

CIGARETTES

# WORTH MORE THAN A THOUSAND WORDS

Picture-Based Tobacco Warning Labels and Language Rights in the U.S.

POWER • TOBACCO FREE COALITION • DATA CENTER



# Acknowledgments

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**POWER** is a multi-racial, multi-lingual membership organization of low-income workers and tenants fighting for economic and racial justice in San Francisco. Through grassroots organizing, building strategic alliances, and developing the political skills and leadership of POWER's members, the organization develops the capacity of low-income communities of color to exert their influence over the political processes that impact the well being and economic security of our communities.



The **Tobacco Free Coalition** is a grassroots coalition of health, environmental and youth-serving organizations and individuals concerned with tobacco control. The Coalition has focused on protecting non-smokers from environmental tobacco smoke, reducing youth access to tobacco products, fighting tobacco industry marketing and advertising, and educating the community on international issues in tobacco control policies. In response to a state requirement that all local health departments receiving tobacco tax funds for tobacco control form local tobacco control coalitions, the San Francisco Tobacco Free Coalition was formed in February 1990 to make recommendations on a comprehensive tobacco control plan and to provide leadership in creating environmental change and social norms that discourage the sale, use and promotion of tobacco products.



The **Data Center** supports poor and working class people of color-led organizing efforts to reclaim community knowledge and access information in order to strategically utilize research that strengthens the movement for liberation and social justice and dismantles the structural inequities in research.

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# Introduction

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Cigarette smoking kills one out of two long-term users globally, making tobacco consumption one of the most important public health issues for nations all over the world. At the same time, addiction to tobacco products has made transnational tobacco one of the most profitable industries in the global economy.

Policy makers and public health officials are faced with questions about how to monitor and control the tobacco industry marketing on one hand, and how to inform consumers about these critical health issues on the other. In the last two decades as more information has been exposed about the explicit efforts of transnational tobacco corporations (TTCs) to suppress health information on the harmful effects of consuming tobacco industry products, class action litigation and proactive public policies have had some success in restricting many of the more harmful marketing tactics of the TTCs.

Still, years of deception and misinformation by the tobacco industry have created a huge gap in public awareness of the harmful effects of tobacco products that is difficult to overcome. In 2004, the Surgeon General reported a causal link between smoking and 28 individual diseases, including the leading causes of death in the Western world and harm to every major organ in the human body.<sup>1</sup> Public health warnings, however, have not expanded to give consumers access to this information, leaving most smokers extremely uninformed. This gap in public awareness about the severity of the health consequences of consuming tobacco products is even greater among working class and immigrant communities throughout the United States. These communities are at once targeted by the tobacco industry as consumers, and often barred from access to public health warnings as a result of English-only text-based warning labels.

One of the most successful and cost-effective policy initiatives to eliminate this gap in public awareness about the harmful effects of tobacco is the use of picture-based tobacco warning labels. Picture-based tobacco warning labels cover the outside of tobacco packages with simple

and direct warnings about the harmful effect of tobacco consumption. Since their introduction in Canada in 1994, picture-based tobacco warning labels have proven to be more accessible and effective than English-only text-based warning labels, such as those used in the United States. In the last five years, eight countries, including Australia, Belgium, Brazil, Canada, Singapore, Thailand, Uruguay, and Venezuela, have passed laws requiring picture-based warning labels on tobacco products. Another fourteen countries are in various stages of consideration and implementation of similar requirements. The European Union has recommended that all member countries implement picture-based health warnings and has provided sample guidelines and a series of labels for rotation on tobacco packaging.

This paper is intended to describe the core problem of inequality that the use of English-only text-based tobacco health warning labels in the United States both reflects and sustains. Our research has shown that language discrimination in tobacco health warnings is undeniable. The use of English-only text-based warning labels has created a grave divide in public knowledge about health impacts of smoking for non-English speaking people and people with limited literacy. The consequences of this barrier to information for these communities are deadly.

This report consists of three sections. Section one summarizes the history and current status of tobacco warning labels in the United States and describes the problem of language discrimination. The second section describes the international trend toward picture-based warning labels. The last section details our recommendation for legislative action that could resolve the current problem of language discrimination and unequal protection under the law.

# II: Tobacco Warning Labels in the United States

## THE HISTORY OF TOBACCO WARNING LABELS



The United States was the first country in the world to require warning labels on tobacco products. In 1965, the Federal Cigarette Labeling and Advertising Act (Public Law 89-92) required that all cigarette packages contain the warning “Caution: Cigarette Smoking May Be Hazardous to Your Health.” The warning was to be placed in small print on one of the side panels of each cigarette package. This act prohibited additional labeling requirements at the federal, state, and local levels.

In June 1967, the Federal Trade Commission (FTC) issued its first report to Congress recommending that the warning labels be changed to “Warning: Cigarette Smoking is Dangerous to Health and May Cause Death from Cancer and Other Diseases.” In response to this report, Congress passed the Public Health Cigarette Smoking Act of 1969 (Public Law 91-222) which prohibited cigarette advertising on television and radio and required that each cigarette package contain the label “Warning: The Surgeon General has Determined That Cigarette Smoking Is Dangerous to Your Health.”

In 1981, The Federal Trade Commission again issued a report to Congress which concluded that the existing health warning labels had little effect on public knowledge and attitudes about smoking. As a result of this report, Congress enacted the Comprehensive Smoking Education Act of 1984 (Public Law 98-474), which required four specific health warnings on all cigarette packages and advertisements:

- SURGEON GENERAL’S WARNING: Smoking Causes Lung Cancer, Heart Disease, Emphysema, and May Complicate Pregnancy.
- SURGEON GENERAL’S WARNING: Quitting Smoking Now Greatly Reduces Serious Risks to Your Health.
- SURGEON GENERAL’S WARNING: Smoking by Pregnant Women May Result in Fetal Injury,

Premature Birth, and Low Birth Weight.

- SURGEON GENERAL’S WARNING: Cigarette Smoke Contains Carbon Monoxide.<sup>2</sup>

Despite significant advances in scientific understanding of health consequences, as well as cultural shifts and advances in graphic design, these four warnings, developed in 1984, remain the only health warning messages that cigarette packages contain in the United States to this day.

Cigarette package labeling was followed by legislation requiring similar warnings for smokeless tobacco products (1986). Warnings for cigars came much later, in 2000, only after successful litigation. Both smokeless tobacco and cigar labeling followed the formula established by cigarette labels, namely English only, small print, text-based labels.

The historic steps taken by the U.S. Congress and the Federal Trade Commission forced the tobacco industry to assume responsibility for informing consumers about the health impact of their products. While these warning labels only cover a small range of the total health consequences of consuming tobacco industry products, and while they do not address the addictive nature of tobacco products, the Surgeon General tobacco warning labels are still one of the most cost-efficient mechanisms to educate consumers about the potential harm of consuming tobacco industry products.

At the same time, there are millions of people in the United States who are unable to access this critical public health information because of language barriers and literacy levels. The fact that these warning labels use technical language and are only required in English has created a significant gap in public knowledge about the harmful effects of tobacco consumption for non-English speaking people and people with limited literacy. Significantly, these are often the communities with the highest smoking rates; the highest rates of smoking related diseases and illnesses; and the least access to consistent and quality health care. At the same time they are most often the target for tobacco industry advertising campaigns. A review of the effectiveness of the current Surgeon General warning labels is long overdue.

## LANGUAGE AND LITERACY IN THE UNITED STATES

The United States is one of the most diverse and multinational countries in the world. Large and distinct Native American, African American, Asian, Middle Eastern, Chicano, Latino, Pacific Islander and white European American communities all exist within its national boundaries. At the same time, for over 500 years, racism and white supremacy have defined every aspect of national identity in the creation of the United States. While social movements have made significant advances in addressing social justice and economic disparities at key moments in history, the inequality underlying the struggles over civil rights, citizenship, and racial justice remains a gaping wound dividing the country on the basis of color and nationality.

At the center of these struggles for racial justice and social equality is the issue of language rights. While English is often narrowly understood as the “official” language in the U.S., the reality is that the U.S. is a very multi-lingual society. According the U.S Census Bureau nearly one-in-five people, or 47 million U.S. residents age five and older, spoke a language other than English at home in 2000—an increase of 15 million people since 1990. In California 39 percent of the population speaks a language other than English at home, which makes California the leading state of non-English speaking households in the country.<sup>3</sup>

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The issue of language access and literacy level is particularly important when related to the question of political participation, educational access, economic needs, and public health. Given the severity of the consequences of language discrimination in each of these areas, language access is one of the central aspects of the Equal Protection clause of the 1964 Civil Rights Act. Title VI of the Civil Rights Act of 1964 states: “No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” Title VI applies to all recipients of federal funds, without regard to the amount of federal funds that they have received. It covers schools, elections offices, social services, doctors who treat Medicaid or Medicare patients, as well as hospitals that receive federal grants.<sup>4</sup>

Highly technical language can be a barrier to equal access both for non-English speakers, as well as for people with limited literacy and disability issues. Decreased funding for public education has resulted in lower literacy levels in the United States compared to many other developed nations. In December 2005, a study of literacy levels in the United States found that 1 in 20 adults are not literate in English.<sup>5</sup> This study conducted by the National Assessment of Adult Literacy surveyed over 19,000 adults, age 16 or older, living in homes, college housing or prisons. The study also found that 30 million adults in the U.S. have “below basic” skill in prose, which means that a written pamphlet, or small text health warnings on tobacco products, may be difficult for them to understand.<sup>6</sup>

Health care professionals report that language barriers can have deleterious effects in health care. They note that patients who face such barriers are less likely than others to have a usual source of medical care; they receive fewer preventive services; and they have an

increased risk of non-adherence to prescribed medications. Among patients with psychiatric conditions, those who encounter language barriers are more likely than others to receive a diagnosis of severe psychopathology, but are also more likely to leave the hospital against medical advice. Among children with asthma, those who confront language barriers have an increased risk of intubation. Such patients with language barriers are less likely than others to return for follow-up appointments after visits to the emergency room, and they have higher rates of hospitalization and drug complications.<sup>7</sup>

## INADEQUACY OF U.S. TOBACCO WARNING LABELS

Given the reality of both language diversity and high levels of illiteracy in the United States policy makers must ask the question, “What is the impact of English-only text-based tobacco warning labels on non-English and limited English reading communities?”

When we began to research this question in the Fall of 2005, POWER members along with the Chinese Progressive Association (CPA) conducted a survey of Chinese speaking, Spanish speaking, and English speaking smokers in San Francisco to assess differences in people’s ability to understand tobacco warning labels based on their primary language. POWER members and CPA surveyed more than 150 smokers in three different neighborhoods in San Francisco. The results of our survey demonstrate a clear disparity in how informed English reading smokers are, as compared with non-English reading smokers:



- 97 percent of Spanish and Chinese speaking people surveyed said they **did not know** or **could not understand** the meaning of the warning label when given a leaflet with all four Surgeon General Warnings,.
- 59.2 percent of those surveyed in Chinese, English, and Spanish stated that when they read the Surgeon General’s warnings they found some of the words **too technical** or **unclear**.
- 93 percent of total respondents said they **support** having warning labels in other languages besides English
- 89 percent of total respondents said they **support** images/pictures as warning labels.

Our results reinforce evidence that non-English speaking smokers are unable to read the current labels and therefore do not have access to information that would allow them to make informed decisions to protect their own health. In our survey we found that non-English speaking smokers, when asked to list smoking related health dangers identified lung cancer, but did not identify the risks for pregnant women or the presence of carbon monoxide in tobacco products as dangers.

In addition to conducting our survey, we found research concluding that large picture-based warnings are far more effective than small text-based, English-only warning labels, such as those used in the United States. Smokers in countries that require large picture-based health warning labels on cigarette packs are more likely to recognize disease risks from smoking and to be motivated to quit smoking, according to a new study which compared smokers in four countries—Canada, Australia, the United Kingdom, and the United States. Additionally, 84 percent of Canadian smokers reported the cigarette package (with picture-based warning labels) as a source of information on the dangers of smoking, compared to only 47 percent of U.S. smokers.<sup>8</sup>

Not only do picture-based warning labels inform consumers, but they are also more cost effective. A study compared a \$22 million mass media campaign to raise awareness in California with the level of awareness raised in Canada by their picture-based warning labels. The study concluded that the same level of awareness was achieved at little or no cost to the Canadian government.<sup>9</sup>

- A 2004 survey of 1,046 smokers found that “the suggestion that the health risks of smoking are universally known and appreciated is clearly wrong.”<sup>10</sup> For example, 65 percent of smokers surveyed were misinformed about the harmful health affects of low-tar cigarettes, and 77 percent of respondents indicated that they would like the cigarette companies to provide them with more information about the health risks of smoking.<sup>11</sup>
- Another recent study found that more than a quarter of respondents in the USA did not believe that smoking causes stroke and only a third believe that smoking can cause impotence.<sup>12</sup>
- Finally, the US Surgeon General reported a causal link between smoking and 28 individual diseases, including the leading causes of death in the Western world and harm to every major organ in the human body. Given the long and growing list, smokers are unlikely to be aware of the full range of health impacts.<sup>13</sup>

Finally, despite attempts by transnational tobacco corporations to perpetuate the myth that consumers are already adequately informed about the health risks of smoking, research has shown they are not.

## TARGETED BUT NOT INFORMED

While non-English speaking communities and people with limited literacy are systematically excluded from information about the harmful effects of consuming tobacco industry products, these same communities are also a central focus of tobacco industry marketing. Just as it was exposed for targeting youth, the tobacco industry is increasingly being exposed for its disproportionate targeting of marginalized communities and communities of color, resulting in disproportionate levels of tobacco-related illnesses and disease in these communities.

One of the clearest examples of tobacco industry targeting of a population known to have lower access to education and lower literacy levels is the marketing to homeless communities. Public health advocates with the project Truth Dot Com, exposed one such marketing scheme from 1995. That year a major tobacco company planned to boost cigarette sales by targeting homeless people. They called their plan “Project SCUM: Sub-Culture Urban Marketing.” The tobacco corporation distributed 7000 blankets to homeless people in Brooklyn.<sup>14</sup>

International tobacco industry trade groups, recognizing the higher likelihood of affluent and highly educated consumers to quit in the face of health warnings, noted that cigarette smoking “is becoming a downscale social activity.” Cigarette companies thus increased marketing towards lower income communities of color, and communities with lower access education in the US. An RJ Reynolds marketing study noted that this segment was “more impressionable... more susceptible. They’re less formed intellectually.”<sup>15</sup>

Homeless and seriously mentally ill populations are marked by high rates of smoking, along with simultaneous extreme economic, social, psychological, and physiological vulnerability. One quarter to one third of the homeless population is considered mentally ill. Studies suggest that 70-99 percent of homeless adults (amongst whom those with mental illnesses are over-represented) smoke.<sup>16</sup>

Tobacco companies are also targeting Latino communities. According to the most recent data, Latinos now make up at least 14 percent of the US population, making them the largest and youngest “minority” group. Cigarettes are much more prevalent on Spanish-language television than on mainstream stations. For example, popular *telenovelas* show smoking in the opening scenes every night on national Spanish-language TV. Federal law prohibits advertising tobacco on television; therefore, cigarettes are not directly advertised on Spanish language TV. However, images in programming send signals that smoking is acceptable and even glamorous to viewers of Spanish-language TV. Such images are not seen on “mainstream” American TV. See , *for example*, [www.univision.com](http://www.univision.com) for program information on *La Madastra* (reviewed July/Aug. 2005).<sup>17</sup>

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Similar to other targeted communities, Latinos experience disproportionate cultural, language, and immigrant status discrimination as well as barriers to health care and health information.

To increase sales and defuse potential political opposition, tobacco companies have directed marketing, philanthropy, and outreach campaigns to African Americans, Asian Americans, Latinos, and gay men, and made appeals to different segments of society based on factors such as age and gender.<sup>18</sup>

The impact of tobacco advertising on low-income communities and communities of color must be analyzed in the context of discrimination in the nation’s health care system, including “differential delivery of health care services based on race, ethnicity, and gender; inability to access health care because of lack of financial resources, culturally incompetent providers, language barriers, and the unavailability of services; and exclusion of minority and female populations from health-related research.” In 1999, the U.S. Civil Rights Commission reported that such discrimination in the health care system resulted in “striking disparities in health status between minorities and non-minorities.”<sup>19</sup>

And the tobacco industry has been very effective in its advertising campaigns to recruit new smokers among low-income and communities of color. Here are just some examples of disparities in smoking rates and the disproportionate impact of smoking on communities of color.

- Lung cancer is the leading cause of cancer deaths among Latino men and second among Latina women in the United States.<sup>20</sup>

- Cigarette smoking is more common among adults who live below the poverty level (32.9 percent) than among those living at or above the poverty level (22.2 percent).<sup>21</sup>
- Adults with 16 or more years of education have the lowest smoking prevalence (11.3 percent).<sup>22</sup> The educational level may also indicate the relative level of literacy among many smokers.
- Specific immigrant Asian and Pacific Islander communities have some of the highest per capita smoking rates in the country, such as the 72 percent smoking rate within the Laotian community, and 71 percent smoking rate within the Cambodian community in the United States.<sup>23</sup>
- Recent evidence indicates that alcohol and tobacco use *increases* as Latino immigrants become acculturated to the United States. In the landmark Mexican American Prevalence and Services Study (MAPSS) interviewing more than 4,000 Mexican Americans in California in the 1990’s, Dr. Sergio Águilar-Gaxiola found that rates of alcohol and drug abuse more than doubled for Mexicans born in the U.S. as compared to Mexican immigrants, and that substance abuse increased over time spent in the U.S.<sup>24</sup>

## **TOBACCO HEALTH WARNINGS ARE A CIVIL RIGHTS ISSUE**

Low-income communities and communities of color are hit with a double burden of targeted tobacco marketing as well as discrimination and unequal access to health care in the United States. Perhaps not surprisingly, these communities therefore tend to show higher rates of smoking as well as higher rates of illness and mortality from causes typically linked to smoking. Given this double hit, it is reasonable to say that these communities have higher levels of vulnerability and therefore merit at least equal if not higher levels of protection and warning.

Implementation of effective, understandable health warning labels to protect consumers of tobacco products is ultimately a civil rights issue. Title VI of the Civil Rights Act of 1964 states: “No person in the United States shall, on ground of race, color, or nation-

al origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” Title VI applies to all recipients of federal funds, without regard to the amount of federal funds that they have received. It covers doctors who treat Medicaid or Medicare patients as well as hospitals that receive federal grants.

Such prohibitions logically also extend to cover federal bodies that monitor and oversee the nation’s health. In the case of tobacco, the Federal Trade Commission (FTC), charged with enforcing the Comprehensive Smoking Education Act of 1984, is an official commission of the Federal Government and therefore bound by compliance with the 1964 Civil Rights Act. By not holding tobacco corporations to an equal standard of public disclosure around the health impacts of smoking, regardless of language or literacy level, the FTC is violating the Civil Rights Act of 1964.

Protection from language discrimination, particularly in regard to health care and access to health information, is an important application of the 1964 Civil Rights Act. The failure of existing, federally-required tobacco warning labels to overcome language and literacy barriers has a serious discriminatory effect on millions of Americans. These labels do little or nothing to warn the close to one in eight American adults who are unable to comprehend basic prose, or the one in five Americans whose primary language is not English. This discriminatory effect is compounded by marketing that targets low-income and minority communities, extremely high smoking rates in Latino, Middle Eastern, Asian, and Pacific Islander immigrant communities, and the resulting high incidents of tobacco-related illness in these communities.

Courts and policy-making bodies have in fact held corporations liable for damages based on the corporation’s responsibility to provide multi-lingual and image-based

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warnings. A precedent-setting case considering this issue was *Campos v. Firestone Tire & Rubber Company*, 98 N.J. 198, 485 A.2d 305 (1984). The plaintiff in this case immigrated to the United States from Portugal. The accident involved the explosion of a truck tire rim and tire while being

mounted. The manufacturer provided various warnings and instructions in English. However, the plaintiff could not read or write Portuguese or English. The plaintiff won in trial court on the basis that the company had failed to adequately warn the consumer, and the New Jersey Supreme Court upheld the judgment. The Court also stated that: In view of the unskilled or semi-skilled nature of the work and the existence of many in the work force who do not read English, warnings in the form of symbols might have been appropriate, since the employee’s ability to take care of himself was limited.<sup>25</sup> Similar liability standards need to be applied to the tobacco industry.

Historically, tobacco companies have been held accountable for causing health damage and required to take steps to compensate victims *and prevent further damages*, principally through litigation strategies. Tobacco litigation has centered on the fact that tobacco companies knew nicotine was addictive and that smoking causes serious health damage, yet they withheld this information from the public. The US Attorney General’s tobacco litigation emphasized that targeting of youth was especially egregious, because tobacco companies were fully aware of the consequences.

Facts in the public record indicate that tobacco companies know or should know that immigrant populations, and the Latino population in particular, is very young. In common with a broad range of consumer product marketers, they also are aware of projected rapid increases in Latino populations, with predicted future increases highest among the young. Tobacco companies must know that smoking among Latino youth is increasing. Negligence theory permits that even if tobacco compa-

nies did not actually know these facts, they should have known them because there is much public information about the growing Latino population and its youth. In addition, documents could be procured during a discovery process showing that tobacco companies had this information and probably made specific, relevant marketing plans, just as nearly all other US companies have done in developing new strategies to market to and address the importance of the growing Latino community. Tobacco companies would also be held liable because the likelihood of becoming addicted and being a smoker for life is highest if the person starts smoking in their youth. Furthermore, they would be strictly liable for any targeting of Latino youth, because underage smoking is illegal.

Tobacco companies should know that health disparities are severe for Latinos, and that access to health information and health care is markedly lower in Latino communities than white communities. It follows that tobacco companies must be aware that the health impact of smoking will be more severe in Latino communities.

On July 21, 2005, the National Latino Council on Alcohol and Tobacco Prevention, the National African American Tobacco Prevention Network (NAAPT), Praxis Project, National Tribal Tobacco Prevention Network (NTTPN), Asian Pacific Partners for Empowerment, Advocacy and Leadership (APPEAL), National Coalition for Lesbian, Gay, Bisexual and Transgender Health (NCLGBTH), and Professor Vernellia R. Randall, together filed an *amicus* brief on the RICO litigation, urging the federal court to provide compensation and forward-looking remedies for minority communities. The brief emphasized that cigarette smoking, the number one cause of preventable death, was responsible for millions of deaths in the United States, and that significant investment in prevention

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and smoking cessation was still needed. Moreover, the *amicus* parties contended that minority communities were increasingly being targeted by tobacco marketing.<sup>26</sup>

Corporations and the media should be aware of the severe health care disparities experienced by the Latino community, and the law may imply a duty to act accordingly and refrain from targeting Latinos in alcohol

and tobacco advertising. Given the tremendous health consequences and addictive impact of tobacco consumption, the tobacco industry needs to be held to the highest standard of responsibility to inform consumers about the dangers of their product.

In 1998, the Office for Civil Rights of the Department of Health and Human Services issued a memorandum regarding the prohibition, under Title VI of the Civil Rights Act of 1964, against discrimination on the basis of national origin that affects persons with limited English proficiency. This memorandum states that the denial or delay of medical care because of language barriers constitutes discrimination and requires that recipients of Medicaid or Medicare funds provide adequate language assistance to patients with limited English proficiency. In 2000, a presidential executive order was issued on improving such persons' access to services.<sup>27</sup>

Several legal cases around the country have subsequently successfully argued that language discrimination violates the Civil Rights Act. Similar liability standards should, and likely will, be applied to the tobacco industry.

- In November 1999, the Court of Appeals for the 11th Circuit ruled that Alabama's practice of giving its drivers' license examinations only in English was a violation of the Civil Rights Act of 1964.
- The Sonoma County Superior Court approved a settlement ensuring that the California Labor Commissioner would provide non-English speaking persons filing claims for unpaid wages with materials and services in their own languages.

- A formal agreement was signed between the Contra Costa County Department of Social Services and the Department of Health and Human Services Office for Civil Rights that will ensure all county services and programs are accessible to persons who are limited English proficient (LEP). This includes making forms and information in non-English languages available to the public. The settlement came in response to a complaint filed by six civil rights organizations on behalf of a Laotian refugee who was erroneously cut off from food stamps.<sup>28</sup>
- In *Lau v. Nichols*, 414 US 563 (1974), the Supreme Court has held that failure to provide bilingual education violates Title VI and its implementing regulations.

Clearly civil rights law provides ample precedence for requiring tobacco warning labels that meet the needs of the most impacted members of our communities. Federal regulatory bodies charged with overseeing health impacts of products need to ensure that all consumers are provided with clear, understandable warnings. In so doing they will be saving the nation untold costs associated with treating preventable illness, and avoiding civil rights litigation.



# III. Picture-Based Warning Labels

## THE RISING CONSENSUS FOR PICTURE-BASED WARNING LABELS

**H**ow then can we resolve the problem of language and literacy discrimination in tobacco health warning labels? Increasingly, research is showing that clear and broadly accessible picture-based warning labels are one of the key strategies to address the public health epidemic that decades of tobacco industry deception and misinformation have created.

Canada has become a leader in the development and implementation of innovative label requirements for tobacco products. Canada's introduction of large picture-based warning labels on tobacco products in 1994 set a precedent that has had a tremendous impact on health warning labels and tobacco control policy internationally.

Picture-based tobacco health warning labels in Canada came in response to a crisis that began over three decades ago. In the early 1980s, Canada had the highest per capita smoking rate in the world.<sup>29</sup> From 1975 to 1988, the tobacco industry had negotiated a voluntary warning label that many have called absurd in its actual ability to protect and inform consumers. Tobacco warning labels in Canada at this time stated:

"The Department of National Health and Welfare advises that danger to health increases with amount smoked. Avoid inhaling."

Canadian consumer law places a high level of responsibility on corporations to warn consumers. Tobacco manufacturers have had a longstanding common law duty to advise consumers of the risks associated with their products. This includes advising consumers about both the nature of the risks and the magnitude of the impact.<sup>30</sup> Studies showed that tobacco consumers, particularly youth and children, had general knowledge that tobacco is "bad for you." However, beyond this very broad awareness, most tobacco consumers are not informed about the level of lethality and the many risks

involved in consuming tobacco products. Even the World Bank has concluded that, "An overview of the research literature recently concluded that smokers in high-income countries are generally aware of their increased risks of disease, but that they judge the size of these risks to be smaller and less well-established than do non-smokers."<sup>31</sup>

In response to (1) the epidemic of tobacco-related illnesses and addiction; (2) the lack of information among tobacco consumers; (3) and the impact of tobacco industry misinformation, marketing and advertising, Health Canada, and the Canadian federal health department, introduced picture-based warning labels in 1994. In June 2000, this law was strengthened and improved under section 15 of the Tobacco Act, requiring 50 percent of tobacco packages to carry the new warnings within six months of when the law was enacted. The regulation requires 16 warning labels in rotation, which use full color, pictures and graphics. The picture-based labels occupy the upper 50 per cent of both of the "principle display surfaces" of each package. In addition to the exterior warnings, Health Canada also requires an interior warning system that consists of the 16 messages in rotation. Interior warnings are printed either on the slide of the dominant package type, or on a removable inserts for the flip-top box.<sup>32</sup>

Studies comparing the impact of different types of warning labels indicate that smokers in countries that require large, picture-based health warning labels on

# International Laws Requiring Picture-Based Tobacco Warnings

## Countries Requiring Picture-Based Warnings in Tobacco Products

Australia (2006)	60 percent (30 percent front, 90 percent of back)
Belgium (2007)	56 percent of the package covered with picture-based warning
Brazil (2004)	50 percent of the package covered with picture-based warning
Canada (2000)	50 percent of the package covered with picture-based warning
Jordan	
Singapore (2004)	50 percent of the package covered with picture-based warning
Thailand (2005)	50 percent of the package covered with picture-based warning
Uruguay	50 percent of the package covered with picture-based warning
Venezuela (2004)	50 percent of the package covered with picture-based warning

## Announced Intention to use Picture-Based Warnings

Czech Republic  
Ireland  
Latvia  
Netherlands  
Slovenia

## Public Consultation re Picture-Based Warning

Portugal  
United Kingdom 48 percent of the package covered with picture-based warning

## Picture-Based Warnings Under Consideration

Bangladesh  
Hong Kong  
India  
Malaysia  
New Zealand  
South Africa  
Taiwan

cigarette packs are more likely to recognize disease risks from smoking and to be motivated to quit. One recent study compared smokers in four countries —Canada, Australia, the United Kingdom, and the United States— that have widely varying requirements for cigarette warning labels. The Canadian picture-based warnings are the most prominent among the four countries, while the U.S. warnings are the least prominent. Eighty-four percent of Canadian smokers reported the cigarette package as a source of information on the dangers of smoking, compared to 69 percent of Australian smokers, 56 percent of UK smokers, and 47 percent of US smokers.<sup>33</sup>

In addition to the use of large, clear, powerful images that communicate to consumers across language and literacy barriers, the Canadian tobacco warning labels also include messaging aimed to raise consumers' consciousness. Despite the tobacco industry's strong resistance to any specific mention of smoking-related disease, Health Canada requires tobacco manufactures to speak to the specific proven risks: addiction, lung cancer, heart disease, emphysema, mouth disease, stroke, second-hand smoke, maternal smoking during pregnancy, effects of parents smoking on the risks of uptake among children, a warning of hydrogen cyanide, and a "proportionality" message (deaths from tobacco compared with other causes of preventable death). The 16 interior messages included nine positive messages to encourage cessation, such as "You CAN quit smoking!" as well as questions to compliment the exterior warnings, such as:

"If I get lung cancer, what are my chances of surviving?"

"Can second-hand smoke harm my family?"

"Can tobacco cause brain injury?"

When the newest generation of picture-based warning labels hit the shelves in 2001, the smoking rate in Canada was 22 percent. By 2005, this number had dropped to 20 percent.<sup>34</sup> Even a study commissioned by Rothmans, Benson & Hedges Ltd. (R.B.H.) in the year 2000 (Project Jagger, June 23, 2000), cited by the Quebec Superior Court: "shows that the warnings with photos recently mandated by the federal government are having a major impact on consumers."<sup>35</sup>

In the first decade since picture-based tobacco warning labels were introduced in Canada, eight more countries have adopted similar legislation requiring graphic warning labels on tobacco products. Another fourteen countries are in various stages of consideration and implementation of similar requirements.

Much of the international momentum toward picture-based warning labels is in response to the research studies that show that picture-based warnings can be much more cost-effective than other types of tobacco public health campaigns. For example, in 1998-1999, California conducted a \$22 million mass media campaign that included messages linking impotence to smoking. Researchers from the University of Waterloo in Canada surveyed smokers and found that while California respondents were more likely than other US respondents to identify the risk of impotence from smoking, they did not reach a higher level of awareness than Canadian residents who were surveyed. Canada achieved this same level of awareness via warning labels that were introduced at little or no cost to the government.<sup>36</sup>

## TOBACCO INDUSTRY RESPONSE

Soon after the introduction of the earliest health warning labels (HWLs) in the early 1960's, the tobacco industry began to aggressively take action to block, weaken and monitor these initiatives both in the US and abroad.

The tobacco industry has used a variety of strategies and arguments to avoid health warning labels. Two researchers, Chapman and Carter, who studied the tobacco industry in Australia outline four strategies used by the industry to avoid regulated health warnings. The first strategy involves submissions to governments stating that health departments and ministries were overstepping their responsibilities, "that the proposed policy was motivated by puritanical prohibitionism" and "that there was insufficient evidence to justify warnings." To date, the industry continues to argue that there are no studies that have shown the effectiveness of pictorial-based health warning labels despite research from Canada, Brazil, and other countries.

The second strategy involves privately influencing politicians and the media through covert lobbying and contri-

butions to election funds of all political parties.

The third strategy involves using third parties to influence decision makers, such as co-opting sports organizations, business councils, and other industry confederations.

Finally, the fourth strategy involves commissioning research. This research was used to create six main arguments to oppose warn-

ing labels: (1) that tobacco warnings are the start of a “slippery slope” of requiring corporations to warn consumers about more and more issues; (2) that claims made in warnings are unsubstantiated in the evidence; (3) that warnings are an assault on free enterprise and the national economy; (4) that warnings don’t work; (5) that smokers already know that smoking is harmful; and (6) that warnings desecrate pack design and branding.<sup>37</sup>

The idea that health warning labels’ claims are unsubstantiated by the evidence was particularly relevant with regards to the “Smoking is addictive” warning, which has been strenuously resisted by the tobacco industry because of its immense legal implications. As stated by tobacco industry lawyers, “... we can’t defend continued smoking as ‘free choice’ if the person was ‘addicted.’”<sup>38</sup>

Arguments by the tobacco industry regarding the economic costs and difficulty of designing new, pictorial-based health warning labels were frequently used. These arguments have been countered by numerous studies showing the facility with which the tobacco industry is easily able to provide unique brands and packaging for different markets, regions and within countries in a way that is cost efficient.<sup>39</sup>

The industry continuously uses arguments that the public is already informed about the consequences of smoking and therefore needed no further health warning labels. To support this argument, industry research used broadly formulated questions about health impacts of smoking and not surprisingly, nearly all respondents where able to state that, “they had heard something about smoking and health.”<sup>40</sup> This finding was used to

*Since the adoption of Federal Cigarette Labeling and Advertising Act of 1965, numerous bills have been introduced in to strengthen the warning labels. The tobacco industry not only monitored them in the House and the Senate committees, but also lobbied against them and successfully prevented attempts to strengthen warning labels.*

negate the need for further health warning labels. As stated elsewhere in this paper, this does not address the gap in public awareness about the severity of the health consequences of consuming tobacco products, which is even greater in working class communities and immigrant communities throughout the United States, who have been targeted by the tobacco indus-

try as consumers and often barred from access to public health warnings.

Finally, future strategies already suggested by the industry to block health warning labels include using international trade agreements including enabling regulations for GATT/TRIPPS using commercial property, packaging and trademark arguments.<sup>41</sup>

In the United States, all of the aforementioned strategies, arguments and tactics have been used by the tobacco industry to avoid effective health warning labels.

The tobacco industry has been monitoring bills introduced in the State Congress since the late 1950s. For example, in 1958, Representative Matera introduced a bill in the House of Massachusetts that required a warning that “the use of the cigarettes may induce cancer of the lungs” and failed to pass committee according to a tobacco industry document.

Since the adoption of Federal Cigarette Labeling and Advertising Act of 1965, numerous bills have been introduced in to strengthen the warning labels. The tobacco industry not only monitored them in the House and the Senate committees, but also lobbied against them and successfully prevented attempts to strengthen warning labels. For example, during the 1980s several bills were proposed by Representative Henry Waxman. Tobacco industry documents reveal the history of their vigorous opposition to these bills:

- In March 1982, during the public hearings before the House Commerce Subcommittee on Health and the Environment on H.R. 4957 (“Comprehensive

Smoking Prevention Education Act”), RJ Reynolds’s representative Edward Horrigan stated that “the industry is opposed to the Waxman cigarette labeling proposal because it is unnecessary, misleading and, most importantly, because the medical and scientific assumptions or “findings” underlying it are incorrect and unsubstantiated. He called the bill unnecessary because virtually everyone is aware of the claimed-dangers of smoking. March 1982, H.R. 4957.<sup>42</sup>

- In April 1982, a Brown & Williamson internal memorandum written to the Ohio TAN (Tobacco Action Network) Advisory Committee, described the actions taken to oppose two new proposals that were introduced in the House (by Rep. Waxman; H.R. 5653) and in the Senate (by Senator Hatch-Packwood; S. 1929):

Gentlemen, as we discussed TAN has begun to mobilize on a nation-wide basis against two similar bills at the federal level. Your help is essential to insure that our Ohio legislators in Washington are well aware of our stance regarding these bills.

Both pieces of legislation appear to be designed to do nothing more than harass our industry . . .<sup>43</sup>

Regarding the Waxman Bill, “We are requesting that all TAN (Tobacco Action Network) members in these districts write their Congressmen immediately, in opposition to the bill, in order to prevent it from being brought before the full House Committee on Energy and Commerce.”<sup>44</sup> [emphasis in the original]

Regarding the Hatch-Packwood Bill, “All Ohio TAN members are being requested to write him immediately to discourage passage of the bill.” [emphasis in the original] The memorandum concludes stating that “either of these bills, if passed, would have a devastating effect on each of our industries” and that “this may be our most vital federal legislative battle during the 1980’s, because it addresses the very question of how far our government will go to deter the use of tobacco products.”<sup>45</sup>

- In May 24, 1982, another B&W memorandum described the success of the tobacco industry related to the bills pending in the Congress:

Subsequent to our initial serious concern about the warning notice bills, conditions have improved and at present we are cautiously optimistic that neither of the bills will be passed from committee. The improvement in outlook has been due in part to extensive efforts by the industry to communicate its position to the Congress and in part to a fortuitous unfolding of events.<sup>46</sup>

- In 1983, Rep. Waxman introduced bill H.R. 1824 in the House, which would have required three rotating HWLs replacing the 1969 single warning label. The first one would have read: “Warning: Cigarette Smoking causes LUNG CANCER AND EMPHYSEMA; is a mayor cause of HEART DISEASE; is ADDICTIVE and may result in DEATH.” The second one would have said: “Cigarette Smoking by Pregnant Women may result in MISCARRIAGE, PREMATURE BIRTHS, OR BIRTH WEIGHT DEFICIENCIES” and the third one “Smokers: No Matter how long you have smoked QUITTING NOW greatly reduces the risks to your health.” The The Philip Morris USA internal report “The Case for defeat of H.R. 1824” contained arguments used by the industry to prevent meaningful HWLs.<sup>47</sup> As a result, the Comprehensive Smoking Education Act of 1984, which established the current four HWLs, was diluted and did not include statements about addiction and death.
- During the 1990s attempts within Congress to pass stronger labeling polices continued. In 1993 Rep. Waxman introduced a bill modeled on the laws of Australia and Canada, which would have required nine rotating HWLs including addressing addiction, environmental tobacco smoke, and the warning “cigarettes can kill you.” In 2000, a graphic warning label bill was introduced by Senator Durbin that would address these issues. Both bills died before going to the floor.<sup>48</sup>

Most recently, Philip Morris, México and BAT México entered into an agreement with the Mexican Ministry of Health that resulted in the industry voluntarily placing a warning label message on the side of the pack of cigarettes that is ambiguous and confusing. In exchange for financial subsidy from Phillip Morris and BAT, the Ministry of Health agreed to not place stronger and more

effective pictorial labels on the package front in accordance with the agreement's explicit preemption of "images or pictures."<sup>49</sup>

Each of these examples demonstrate how the tobacco industry recognizes the impact and effectiveness of tobacco health warning labels just as much as public health officials. These blatant efforts of transnational tobacco corporations to interfere with progressive legislation that would serve the best interests of the public must be exposed so that public health protection is driving our policy decisions, rather than the narrow interests of tobacco corporations.

## THE FRAMEWORK CONVENTION ON TOBACCO CONTROL

In May 2003, after four years of negotiations the member countries of the World Health Organization adopted an historic tobacco control treaty, the Framework Convention on Tobacco Control (FCTC). This treaty was soon signed by over 100 countries, and went into force on February 27, 2005. To date, a total of 137 countries have ratified the FCTC and thus are committed to implementing the legally required policies outlined in the treaty.

One of the elements of the treaty concerns warning labels. Article 11 of the FCTC states that warning messages should cover at least 50 percent of the principal

*Article 11 of the FCTC states that warning messages should cover at least 50 percent of the principal display areas of the package (i.e. both the front and back), but at a minimum must cover at least 30 percent of the principal display areas.*

display areas of the package (i.e. both the front and back), but at a minimum must cover at least 30 percent of the principal display areas. It also requires that the messages be rotated and encourages the use of pictures and pictograms as well as the use of non-health messages (e.g. "Quit Smoking—Save Money!"). These require-

ments reflect the findings that, to be effective, warning labels must be noticeable, relevant and memorable. To command attention, warning labels should occupy a *minimum* of 50 percent of the display area and should be in color! Pictorial warnings are also necessary, particularly in countries with low literacy rates or where research shows smokers are ignoring warning labels (for example where warning labels have been on cigarette packs for a long period of time and consumers may have become "immune" to them).

Detailed information on the FCTC can be found on the website of the Framework Alliance for Tobacco Control, (<http://fctc.org/>) an alliance of more than 250 organizations representing over 90 countries around the world which was created to support the development, ratification and implementation of the FCTC. Information can also be found on the World Health Organization's Tobacco Free Initiative site (<http://www.who.int/tobacco/en/>).

The United States has signed the treaty, but the United States Congress has still not taken action to ratify and adopt this treaty.

# Recommendation

Our experience and research has shown that clear and broadly accessible picture-based warning labels are one of the key strategies available to address the public health epidemic that has been created by decades of tobacco industry deception and misinformation.

The United States Congress is the legislative body that can take action to provide access to tobacco health warnings on picture-based warning labels to non-English and low literacy tobacco users. We think it is of the highest urgency that the United States join the international consensus and enact picture-based warning labels as a more effective and cost-efficient model of educating and protecting the rights of all of our communities.

We urge Congressional Representatives who are concerned about tobacco control, language rights and civil

rights to propose legislation to amend the Comprehensive Smoking Education Act of 1984 (Public Law 98-474) and require picture-based warning labels. This may include directing the Office of Governmental Accountability or another appropriate government agency to file a Report to Congress. The report must look at the deadly consequence to non-English speaking and low-literate tobacco consumers of text-only, English only warning labels. The report must reflect evidence that picture-based warning labels are the best and most cost effective way to address this deadly consequence and recommend an amendment to the Comprehensive Smoking Education Act of 1984 (Public Law 98-474) that would require graphic warning labels to remedy this problem.

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