

FROM THE BIG APPLE TO BIG BEN: AN INSIGHT INTO MENU LABELING

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I.	INTRODUCTION.....	1
II.	OBESITY IN THE UNITED STATES	2
	A. <i>Obesity—An insight into measurement and dietary habits</i>	3
	1. Measurement.....	3
	2. Dietary Evolution	4
	B. <i>More weight - More problems</i>	5
III.	LEGISLATIVE LANDSCAPE OF NEW YORK CITY’S NUTRITIONAL DISCLOSURE	6
	A. <i>Regulation 81.50</i>	7
	B. <i>Studies of Implementation</i>	8
IV.	NATIONAL NUTRITIONAL DISCLOSURE REGULATION	10
	A. <i>The Patient Protection and Affordable Care Act</i>	10
	B. <i>Arguments in Favor of Menu Labeling</i>	11
V.	INTERNATIONAL MENU LABELING	12
	A. <i>International Obesity-United Kingdom</i>	12
	B. <i>Author’s Perspective</i>	14
VI.	CONCLUSION	15

I. INTRODUCTION

Imagine looking around and recognizing that you are much heavier than your fellow peers. You are out of breath after jogging a quarter of a mile and shopping for new clothes is a nightmare. You dread stepping on the scale at the doctor’s office because you know the nurse will have to move you up to the next weight category. These scenarios you have envisioned are not imaginary, but rather the unfortunate reality for many struggling with obesity. Ashley Pelman has fallen victim to this harsh reality. Although she had always been slightly heavier than most kids her age, she knew she had a problem when she reached the age of fourteen. At only four feet ten inches, Ashley Pelman weighed in at 170 pounds.¹ She ate McDonald’s approximately three to four times a week since the age of five and had become obese.² Pelman would now be at serious risk for developing diabetes, heart disease, and high blood pressure.

1. Devon E. Winkles, *Weighing the Value of Information: Why the Federal Government Should Require Nutrition Labeling For Food Served in Restaurants*, 59 EMORY L.J. 549, 550 (2009).

2. *Id.*

Ashley Pelman claimed that McDonald's failed to adequately warn the public of its product's health content. A grease soaked wrapper was not enough to inform the public that its meals contained a lot of calories, fat, and salt.³ Pelman filed a claim asserting that without nutritional disclosure, McDonald's was misleading the public.⁴ The court dismissed her claim and held that the nutritional content of the food was common knowledge.⁵ However, the court's assumption that fast food patrons are inherently informed of their purchase's nutrition is erroneous. In fact, nutritional information provides little to no consumer awareness to restaurant patrons, as they do not have accessible nutritional information at the point of purchase.

This Article will explore these issues in several parts. It will assert that countries that have rising levels of obesity similar to that of the United States should adopt menu labeling regulations. These countries, such as the United Kingdom, should adopt a nation-wide initiative to curb obesity through menu labeling at fast food restaurants. This conclusion is reached by comparing the current obesity statistics of these countries with the United States efficacy at reducing obesity through menu labeling.

Part II will provide an overview of obesity in the United States. As part of this discussion, this section will lay out how obesity is measured and the negative effects for not only individuals, but also the country as a whole. Part III will explain the legislative landscape regarding the actions taken to target obesity in New York City. It will begin with a brief overview of the nutritional disclosure mandate in New York City and end with a discussion of the studies performed regarding New York City's nutritional disclosure regulation. Part IV will explore the Patient Protection and Affordable Care Act's attempt at a national nutritional disclosure mandate. Further, it will briefly describe the arguments in favor of menu labeling. Finally, part V will assert that countries that have rising levels of obesity, like the United Kingdom, should adopt nation-wide legislation to curb obesity. It will reach that conclusion by analyzing the United Kingdom's obesity statistics and their correlation to a variety of factors that contribute to the crisis.

II. OBESITY IN THE UNITED STATES

America is consumed with body image and unhealthy eating habits. Upon examining obesity, it is important to note that the underlying problem is not one of appearance, but rather of health. Obesity has been a

3. See *Ashley Pelman v. McDonald's Corp.*, 396 F.3d 508, 510 (2d Cir. 2005).

4. *Id.*

5. *Id.* at 511.

significant health concern in the United States over the past three decades.⁶ It is a pandemic that has led to an overall decrease in the health of this country's population.⁷ In the mid 1970s, approximately 15% of the U.S. population was obese.⁸ Figures now suggest that more than 33% of adults are suffering from obesity.⁹ These alarming statistics have led to regulatory tools to combat this crisis. This section will address the definition of obesity by measurement, the American dietary evolution, and the implications stemming from obesity in the United States.

A. Obesity—An insight into measurement and dietary habits

Prevention and treatment of obesity is an extremely important public health concern that can only be dealt with by examining the causes that have led to America's expanding waist sizes. Approximately a decade ago, an expert panel of the National Institutes of Health (NIH) developed a system for defining different weight categories. Upon further examination of these weight categories, studies reveal an undeniable link between higher weight and more financial and health complications in this country.

1. Measurement

Obesity is a label given for a range of weight that is greater than what is healthy for a certain height.¹⁰ For adults, obesity ranges are broken down by using weight and height, to calculate a number called the Body Mass Index (BMI).¹¹ BMI is a reliable and inexpensive method for determining whether an individual is obese.¹² For BMI purposes, standard weight categories indicate whether an individual is underweight, normal, overweight, or obese.¹³ Adults with a BMI below 18.5 are underweight and scores between 18.5–24.9 reflect a normal weight category.¹⁴ Those adults that fall into a BMI category of 25.0–29.9 are considered overweight; anything higher indicates an individual is obese.¹⁵ These statistics are

6. Ashley Arthur, *Combating Obesity: Our Country's Need For a National Standard to Replace the Growing Patchwork of Local Menu Labeling Laws*, 7 IND. HEALTH L. REV. 305, 307 (2010).

7. *Id.*

8. *Id.*

9. *Id.*

10. *Overweight and Obesity*, CTRS FOR DISEASE CONTROL AND PREVENTION (Jun. 21, 2010), <http://www.cdc.gov/obesity/defining.html> (last visited Nov. 3, 2011).

11. *Id.*

12. Eloisa C. Rodriguez-Dod, *It's Not A Small World After All: Regulating Obesity Globally*, 79 MISS L.J. 697, 713 (2010).

13. *Overweight and Obesity*, *supra* note 10.

14. *Id.*

15. *Id.*

important because of their direct correlation between weight and the various health problems that contribute to the decline in health of this country.¹⁶

2. Dietary Evolution

Obesity is a major cause of preventable death.¹⁷ Current statistics suggest that the incidence of obesity is not slowing.¹⁸ If existing trends continue, 80% of American adults will be overweight or obese by 2022.¹⁹ These numbers are largely reflective of the evolution of this nation's dietary habits. This country's dietary habits have been changing due to Americans working more hours and having less time to prepare meals at home.²⁰ In fact, one-third of domestic food consumption now comes from meals prepared outside the home.²¹ In 2007, Americans spent about half of their food budget on restaurant meals.²² This is a dramatic increase in comparison with a 26% restaurant consumption budget in 1970.²³ This presents a problem for places where the majority of restaurants are fast food establishments. Although these fast food restaurants provide easy and inexpensive food for out of home consumption, they are larger than necessary calorie-ridden meals.

The major concern regarding this change in dietary habits is the consumption of high caloric meals. Patrons who eat at fast food establishments are more likely to underestimate the amount of calories in the foods they choose and tend to consume significantly more calories.²⁴ Adults now consume 200 more calories per day than individuals several

16. Press Release, Pub. Health Serv., Office of the Surgeon Gen., U.S. Dep't of Health & Human Serv., The Surgeon General's Call to Action to Prevent and Decrease Overweight & Obesity, available at http://www.surgeongeneral.gov/topics/obesity/calltoaction/1_2.htm (last visited July 13, 2011) (stating that individuals with a BMI greater than thirty have up to a 100 percent increased risk of premature death).

17. Press Release, Tim Kensley, Obesity Epidemic Increases Dramatically in the United States: CDC Director Calls for National Prevention Effort (Oct. 26, 1999), available at <http://www.cdc.gov/media/pressrel/r991026.htm> (last visited July 19, 2011) (quoting that the Center for Disease Control estimates that obesity contributes to 300,000 deaths per year in the U.S., second only to tobacco-related deaths).

18. *See id.*

19. See Youfa Wang et al., *Will All Americans Become Overweight or Obese? Estimating the Progression and Cost of the US Obesity Epidemic*, 16 *OBESITY* 2323, 2329 (2008).

20. *Id.*

21. DEPT OF HEALTH AND MENTAL HYGIENE BOARD OF HEALTH, NOTICE OF ADOPTING OF A RESOLUTION TO REPEAL AND REENACT § 81.50 OF THE NEW YORK CITY HEALTH CODE, 2008, available at <http://www.nyc.gov/html/doh/downloads/pdf/public/notice-adoption-hc-art81-50-0108.pdf> (last visited July 15, 2011) [hereinafter NOTICE OF ADOPTING OF A RESOLUTION].

22. *Id.*

23. *Id.*

24. Paul Simon et al., *Menu Labeling as a Potential Strategy for Combating the Obesity Epidemic: A Health Impact Assessment*, 99 *AM. J. PUB. HEALTH* 1680, 1681 (2009).

decades ago.²⁵ Restaurants have not only increased portion sizes throughout the years, but have also set price incentives for purchasing larger meals.²⁶ Extensive studies have shown that even lean individuals increase their food intake when given larger portions.²⁷ Americans are suffering from portion distortion and fail to realize that even one meal can encompass the entire caloric intake for an entire day.²⁸ Fast food restaurants use certain marketing techniques to give consumers the impression that these larger portions are normal. As a result, adults across the nation have been gaining weight. These weight changes in the population have led to direct economic consequences on the entire United States' health care system.²⁹

B. More weight - More problems

America's obesity crisis is at the pinnacle of its pandemic. Obesity costs Americans \$147 billion each year in health care costs.³⁰ This staggering cost makes obesity in this country a ticking time bomb for the American health care system. The obesity pandemic has made Americans susceptible to a variety of chronic health conditions that are undeniably linked to these increasing costs.³¹ These conditions range from heart disease, hypertension, high cholesterol, cancer³², and Type II diabetes.³³

Studies confirm that obese individuals who suffer from a variety of health conditions directly contribute to the rising health care costs. Recent studies reveal that a woman of normal weight between the age of thirty-five and forty-four spends an average of \$2100 dollars on health care annually, as opposed to \$2350 dollars for women in the same age range, but with BMIs between twenty-five and thirty.³⁴ Annual health care costs rise as a result of higher BMIs. For example, annual health care costs for women

25. ROBERTA R. FRIEDMAN, MENU LABELING: OPPORTUNITIES FOR PUBLIC POLICY: SCIENTIFIC STUDIES RELATED TO MENU LABELING 8 (Rudd Ctr. for Food Pol'y and Obesity Yale Univ.) (2008).

26. *Id.* at 7 (quoting that since the 1970s, the typical soft drink servings have increased by forty-nine calories and French Fries servings have increased by more than sixty-eight calories).

27. See Jeppe Matthiesen et al., *Size Makes a Difference*, 6 PUB. HEALTH NUTRITION 65, 70 (2002).

28. Barbara J. Rolls et al., *Portion Size of Food Affects Energy Intake in Normal-Weight and Overweight Men and Women*, 76 AM. J. CLINICAL NUTRITION 1207, 1207 (2002).

29. Eric A. Finkelstein et al., *Annual Medical Spending Attributable To Obesity: Payer and Service-Specific Estimates*, 22 HEALTH AFFAIRS 822, 822 (2003).

30. *Id.*

31. *Id.*

32. National Cancer Institute, U.S. National Institutes of Health, *Obesity and Cancer: Questions and Answers* (Mar. 16, 2004), <http://www.cancer.gov/cancertopics/factsheet/Risk/obesity> (last visited July 5, 2011).

33. See Finkelstein et al., *supra* note 29, at 829.

34. See Christina C. Wee et al., *Health Care Expenditures Associated With Overweight and Obesity Among US Adults: Importance of Age and Race*, 95 AM. J. PUB. HEALTH 159, 159 (2005).

with BMIs between thirty and thirty-five were about \$2800, and for women with BMIs between thirty-five and forty, \$3000.³⁵ In total, obesity related health care costs encompass a large portion of American health care expenditures and if these statistics continue, health care costs stemming from obesity could reach \$860 billion dollars a year.³⁶

Obesity is a large financial burden that will affect the tax paying public directly through programs such as Medicaid and Medicare.³⁷ Obesity related expenses constitute about \$26.9 billion of adult medical expenditures outlaid by these programs.³⁸ When focusing on total payments, obesity attributes to 8.5% of all Medicare payments, 11.8% of Medicaid, and 12.9% of private payer spending.³⁹ In 2006, medical spending for obesity resulted in taxpayers incurring a 9.1% increase in annual medical spending, compared with only a 6.5% increase in 1998.⁴⁰ These statistics highlight the ever-increasing burden to both public and private taxpayers.

Obesity is also affecting this country's youth because obese children are very likely to become obese adults.⁴¹ Obese children tend to suffer from more direct results of obesity like insulin resistance, orthopedic problems, liver damage, sleep apnea, and asthma.⁴² Additionally, both obese children and adults are likely to suffer from stigmatization and discrimination from being obese. This stigmatization often times results in depression and low self-esteem.⁴³ These problems continue to plague this country. In response to these trends, policy-makers have set forth different regulatory approaches to slim down America's expanding waistlines.

III. LEGISLATIVE LANDSCAPE OF NEW YORK CITY'S NUTRITIONAL DISCLOSURE

In the last decade, there have been several movements to target obesity throughout the United States. States such as California, Oregon, Maine, Massachusetts, and New Jersey have all adopted menu labeling

35. *Id.*

36. Youfa Wang et al., *supra* note 19 at 2323.

37. Michael Fierro & Debra Lightsey, *Trends and Policy Solutions in Adult Obesity, Physical Activity and Nutrition*, COUNCIL OF STATE GOV'TS HEALTH SERV. INITIATIVE, available at <http://www.healthystates.csg.org/NR/rdonlyres/24124F6F-1286-4B5F-AB21-D59D6F78F476/0/aoverview.pdf>. (last visited July 24, 2011).

38. *Id.*

39. Finkelstein et al., *supra* note 29 at 829.

40. *Id.* at 828.

41. U.S. Dep't of Health & Human Services, Centers for Disease Control & Prevention, *Childhood Overweight and Obesity* (Oct. 12, 2011).

42. *Id.*

43. *Id.*

regulations.⁴⁴ However, New York City's fight for menu labeling has been the most notable. This section will address New York City's two attempts at implementation of the menu labeling regulation on fast food items, and the studies.

A. Regulation 81.50

New York City has been at the forefront of adopting menu labeling requirements for restaurants in the United States. On December 5, 2006, the Department of Health implemented the New York City Health Code Section 81.50, attempting to combat the obesity in the city.⁴⁵ The regulation mandated that any food service voluntarily publishing calorie information should post such information on its food menus.⁴⁶ Restaurants that did not post the information⁴⁷ were subject to fines.⁴⁸ However, due to legal challenges based on preemption and constitutionality, New York City adopted a revised version of regulation 81.50.

On January 2, 2008, New York City implemented a revised version of Regulation 81.50.⁴⁹ While the first law applied to restaurants that voluntarily released nutritional information, the revised version of the regulation mandated any restaurant with at least fifteen locations to provide nutritional information.⁵⁰ The drafters of the new version also made changes to other portions of the regulation to offer a more flexible standard for the restaurant industry.⁵¹ The new regulation states that calorie information is to be shown as prominently as either the menu item's name or price.⁵² The new regulation also allows restaurants to place nutritional information in a variety of places.⁵³ Nutritional information can now be placed on item tags on food displays, food display cases, or separate drive-through window displays, as long as the information could be easily read.⁵⁴

The new law was set to cover about 2400 restaurants in New York City and would impact approximately 145 million to 500 million meals per year.⁵⁵ Regulation 81.50 promoters estimate that there would be 150,000

44. Michelle I. Banker, *I Saw the Sign: The New Federal Menu-Labeling Law And Lessons From Local Experience*, 65 FOOD & DRUG L.J. 901, 908 (2010).

45. N.Y. State Rest. Ass'n v. N.Y. City Bd. of Health, 509 F. Supp. 2d 351, 353 (2nd Cir. 2007).

46. *Id.*

47. Wendy N. Davis, *Biting Back at Obesity: The Big Apple's calorie-counting law is staying on the menu*, 95 A.B.A.J. 17 (2009).

48. *Id.* (explaining that fines range between \$200-\$2000).

49. N.Y. State Rest. Ass'n v. N.Y. City Bd. of Health, 556 F. 3d 114, 121 (2d Cir. 2009).

50. *Id.*

51. NOTICE OF ADOPTING OF A RESOLUTION, *supra* note 21.

52. *Id.*

53. *Id.*

54. *Id.*

55. NOTICE OF ADOPTING OF A RESOLUTION, *supra* note 21.

fewer obese New Yorkers and at least 30,000 fewer cases of diabetes as a result of the new law.⁵⁶ The new legislation was encouraging for officials who saw the obesity problem getting worse in New York City.

Regulation 81.50 is a narrowly tailored nutrient disclosure requirement for fast food establishments. The New York City regulation requires fast food establishments to make calorie information for standard menu items⁵⁷ available to the public at the point of purchase.⁵⁸ The proposal is set to affect approximately 10% of food service establishments that serve standard menu options.⁵⁹ The regulation states that restaurants must disclose calorie information that has been made publicly available or otherwise.⁶⁰ Although the regulation's accommodating requirements do not specify a particular typeface, the information must be posted as large as the price or name of the menu item.⁶¹ Additionally, the regulation does not require the restaurant industry to engage in any analysis of the actual nutritional content of their items. The nutritional information would only have to adhere to the calculation of the Food and Drug Act.⁶² Moreover, restaurants would remain free to post any additional information and possible disclaimers about calorie variations.⁶³

B. Studies of Implementation

New York City's regulation 81.50 has been in effect for nearly three years now and a variety of studies have evaluated the regulation's efficacy. The studies evaluate a regulation that is still in its initial stages and many suggest that the law needs time to take effect before an accurate inference can be made.

One particular study asks consumers whether knowledge of calorie information would influence their purchasing decision.⁶⁴ The study reveals a mixed percentage of respondents claiming that the menu labels alter their habits.⁶⁵ In another survey, 37% of New Yorkers who saw nutritional information modified their purchasing behavior and changed their

56. Press Release, Michael A. Cardozo, New York City Government, Federal Court Upholds New York City Health Code Provision Requiring Certain Restaurants to Post Calorie Information on Menu and Menu Boards (Apr. 16, 2008), available at <http://www.nyc.gov/html/law/downloads/pdf/pr041608.pdf> (last visited July 29, 2011).

57. NOTICE OF ADOPTING OF A RESOLUTION, *supra* note 21.

58. N.Y.C., N.Y., RULES OF THE CITY OF NEW YORK TIT. 24, HEALTH CODE, § 81.50(a)-(e) (2008).

59. NOTICE OF ADOPTING OF A RESOLUTION, *supra* note 21.

60. Tit. 24 § 81.50.

61. *Id.*

62. *Id.*

63. *Id.*

64. Mary T. Bassett et al., *Purchasing Behavior and Calorie Information at Fast-Food Chains in New York City*, 98 AM. J. PUB. HEALTH 1457, 1458 (2008).

65. *Id.*

consumption.⁶⁶ Additionally, the New York City Health Department conducted a study that reported only 56% of consumers noticed the information at fast food establishments.⁶⁷ That study reveals that 15% of those who saw the information changed their food choice as a result of the nutritional information.⁶⁸

Pilot studies examining restaurant purchases also reveal positive results.⁶⁹ One study reveals that Subway customers who saw the nutritional information; purchased on average products with fifty-two less calories than those who did not see anything.⁷⁰ In another study, results show people who saw the nutritional information chose a meal with 14% less calories than other people.⁷¹ The Health Department's report indicates a modest reduction in calorie consumption, revealing a decrease in chains like Au Bon Pain, Kentucky Fried Chicken, McDonald's, and Starbucks.⁷² The study reveals that the largest calorie reduction was found at coffee shops.⁷³ The number of calories that customers ordered was reduced by almost 10%. The average caloric consumption decreased from 260 in 2007 to approximately 237 calories in 2009.⁷⁴

Another recent study from Stanford University assessing menu labeling regulation found that New York City's menu labeling law led to Starbucks' customers ordering, on average, products with 6% less calories than before.⁷⁵ The study also reveals that the calorie modification lasted the entire ten month duration after the regulation was set forth.⁷⁶ Lastly, studies have found that 75% of the decrease in calories has come from customers ordering fewer items, and 26% of the decrease in calories has come from customers ordering healthier options.⁷⁷ Additional studies reveal that although many individuals claim to have altered their decision due to nutritional influence, no statistics have shown a change in the calories they consume.⁷⁸ These studies reveal that menu labeling is altering restaurant patrons' consumption. These are positive results for a community that needs a drastic change. However, these positive results need to be applied on a larger scale to help all Americans.

66. *Id.*

67. See Roni Caryn Rabin, *How Posted Calories Affect Food Orders*, N.Y. TIMES, Nov. 9, 2009, at A7.

68. *Id.*

69. *Id.*

70. Mary T. Bassett et al, *supra* note 64 at 1458.

71. Bryan Bollinger et al., *Calorie Posting in Chain Restaurants* 1-51 (Stanford Univ. & Nat'l Bureau of Econ. Res., Working Paper No. 15648, 2010).

72. Rabin, *supra* note 67.

73. *Id.*

74. *Id.*

75. Bollinger et al., *supra* note 71, at 2.

76. *Id.*

77. *Id.* at 3.

78. *Id.* at 9.

IV. NATIONAL NUTRITIONAL DISCLOSURE REGULATION

There have been numerous menu labeling laws implemented across the country. However, the variety between the different laws has led to an irregularity of its application. Although most local and state menu labeling regulations are quite similar, there are enough differences to make the application of the law inconsistent. In an attempt to eliminate the patchwork of legislation across the country, Congress has established a national nutritional disclosure regulation. This section will address the national attempt at menu labeling promulgated in the Patient Protection and Affordable Care Act (PPACA) and the arguments in favor of nutritional disclosure.

A. The Patient Protection and Affordable Care Act

In March 2010, the Patient Protection and Affordable Care Act was passed by Congress.⁷⁹ Section 4250 of the Act promulgates a national nutritional disclosure regulation.⁸⁰ This new regulation requires food establishments, with twenty or more locations, to disclose nutritional information regarding standard menu items.⁸¹ Section 4250 marks Congress' first attempt at a successful federal nutritional disclosure mandate.

The federal mandate requires food establishments to post the number of calories next to the menu item.⁸² Additionally, the restaurants are required to post the recommended daily caloric intake next to the menu items.⁸³ This federal law will preempt any state law regarding menu labeling. Therefore, section 4250 will supersede any local ordinance or regulation. Additionally, this federal law will have a voluntary opt-in provision.⁸⁴ Restaurants not required to, but wishing to post this information, may do so.⁸⁵ In turn, these restaurants would be exempted from local laws.⁸⁶ This national standard for nutritional information disclosure is a beneficial mandate that will not be difficult to implement. The Act's mandate will reach consumers all across the United States and can be expected to have a positive effect on the overall health of this country's citizens. Providing a national nutritional disclosure law will replace the patchwork of local legislation with a consistent mandate.

79. Patient Protection and Affordable Care Act, Pub. L. 111-148, § 4205, 124 Stat. 119, 413-16 (2010).

80. *Id.* at § 4205(b).

81. *Id.*

82. *Id.* § 4205(bb).

83. *Id.*

84. Patient Protection and Affordable Care Act, § 4205(bb).

85. *Id.*

86. *Id.* at § 4205(d).

B. Arguments in Favor of Menu Labeling

Officials raise numerous arguments in support of a nutritional disclosure law. The main argument in favor of the menu labeling concerns the encouragement of individuals to purchase and consume fewer calories, which would result in lower obesity rates.⁸⁷ Supporters of the menu labeling assert that obesity does not just affect an individual; it is a public health concern placing a heavy burden on the economy.⁸⁸ The government does not intend to stop people from eating fast food. Nutritional disclosure is simply meant to inform individuals of the meals they are purchasing and consuming.

Supporters also cite studies that show that the lack of information at the point of purchase leads to the overconsumption of high caloric meals.⁸⁹ Evidence illustrates that consumers cannot accurately estimate the amount of calories in their meals without menu labeling.⁹⁰ According to one study, Americans underestimate the amount of calories they consume by almost 55%.⁹¹ In another study, individuals underestimated the amount of calories they ate by 600.⁹² Consequently, although consumers may be aware that they are not consuming healthy food, the degree to which individuals underestimate their calories is astronomical.

Therefore, supporters argue that if individuals have more information about consumption it could lead to better eating habits. Menu labeling could provide information for consumers to make accurate decisions at the point of purchase. Better decisions can lead to people adopting healthier long term eating habits, and would in turn, reduce the demand for high caloric items at fast food restaurants.⁹³ Instead of putting a strain on fast food locations, menu labeling can provide new health-conscious marketing and advertising avenues for the restaurant industry. Supporters also state that the fast food industry could benefit from including healthier alternatives such as changing their ingredients, cooking methods, and even reducing portions sizes that have grown throughout the years.⁹⁴

Lastly, supporters of menu labeling argue that adopting a mandatory nutrient disclosure regulation, rather than other anti-obesity initiatives,

87. Finkelstein et al., *supra* note 29, at 831.

88. Simon et al., *supra* note 24, at 1681.

89. See Mary T. Bassett et al., *supra* note 64, at 1459.

90. *Id.*

91. Michael A. McCann, *Economic Efficiency and Consumer Choice Theory in Nutritional Labeling*, 2004 WIS. L. REV. 1161, 1176 (2004).

92. Scot Burton et al., *Attacking the Obesity Epidemic: The Potential Health Benefits of Providing Nutrition Information in Restaurants*, 96 AM. J. PUB. HEALTH 1669, 1669 (2006).

93. Banker, *supra* note 44, at 917.

94. *Id.*

avoids discrimination against obese people.⁹⁵ Other unhealthy food restrictions could come into conflict with an individual's choice while menu labeling simply discloses information.⁹⁶ A national nutritional disclosure law is a tool that can help everyone make better decisions about consumption.

V. INTERNATIONAL MENU LABELING

Obesity is an international pandemic that is reaching every corner of the world. Even in Africa, where malnutrition was once a major health problem, countries are currently experiencing problems with obesity. Obesity is now as much of a concern as malnutrition and infectious diseases in many third-world countries around the world.⁹⁷ This section will explore the high incidence of obesity in the United Kingdom. It will assert that the United Kingdom should adopt a national menu labeling regulation similar to that of the United States to curb rising levels of obesity.

A. *International Obesity-United Kingdom*

The World Health Organization (WHO) describes global obesity, or "globesity," as one of the greatest health risks in the world.⁹⁸ People all around the world have been experiencing an ever-expanding waist size. In 1995, it was estimated that there were 200 million obese people worldwide.⁹⁹ Those figures have increased, soaring to over 300 million in 2005, while seemingly continuing to increase exponentially.¹⁰⁰ Statistics estimate that by the year 2015, there will be over 700 million obese individuals worldwide.¹⁰¹ The obesity pandemic affects a large population of people in countries like Brazil, Germany, and Australia.¹⁰² The World Health Organization has initiated a Global Strategy on Diet, Physical Activity, and Health to promote healthier eating habits but has yet to use its treaty making powers to implement a world-wide obesity control.¹⁰³

Obesity rates vary throughout Europe. However, the European country with the most significant levels of obesity is the United

95. Katherine Mayer, *An Unjust War: The Case Against the Government's War on Obesity*, 92 GEO. L.J. 999, 1013-14 (2004).

96. *Id.*

97. Jane E. Brody, *As America Gets Bigger, The World Does, Too*, N.Y. TIMES, Apr. 19, 2005, at A5.

98. *Id.*

99. *Id.*

100. *Id.*

101. Brody, *supra* note 97, at A6.

102. *Id.*

103. See Mickey Chopra et al., *A Global Response to a Global Problem: The Epidemic of Overnutrition*, 80 BULL. WORLD HEALTH ORG. 952, 954 (2002).

Kingdom.¹⁰⁴ A wide variety of studies have indicated that there are many factors that contribute to these staggering levels of obesity. Some studies suggest that obesity is caused by socio-economic factors while other studies indicate that the cause of obesity is manipulative advertising.¹⁰⁵ Although there is growing controversy and much to debate as to the cause of obesity, few will dispute that this pandemic needs a solution to curtail the increasing rates of obesity.

In England 22% of men and 23% of women are considered obese.¹⁰⁶ There are many factors that have contributed to these alarming statistics. One strikingly similar correlation between England and the United States is the long working hours. People in England work longer hours than anywhere else in Europe.¹⁰⁷ Long working hours has lead to people eating fast food items more often. Also, these longer working hours result in families having little to no time to eat dinner together.¹⁰⁸ This often leads to children and adults substituting home cooked meals for high caloric fast food meals.

Additionally, another factor that contributes to obesity is the United Kingdom's climate.¹⁰⁹ Although studies are not conclusive that colder climates correlate to a higher rate of obesity, longer nights and shorter days reduce the likelihood that individuals exercise and lead a more mobile life. Individuals in England are less active and resort to comfort food, which are notorious for their high caloric value. Ultimately, the causes of obesity are complex and diverse, but a response to the crisis is essential for a healthier country. As a result, England has taken steps to try to curb obesity through legislation.

According to the Food Safety Act 1990, it is an offense to sell food that could harm a person's health.¹¹⁰ Specifically, this act requires a showing of the food being "injurious to health."¹¹¹ This injurious to health standard requires a proof of causation between the food and the harm.¹¹² This standard is easily met in cases of immediate physical harm such as food poisoning, but would be exceedingly difficult to establish that unhealthy food leads to chronic diseases such as diabetes and heart diseases. While this act is a step in the right direction, it fails to address

104. *Id.* at 952.

105. *Id.* at 954.

106. Robyn Martin, *The Role of Law in the Control of Obesity in England: Looking at the Contribution of Law to a Healthy Food Culture*, 5 AUSTL. & N. Z. HEALTH POL'Y (2008).

107. *Id.* at 3.

108. *Id.*

109. DIW Phillips & JB Young, *Birth Weight Climate at Birth and the Risk of Bbesity in Adult Life*, 24 INTERNATIONAL JOURNAL OF OBESITY 281 (2000).

110. Food and Safety Act 1990 (c. 16/1990) (Scot.).

111. *Id.*

112. Martin, *supra* note 106, at 7.

nutritional content of food, but instead deals with the immediate safety of the food.

England has also attempted to regulate food labeling through the Food Labeling Regulations 1996, in accordance with European Union law. The law requires that nutritional content of food is to be disclosed only when a nutritional claim is made by the manufacturer.¹¹³ Additionally, the nutritional disclosure is required to be labeled in a form that has not always been easy to interpret. Some of these labels call for extensive calculations to determine calories and would be misleading as to other nutrients contained in the product. Many of these manufactures resort back to the Food Safety Act 1990 and claim that these items are not injurious to people's health.¹¹⁴ Although the government has agreed that certain foods should be labeled unhealthy while others should be labeled as healthy, legislation has done little to address these issues.

B. Author's Perspective

In the United Kingdom, the Food Standards Agency recognizes that some law needs to be established to curb obesity levels. The government accepts that businesses will not take it upon themselves to disclose nutritional facts unless they are mandated to do so. Until the present day, the English government has favored a voluntary regulatory approach to nutritional disclosure. However, this regulatory approach has not yielded fruitful results in the battle to curb obesity in the United Kingdom. The United Kingdom's obesity levels will continue to soar unless the government addresses this public health issue. Consumers need an informative system for nutritional content at the point of purchase. Legislation will aid in the United Kingdom's battle against the bulge. Mandatory menu labeling at fast food restaurants will enable consumers to make healthier consumption choices. The rise of the fast food nation in the United Kingdom necessitates a mandatory nutritional disclosure system. Therefore, the United Kingdom should adopt a national nutritional disclosure regulation similar to the legislation set forth in the PPACA. Every restaurant that contains twenty or more locations should provide nutritional disclosure for standard menu items. The legislation's nutritional disclosure will allow consumers to make better purchases. This can lead to not only a healthier lifestyle, but also a decrease in the rise of obesity. Lower obesity rates will decrease health care spending, and improve the health of the nation as well. Therefore, the United Kingdom should play its

113. The Food Labeling Regulations 1996, (Act No. 1499/1996) (Scot.).

114. *Id.*

part in the worldwide battle against obesity by adopting a menu labeling regulation.

VI. CONCLUSION

Obesity is both a serious medical condition and a lifestyle disorder that has led to a worldwide pandemic. Although obesity rates vary throughout the world, almost every country has been affected by obesity in some way. There is no golden ticket in the prevention of obesity, and as noted, the last few decades have displayed how people are eating themselves to death. The problem is clearly identifiable and a definite solution is on the horizon. There has been a positive solution to this crisis by the government's efforts to reduce obesity through menu labeling in the United States, which has certainly proven to be a step in the right direction. Countries, such as the United Kingdom, should use the United States as a case study to implement their own national menu labeling regulation, which would attack the obesity pandemic head-on. Menu labeling is the long awaited solution to this worldwide problem.