



Innovative Uses of Government Authority

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YALE RUDD CENTER
FOR FOOD POLICY & OBESITY

FOR BETTER OR FOR WORSE/ by Lynn Johnston



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Retail Environment

- Impulse Purchases
 - Check-out aisle
 - End of aisle
- Shelf Position



Point of Purchase Promotion

- \$195 million (12% youth targeted)
 - QSRs, snacks, cereal, beverages, desserts/candy
- 79% of all food promotions <12 yrs
- Most promoted: 81% unhealthy
- “Fun” packaging: 89% unhealthy
- At 2-3 yrs recognize food packages



The First Amendment

- Freedom of speech
- Commercial speech
- Expressive conduct
- Not pure conduct



Lorillard v. Reilly (2002)

- Struck down advertising regulations
 - Central Hudson test
- Upheld ban on self-service displays
 - O'Brien test

Lesson:

- **Regulating conduct (sale practices) is achievable**



O'Brien Test

1. Within constitutional powers
2. Further substantial interest
3. Unrelated to suppression of expression
4. Incidental speech restriction not more than essential to further interest



Supreme Court Ideas

- Increase price (tax, regulation)
- Limit per capita purchase
- Ban/limit harmful ingredient/product
- Age limits: purchase, possess, use
- Restrict access



In Practice

- Taxes on cigarettes
- Ephedrine purchase restrictions
- NYC trans fat ban
- Minors: alcohol, tobacco, gambling
- Tobacco/ephedrine location restrictions
- San Francisco tobacco pharmacy ban



As Applied to SSBs

- Increase price (tax)
- Limit per capita purchase
- Limit harmful ingredient (sugar/caffeine)
- Age limits: purchase, possess, use
- Restrict access (in/near schools)



New Ideas from *Lorillard v. Reilly*

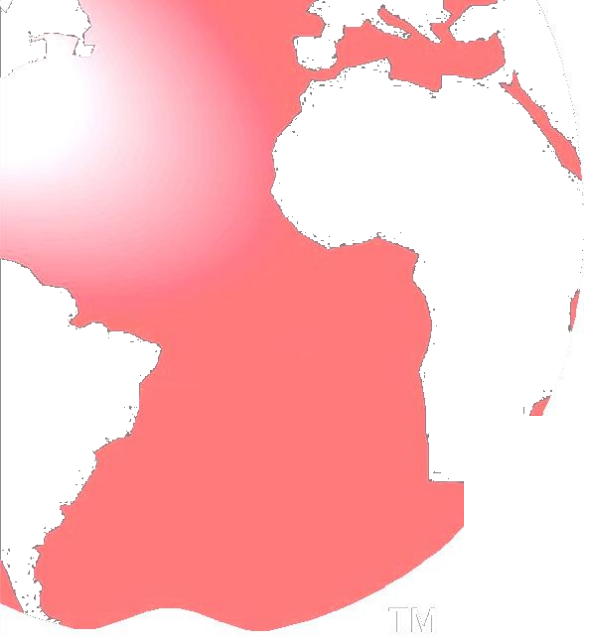
- Check-out aisles
- Specially marked aisles
- Restrict end of aisle displays
- Healthy default shelves
- Ban food samples to minors
- Vending machines: shelves, content



References

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Thank you!

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