

Graphic images of smoking about more than cigarettes

By Jim Nowlan

Many decades ago when I was a callow college man, my fraternity taught me the proper way to light a lady's cigarette (I think it was in how to strike and hold the match, among other polite gestures). Back then, smoking was cool.

My parents both smoked bracing, unfiltered Lucky Strikes and developed emphysema, which contributed to their deaths. I have my vices, but smoking isn't one of them, and maybe that's why. Maybe that's also why my initial reaction to the 2009 federal act that requires graphic warning labels on packs of cigarettes was favorable. After all, cigarettes kill and the government has an interest in reducing such carnage.

And smoking is no longer cool.

Yet the cigarette companies have fought the graphic warning labels (which have not been implemented), declaring that the government is compelling speech that the companies don't want to make. In other words, the required labels would be a violation of the free speech rights guaranteed under the First Amendment to the U.S. Constitution.

Here is the situation.

Text only warning labels on cigarette packs first appeared in 1965, mandated by Congress a year after the U.S. Surgeon General issued the first report documenting the health hazards of smoking. At my local Casey's, I checked several cigarette packs and found the labels on the sides of each pack, in small, light-face lettering. The warnings varied from warning pregnant women that "smoking may result in fetal injury" to

“smoking causes lung cancer.” There are other warnings as well, all of which are hard to see and easy to avoid.

The 2009 Family Smoking Prevention and Tobacco Control Act mandated the Federal Drug Agency (FDA) to require graphic warning labels. The FDA has proposed grisly labels that would cover the top half of cigarette packs with such images as a man exhaling smoke from a tracheotomy hole in his neck, the rotting teeth of a smoker, and the damaged heart muscle of a smoker.

Two federal court cases on the issue are being litigated. In both, the tobacco companies argue that the law infringes on their free speech rights; the government, that the law was in the public interest.

A federal judge in Washington, D.C. last month agreed with the companies, and issued a temporary restraining order that blocks implementation of the labels. But a federal appeals court in Cincinnati last week sided with the government.

Judge Jane Branstetter Stranch, writing for the three-judge panel, noted that, “Tobacco products will kill up to one-half of the people who use them as they are intended to be used,” which she opined created a strong government interest in providing “truthful information” (the labels) for consumers of cigarettes.

Because of conflicting decisions in different federal courts, the issue will probably be decided by the Supreme Court, so it is out of our hands.

Yet the federal labeling law is a reminder of the awesome power of government to force us to do something we (the cigarette companies, in this case) don’t want to do.

Living in a farm community, I am reminded of the U.S. Supreme Court ruling in *Wickard v. Filburn* (1942) in which the federal government destroyed the wheat crop of farmer

Filburn, and fined him to boot, because he grew more wheat than he was allotted, even though the extra amount was to be for his own use.

Indeed, more than regulate package labels, the government can deny some people their pleasures, as in federal laws that ban outright the growing and sale of marijuana and other drugs. But not tobacco, yet, which is arguably more harmful than the weed.

We tend to back laws that ban or limit what we don't use ourselves, as in the above paragraph. But what if the Congress were crazy enough to ban NFL football on the premise that it is harmful to the players? Americans would be up in arms against such a law, declaring it a violation of our rights.

On balance (and that is what we often do in a democracy, balance competing rights and interests), I support with some hesitancy the requirement that the grisly labels be placed on cigarette packages. The use of the tobacco product is not banned, after all, yet the labels may create such anxieties in smokers as to cause some of them to quit. Yet free speech is diminished.

Not a simple, easy decision.