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(Assisted Suicide, continued from page 1)

law journals.”¹⁴ Smith, along with many other opponents of physician assisted suicide, claim that the Interpretive Rule would have been valid had the Attorney General worked with the Department of Health and Human Services (“HHS”) to enforce the Rule. Had HHS been consulted, they argue, the decision as to what medical acts constitute “legitimate medical practices” would be made by the Government agency responsible for regulating medical practice and the Rule would be valid.¹⁵

Proponents of ODWDA point out that the matter is now settled. They argue that ODWDA was twice approved by the voters of Oregon and that the Rule has now been decisively defeated at the District Court, in the Ninth Circuit and at the United States Supreme Court.¹⁶

¹ *Gonzales v. Oregon*, 126 S.Ct. 904 (2006).

² *Id.*

³ *Id.* at 922-23.

⁴ Wesley J. Smith, *Nothing to Die Over*, National Review Online (Jan. 12, 2006), <http://www.nationalreview.com/smithw/smith200601181012.asp>.

⁵ *Gonzales*, 126 S.Ct. at 911.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* at 913-14.

⁹ *Id.* at 914.

¹⁰ *Oregon v. Ashcroft*, 368 F.3d 1118, 1124 (9th Cir. 2004).

¹¹ *Gonzales*, 126 S.Ct. at 925-26.

¹² E-Mail Interview with Roger Pilon, Vice President for Legal Affairs, CATO Institute (Jan. 30, 2006).

¹³ *Id.*

¹⁴ *Nothing to Die Over*, *supra* note 4.

¹⁵ Molly McDonough, *More Tests for Assisted Suicide Likely*, ABA Journal E-Report, <http://www.abanet.org/journal/ereport/j20suicide.html> (last visited Apr. 26, 2006); *Nothing to Die Over*, *supra* note 4.

¹⁶ Press Release, Governor Ted Kulongoski, Statement by Governor Ted Kulongoski on *Gonzales v. Oregon* (Jan. 17, 2006), http://governor.oregon.gov/Gov/p2006/press_011706c.shtml (last visited Mar. 13, 2006).

House Passage of Cheeseburger Bill Cheered on by Food Industry

By Andrea Binion

In response to a 2002 suit against McDonald’s Corporation, 21 states have enacted laws designed to shield the fast food industry from liability against obesity-related lawsuits.¹ Multiple versions of the “cheeseburger bill,” a term coined by the Congressional Research Service, have also been proposed in Congress.² These “cheeseburger bills” block civil lawsuits against food manufacturers by individuals claiming that their health condition was caused by the manufacturers’ food.³

On October 21, 2005 the House of Representatives passed The Personal Responsibility in Food Consumption Act (“the Act”), by a vote of 276-139.⁴ The goal of the act is “to prevent legislative and regulatory functions from being usurped by civil liability actions brought or continued against food manufacturers, marketers, distributors, advertisers, sellers and trade associations for claims of injury relating to a person’s weight gain, obesity or any health condition associated with weight gain or obesity.”⁵ The Act associates weigh gain, obesity and other related health conditions with “a multitude of factors, including genetic factors and the lifestyle and physical fitness decisions of individuals.”⁶ Accordingly, such weight gain, obesity or related health conditions will not be attributed to the consumption of a particular food or beverage.⁷ Additionally, the Act attempts to foster personal responsibility over frivolous lawsuits that have the potential to be economically damaging.⁸ A similar bill was introduced in the Senate in April 2005, and is presently being considered by the Senate Committee on the Judiciary.⁹

Industry trade groups such as the Food Products Association, the National Restaurant Association and the National Council of Chain Restaurants praise the bill’s passage, claiming that “cheeseburger bills” prevent the costs of frivolous lawsuits from being passed along to consumers.¹⁰ The bill’s sponsor, Ric Keller (R-Fl.), said the legislation was all about “common sense and personal responsibility.”¹¹ The Speaker of the House, Dennis

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Hastert, (R-Ill.), agreed with the legislation and stated that, “we as Americans need to realize that suing your way to better health is not the answer. Trial lawyers need to stop encouraging consumers to blame others for the consequences of their actions just so they can profit from frivolous lawsuits against restaurants.”¹² Although the White House has endorsed the legislation, the Senate is not expected to pass it this year.¹³

According to consumer activists, the avalanche of “cheeseburger laws” may not insulate the food industry from legal troubles as much as intended.¹⁴ Professor

John Banzhaf of George Washington University School of Law and Professor Richard Daynard of Northeastern University School of Law are two well-known anti-tobacco activists who have vowed to bring their tobacco litigation experience to the fight for changes in the production, advertisement and consumption of food in the United States.¹⁵ Similar to the fight against the tobacco industry, activists will probably begin to focus on state consumer protection statutes that empower consumers with the right to bring lawsuits based on unfair or deceptive commercial practices.¹⁶ The appearance of state and federal ‘cheeseburger bills’ sparked a growing debate involving complicated issues of public health, personal responsibility and government regulation. As consumer activists continue with their fight on ‘Big Food,’ this debate may result in significant changes to the American food industry.



The U.S. House of Representatives is the latest legal battleground between obese consumers and fast food restaurants.

¹ Erin Madigan, ‘Cheeseburger’ bills fill state lawmakers’ plates (Feb. 15, 2005), <http://www.stateline.org/live/ViewPage.action?siteNodeId=136&languageId=1&contentId=1592>.

² Melanie Warner, *The Food Industry Empire Strikes Back*, N. Y. TIMES, July 7, 2005 at C1.

³ Evan Glass, *House passes ‘Cheeseburger Bill,’* CNN Money, Oct. 20, 2005 available at <http://money.cnn.com/2005/10/19/news/fortune500/obesity/>.

⁴ *U.S. approves ‘Cheeseburger Bill,’* BBC News (Mar. 10, 2004), available at <http://news.bbc.co.uk/go/pr/fr/-/s/hi/americas/3500388.stm>.

⁵ The Personal Responsibility in Food Consumption Act of 2005, H. R. Res. 545 109th Cong. (2005).

⁶ H.R. 554.

⁷ H.R. 554.

⁸ H.R. 554.

⁹ Commonsense Consumption Act of 2005, S. Res. 908, 109th Cong. (2005).

¹⁰ Erin Madigan, *supra* note 1.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ Joanne M. Gray, U. Gwyn Williams and Kenneth J. Parsigian, *Obesity Litigation – The Next “Tobacco”* (June 25, 2004), available at <http://www.goodwinprocter.com/PublicationSearchResults.aspx?search=all>.

¹⁵ *Id.*

¹⁶ *Id.*