say, I started out as an activist in the grocery store. I was a very, very young housewife many years ago, 1970, when a small group of women got together. We called ourselves National Consumers United because we wanted to know how old our food was in the grocery store.

Everything was code dated. You couldn't tell how old the food was, and we were actually told that if we didn't like it, we could shop somewhere else. Well, we started cracking the codes like detectives, pushing the stock boys—and they were all boys—against the shelf, and they were telling us how they put the old stuff in front and the new stuff in the back.

Finally, we were able to get one of our retailers to say: Come to Jewel; our food has freshness dates. And people loved it. And it turned out that, even over the initial opposition from the retailers, it was good for them, because people appreciated that and went to their stores.

Now, those dates on food are ubiquitous. Customers like it, retailers like it, it is better, and this would be yet another thing that we could do.

Mr. Speaker, I yield 2 minutes to the gentleman from New Jersey (Mr. PALLONE), the ranking member on the Energy and Commerce Committee.

Mr. PALLONE. Mr. Speaker, I want to thank my colleague from Illinois for all her work on this and so much other good legislation—not the bill that is on the floor today, though.

I rise in strong opposition to H.R. 772. This bill would undo years of progress towards implementing menu label requirements and only lead to greater consumer and industry confusion.

We included a requirement in the Affordable Care Act that certain restaurants and other retail food establishments with 20 or more locations display calorie and other nutritional information in order to give consumers access to the information they need to make healthy choices in a way that would be consistent and easy to understand.

Now, GOP efforts to sabotage the Affordable Care Act continue with this

legislation today, which also undermines the ACA's prevention goals. Unfortunately, H.R. 772 would weaken the current menu labeling requirements and lead to extended compliance delays, putting those establishments who have already begun complying at a disadvantage.

While proponents of this bill claim it will increase flexibility for covered entities, in reality, this bill would allow restaurants and other retail food establishments to determine their own serving sizes and what would be the one designated menu or menu board for the purposes of disclosing caloric information. It would also permit establishments to disclose nutritional content for certain food items through a choice of methods instead of utilizing a standardized format.

H.R. 772 also would limit the civil liability of covered entities, impeding private citizens' ability to take legal recourse should an establishment fail to comply with the menu labeling requirements.

And as I noted when we considered a similar version of this bill in the last Congress, I continue to believe that legislation is not the right approach to address the concerns raised by some industry groups regarding the menu labeling rule.

The FDA has been diligently working with stakeholders, since the law was passed, to find a workable approach that provides consumers with transparency when eating out, while also ensuring covered establishments have the tools they need to implement the rule.

Just this past November, FDA issued new supplemental draft guidance to help answer any outstanding questions still posed by industry.

The SPEAKER pro tempore. The time of the gentleman has expired.

Ms. SCHAKOWSKY. Mr. Speaker, I yield an additional 30 seconds to the gentleman from New Jersey.

Mr. PALLONE. Mr. Speaker, the FDA has demonstrated that it is best positioned to address specific concerns with the regulation, and this new guidance is an example that FDA is taking the necessary steps to make compliance attainable.

Again, we have a new FDA Administrator appointed by the Trump administration, and he is trying to work with industry to get this done. So we shouldn't roll back the clock and undo the progress we have made.

Instead, we should be moving forward with the menu labeling requirements as they currently stand and are set to go into effect in May of this year. H.R. 772, unfortunately, would do the opposite; and, for this reason, I oppose the bill and urge my colleagues to oppose the bill as well.

Mr. UPTON. Mr. Speaker, I continue to reserve the balance of my time.

Ms. SCHAKOWSKY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I wanted to—you know, your friends at Jimmy John's are not

going to go to jail. In fact, just this past November, in new supplemental draft guidance, FDA explained that the agency, “does not intend to penalize or recommend the use of criminal penalties for minor violations.” The FDA went on to explain that minor violations would include inadvertently missing a calorie declaration for a standard menu item on the buffet; minor discrepancies in the type, size, color, contrast of calorie declarations; minimal variations or inadvertent error that would only minimally impact the calorie declaration, such as adding extra slices of pepperoni or an extra dollop of ketchup. This is just not going to happen.

Let me just say, in closing, the law that Congress passed almost 8 years ago—so the calls for more time is just ridiculous—should be allowed to go into effect. It is long past due. This is about freedom, about freedom of consumers to make informed choices.

I know my friends across the aisle talk about freedom all the time. This is about freedom to make choices that will help you. Empowering consumers to make informed decisions that benefit their health is exactly what the current law allows. H.R. 772 would undermine that important goal.

Mr. Speaker, I yield back the balance of my time.

Mr. UPTON. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I would just remind my colleagues that this bill is supported by literally hundreds of national State and local organizations, including the National Grocers Association, the National Association of Convenience Stores, the Food Marketing Institute, the American Pizza Community, the National Association of Truck Stop Operators, amongst many, many others.

□ 1330

I want to also reiterate that this bill, again, is bipartisan and has passed the Energy and Commerce Committee 39–14, in this Congress, and last year in the House, where it passed 266–144.

The bottom line is this: it clarifies that establishments acting in good faith will not be penalized, particularly in a criminal way, for inadvertent human error in reasonable variations in serving sizes and ingredients, giving them 90 days to correct a violation before enforcement action is brought by the FDA.

Mr. Speaker, I urge my colleagues to vote in support of this bill, and I yield back the balance of my time.

Mr. DESAULNIER. I rise to express my strong opposition to H.R. 772, the so-called Common Sense Nutrition Disclosure Act.

I have worked at every level of the restaurant business, starting as a dishwasher and busboy, and eventually managing and owning various restaurants in the San Francisco Bay area. As a former restaurateur and a member of the California Restaurant Association, I have a deep appreciation for the value American consumers place on nutritional information when determining their food purchases.

Numerous studies, like the International Food Information Council and elsewhere, suggest that nutritional information is second only to taste when choosing what to eat from a menu. Other peer-reviewed studies have found that consumers make healthier choices when nutrition information is placed directly on the menu.

Making nutrition information readily available and standardized is an important step in fighting the growing epidemic of obesity and chronic disease. According to the CDC, more than two-thirds of American adults are overweight or obese, nearly a third of American children are overweight, and the prevalence of childhood obesity children has more than tripled since 1971.

That is why, as a California State Senator, I co-authored the first-in-the-nation menu labeling law. This bipartisan legislation was passed with industry support and cooperation, and signed by a Republican governor.

In contrast, the bill before us today creates giant loopholes in the ACA’s national menu labeling provisions and allows selected establishments to arbitrarily determine serving sizes, and obscure the total number of servings per item. For example, if this bill would become law pizza chains, supermarkets, and convenience stores would be exempt from having to provide information to consumers at the point-of-sale. The bill would also further delay the implementation of our existing nationwide menu labeling efforts that are supported by more than 75 percent of American consumers.

Particularly harmful for my constituents, H.R. 772 would preempt state efforts to address the obesity epidemic locally. The bill also undermines state and local efforts to enforce or enact their own food labeling laws, and extends to food labelling in general, not simply menu labeling as the bill’s title would lead us to believe.

This misguided legislation unravels all of the cooperative work being done by the restaurant industry and government agencies across the nation. I urge my colleagues to oppose this effort to undermine local transparency efforts and vote No on H.R. 772.

The SPEAKER pro tempore. All time for debate has expired.

Pursuant to House Resolution 725, the previous question is ordered on the bill, as amended.

The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Ms. SCHAKOWSKY. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, further proceedings on this question will be postponed.

RECESS

The SPEAKER pro tempore. Pursuant to clause 12(a) of rule I, the Chair declares the House in recess subject to the call of the Chair.

Accordingly (at 1 o’clock and 31 minutes p.m.), the House stood in recess.

□ 1508

AFTER RECESS

The recess having expired, the House was called to order by the Speaker pro tempore (Mr. PALMER) at 3 o’clock and 8 minutes p.m.

REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF SENATE AMENDMENT TO H.R. 1892, HONORING HOMETOWN HEROES ACT

Mr. SESSIONS, from the Committee on Rules, submitted a privileged report (Rept. No. 115–547) on the resolution (H. Res. 727) providing for consideration of the Senate amendment to the bill (H.R. 1892) to amend title 4, United States Code, to provide for the flying of the flag at half-staff in the event of the death of a first responder in the line of duty, which was referred to the House Calendar and ordered to be printed.

PROVIDING FOR CONSIDERATION OF SENATE AMENDMENT TO H.R. 1892, HONORING HOMETOWN HEROES ACT

Mr. SESSIONS. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 727 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 727

Resolved, That upon adoption of this resolution it shall be in order to take from the Speaker’s table the bill (H.R. 1892) to amend title 4, United States Code, to provide for the flying of the flag at half-staff in the event of the death of a first responder in the line of duty, with the Senate amendment thereto, and to consider in the House, without intervention of any point of order, a motion offered by the chair of the Committee on Appropriations or his designee that the House concur in the Senate amendment with an amendment consisting of the text of Rules Committee Print 115–58 modified by the amendment printed in the report of the Committee on Rules accompanying this resolution. The Senate amendment and the motion shall be considered as read. The motion shall be debatable for one hour equally divided and controlled by the chair and ranking minority member of the Committee on Appropriations. The previous question shall be considered as ordered on the motion to its adoption without intervening motion.

The SPEAKER pro tempore. The gentleman from Texas is recognized for 1 hour.

Mr. SESSIONS. Mr. Speaker, for the purpose of debate only, I yield the customary 30 minutes to the gentlewoman from Rochester, New York (Ms. SLAUGHTER), my dear friend and ranking member of the Rules Committee, pending which I yield myself such time as I may consume. During consideration of this resolution, all time yielded is for the purpose of debate only.

GENERAL LEAVE

Mr. SESSIONS. Mr. Speaker, I ask unanimous consent that all Members