

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.³

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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.⁴

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.⁵ 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.⁶

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.⁷

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.⁸

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.⁹

- 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.”¹⁰ 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.¹¹
- 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.¹²
- 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.¹³

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.¹⁴

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.”¹⁵

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.¹⁶

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 for program information on *La Madastra* (reviewed July/Aug. 2005).¹⁷

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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.¹⁸

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.”¹⁹

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.²⁰

- 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).²¹
- Adults with 16 or more years of education have the lowest smoking prevalence (11.3 percent).²² 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.²³
- 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.²⁴

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.²⁵ 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.²⁶

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.²⁷

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.²⁸
- 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.