

THE COURTS WERE RIGHT, FDA WAS WRONG

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Dockets Management Branch
Food and Drug Administration (FDA)
5630 Fishers Lane, rm. 1061
Rockville, MD 20851

<http://www.fda.gov/dockets/>

Re: Docket No. 02N-0209

THANK YOU for inviting public comment on whether FDA's policies and regulations on product labeling and advertising have been constitutional in light of the recent decisions by the federal courts. Sadly, they haven't been!

I believe Justice Sandra Day O'Connor and the majority of the Supreme Court were absolutely correct in the recent 5-4 decision against FDA in *Thompson vs Western States Medical Center*. Justice O'Connor expressed my view when she wrote: **"If the First Amendment means anything, it means that regulating [commercial] speech [by FDA] must be a last -- not first -- resort."** If it is not false or misleading, it should be protected speech.

I do not agree with Bruce Silverglade of the Center for Science in the Public Interest on this issue. He implies he represents consumers who are worried that some new officials at the agency are "wrapping commercial speech in the First Amendment, and using it as a license to practice quackery." Silverglade is a self-appointed "expert" on quackery. His definition of "quackery" appears to be: "If you don't agree with Silverglade on herbs and dietary supplements, you are a quack."

William B. Schultz and Michael R. Taylor **do not** speak for me on this issue. As former FDA's deputy commissioners for policy from 1991 to 1998 they supported, and still support, FDA's most unconstitutional policies against commercial speech which the Supreme Court has properly struck down.

02N-0209

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Sincerely yours,

Elita Rogers

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PREPARED FOR MY CONVENIENCE BY CLINTON RAY MILLER, Health Freedom Legislative Advocate (code: fda-1)

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