



Competitive Enterprise Institute

Free Markets and Limited Government

Published on *Competitive Enterprise Institute* (<http://cei.org>)

[Home](#) > [FDA Legal Challenges, Obama's Broken Pledge and Stimulus Roundup](#)

FDA Legal Challenges, Obama's Broken Pledge and Stimulus Roundup

FDA Legal Challenges, Obama's Broken Pledge and Stimulus Roundup

By [Lee Doren](#) ^[1]

September 17, 2010

FDA Legal Challenges

The FDA ban on promoting so-called off-label uses for drugs and medical devices is now being challenged in federal court as an unconstitutional restriction on commercial free speech. This coming term, the U.S. Second Circuit Court of Appeals will hear the case, which could over-turn the ban and make it easier for doctors and patients to learn about beneficial new uses of approved medical products.

In a forthcoming study for the publication *Health Matrix: Journal of Law-Medicine* [http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1677609] ^[2], CEI Senior Fellow [Gregory Conko](#) ^[3] explains why the FDA policy violates the First Amendment and why freeing up manufacturer speech would have important benefits for American patients.

"Doctors and their patients reap tremendous benefits from the distribution of truthful and non-misleading information about effective off-label uses. But the FDA's ban on manufacturer promotion compromises the ability of doctors to learn about important treatment options. Given the recognized value of open discourse on scientific and health matters, as well as the importance of off-label prescribing in patient care, it is far from clear that the blanket restriction on off-label promotion actually advance the government's broader interest in promoting public health. It is clear, however, that the ban is an unconstitutional restriction on commercial speech."

Obama's Broken Pledge

The Cato Institute's full-page [advertisement](#) ^[4] in the *Washington Post* identifies \$525 billion Barack Obama could cut annually from the federal budget by eliminating unnecessary or harmful programs.

CEI's Counsel for Special Projects [Hans Bader](#) ^[5] outlines other harmful programs and [failed government policies](#) ^[6].

"The Obama administration's housing spending is particularly wasteful. It is now using regulations and billions in tax dollars to [promote more of the risky lending](#) ^[7] that led to the financial crisis. It is [ratcheting up](#) ^[7] affordable-housing mandates that created markets for junk sub-prime mortgages (thus spawning the mortgage meltdown, as even the liberal Village Voice has conceded), and it is increasing regulatory pressure [on banks](#) ^[8] to make risky loans."

Stimulus Roundup

Politicians and pundits have debated whether the stimulus has worked over the last few months. However, many overlook where all the money went.

CEI's Warren T. Brooks Journalism Fellow [Ryan Young](#) ^[9] highlights some of the [more absurd](#) ^[10] ways our stimulus money has been spent. ^[9]

"Most people doubt Congress' ability to spend money wisely. The stimulus has given them some proof."

[CEI Original Content](#) [Economic Regulation](#)

Competitive Enterprise Institute
1899 L ST NW Floor 12, Washington, DC 20036
Phone: 202-331-1010 | Fax: 202-331-0640
©2001-2010 Competitive Enterprise Institute

```
var _gaq = _gaq || []; _gaq.push(['_setAccount', 'UA-2589558-2']); _gaq.push(['_trackPageview']); (function() { var ga = document.createElement('script'); ga.type = 'text/javascript'; ga.async = true; ga.src = ('https:' == document.location.protocol ? 'https://ssl' : 'http://www') + '.google-analytics.com/ga.js'; var s = document.getElementsByTagName('script')[0]; s.parentNode.insertBefore(ga, s); })();
```

Source URL: <http://cei.org/news-letters-daily-update/fda-legal-challenges-obamas-broken-pledge-and-stimulus-roundup>

Links:

[1] <http://cei.org/staff/lee-doren>

[2] http://click.icptrack.com/icp/relay.php?r=-1&msgid=0&act=11111&c=174876&destination=http%3A%2F%2Fpapers.ssrn.com%2Fsol3%2Fpapers.cfm%3Fabstract_id%3D1677609

[3] <http://click.icptrack.com/icp/relay.php?r=-1&msgid=0&act=11111&c=174876&destination=http%3A%2F%2Fcei.org%2Fexpert%2Fgregory-conko>

[4] <http://click.icptrack.com/icp/relay.php?r=-1&msgid=0&act=11111&c=174876&destination=http%3A%2F>

%2Fwww.cato.org%2Ffiles%2FDownsizingAd.pdf

[5] <http://click.icptrack.com/icp/relay.php?r=-1&msgid=0&act=11111&c=174876&destination=http%3A%2F%2Fcei.org%2Fexpert%2Fhans-bader>

[6] <http://click.icptrack.com/icp/relay.php?r=-1&msgid=0&act=11111&c=174876&destination=http%3A%2F>

%2Fwww.openmarket.org%2F2010%2F09%2F16%2Fobamas-broken-pledge-to-cut-wasteful-spending%2F

[7] <http://click.icptrack.com/icp/relay.php?r=-1&msgid=0&act=11111&c=174876&destination=http%3A%2F>

%2Fwww.openmarket.org%2F2010%2F09%2F10%2Fobama-administration-mandates-more-of-the-risky-loans-that-spawned-the-mortgage-crisis%2F

[8] <http://click.icptrack.com/icp/relay.php?r=-1&msgid=0&act=11111&c=174876&destination=http%3A%2F>

%2Fwww.openmarket.org%2F2009%2F06%2F17%2Fobama-seeks-to-mandate-more-risky-low-income-loans-by-banks%2F

[9] <http://click.icptrack.com/icp/relay.php?r=-1&msgid=0&act=11111&c=174876&destination=http%3A%2F%2Fcei.org%2Fexpert%2Fryan-young>

[10] <http://click.icptrack.com/icp/relay.php?r=-1&msgid=0&act=11111&c=174876&destination=http%3A%2F>

%2Fwww.openmarket.org%2F2010%2F09%2F16%2Fstimulus-roundup%2F