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editor's note

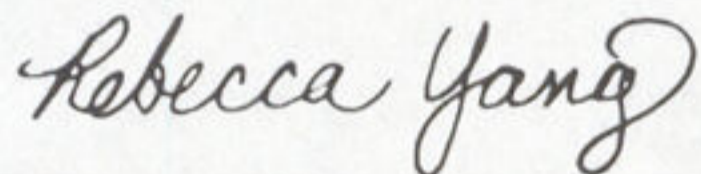
The twenty-fourth volume of the *Asian American Policy Review* (AAPR) examines a wide array of issues from the possibilities of art for informing public policy to advancing data disaggregation for the Asian American and Pacific Islander (AAPI) community.

In this volume, we pushed the boundaries of the traditional policy journal, from the diversity of issues discussed to the cover art. In a timely and important discussion, one of our Feature articles commemorates *Lau v. Nichols* on its fortieth anniversary by examining language access rights following the passage of the Affordable Care Act. Our second Feature article discusses the challenges that Asian American women, and other women of color, face while driving political campaigns in leadership roles. We examine the impact of recent sex-selective abortion bans on AAPI women and Medicaid parity for Pacific migrant populations in the United States.

Our interview highlights Curtis Chin, an award-winning documentary filmmaker and community activist who produced the documentary *Vincent Who?* His experiences and clarion call for unifying the AAPI community serve as an inspiration for us all.

Finally, this publication would not be possible without the support of the John F. Kennedy School of Government at Harvard University, members of the AAPI community, and our network of AAPI alumni. Thank you to Fred Wang and organizations that continue to support and believe in the work of this journal. Thank you to our publisher Martha Foley and our faculty advisor Richard Parker for their guidance. Lastly, thank you to our AAPR staff members whose commitment and hard work are evident in the diversity of articles we are presenting this year.

Sincerely,



Rebecca Yang
Editor-in-Chief





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it should look like the future you are dreaming.”*

-Alice Walker

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From *Lau v. Nichols* to the Affordable Care Act

Forty Years of Ensuring Meaningful Access in Health Care for Limited English Proficient Asian Americans, Native Hawaiians, and Pacific Islanders

by Helen Tran and Déodonné Bhattarai

Abstract

This article commemorates *Lau v. Nichols* on its fortieth anniversary by examining language access rights in the new era of health care reform following the passage of the Affordable Care Act (ACA). Language assistance services are critical to accessing health care. Starting with *Lau* and ending with the ACA's nondiscrimination provision, this article surveys the progression of these rights over time. A review of current national health care policy priorities for limited English proficient individuals completes the narrative of how language access rights have been an integral part of the Asian American, Native Hawaiian, and Pacific Islander experience.

Introduction

Increased access to health care for limited English proficient (LEP) individuals, or those who speak English less than “very well,” has been an ongoing call to action for many civil rights advocates. Yet, the provision of culturally and linguistically appropriate services in

publicly funded programs has not always been in line with our country's notions of fairness and equality. The idea that LEP individuals should be protected from discriminatory treatment was recognized by the U.S. Supreme Court when it ruled that Title VI of the Civil Rights Act of 1964 required San Francisco public schools to provide bilingual

education for their Chinese-speaking students. This year, 2014, marks the fortieth anniversary of that case, *Lau v. Nichols*.

Today, Asian Americans are the fastest-growing racial group in the United States, represented by dozens of languages and cultures.¹ Approximately 71 percent of Asian Americans and 29 percent of Native Hawaiians and Pacific Islanders (NHPs) speak a language other than English at home.² Approximately 32 percent of Asian Americans are LEP and approximately 21 percent of Asian American households are linguistically isolated, meaning that all members fourteen years or older are LEP.³ Since 1991, our nation's LEP population has increased by 81 percent; Asian Americans and NHPs constitute a significant part of this growing demographic.⁴ LEP Asian Americans and NHPs require interpreter (oral) and translation (written) services to access and navigate the complex health care system. For these reasons, the passage and implementation of language access policies is a top priority for advocates.

This article explores the current state of language access rights in federally funded health programs and activities established under the Patient Protection and Affordable Care Act (ACA), and in particular, their impact on LEP Asian Americans and NHPs. Part I sets the context for why language access rights in health care are important and traces the progress of these rights in health care: from the use of language as a proxy for national origin in *Lau v. Nichols*; to the push for federal rules implementing Title VI LEP programs and concurrent pullback of Title VI enforcement after

Alexander v. Sandoval; and finally to the present day where the ACA's nondiscrimination provision, Section 1557, holds enormous potential to revitalize the enforcement of these rights.

Part II reflects on national policy advocacy efforts to enforce language access rights for LEP Asian Americans and NHPs, with a focus on the provision of translated applications for the federally facilitated Health Insurance Marketplace in the wake of the first Open Enrollment period. The focus on one document illustrates the complexity of opportunities and challenges facing advocates as they work to ensure equal access for LEP individuals to the Health Insurance Marketplaces and other signature ACA programs and activities.

The Expansion and Restriction of Language Access Rights Since *Lau v. Nichols*

The Importance of Language Access in Health Care

Two million Asian Americans and NHPs are eligible for the ACA's new health insurance programs, but without proactive outreach and multilingual enrollment efforts directed toward the LEP population, a much lower number will actually become insured.⁵ LEP individuals require interpreter and translation services to access critical health programs and activities. Take for example, a Title VI complaint against Greenville Hospital System in South Carolina where anesthesiologists attempted to institute an internal policy to ban epidurals for LEP women in labor.⁶ Discrimination

like this on the basis of limited English proficiency continues to be a driver of health care inequality. The poorer health outcomes of LEP patients are well documented as increased misdiagnoses, lower rates of drug adherence, lower utilization of primary care and preventive services, forgoing medical care altogether, and lower overall satisfaction with care.⁷

Investments in language services are nominal relative to the government's substantial yearly investment in public health insurance programs.⁸ Providing interpreter services costs only \$0.50 more for every \$100 spent on a health care visit.⁹ While the total costs to providers and other health care entities for providing interpreter services vary by consumer utilization, the total costs of providing written translation materials is a smaller, often one-time, fixed cost. Having adequate access to insurance and medical services has many benefits including effective service delivery and a healthier and more economically productive population.

In addition to readily quantifiable benefits, there is a moral imperative to providing language minorities meaningful access to health care. The absence of language assistance services often compromises a basic standard of living for individuals and families. For example, in Cleveland, Ohio, a group of Chinese residents had to charter a bus every weekend to drive more than 500 miles to New York City's Chinatown to receive health care from culturally and linguistically competent staff who spoke their dialect.¹⁰ In 2001, the Office for Civil Rights (OCR) at the U.S. Department of Health and Human Services

(HHS) resolved a complaint against a psychiatric assessment center in Fresno, California, for not providing interpreters to Hmong and Spanish-speaking patients during the dispense of medication.¹¹ These stories also show how limited English proficiency is closely tied with the immigrant experience. About 81 percent of the LEP population in the United States are foreign born, and about two-thirds are not U.S. citizens.¹² One in six children who have immigrant parents have at least one parent who has difficulty speaking English.¹³ Enforcing the rights of language minorities is important not just for the sake of carrying out the law itself but as a political ideal against anti-immigrant sentiment.

Enforcing Language Access Rights Through *Lau* and Executive Order 13166

Lau v. Nichols upheld the right of language minorities to have equal access to public programs and to defend this right in court by showing discrimination based on disparate impact.¹⁴ Since *Lau*, language access rights have become a distinct area of legal and policy advocacy. One of the main challenges is that the scope of language access rights—when oral interpreter or written translation services must be provided as a matter of law—is often unclear.

In *Lau*, the Court held that the San Francisco school district's failure to provide bilingual instruction to non-English-speaking Chinese students was discriminatory on the basis of national origin and thus a violation of Title VI.¹⁵ California's state education laws required schools to help students become profi-

cient in English.¹⁶ The Court explained that bilingual instruction was necessary to achieve the state's objectives and that "there is no equality of treatment merely by providing students with the same facilities, textbooks, teachers, and curriculum, for students who do not understand English are effectively foreclosed from any meaningful education."¹⁷ The Court upheld the Department of Health, Education, and Welfare's (HEW) Title VI regulations, which prohibited disparate impact discrimination. This kind of discrimination meant any activity that had the "the effect of subjecting individuals to discrimination" or had "the effect of defeating or substantially impairing accomplishment of the objectives of the program as respect individuals of a particular race, color, or national origin."¹⁸ By validating HEW's regulations, the Court recognized language as a proxy for national origin.¹⁹

In subsequent decades, federal enforcement of Title VI and the Court's ruling in *Lau* fell short of ensuring language assistance services for LEP individuals. As a result, in 2000, U.S. President Bill Clinton enacted Executive Order 13166 ("Executive Order"), clarifying the obligations of federal agencies and their recipients to provide "meaningful access" to programs and services.²⁰ If *Lau* was in any way unclear about the nexus between national origin and limited English proficiency, the Executive Order expressly connected the two: "persons who, as a result of national origin, are limited in their English proficiency."²¹ The Executive Order also required federal agencies to provide guidance to programs and activities that received federal dollars.²² Additionally, policy

guidance from the U.S. Department of Justice (DOJ) that accompanied the Executive Order further laid out the federal government's clear belief in the "link between national origin and language."²³

Still, the force of the Executive Order was limited. It was not an actual law that created a right enforceable in court.²⁴ It also did not define "meaningful access," allowing agencies and federally funded entities broad discretion in interpreting this definition. While the Executive Order provided an opportunity for agencies to develop robust language access requirements, the result was a lax set of recommendations in the form of "guidance"—not requirements.

Sandoval's Restriction of Language Access Enforcement Options

In 2001, while federal agencies were working to comply with the Executive Order, the U.S. Supreme Court issued an opinion in *Alexander v. Sandoval*, taking away the ability of individuals to challenge inadequate language assistance services using a disparate impact theory in court. In *Sandoval*, a Spanish-speaking individual challenged the state of Alabama's English-only driver's license examination as having the effect of discriminating against individuals who did not speak English.²⁵ The plaintiff argued that this policy, regardless of its intent, violated Title VI and its implementing regulations.²⁶

The Court did not consider the merits of the case but rather the question of whether individuals could even bring suit to enforce these particular regulations.²⁷ *Sandoval* held that courts could

only consider Title VI cases based on intentional discrimination, a more difficult standard to prove.²⁸ Because courts could no longer enforce Title VI disparate impact regulations, agencies remained the only governmental entity to enforce them.²⁹ Advocates also turned away from courts and focused their attention on agencies to address language-based discrimination.

Advocates have used both legislative and administrative strategies to minimize the impact of *Sandoval*. Whereas legislation could, in effect, reverse *Sandoval*, administrative avenues would provide only more incremental changes. Since *Sandoval*, none of the legislative efforts in Congress to restore a private right of action for Title VI disparate impact claims have been successfully enacted.³⁰

Federal Policy Guidance and Related Enforcement Activity to Serve Limited English Proficient Individuals

Following *Sandoval*, the DOJ reaffirmed the validity of the Executive Order and Title VI regulations prohibiting disparate impact discrimination.³¹ Despite its effort, whether or not guidance that resulted from the Executive Order had the force and effect of law remained unclear.³² HHS released its final policy guidance on Title VI compliance in 2003 (“HHS LEP Guidance”). This is the current policy that guides HHS’s LEP-related enforcement activity. In broad strokes, the guidance requires a recipient to take “reasonable steps to ensure meaningful access” and to determine reasonableness with a four-factor balancing test, applied case-by-case:

(1) The number or proportion of LEP persons eligible to be served or likely to be encountered by the program or grantee; (2) the frequency with which LEP individuals come in contact with the program; (3) the nature and importance of the program, activity, or service provided by the program to people’s lives; and (4) the resources available to the grantee/recipient and costs.³³

While providing oral interpreter services has generally been accepted as necessary to ensure meaningful access, providing written translation services has been met with more resistance. HHS LEP Guidance suggests that the only written materials that are required to be translated are vital documents, and only when such translations would not “incur substantial costs and require substantial resources.”³⁴ According to the guidance, vital documents include “outreach materials like brochures or other information on rights and services,” “consent and complaint forms,” “intake forms with the potential for important consequences,” and “applications to participate in a recipient’s program or activity or to receive recipient benefits or services.”³⁵

HHS LEP Guidance also lays out a set of circumstances providing a “safe harbor” for recipients in fulfilling their written translation obligations. A safe harbor occurs when “[t]he HHS recipient provides written translations of vital documents for each LEP language group that constitutes 5 percent or 1,000, whichever is less, of the population of persons eligible to be served or likely to be affected or encountered.”³⁶ This is “considered strong evidence of

compliance with the recipient's written translation obligations."³⁷ However, not translating materials under these circumstances is not necessarily evidence of noncompliance. The safe harbor highlights HHS's preference for voluntary compliance,³⁸ diluting the guidance's authority as having the force and effect of law. Furthermore, throughout the guidance, there is a clear absence of the words "must" and "shall." Rather, words such as "may," "should," and "could" are used, pointing to its advisory rather than mandatory nature.

Past complaints and case resolutions provide the best insight as to how HHS applies its own policy guidance. However, agency decisions are not binding precedent and there is tension between advocates and HHS on how these policies should be applied. A National Health Law Program analysis of OCR complaint resolutions between 1981 and 2002 shows that while OCR made many formal findings of compliance with Title VI, formal findings of noncompliance were rare. Rather, OCR generally reached voluntary settlement agreements when language assistance services were found to be lacking. The agreements resulted in new procedures to better serve LEP individuals, such as new systems for collecting LEP data and training staff to utilize interpreter services.³⁹

In recent years, advocates have requested that OCR decisions be made readily and comprehensively accessible to the public. The OCR Web site currently provides more than thirty resolution agreements and compliance reviews, seven of which involve LEP individuals.⁴⁰ Additionally, OCR lists over twenty summaries of

selected "success stories" of compliance reviews and complaint investigations specifically involving LEP individuals.⁴¹ The summaries primarily involve the implementation of interpreter services in hospital and state agency settings. Securing complete decisions would help advocates better understand how OCR actually determines whether an entity is in compliance with Title VI, including how it applies the four-factor balancing test.

Strengthening Language Access Rights in Health Care Through Section 1557 of the Affordable Care Act

Without a private right of action for individuals to challenge disparate impact discrimination in the courts and without LEP regulations that have the clear force and effect of law, language access rights have seen little enforcement action in the past decades. Under the Obama administration today, agency enforcement seems to be improving compared to previous administrations.⁴² At the same time, the ACA presents a ripe political and regulatory opportunity to revive the civil rights mandate of Title VI. The ACA contains a specific nondiscrimination provision, Section 1557, extending Title VI and other civil rights laws to the ACA's health programs and activities:

[A]n individual shall not, on the ground prohibited under title VI of the Civil Rights Act of 1964 . . . title IX of the Education Amendments of 1972 . . . the Age Discrimination Act of 1975 . . . or section 504 of the Rehabilitation Act . . . be excluded from participation

in, be denied the benefits of, or be subjected to discrimination under, any health program or activity, any part of which is receiving Federal financial assistance, including credits, subsidies, or contracts of insurance, or under any program or activity that is administered by an Executive Agency or any entity established under this title (or amendments).⁴³

These programs and activities include all health plans participating in the new Health Insurance Marketplaces as well as related consumer outreach and education activities.

Importantly, the enforcement mechanisms available under Title VI, Title IX, Section 504, and the Age Discrimination Act apply to all violations of Section 1557. As an enforcement mechanism available under Title IX, a private right of action should also be available for all claims brought under Section 1557,⁴⁴ whether related to Title IX, Title VI, or the other listed statutes.⁴⁵ This time, unlike *Sandoval's* finding that Congress did not intend Title VI to cover disparate impact discrimination, advocates contend that Congress enacted Section 1557 with the intent to include a private right of action for all claims brought under this provision. Consistently, Section 1557 reads: "Nothing in this title . . . shall be construed to invalidate or limit the rights, remedies, procedures, or legal standards available to individuals aggrieved" under the listed civil rights statutes. Section 1557 is the legislative fix to *Sandoval* within the context of federally funded health programs and activities.

Section 1557's implementing regulations need to clearly state the availability of a private right of action to prevent a future court ruling that would fail to interpret it as "an integrated remedial scheme" in which Congress intended to make available a private right of action.⁴⁶ Part (c) authorizes HHS to issue implementing regulations but the agency has not done so yet. HHS has, however, recently indicated strong interest in addressing discrimination faced by LEP individuals and related enforcement mechanisms under Section 1557.⁴⁷

The opportunity to issue regulations clarifying recipients' civil rights obligations under Section 1557 calls for HHS to review OCR's enforcement authority and current LEP Guidance. One key question is whether Title VI policies have actually worked to ensure meaningful access to health programs and activities. The persistence of health inequities among LEP communities and documented stories of continuing access barriers to insurance and medical care suggests that policies and enforcement can be improved. One reason for OCR's enforcement challenges could be its separation from HHS's core programs and departments, such as Medicaid and the Health Insurance Marketplaces, which are housed at the Centers for Medicare and Medicaid Services (CMS). Many regulations promulgated for the ACA's key programs so far have failed to mention Section 1557 despite generally referencing requirements for culturally and linguistically appropriate services. Creating regulations for Section 1557 would be an opportunity for an agency-wide overhaul to integrate nondiscrimination compliance measures and OCR's

enforcement oversight into all ACA programs and activities.⁴⁸

Section 1557 regulations are particularly important if government agency and insurance industry practices will change. Like *Lau*, Section 1557 holds enormous promise for ensuring equal access. But, as learned from the enforcement of Title VI for language access rights, great laws can be hampered by lack of specificity in policy and prioritization from their enforcing agencies.⁴⁹ While waiting for OCR to issue regulations implementing Section 1557, advocates have shared with HHS their top priorities as well as model regulations.⁵⁰

There is reason to believe that OCR is improving as an enforcement authority alongside implementing Section 1557. In 2012, OCR proactively initiated a compliance review of critical access hospitals across ten states and published a list of effective practices for these hospitals.⁵¹ Also in 2012, in what was seen as a progressive civil rights position, OCR interpreted sex discrimination under Section 1557 to include discrimination based on gender identity and sex stereotypes.⁵² In December 2013, OCR obtained corrective actions under its Section 1557 authority from two medical centers, finding that one had denied appropriate care to a male victim of domestic violence and another had treated male and female patients differently in its guarantor policies.⁵³ These actions by OCR indicate that it is paying attention to Section 1557. Nine complaints based on sex discrimination that were recently filed by the National Women's Law Center will further test OCR's enforcement capabilities.⁵⁴

Policy Recommendations

Given the current jurisprudence on Title VI language-based discrimination, advocates have focused on agency action to increase the availability and quality of language assistance services. In this section, we review recent endeavors in administrative advocacy and the leveraging of public-private partnerships to fulfill acute language needs while waiting for long-term policy changes.

Asian American and NHPI consumers looking to enroll in the ACA's new programs and who need language assistance services have faced an uphill battle given that they can utilize only two of the four channels of enrollment: the federal call center and in-person assistance. Due to a lack of translated applications, these LEP communities can make use of neither the online application nor the mail-in paper application.

What follows is an overview of some policy priorities that have taken on a new urgency in the wake of the ACA. These priorities, if enacted, would revise standards in HHS LEP Guidance and HHS's application of these standards.

Mandatory Translation Thresholds

Advocates are pushing back on the current voluntary safe harbor standard by recommending the adoption of a new policy. This policy would eliminate the safe harbor and instead set a mandatory percentage and numeric threshold as evidence of noncompliance. The threshold in current HHS LEP Guidance would also be changed to reflect today's demographics of actual language need. The existing "5 percent or 1,000-person

threshold, whichever is less”⁵⁵ leaves out millions of LEP individuals. Advocates’ recommended 5 percent or 500-person threshold for the translation of vital documents is better policy.⁵⁶

Far fewer LEP communities will have difficulty accessing health care if documents are translated for each language group that makes up 5 percent or 500 persons, whichever is less. For example, when using counties as proxies for service areas,⁵⁷ under the 5 percent or 1,000-person threshold, 1,111 counties in the United States would be required to translate vital documents for at least one non-English language. Under the proposed 5 percent or 500-person threshold, this requirement would extend to 1,386 counties.⁵⁸ The 5 percent or 500-person threshold draws from existing federal agency policy guidance and better ensures that the intent and statutory requirements to provide linguistically appropriate services are met.⁵⁹ Even if the threshold remains part of a safe harbor rather than mandatory requirement, changing the threshold to 5 percent or 500 persons would make a significant difference when recipients of federal funding decide to provide language assistance services.

Various advocacy efforts are underway to revise the threshold, including efforts by the Congressional Asian Pacific American Caucus (CAPAC),⁶⁰ National Council of Asian Pacific Americans (NCAPA), and the Leadership Conference on Civil and Human Rights.⁶¹ The recommendation is also included in the 2014 version of the Health Equity and Accountability Act (HEAA), a comprehensive bill addressing racial and ethnic

health disparities.⁶²

Vital Documents and the Affordable Care Act’s Single, Streamlined Application

As outlined above, a federal recipient may fulfill its obligation of providing “meaningful access” under Title VI by translating vital documents. The federal interagency Web site LEP.gov says that a “document will be considered vital if it contains information that is critical for obtaining federal services and/or benefits, or is required by law.”⁶³ HHS LEP Guidance is less certain in its definition of vital documents: “[w]hether a document . . . is ‘vital’ may depend upon the importance of the program, information, encounter, or service involved, and the consequence to the LEP person if the information is not provided accurately or in a timely manner.”⁶⁴

Combined, the above criteria of *critical*, *important*, and *consequential* supports the classification of the single, streamlined application (SSA) used in the new Health Insurance Marketplace as a vital document. Moreover, requiring the translation of an application by a government agency is not a new interpretation of HHS LEP Guidance. In fact, this interpretation is entirely consistent with OCR’s past decisions. Its 2008 resolution with the Hawaii Department of Human Services (HDHS) affirmatively stated that vital documents “shall include . . . applications” and required HDHS to “translate existing documents into any language spoken by five percent (5%) of the total population eligible to be served or likely to be directly affected or encountered by HDHS’ program, or

one thousand (1,000) persons in that population, whichever is less” in order to comply with Title VI.⁶⁵

In February 2013, a group of language advocates based in Washington, DC, pushed for the SSA to be translated into fifteen of the most commonly spoken languages. In their letter to CMS, advocates explained that the SSA “provides the initial entry point to apply for health insurance and is a vital component of the ACA’s ‘no wrong door’ approach to enrollment.”⁶⁶ Despite continued advocacy on the federal administrative level, neither the online nor paper SSA has been translated into any language other than Spanish, continuing to foreclose two of the four available enrollment channels for LEP Asian Americans and NHPs. Instead, in response to the February 2013 letter, CMS indicated its plan to translate the *content* of the application into twenty-seven languages. These “job aids” are not actual applications but function as mock applications; they cannot be completed by LEP consumers or processed by the agency.⁶⁷ Although CMS responded to advocates’ concerns, its solution fell short of what is legally required under Title VI and what is needed in LEP communities.

In addition to the efforts of DC-based advocates, community-based coalitions are also bringing increased attention to the lack of translated ACA-related documents and the need for better language assistance services.⁶⁸ AIM for Equity recently submitted a letter to Dr. Howard Koh, Assistant Secretary for Health at HHS, outlining the absence of translated materials, lack of quality control in current ACA-related translations,

and the need for a uniform glossary of ACA-related terms to assist in standardizing translations.⁶⁹ As of the date of this publication, the Assistant Secretary’s office has not responded.

A few months prior to the first Open Enrollment period that was set to begin in October 2013, health equity and civil rights groups serving Asian American and NHPs communities faced a stark reality that they would be left out of federally funded and mainstream national outreach, education, and enrollment campaigns. These four organizations, consisting of the Asian & Pacific Islander American Health Forum, the Association of Asian Pacific Community Health Organizations, Asian Americans Advancing Justice | Los Angeles, and Asian Americans Advancing Justice | AAJC, combined their resources and networks of community-based organizations into one national collaborative to engage Asian Americans and NHPs in the ACA’s new programs and policies. The collaborative, known as Action for Health Justice, now convenes over seventy Asian American and NHPs organizations in twenty-one states to provide culturally and linguistically competent ACA outreach, education, and enrollment services. With a goal of reaching 250,000 Asian Americans and NHPs and enrolling 35,000 in the first Open Enrollment period, Action for Health Justice is also exploring the development of a uniform glossary of translated terms. This glossary would help avoid future translations of ACA-related materials plagued by inconsistencies and inaccuracies, like those recently developed by CMS. Action for Health Justice is also working to create a clearinghouse

that will provide standardized translated resources in at least seven Asian and two Pacific Islander languages.

With Action for Health Justice established just in time for the start of Open Enrollment, the White House Initiative on Asian Americans and Pacific Islanders (WHIAAPF)⁷⁰ met with executive directors of the anchor organizations of Action for Health Justice, private funders, and HHS Secretary Kathleen Sebelius to explore the creation of a public-private partnership. Action for Health Justice demonstrated that successful ACA enrollment is possible if government and private entities work together to create a strategy responsive to the unique needs of local communities.

As initiatives like Action for Health Justice unfold, there may be some mixed messaging to policy makers who observe that advocates are undertaking voluntary translation efforts (albeit with urgency) while attempting to hold the government accountable to its Title VI translation obligations. Remembering *Lau* within this context of difficult political realities reminds us that policies and legal mandates do not always align. The challenge for advocates is to navigate both in order to produce optimal outcomes for their communities.

Conclusion

Advocacy efforts for culturally and linguistically appropriate health care for Asian Americans and NHPs are rooted in a historic Supreme Court case. By remembering *Lau v. Nichols*, we remember that language assistance services have been an integral part of the Asian American and NHP experience. Today,

the provision of meaningful access for LEP consumers to the Health Insurance Marketplaces and other health reform programs is no less important than the provision of meaningful access for LEP students to public education. While debate may be out of the courtroom for now, there are several channels for positive policy change that would improve the lives of LEP individuals, including administrative advocacy and public-private partnerships.

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Shaping the Mainstream As An Asian American Woman

Politics Within Politics

by Tonia Bui

Abstract

This commentary illustrates how women of color, including Asian Americans, are rarely associated with having an active role in American politics. Based upon my experiences as the communications director for a state legislative race in Virginia, I shed light on hidden stereotypes associated with the intersection of gender, race, and nationality that emerge within political campaigns. I also discuss how my female and Asian American identity took precedence over my leadership role for the campaign. These experiences demonstrate a great need for more women of color to lead political campaigns in a way that would alleviate demeaning perceptions of race and gender within mainstream politics.

The presence of women of color, including Asian Americans, is critical to shed light on stereotypes that men may not see in mainstream politics. Some may argue that misconceptions related to the intersections of gender, ethnicity, and citizenship will eventually become an irrelevant issue because the U.S. population is becoming more diverse over time. In fact, the 2012 U.S. Census shows that Asian Americans and Pacific Islanders

(AAPI) are the fastest growing population in comparison to other ethnic groups.¹ Since people of color outnumber their Caucasian counterparts, there is the expectation that Asian Americans and other ethnic groups will be highly visible in mainstream politics.

However, this logic is faulty because women already make up more than half of the U.S. population,² and yet they are disproportionately represented by

those who hold elected positions at all levels of government. What seems like a nonissue is an issue that is problematic right now. Today, men still outnumber women as elected officials.³ As of 2013, women make up only 18 percent of the 535 seats in U.S. Congress.⁴ At the state level, nearly 25 percent of women hold offices among all legislators.⁵ Political campaigns need to develop strong pipelines for more diverse campaign staffers, particularly targeted at women of color so that candidates have campaign staffers that reflect the diverse, unique, and varying needs of constituents before the 2020 decennial census. It may be too late for political campaign strategists to wait until after the year 2020 to find out if more people of color, including women, will influence the outcome of mainstream politics.

The intersection of race and gender plays an important role in American politics. Women of color, including Asian Americans, experience a double standard in terms of race and gender as campaign staff, operatives, and consultants. This double standard allows them to cast a wider net when strategizing on the key issues that constituents can resonate with their candidate. For example, women of color already have expectations of how the public and the media generally perceive women—especially perceptions about physical appearance, how they emotionally react, and whether they have a voice at the table. Because of their racial or ethnic backgrounds, diverse female campaign staffers have the ability to initiate a dialogue on how race plays a factor in a candidate's viability to woo voters, which is equally important as discussing gender stereotypes on the

campaign trail. The role of minority women goes beyond influencing the outcome of elections, both by their visibility in the public with their candidates and their ability to steer the political strategy for voter turnout. Therefore, candid conversations about race issues with campaign staff should be a part of campaign strategy for all candidates running for office.

Few programs specifically train women of color to become political operatives since they fall instead under the general umbrella of women. What is missing from current campaign trainings is an emphasis on building the pipeline for the next generation of women operating behind the scenes for political candidates. Several political training programs already focus on helping women run for local, state, and federal level offices, including Running Start,⁶ She Should Run,⁷ VoteRunLead,⁸ and many others. These are extremely beneficial in addressing the gender parity in mainstream politics. As for trainings that support ethnically diverse female candidates, the Rising Stars Ready to Run program at Rutgers University provides tools to Asian American women and other women of color to get them elected or appointed to offices at all levels of government.⁹ The only program that concentrates specifically on campaign management is EMILY's List's The Winning Edge program, which provides both men and women the opportunity to receive campaign training from political operatives so they could serve on House, Senate, Gubernatorial, and Presidential races.¹⁰

I have done the EMILY's List training,

but it does not provide a session on addressing gender and racial stereotypes framed by the media, voters, and the opponent to trainees. Based on my experiences as a Vietnamese American woman on the campaign trail, there is a great need for empowering more women of color so they can lead political campaigns in a way that would alleviate demeaning perceptions of race and gender within the predominantly male space of politics. Along my journey, I found that patronizing stereotypes determined how the public defined my role in politics. Perceptions about my role fell into silos based on stereotypes about my gender, ethnicity, or nationality, but rarely all of these identities at once.

The different silos emerged when I was the communications director for Hung Nguyen, a Vietnamese American candidate who ran for the Virginia House of Delegates in 2013. For example, those who encountered me on the campaign trail surmised that marriage must have led to my involvement in Nguyen's political campaign. I am not married, nor do I bear the last name Nguyen, but a middle-aged Caucasian woman approached me at an Oktoberfest autumn festival asking me, "Aren't you Hung's wife?" On that very same day, a middle-aged Vietnamese woman, who was a Vietnamese restaurant hostess, said, "Mr. and Mrs. Nguyen, let me take you to your table," as the candidate and I were reaching out to Vietnam War veterans. While I recognized that the generational gap between these women and me could have triggered their assumption, I immediately deflected the inappropriate assumption by introducing myself as the candidate's campaign communications

director. By doing so, I helped these two people recognize that a Vietnamese American woman accompanying a Vietnamese American political candidate can play other roles other than the political candidate's wife.

What I looked like led to the conclusion that I was the candidate's spouse. This typecasting demonstrates that cultural insensitivity toward women of color remains a problem today, as it suggests that minority women in positions of power are not the social norm, especially in mainstream politics. I would argue that the pervasive assumption about me aligned with Walter Lippmann's perspective on stereotypes, emphasizing that what people viewed physically at the surface or on the outside triggers people's associations with specific characteristics when it came to public opinion.¹¹ In this instance, a woman in politics had no real role in politics, except to be the spouse, simply because she appeared to share the same ethnicity as the candidate. Such assumptions asserted that I did not belong among the predominantly male space of political campaigns.

The fact that campaign staffers are predominantly Caucasian and male reinforces my minority status as an Asian American female in mainstream politics. The New Organizing Institute (NOI) recently reported the gender and racial composition of campaign staffers who worked on federal level races in 2012. NOI's analysis showed that Asian Americans accounted for only 2 percent of federal campaign staffers, while 22 percent were African Americans and nearly 10 percent were Latinos.¹² The numbers for women were a little more

promising. Among all federal campaign workers, more than 45 percent of them were women.¹³ NOI was unable to capture the type of work that campaign staff did, making it unclear if these minority campaign staffers conducted outreach or other significant roles. As a result, NOI questions whether people of color and women obtain leadership positions on the campaign trail based on its findings.

More data can help better determine the gender and racial disparities among all campaign staffers. Another aspect of the data that NOI did not consider was the cross-tabulation of gender and ethnicity or race of its sample. Just from these sheer numbers alone, I suspect a very low percentage of AAPI women worked on campaigns at the federal level. These are the only numbers that I am aware of that capture the demographic breakdown of campaign staff working during the elections. Data that would allow researchers to analyze the demographics of campaign staff at local and state level races, along with identifying the positions they hold for campaigns, may allow for a more thorough evaluation. While more variables can help make NOI's data more comprehensive, NOI's study provides a point of departure to move forward with promoting more AAPI women, and other women of color, in leadership roles of political campaigns.

Notwithstanding the gender-based assumptions made about my role in Nguyen's political campaign, the visibility of my ethnic identity seemed to dominate perceptions made about my gender. Even within my own campaign team, my ethnicity took center stage.

When I accepted Nguyen's offer to be on his campaign team, I thought I would be executing Nguyen's overall communications strategy without having to show a predilection toward one racial or ethnic group, but I was completely wrong.

Mainstream politics pigeonholed me into conducting AAPI outreach, despite the fact that I held a leadership role for our campaign. I officially became the token Asian American to represent the campaign at events organized by the Korean, Chinese, and, of course, Vietnamese community groups, since more than one-fifth of the district's population comprised Asian Americans. I understood why the campaign delegated the task of reaching out to the AAPI community to me. Physically, I looked like those in the AAPI community, and I had a deep understanding of the unique cultures and histories of different Asian groups—which made it an effective strategy to place me there. Any candidate would send her Asian American staffer to conduct community outreach among AAPI constituents. While it was ideal for me to attend Asian American field events, my presence in these spaces caused my Asian ethnicity to take precedence over my leadership duties on the campaign.

Even more patronizing was when my ethnicity became a tool to portray the campaign's respect for cultural diversity in mainstream media. At one point, a political consultant pulled me into a photo shoot with a group of all Caucasian women, posing with angry expressions to show their distaste for state legislators in Virginia who infringed upon their reproductive rights. Accord-

ing to the consultant, a Caucasian male, I was “helping to bring diversity into the photo.” I resisted at first because I knew my role was to steer our campaign strategy, and not to pose in photo shoots. However, I went with it because I valued cultural representation in all aspects of politics.

Interestingly, the “diversity photo” told its own story. No one questioned what was wrong with placing only one woman of color in the photo to signal the inclusiveness of minorities. Everything was wrong about this image because that person was an Asian American woman, supporting an Asian American candidate. Even more so, why did the male consultant exclude other women of color and male allies in the photo if diversity was truly an issue? My presence alone in this photo insinuated favoritism toward only Asian groups—that only Asians supported my candidate. I raised my concerns with Nguyen that his voters could interpret the image inaccurately. Overall, the intersection of my race and gender identity was visible in the political space. The political community hinted that it was not my place as an Asian woman to help lead a state-level campaign, but rather as a token minority to represent an Asian candidate.

Furthermore, emphasis on the Asian American identity became a prevalent aspect in getting the campaign message across among specialty media outlets. From the perspective of ethnic newspapers, Asian Americans were a part of mainstream politics. The candidate earned media coverage by the Korean, Chinese, and Vietnamese news outlets because Nguyen was one of two AAPI

candidates challenging incumbents. The reporters I knew told me in confidence they would not cover stories if the candidates were not of AAPI descent. For example, the *Korea Daily* highlighted Nguyen’s campaign efforts when he attended the same events as Virginia Delegate Mark Keam, who is the only Korean American to serve in the Virginia House. Our campaign easily targeted and resonated with a demographic that our non-Asian opponent could not have done.

In contrast, mainstream media covering American politics created a discourse that encouraged an indirect form of xenophobia. The Asian American identity, or any other ethnic or racial identity, seems to be a negative aspect for candidates running for office. Two days after the election, the *Washington Post* ran the headline: “Foreign-Born Candidates Lose to Republicans in Virginia But Are Optimistic About the Future.”¹⁴ From a public relations point of view, I recognized the major newspaper suggested that Nguyen and the Latino and Pakistani candidates, who were also men, were neither Virginians nor U.S. citizens by including the words “foreign-born.”¹⁵ Furthermore, the headline insinuated that the candidates’ immigration status attributed to their losses. A Caucasian male in the political space would unlikely have had the above assumptions made about him, because it is already assumed that a Caucasian male would be a citizen by birth.

The term “foreign-born” subtly portrays that individuals of different nationalities do not belong in mainstream politics. If the *Washington Post* truly wanted to be

politically correct and reinforce the status quo, the headline should have read “Foreign-Born Democrats with Citizenship Lose to U.S.-Born Republicans in Virginia.” This alternative headline would have deflected the legitimacy question of the foreign-born label already embedded into American history with the U.S. Census.¹⁶ Such discourses exclude minority men and women from mainstream politics because they have ethnic or racial identities. An emergence of diverse campaign staff that accurately represents America’s changing demographics can prevent media discourses that indirectly alienate people of color and encourage xenophobia.

No one should be alienated in mainstream politics based on race or gender, or both. The example above illustrates the stereotype that certain populations are not American citizens, and therefore they are not qualified to serve in politics. Women of color experience a similar exclusion when it comes to serving in a leadership capacity in mainstream politics. When more women of different ethnic backgrounds are involved in shaping political campaign strategies, members of the community would not ask female campaign staffers if they are the spouse of the candidates. Ethnically diverse campaign operatives would not be limited to conducting outreach to cultural groups they most identify with. Campaigns would not worry about whether one person of color among a group of all Caucasian individuals is enough to demonstrate diversity. Furthermore, the citizenship of an individual would not be a determining factor in his or her ability to be a public servant in mainstream America.

The personal is political¹⁷—and there is nothing more personal than to experience exclusion because of my gender, ethnicity, and presence in American politics. Now is the time to create a new generation of political operators. In August 2013, Former U.S. Senator Hillary Rodham Clinton reinforced my call to action. She could not have said it better when she called upon election reform by stating: “Anyone who says that racial discrimination is not a problem in American elections must not be paying attention.”¹⁸ I thank Clinton for calling attention to racial discrimination in American politics, reminding mainstream political operatives and leaders to incorporate practices that effectively and progressively change how elections are shaped. What I look like is not an excuse for mainstream politics to define my identity with patronizing stereotypes that place me into silos, averting my abilities to lead a political campaign. I am a Vietnamese American woman shaping mainstream politics—and mainstream politics can never take that away from me.

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WOLVES IN SHEEP'S CLOTHING

THE IMPACT OF SEX-SELECTIVE ABORTION BANS ON ASIAN AMERICAN AND PACIFIC ISLANDER WOMEN

by Shivana Jorawar and Miriam Yeung

Abstract

Increasingly, a type of abortion ban that exploits the Asian American and Pacific Islander (AAPI) community is becoming a trend in the United States. Using racial stereotypes and relying on information from Asian countries, lawmakers are passing laws that criminalize doctors for performing abortions that are based on the sex of the fetus. Sex-selective abortion bans are deceptive and harmful to AAPI women. They purport to end sex-selective abortions and promote women's equality when they do nothing to address the problem of sex selection and in fact undermine women's equality. Further, they put the health of AAPI women at risk and promote the idea that AAPI women and families hold dangerous values.

At this moment, some politicians in the United States are subjecting women across the country to extremist measures that restrict their health and well-being. Increasingly, anti-choice conservatives are including in their arsenal a particularly insidious type of abortion ban that exploits the Asian American and Pacific Islander (AAPI) community and intentionally singles out AAPI women

as targets. Since 2009, seven states have enacted the ban and more than sixty of them were introduced at the state and national level.¹ The measure was also the second most-proposed abortion restriction of 2013. Using racial stereotypes, leveraging xenophobia, and relying heavily on information from Asian countries, lawmakers are proposing and passing laws that criminalize

doctors for performing abortions that are based on the sex of the fetus. These deceptive *sex-selective abortion bans* purport to end sex-selective abortions and promote women's equality. In fact, they are ineffective solutions that undermine women's equality and negatively impact AAPI women and the AAPI community in many ways.

This article sheds light on the incidence of and appropriate solutions for sex-selective abortions; the real purpose and strategy behind sex-selective abortion bans; how sex-selective abortion bans harm AAPI women and the AAPI community; and the current legislative landscape, including how AAPI and reproductive health, justice, and rights policy advocates are responding to these bans in state and federal legislatures and in the courts.

Sex-Selection Occurrences at Home and Abroad

Son preference and the sex-selective practices that can arise from it are devastating realities, especially in China and India where cultural practices and social norms dictate a stronger worth for sons than daughters. The number of girls missing in Asian countries like India and China due to infanticide, sex selection, or being neglected to death is estimated to be more than 160 million.² This is undeniably one of the worst repercussions of gender inequality women and girls in the world are experiencing today. As a result of gender inequities in these countries—including the elevated status of men, the ability of sons to carry on the family name and perform certain rituals, men's ability to contribute more

to family income, and traditions that require sons to care for aging parents—the number of women and girls in some regions of the world are dwindling in what some have coined a “gendercide.”

Relying on U.S. Census data, some politicians are now claiming that Asian Americans are practicing sex-selective abortion. However, to date, there is no conclusive evidence that sex selection is happening in the United States. Two studies confirm the existence of skewed sex ratios at birth in Indian American, Chinese American, and Korean American populations in the United States.³ Among these Asian American populations, although the sex ratio for the oldest child is normal, it is male-biased for later births in families with older girls.⁴ The reasons for the imbalance are inconclusive. Indeed, there may be selection happening through pre-implantation technologies, and it is possible families are not engaging in sex selection at all. Instead, they may be practicing family balancing to ensure they have an equal, or close to equal, number of girls and boys. Coming from countries with population control policies that pressure families to limit the number of children they have, it is possible that Chinese American, Korean American, and Indian American women are family balancing because of the cultural notion that they should not have many children and therefore need to have an abortion if they want children of both sexes. Furthermore, 2012 National Asian American Survey opinion polling data shows no reported child gender preference in almost every Asian American community—Hmong were the only community that reported a son preference.

Despite the lingering questions, anti-choice activists have seized upon the U.S. Census data and are using it to suggest that sex-selective abortion based on a preference for sons is occurring in the United States.

Real Solutions

If sex-selection is in fact happening in the United States, the real solution is to eliminate its root: gender inequity. Contrary to what anti-choice U.S. legislators would like us to believe, banning abortion is not the solution. It is an ineffective method, and common sense alone tells us we cannot help women by undermining their reproductive rights.

Internationally, bans have not been shown to be effective, and issue experts warn that denying access to safe abortions can result in death or serious injury and is not an appropriate remedy. The international community, including multiple United Nations agencies and the World Health Organization, believes that abortion restrictions are not an acceptable solution because they put women's health and lives in jeopardy. Indeed, even Mara Hvistendahl, whose work sex-selective abortion ban supporters rely on, writes that curtailing women's rights will not solve the problem.

To meaningfully address sex selection, we must promote measures shown to be effective in decreasing discrimination and increasing the social standing of girls. We need remedies that undo gender inequity, of which son preference and resulting sex selection are simply offshoots. This deep-seated social bias can only be solved by working to change the values and circumstances that create

a preference for sons. In South Korea, the only country that has successfully reduced its sex ratio imbalance, researchers credit exactly these types of measures—not abortion bans or other policies that undermine women's rights.⁵ AAPI women's organizations are already working on this problem in culturally competent ways that provide long-term sustainable solutions. They are working to empower women and girls by building the leadership capacity of women, improving women's economic standing, creating better access to health care, lowering the rates of gender-based violence, and taking public stances against son preference. Instead of supporting them in this work, proponents of sex-selective abortion bans take the opposite approach. They ignore what AAPI women know is best for their own community and undermine their agency. Legislative measures that address violence against women and provide equal pay for women, health care coverage, and food security are also ways to reduce the preference for sons by creating a society where women can live fuller, healthier lives and support their families. However, these are the very measures that supporters of sex-selective abortion bans, who claim to stand for women, consistently reject.

The Truth and Hypocrisy Behind Sex-Selective Abortion Bans

Bill proponents are co-opting the language of women's equality to mislead people into passing an anti-choice measure without a fight. The voting patterns of the politicians who support these bans illustrate this. The vast majority of bill sponsors have legislative histories that are hostile toward women's rights, abor-

It is clear that sex-selective abortion bans are wolves in sheep's clothing.

tion, and health care access. Sponsors have voted against equal pay for women, against funding for safety net benefits that support women and children, against legislation to support survivors of domestic violence and sexual assault, to defund family planning, and to ban abortion at twenty weeks.⁶ It is clear that sex-selective abortion bans are wolves in sheep's clothing.

These bans were carefully created as part of a coordinated national strategy to undermine abortion rights—a strategy executed on the backs of AAPI women. The measures are meant to put women's rights supporters in an uncomfortable position if they choose to fight back. The discomfort and resulting silence surrounding these bans have meant that they pass through legislatures and legislative committees with relative ease—precisely what the bill drafters at Americans United for Life⁷ hoped for.

In 2011 and 2012, states enacted a record 135 new restrictions limiting access to abortion. Instead of overturning the Supreme Court's 1973 *Roe v. Wade* decision and stripping women of their right to abortion altogether, the onslaught of attacks is a calculated attempt to chip away at women's health and eventually render it meaningless. This ban is one small piece of the larger conservative blueprint to incrementally dissolve abortion rights. In 2008, Steven Mosher, president of the Population Research Institute and anti-choice activist,

suggested that “we—the pro-life movement—adopt as our next goal the banning of sex-selective abortion.”⁸ For him and others like him, sex selection is the next logical battleground in the abortion wars because it is a cloak to hide under that might gain sympathy and support from those who are under-informed.

The Harm to AAPI Women

Sex-selective abortion bans squarely target AAPI women. It is not a coincidence that the states with the second, third, and fourth fastest-growing AAPI populations have also passed sex-selective abortion laws; these bans are not only anti-woman, they are anti-immigrant and, specifically, anti-Asian. For over one hundred years, AAPIs have endured debasing generalizations and systemic racism. Since the country's first anti-immigrant law, the 1882 Chinese Exclusion Act, we have experienced a litany of legislative insults, including the Page Act, which stereotyped Chinese women as prostitutes and kept them from entering the country; laws forbidding Asians from owning property; and the internment of over 110,000 people of Japanese heritage during World War II. Sex-selective abortion bans, or “anti-Asian abortion bans,” follow in this tradition.

Perpetuates Xenophobia and Institutionalized Racism

This legislation perpetuates negative stereotypes of AAPIs. Those who designed it are capitalizing on the high numbers

of sex selection in Asian countries, as well as xenophobic resentment toward the influx of new immigrants from Asia, to promote a fear that sex-selective abortion is widespread and growing rapidly in the United States—ripening the environment for deceiving people into chipping away at abortion rights. In doing so, supporters are painting a picture of AAPIs as “backward” and immoral and are intensifying the alienation our community already experiences. During a Congressional hearing on the proposed federal ban, Representative Steve King (R-Iowa) built a narrative about India that was saturated with Orientalism and finished by saying that, for Indians, “It is their custom to disrespect the little female lives in their culture.” The legislative history of Arizona’s ban reflects similar anti-Asian, anti-immigrant sentiment,⁹ as does the rhetoric around the pending South Dakota ban.¹⁰ Further evidencing their anti-immigrant stance, the primary sponsors of the federal versions of this bill have supported declaring English the official language of the United States and ending birthright citizenship for children of undocumented immigrants.¹¹

It is not a coincidence that the states with the second, third, and fourth fastest-growing AAPI populations have also passed sex-selective abortion laws.

Normalizing the notion of AAPIs as savage and infusing it into the law, the legislators behind these bans perpetuate the institutionalized racism our community already faces. Sex-selective abortion bans join the list of harmful oversimplifications of our community enshrined into policy, including “yellow peril” at the time of anti-Asian immigration laws in the late nineteenth century; the “terrorist” stereotype and concurrent mandatory registration, detention, and deportation policies aimed at South Asians post-September 11; and the “model minority” myth that prevents government and independent research institutions from studying the real challenges our communities face.

Restricts AAPI Women’s Health

This discriminatory law relies on a woman facing scrutiny and interrogation in the doctor’s office simply because of her race or ethnicity. Having no real means of ensuring a woman has not decided on an abortion because of the sex of the fetus, doctors may rely on the ethnicity of their patients in determining whether to subject them to increased questioning. This means that, based on harmful stereotypes perpetuated by this legislation, AAPI women will be subjected to racial profiling in the doctor’s office that other women will not have to endure.

In doing so, these bans interfere with the doctor-patient relationship and cause distrust at a time when women need to feel safe and comfortable in the hands of

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their medical provider. Trust is an essential element of health care. It encourages use of services, facilitates disclosure of important medical information, and has an indirect influence on health outcomes through patient satisfaction, adherence, and continuity of provider.¹²

Making matters worse, threatening providers with criminal and civil penalties has a chilling effect. Out of fear of imprisonment, doctors may be reluctant to provide care to AAPI women, decreasing AAPI women's access to abortion care and erecting another barrier to health for them. AAPI women, like other women of color, already face barriers to health and resulting health disparities and do not need this additional obstacle. Despite the model minority stereotype, due to immigration status as well as financial, linguistic, and cultural barriers, AAPI women face difficulties accessing hormonal contraceptives, making regular well-women visits, protecting themselves from sexually transmitted diseases, and preventing deadly health conditions like cervical cancer. Cervical cancer incidence rates for Vietnamese women are among the highest in the United States.¹³ For AAPI women with a language barrier, a simple misunderstanding could result in denial of care. Roughly one out of every three Asian Americans are limited English proficient and experience difficulty

communicating in English, increasing the chances that AAPI women will be denied care because of a misunderstanding.¹⁴

Undermines Abortion Rights Law

The vast majority of Asian Americans support women's reproductive rights. According to the 2012 National Asian American Survey, 78 percent of Asian Americans support some form of legal abortion and 69 percent agree that abortion is a private matter, not a decision for the government to interfere in. Chipping away at abortion rights, the true purpose behind sex-selective abortion bans, undermines the values of the Asian American community.

Sex-selective abortion bans not only make it more difficult for women to access abortion care in the immediate future, they also pose a potential threat to settled law. By applying equal rights protections to a nonviable fetus, these bans could be used to imply "personhood"—the declaration of fertilized human eggs to be legal persons, making abortion and some forms of birth control considered murder under the law. Indeed, only people can enjoy constitutional protections. According to the Supreme Court in *Roe v. Wade*, 410 U.S. 113 (1973), a person has the right to an abortion until the point of viability, defined as "potentially able to live outside the mother's womb, albeit with artificial aid." Viability is scientifically held to begin at twenty-four weeks into pregnancy, and the sex of a pregnancy can now be told with ultrasound as early as twelve weeks. Thus, sex-selective abortion bans complement the anti-choice agenda to flout *Roe* and enact earlier pre-viability abortion bans,

many of which are being challenged on constitutional grounds in an effort to turn back the clock on women's rights until the right to abortion is decimated altogether. Nine states now have twenty-week abortion bans.¹⁵ In 2013, Arkansas passed a twelve-week abortion ban¹⁶ and North Dakota passed a six-week ban,¹⁷ the earliest in the country.

Moreover, sex-selective abortion bans are the very first abortion restrictions based on the factors that go into a woman's decision making, and they open the door to more bans of this kind. Already, anti-choice activists are pushing for bans on abortions based on genetic abnormality, and one such ban has already passed in North Dakota.¹⁸

Legislative Landscape

On the federal level, the sex-selective abortion ban has been proposed four times in the House of Representatives by Representative Trent Franks (R-Arizona) and once in the Senate by Senator David Vitter (R-Louisiana).¹⁹ In 2012, the bill received its first and only federal vote thus far under a suspension of rules in

Since the ban was first introduced in the House in 2008, a legislative trend emerged. In addition to Illinois and Pennsylvania, Arizona, Kansas, North Carolina, North Dakota, and Oklahoma have passed sex-selective abortion bans.²² The number of these bans being introduced is on the rise. In 2009, nine state bills were introduced to ban sex-selective abortion.²³ During the first six months of 2013 alone, twenty-one state bills were introduced.²⁴ In fact, the measure was the second most-proposed abortion restriction of 2013, which is quite notable given the vast array of restrictions making their way through state legislatures.²⁵

Looking Toward the Future

As the AAPI community continues to grow at a rapid pace, we are certain to witness an increasing number of sex-selective abortion bans in the coming years. The people behind this novel amalgamation of sexism and xenophobia, thinly and insultingly veiled in equal rights language, will continue to exploit racial stereotypes and stoke anti-immigrant resentment to promote

Banning sex-selective abortion was the second most-proposed abortion restriction of 2013.

the House, and it failed to pass.²⁰ The measure currently sits in both chambers of Congress, awaiting legislative action.

Seven states have enacted sex-selective abortion bans. Before the year 2010, only two states banned sex-selective abortions: an Illinois ban passed in 1975, which is not enforced today, and a Pennsylvania ban passed in 1982.²¹

their agenda to restrict safe and legal abortion—creating real harm for AAPI women in the process.

As this is being written, the South Dakota legislature is on the verge of passing such a ban, and the bill is also sitting in the Missouri, Oregon and West Virginia state legislatures.

Those who value women and racial justice must fight back, and they are doing so. At this time, advocates for the AAPI community and for reproductive health, rights, and justice are conducting legislative advocacy calling for state and federal lawmakers to reject sex-selective abortion bans. They are also challenging the constitutionality of these laws in the courts: in May of 2013, the National Asian Pacific American Women's Forum (NAPAWF) and the Maricopa County National Association for the Advancement of Colored People (NAACP), represented by the American Civil Liberties Union (ACLU), filed a suit in a U.S. District Court against Arizona state officials, arguing that the state's race and sex-selective abortion ban stigmatizes and stereotypes the reproductive choices of African and Asian women based on their race and ethnicity.²⁶ The case was dismissed and is currently being appealed in the 9th Circuit.²⁷ The Center for Reproductive Rights filed a suit against North Dakota's sex-selective abortion ban in June 2013 as part of a larger legal challenge.²⁸ This piece of the suit was ultimately dismissed after the plaintiff, a clinic, determined the law did not apply to its practice and requested the dismissal.²⁹ There is also a proactive legislative response to these bans underway. In November 2013, the Women's Health Protection Act (H.R. 3471, S. 1696) was introduced. If passed, this legislation would make illegal almost all of the restrictions on women's health we have seen in the last three years, including restrictions on abortion based on a woman's reasons or perceived reasons.

It is bold acts of courage like these that are needed to stem the flood of attacks

on women's health, including sex-selective abortion bans.

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Medicaid Parity for Pacific Migrant Populations in the United States

by Franco Ciammachilli, Priscilla Huang, Déodonné Bhattarai, and Paulo Pontemayor

Abstract

Under the Compact of Free Association (COFA), citizens from Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands—also known as COFA migrants—are granted broad migration rights in exchange for providing the United States the use of and access to strategic military defense positioning in the Pacific. For many years, these citizens have lived and worked in cooperation with the U.S. military even as their health was being detrimentally impacted by exposure to nuclear weaponry. Unfortunately, in the passage of the Personal Responsibility and Work Opportunity Act in 1996, COFA migrants were stripped of their eligibility for most federal benefits, including Medicaid. In the aftermath of this decision, some states continued to provide health care to COFA migrants using state funds, however, the current fiscal crisis is forcing many states to reduce funding for these efforts, putting the health of this population at risk. It is the responsibility of the federal government to honor the terms of the Compact by restoring eligibility to Medicaid for COFA migrants.

Introduction

This article aims to provide an in-depth analysis on the health care options for migrants from the Freely Associated States (FAS)—which includes the Republic of Palau, the Federated States

of Micronesia (FSM), and the Republic of the Marshall Islands (RMI)—who currently reside in the United States and its territories. The analysis will include a brief background on the Compact of Free Association (COFA; the Compact), a unique agreement that established the

working relationship between the United States and the FAS countries. It will also provide a history of the major events leading up to today's current immigration status of more than 56,000 FAS citizens residing in the United States, commonly referred to as COFA migrants.¹ Ultimately, this article highlights the need for responsible policy reform to restore access to entitlement programs previously afforded to COFA migrants before the changes to eligibility under the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996.²

Historical and Demographic Background

The Trust Territories of the Pacific Islands

Micronesia is a region in the Pacific Ocean comprising independent island nations that share a cultural and ethnic identity. East of the Philippines and north of Papua New Guinea, islands in Micronesia have a long history of foreign occupation and colonial administration. As early as the seventeenth century, Spanish, German, Japanese, American, and British international agreements decided the ownership and territorial boundaries of the region with little regard for its native population and traditional claims to the land. After World War II, the islands that make up modern-day Palau, the Commonwealth of the Northern Mariana Islands (CNMI), the Republic of the Marshall Islands, and the Federated States of Micronesia were taken from Japanese control and organized as the Trust Territory of the Pacific by the United Nations and placed

under U.S. administrative authority. The Trust Territory specifically included Yap, Pohnpei, and Chuuk from the FSM; Koror from Palau; Majuro from the Marshall Islands; and Saipan from the CNMI, which served as the capital of the Trust Territory. The Trust Territory was officially organized in 1947 and included the Pacific Proving Grounds, an area spanning the Micronesian region in the Pacific used for nuclear testing from 1947 to 1962. U.S. administrative jurisdiction ended in 1990, after the independence of the RMI and the FSM in 1986 and Palau in 1994.

Compacts of Free Association³

After U.S. administration of the Trust Territory ended, a new relationship between the United States and the newly independent nations of Palau, the RMI, and the FSM developed. In 1986, the United States negotiated an agreement of free association with Palau, the RMI, and the FSM: these island nations make up the Freely Associated States as outlined in the Compact. The agreement outlined economic assistance for the FAS in exchange for exclusive U.S. defensive use and other operating rights in the islands, including the denial of regional access by other nations, making these islands strategically significant to U.S. military positioning in the Pacific.

There are several provisions within the Compact that provide support to the FAS governments and their citizens. Perhaps the most important are the immigration and economic provisions. The immigration provision allows most citizens from the FAS to reside and work in the United States without a visa

for an indefinite amount of time.⁴ This provision has given citizens of the FAS employment opportunities that are not available in the islands. The economic provision provides for various sector grants, or financial payments, to the governments of the FAS for health care, education, public infrastructure, economic development, and environmental protection. These grants have been crucial for cleaning up the aftermath of post-WWII nuclear fallout from the U.S. nuclear tests in the region and for providing a basic health care infrastructure in the islands.⁵ A joint committee determines the annual grant amounts, which vary among the FAS countries and decrease in value every five years.⁶

In 2003, due to the increase in migration from the FAS to the United States, the Compact was amended to include \$30 million annually for twenty years in “Compact Impact funds” to “affected jurisdictions”—namely the state and territories that saw the greatest increase in COFA migration. The affected jurisdictions authorized to receive Compact Impact funds are American Samoa, the CNMI, Guam, and Hawaii.⁷ Each of these designated impacted jurisdictions receives an amount of the Compact Impact funds dependent upon the size of the COFA migrant population within its care. For example, Guam, with a resident population of 18,305 COFA migrants and the highest population of all of the affected jurisdictions, has received \$102 million in impact funds to support education, health, social, and public safety service costs associated with increased migration from the FAS.⁸ Together, Guam, the CNMI, and Hawaii estimated educational services at \$517

million, health services at \$313 million, public safety at \$81 million, and social services at \$98 million for fiscal years 2004 through 2010. Yet, the estimated cost on affected jurisdictions for services associated with increased migration from the FAS for this time frame totaled \$1 billion, far exceeding the \$210 million initially allocated.

COFA Migrants in the United States

According to the U.S. Census Bureau’s 2005-2009 American Community Survey (ACS), an estimated 57.6 percent of all COFA migrants live in the affected jurisdictions of the CNMI, Guam, and Hawaii, with 32.5 percent in Guam, 21.4 percent in Hawaii, and 3.7 percent in the CNMI. Ten mainland states have COFA migrant populations of 1,000 or more: Arizona, Arkansas, California, Florida, Hawaii, Missouri, Oklahoma, Oregon, Utah, and Washington.⁹

People from the RMI, the FSM, and the Republic of Palau have had a long and complicated history with the international community. Residents of these island nations have seen their national identity change three times within the last one hundred years.¹⁰ As discussed above, most citizens from the FAS enjoy unrestricted travel to and from the United States and have indefinite work authorization in the country. Yet, even before the Compact, many individuals from the Trust Territory of the Pacific Islands moved abroad to attend college in the United States. In 1986, the first wave of COFA migrants left their home nations and traveled to Guam and the CNMI. Both territories were popular

with COFA migrants due to their proximity to the FAS islands and because they offered many previously unavailable opportunities. Migration to Guam and the CNMI increased steadily until 1990, when migration shifted to Hawaii. One of the “pull” factors was the high quality of health care offered in Hawaii that was often lacking in Guam and the CNMI. Citizens of the FAS were also sought out by factory owners and the agriculture industry to fill Hawaii’s low-skill labor force.

Migration to the U.S. mainland did not gain popularity until 1999, with the targeted recruitment of COFA migrants to the agricultural, elderly care, and hospitality industries.¹¹ Word-of-mouth accounts of job opportunities also contributed to the formation of COFA communities in the mainland. The growth of the Marshallese community in Arkansas is an example of this typical migration pattern. Roughly 4,300 COFA migrants from the Republic of the Marshall Islands living in Springdale, Arkansas, can trace their roots to John Moody. In 1979, John Moody arrived in Arkansas as a student on a scholarship and later started working at the Tyson Poultry Plant. He reported back to friends in the Marshall Islands about the work opportunities in Springdale, which is now home to one of the largest communities of COFA migrants in the continental United States.¹² Arkansas has welcomed this new migrant community by providing public service information for newly arriving Marshallese individuals and families to help navigate their settlement in various areas of Arkansas.¹³

Today, more economic opportunities

and better medical care continue to attract many citizens of the FAS to make the expensive journey to the United States and its jurisdictions. The annual income for many COFA migrants increases gradually as they move west to east. For example, the average annual household income in the CNMI is \$25,450; Guam, \$24,800; Hawaii, \$42,150; and the U.S. mainland, \$62,800. The per capita income for the CNMI is \$5,000; Guam, \$4,600; Hawaii, \$10,500; and the U.S. mainland, \$15,700.¹⁴ Greater economic opportunity in the United States also reinforces the ability to care for family members in the islands. One survey found the average annual remittance sent back to the islands from the U.S. mainland to be \$2,320 for the FSM; \$1,081 for Hawaii; \$450 for Guam; and \$250 for the CNMI.¹⁵

Health Care Options for COFA Migrants

Medicaid

Prior to 1996, low-income COFA migrants and other lawfully residing immigrants were largely treated the same as citizens in terms of Medicaid eligibility. However, Medicaid eligibility changed dramatically for immigrants and noncitizens with the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, also known as welfare reform. PRWORA created two new categories of eligibility for immigrants and noncitizens: “qualified aliens” with a statutorily enumerated list of immigrants, and “not qualified aliens.” The list of qualified immigrants is limited to the following:

1. Lawful permanent residents (i.e., green card holders)
2. Refugees, persons granted asylum or withholding of deportation/removal, and conditional entrants
3. Persons granted parole by the Department of Homeland Security for a period of at least one year
4. Cuban and Haitian entrants
5. Certain abused immigrants, their children, and/or parents
6. Certain victims of trafficking

Congress did not include COFA migrants on the list of enumerated qualified immigrants, and therefore, COFA migrants were deemed “not qualified.” This meant that many COFA migrants who had been able to get care through the Medicaid program now found themselves unable to access affordable care.¹⁶

In the aftermath of PRWORA, some states continued to provide Medicaid coverage to their immigrant and noncitizen residents, including COFA migrants, through state-funded programs. Approximately half of the states use their own dollars to provide Medicaid to some or all immigrants who would otherwise be subject to the five-year bar, a five-year residency requirement for lawfully residing immigrants to meet in order to be eligible for federal public assistance programs.

According to recent ACS data, ten states have a population of 1,000 or more COFA migrants, namely Arizona, Arkansas, California, Florida, Hawaii, Missouri, Oklahoma, Oregon, Utah,

and Washington.¹⁷ Appendix 1 illustrates these individual state’s Medicaid coverage expansion categories applying to “legally residing” COFA migrants (see Appendix 1).¹⁸

The Children’s Health Insurance Plan

The 2009 reauthorization of the Children’s Health Insurance Program (CHIP) expanded immigrant eligibility by giving states the option to provide federally funded Medicaid and CHIP to children and/or pregnant women who are “lawfully residing in the United States.” The definition of “lawfully residing” was clarified in a July 2010 letter from the Centers for Medicare & Medicaid Services (CMS) to state health officials: “An alien in nonimmigrant status who has not violated the terms of the status under which he or she was admitted or to which he or she has changed after admission.”¹⁹ COFA migrants fall under this category and therefore meet the definition of lawfully residing for the purposes of coverage under CHIP.

Employer Coverage

Like other workers in the United States, COFA migrants are able to participate in employer-based health care plans if one is offered by their employer. However, even when these plans are offered at little to no cost for the employee, they may not cover the employee’s dependents or the employee’s contribution for dependent coverage may be too high, forcing workers to opt out of coverage for family members.

According to a recent analysis conducted by the Asian & Pacific Islander Ameri-

can Health Forum (APIAHF), 58.4 percent of single race-identified Native Hawaiians or Pacific Islanders from ages 27 to 64 were privately insured.²⁰ Many, if not all, of these individuals were covered under an employer's benefits package. For example, as a leading employer of COFA migrants in Springdale, Arkansas, Tyson Foods, Inc. offers a full health care benefits package to employees working in its production plants. As the health reform law is implemented, companies with one hundred or more employees will be required to provide health care to their workers or pay a penalty. Also, small businesses with up to fifty or one hundred employees, depending on the state, will be able to purchase health coverage for employees at a significantly reduced price, potentially covering an estimated 18 million small business employees, many of whom are COFA migrants.²¹

COFA Migrants Under the Affordable Care Act

Under the Affordable Care Act (ACA), citizens and individuals who are "lawfully present" are subject to the requirement to have health insurance coverage (otherwise known as the individual mandate) and are eligible for the new coverage options offered through the health insurance marketplace.²² COFA migrants are eligible to participate in the marketplace since the definition of lawfully present includes individuals with "non-immigrant status."²³ Additionally, COFA migrants who meet the income thresholds may also be eligible for financial assistance to help pay for a health care plan.²⁴

Since COFA migrants are eligible to participate in the health insurance marketplace, they are also subject to the "individual mandate," a provision in the ACA that requires all citizens and lawfully present individuals to have health insurance. Therefore, COFA migrants that do not have health insurance will need to purchase a plan during the marketplace open enrollment period or pay a fine.

Yet, as previously explained, COFA migrants will not qualify for Medicaid and will not be given the option to enroll in Medicaid through the single streamlined application used to enroll in the marketplace. In addition, COFA migrants making less than 133 percent of the federal poverty level will not only be excluded from Medicaid, but will also not be eligible for premium assistance.²⁵

Legislative Efforts to Restore Medicaid Coverage

The Importance of Medicaid

Over the past seventeen years, approximately sixteen bills have been introduced in both chambers of the U.S. Congress to restore Medicaid eligibility to COFA migrants (see Appendix 2). Many citizens of the FAS come to the United States in search of medical services, including cancer treatments and dialysis, which are largely unavailable in the affected jurisdictions.²⁶ However, because COFA migrants are ineligible for Medicaid, many providers are not reimbursed for the costly care required by some COFA migrants. The Government Accountability Office calculates that between 2004 and 2010, COFA migrant-related health services in

Guam, the CNMI, and Hawaii added up to \$313,963,456. Officials in Hawaii and Guam argue that restoring Medicaid eligibility to COFA migrants will assist in reducing this cost burden on state and territory budgets.²⁷

It is worth noting that the Medicaid programs operate differently in the U.S. territories, with these programs being administered similar to a block grant. These Medicaid caps are statutorily set into law, which, coupled with the lowest set Federal Medical Assistance Percentages rate, have continued to add to the disparities faced by COFA migrants in the U.S. territories.

Recommendations

In 1986, Congress expressed that it did not intend for the Compact of Free Association to have adverse effects on the U.S. territories or its states. Furthermore, Congress stated that it would act sympathetically to address impacts from increased migration to affected areas by authorizing compensation to offset any resulting adverse consequences.²⁸

COFA migrants have a long and mutually beneficial relationship with the United States. They come to the country seeking opportunity to provide for their families while contributing to our economy. COFA migrants pay into the system and contribute to local economies through taxes and government fees. They work in low-paying blue-collar jobs that contribute to our national economic output and gross domestic product.

Congress now has the opportunity to make good on its promise to COFA migrants and the affected jurisdictions.

By restoring Medicaid to this historically disenfranchised population, it will help to ensure that COFA migrants finally have the same opportunity to access quality care and affordable health service that are available to other legal residents.

COFA migrants are eligible for several federal benefits, including emergency Medicaid. It is inhumane and financially irresponsible to force an individual to go without health care until it is an emergency. It is also more costly to the federal, state, and territorial governments to pay for an emergency service when less expensive preventive health care services are available.

Additionally, it is bad policy for the federal government to enter into an agreement with another country and expect for the U.S. territories and states to fulfill its obligations. After PRWORA, the affected jurisdictions and the states did their best to provide necessary care for the influx of migration from the FAS, but these efforts have been difficult in times of economic downturn.

For these reasons it is important that full Medicaid be restored to disenfranchised COFA migrants to fulfill the obligations of the federal government's involvement in the Freely Associated States and to act sympathetically toward the adverse effects on the affected jurisdictions.

APPENDIX 1

Medicaid Coverage Expansion Categories for COFA Migrant Populated States

Arizona	Covered under federal emergency medical services.
Arkansas	Prenatal care is available regardless of status.
California	“Qualified” immigrants, permanently residing in the United States under color of law (PRUCOLs), survivors of trafficking, U visa applicants, and U visa holders. Prenatal care, long-term care, breast and cervical cancer treatment, and certain other medical services are available regardless of immigration status.
Florida	A few counties use local funds to provide coverage to children regardless of immigration status. Children who do not meet the immigration status criteria for Medicaid or CHIP, but are otherwise eligible, can buy coverage at full cost under Health Kids and Medikids.
Hawaii	Children and pregnant women who are “qualified” immigrants, PRUCOLs, or COFA migrants. Pursuant to a federal District Court injunction, non-pregnant COFA migrants can receive medical assistance under Basic Health Hawaii. This order has been appealed to the 9th Circuit.
Missouri	Covered under federal emergency medical services.
Oklahoma	Covered under federal emergency medical services.
Oregon	Lawfully present children. Prenatal care is available regardless of immigration status in fourteen counties.
Utah	Covered under federal emergency medical services. Utah covers lawfully residing children under CHIP.

APPENDIX 2

Legislative Actions to Restore Medicaid to COFA Migrants

Congress	Primary Sponsor	Bill Number
107th Congress (2001-2002)	Congresswoman Mink	H.R.5067 — Compact of Free Association Children's Health Improvement Act of 2002
108th Congress (2003-2004)	Senator Akaka (with Senator Inouye)	S.1632 — To extend eligibility for certain federal benefits to citizens of the Freely Associated States
109th Congress (2005-2006)	Congressman Honda	H.R.3561 — Healthcare Equality and Accountability Act (included as Section 132)
109th Congress (2005-2006)	Senator Akaka	S.1580 — Healthcare Equality and Accountability Act (included as Section 132)
109th Congress (2005-2006)	Senator Akaka (with Senator Inouye)	S.2051 — To extend eligibility for certain federal benefits to citizens of the Freely Associated States
110th Congress (2007-2008)	Senator Akaka (with Senator Inouye)	S.1676 — To extend eligibility for certain federal benefits to citizens of the Freely Associated States
110th Congress (2007-2008)	Congressman Abercrombie (with Congresswoman Bordallo and Congresswoman Hirono)	H.R.4000 — To extend eligibility for certain federal benefits to citizens of the Freely Associated States
110th Congress (2007-2008)	Congresswoman Christensen	H.R.3014 — Health Equity and Accountability Act of 2007 (included as Section 507)

References

- 1 United States Government Accountability Office (GAO). *Compacts of Free Association: Improvements Needed to Assess and Address Growing Migration*. GAO Report to Congressional Requesters, November 2011.
- 2 The “qualified” and “not qualified” immigrant categories were created by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (also known as welfare reform). Pub. L. No. 104-193, 110 Stat. 2105, Aug. 22, 1996.
- 3 It is important to note that there are two Compacts of Free Association. One is shared between the RMI, the FSM, and the United States. The other is between Palau and the United States. There are no significant differences between the two agreements, the term “Compact of Free Association” is used to express the United States’ relationship with all three countries that make up the Freely Associated States.
- 4 Compact of Free Association Act of 1985. U.S. Public Law 99-239, Jan. 14, 1986, Article IV, Sec 141-142.
- 5 Between 1947 and 1962, the United States government conducted seventy atmospheric nuclear ballistics tests in the Pacific Proving Grounds, a name given to a number of testing sites throughout the Marshall Islands and other nuclear testing sites in the Pacific. The citizens of these islands suffered through years of nuclear fallout without being evacuated. Many inhabitants of the region are still experiencing impacts of this fallout, with high rates of cancer and ecological degradation. See Johnson, Giff. “Micronesia: America’s ‘Strategic’ Trust.” *Bulletin of the Atomic Scientists* 35(2): 10, February 1979.
- 6 Compact of Free Association Act of 1985. U.S. Public Law 99-239, Jan. 14, 1986, Title II, Article 1, Sec. 211.
- 7 U.S. GAO. *Compacts of Free Association: Guidelines Needed to Support Reliable Estimates of Cost Impacts of Growing Migration*. GAO Statement for the Record to the Committee on Energy and Natural Resources, U.S. Senate, 11 July 2013.
- 8 *Ibid.*, 9.
- 9 U.S. Census Bureau. *The 2005-2009 ACS 5-Year Summary File Technical Documentation*. U.S. Census Bureau, February 2011.
- 10 From 1884 to 1914, the nations now known as the Freely Associated States, namely, the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands were a part of the Imperial German Pacific Protectorates. After the First World War, administrative responsibility was transferred to Japan under the South Sea Mandate. Japan retained control over them until World War II when the administration of the islands transferred to the United States under the Trust Territory of the Pacific. The island nations remained under the administrative control of the United States until their independence in 1986. Their past status as a protectorate paved the way to the current Compact of Free Association agreement with the United States Government.
- 11 Hezel, Francis X., and Michael J. Levin. *Survey of Federated States of Micronesia Migrants in the United States including Guam and the Commonwealth of Northern Mariana Islands (CNMI)*. FSM National Government, March-July 2012, 8.
- 12 Schulte, Bret. “For Pacific Islanders, Hopes and Troubles in Arkansas.” *New York Times*, 4 July 2012.
- 13 “Living in Arkansas: What You Need to Know as a Marshallese” was a joint project conducted by the Gaps in Services to Marshallese Task Force and the Arkansas Minority Health Commission.
- 14 Hezel and Levin, *Survey of Federated States of Micronesia*, 36.
- 15 *Ibid.*, 40.
- 16 See footnote 2.
- 17 U.S. Census Bureau, 2005-2009 ACS 5-Year Summary.
- 18 National Immigration Law Center. *Medical Assistance Programs for Immigrants*

in Various States. National Immigration Law Center, February 2014.

19 The definition of “lawfully present” for ACA purposes was first defined by the Department of Health and Human Services (HHS) in July 2012 in a final rule governing eligibility for the ACA’s high-risk insurance pools (known as the Pre-Existing Condition Insurance Plans) and codified at 45 C.F.R. § 152.2. The definition largely mirrors the definition used in a July 2010 letter to Center for Medicare & Medicaid Services state health officials regarding Medicaid and CHIP coverage of “lawfully residing” children and pregnant women and was later codified in an HHS final rule on 15 July 2013 with some modifications.

20 Asian & Pacific Islander American Health Forum (APIAHF). *The Impact of Health Care Reform on Health Coverage for Asian Americans, Native Hawaiians and Pacific Islanders.* APIAHF, June 2012, 5.

21 *Ibid.*, 4.

22 See, for example, section 1411(a)(1) of the ACA (eligibility for the health insurance “exchanges” and the related affordability tax credits).

23 See footnote 19.

24 To be eligible for the premium tax credit, an individual must meet the following criteria: be a citizen or lawfully present; have a family income between 100 and 400 percent of the federal poverty level; not have access to a qualified employer-sponsored health plan that provides minimum value (actuarial value of at least 60 percent) and that is affordable (does not cost you more than 9.5 percent of your income); not be eligible for Medicaid, CHIP, Medicare, or military coverage; use your tax credit to purchase insurance through an online, federally certified public health exchange. 26 CFR § 1.36B-1(g).

25 The Henry J. Kaiser Family Foundation. “Explaining Health Care Reform: Questions About Health Insurance Subsidies.” Henry J. Kaiser Family Foundation Focus on Health Reform, July 2012.

26 Before 2009, Hawaii allowed COFA migrants to participate in its comprehensive state health plan called QUEST. However, due to budgetary problems, Hawaii created a new plan specifically for COFA migrants called Basic Health Hawaii, which significantly reduced the health services afforded to COFA migrants. This has resulted in incomplete and inadequate care for those COFA migrants requiring the most critical care due to chronic diseases. See “Broken Promises, Shattered Lives: The Case for Justice for Micronesians in Hawaii.” Hawaii Appleseed Center for Law and Economic Justice Policy Brief, 17 November 2011.

27 U.S. GAO, *Compacts of Free Association: Improvements Needed to Assess and Address Growing Migration.*

28 U.S. GAO, *Compacts of Free Association: Guidelines Needed to Support Reliable Estimates of Cost Impacts of Growing Migration*



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Ciammachilli also works on issues related to health information technology, chronic disease policy, and the integration of Culturally and Linguistically Appropriate Service (CLAS) Standards. He has worked on several publications related to health information technology and meaningful use. Prior to the Health Forum, he worked in several congressional offices and has over ten years of public relations and outreach experience. He received his bachelor of arts from the University of California, San Diego in political science/international relations and economics. He is a master's candidate at Johns Hopkins University, studying global security studies.



Priscilla Huang is the policy director for APIAHF. She directs the organization's policy work on expanding access to health care and coverage, improving the quality of care, increasing data on Asian American, Native Hawaiian, and Pacific Islander health, and increasing investments in community-driven health strategies. She also works to develop and build the organization's national network of community-based organizations and health leaders.

Prior to APIAHF, Huang served as the policy and programs director at the National Asian Pacific American Women's Forum, where she oversaw the federal policy advocacy and government relations for their immigrant rights, anti-trafficking, and reproductive justice programs. She has also worked with women and children in domestic violence and emergency homeless shelters.

Huang was a Georgetown Women's Law and Public Policy Fellow, and her work has appeared in the Harvard Law and Policy Review, Feministing.com, TomPaine.com, and other publications. She currently serves on the boards of the National Women's Health Network and CASA de Maryland and was a board of director for Law Students for Reproductive Justice and SisterSong Women of Color Reproductive Justice Collective. She holds a law degree from American University, Washington College of Law, where she was one of ten Public Interest/Public Service Scholars. She received a bachelor's degree in English and philosophy from Boston College.

Déodonné Bhattarai is the Reproductive Justice Legal Fellow at APIAHF. As a member of APIAHF's policy team, Bhattarai works on health equity issues at the federal level. She analyses issues of health care access and quality, HIV/AIDS, language access rights, maternal health, immigration, and Affordable Care Act implementation—all through a reproductive justice lens.

Bhattarai was a Human Rights Law Fellow at the National Center on Homelessness and Poverty in Washington, DC, and at the Human Rights Law Network Reproductive Rights Unit in New Delhi, India. In India, Bhattarai conducted on-site factual investigations and drafted public interest litigation petitions on behalf of tribal populations and prisoners suffering from egregious health disparities. During graduate school, she worked at Prisoners' Legal Services in Boston, Massachusetts, and in the Criminal Bureau of the New Hampshire Attorney General's Office. Prior to graduate school, Bhattarai spent years as a clinical assistant, providing health care to and advocating on behalf of low-income women and families. She holds a bachelor's degree in human ecology from College of the Atlantic, received her JD from Northeastern University School of Law, and her masters of public health from Tufts University School of Medicine. Bhattarai is a two-time recipient of Northeastern's Program on Human Rights and the Global Economy Human Rights Fellowship.



Paulo Pontemayor is a sought-after expert and speaker on health policy affecting Asian American and Pacific Islander communities, especially as it relates to the U.S. Territories and the Freely Associated States. As a health policy advisor for several Members of Congress, he was instrumental in advancing the priorities of the Congressional Asian Pacific American Caucus in historic health care reform legislation in 2010. Additionally, he worked closely with the Subcommittee on Insular Affairs, Oceans and Wildlife in the House of Representatives, which has jurisdiction over issues related to the Compacts of Free Association. During his time on Capitol Hill, he helped craft legislation to restore Medicaid coverage for COFA migrants—which passed the House of Representatives in the 111th Congress, but unfortunately was not considered by the Senate. He has worked on various legislative proposals related to health policy including a bill to lift the statutorily set Medicaid funding caps for the territories; legislation to extend the Supplemental Security Income program to Guam, the U.S. Virgin Islands, American Samoa, and Puerto Rico; and a bill establishing a national health survey on Pacific Islanders.

As an Advisor at APIAHF, Pontemayor spearheaded the organization's focus on restoring Medicaid for COFA migrants as a policy priority in the 112th and 113th Congresses. Through his efforts, he built a large and diverse coalition that ensured the inclusion of this language in the Senate passed Comprehensive Immigration bill, one of the few positive health care



victories in that divisive debate.

A Bryce Harlow Foundation Fellow, Pontemayor has a bachelor of arts from the University of Washington in Seattle and a masters of public health from the George Washington University. He resides in Washington, DC, and enjoys drawing, museums, and reading about politics in his free time.

Advancing the Asian American and Pacific Islander Data Quality Campaign

Data Disaggregation Practice and Policy

by Bach-Mai Dolly Nguyen, Mike Hoa Nguyen,
and Tu-Lien Kim Nguyen

Abstract

This study examines the impact of disaggregated data on shaping programs, services, and improving student outcomes for Asian American and Pacific Islander (AAPI) student populations at Coastline Community College (CCC). Using a mixed methods approach, including institutional data analysis and semi-structured staff interviews to examine the Asian American Native American Pacific Islander–Serving Institutions (AANAPISI) program and its use of disaggregated data to inform programmatic implementation and decision making, our findings indicate that disaggregated data largely shapes and improves the planning, implementation, and delivery of services to specific ethnic groups in order to enhance student experiences and outcomes.

Introduction

Decades of publications focusing on the Asian American and Pacific Islander (AAPI) student population have called for the collection and reporting of disaggregated data as a necessary tool

for more accurately representing and understanding who students are, how they are performing, and how institutional student services can become more effectively targeted.¹ These publications cite the major differences that exist across various ethnic groups within the

AAPI population as rationale for collecting more granular data.² These concerns continue to be the motivation for AAPI data disaggregation efforts in the twenty-first century. The National Commission on Asian American and Pacific Islander Research in Education (CARE) reports that data disaggregated for individual subgroups—by race, ethnicity, gender, and other demographic distinctions—is critical for raising awareness about issues and challenges that impact subgroups disproportionately.³ The aggregation of data on AAPIs in higher education research, policy, and practice obscures the tremendous diversity that exists within the larger AAPI category.⁴ In reality, the AAPI population consists of at least forty-eight ethnic groups that differ greatly in cultural backgrounds, historical experiences, and socioeconomic and educational circumstances.⁵

As colleges and universities face increased concerns about accountability from internal and external constituents, data is an important tool for informing the work of practitioners and policy makers, which would allow them to target resources where they are most needed and to more effectively support an increasingly complex and heterogeneous student population. In order to improve data quality to more accurately represent and serve AAPI students, institutions must be supported by federal data policies; however, tangible change primarily occurs through the localized efforts of campuses and community groups. Thus, this paper aims to: (1) showcase the demonstrated success of data disaggregation efforts for improving AAPI student outcomes at a two-year institution; and (2) use this model to provide rationale

for the advocacy of more localized data disaggregation efforts, as well as political support from federal data policy.

Calls for AAPI Data Disaggregation

The need for disaggregated data that better represents the heterogeneity in the AAPI population is not a new concept. In fact, as early as 1980, before “disaggregated data” was widely used as a phrase, scholars were already pointing to the problem of lumping Asian Americans from different ethnic and cultural groups together into one category.⁶ Over three decades later, this issue is still at the forefront of the AAPI agenda in public health, social welfare, and civil rights.⁷ The aggregation of AAPI ethnic groups in data collection and reporting remains a prominent issue across all public sectors. The limited disaggregated data that is available reveals a startling reality. Median household income, for example, shows that although some ethnic subgroups, Asian Indians in this case, earn up to \$22,000 over the median household income, Southeast Asians earn between \$14,000 and \$22,000 below the median.⁸ Disaggregated data also indicates lower levels of health care access and higher levels of welfare enrollment and incarceration for Southeast Asian and Pacific Islander subgroups.⁹ The differences between subgroup experiences and circumstance vary even more widely based on immigration history and language proficiency. Although research using disaggregated data that exists has been invaluable to the AAPI community, a sizable gap in scholarship remains to be filled and demand for data disaggregation in public services is greater than ever before. Most promi-

nently, AAPI scholars in the education sector consistently and continuously call upon data disaggregation as a necessary tool for addressing AAPI student needs and improving educational outcomes.

In 1990, for example, Valerie Ooka Pang examined student scores in the California Achievement Test and found that more than 39 percent of Asian American students who took the test in the 1986-1987 academic year scored below the fiftieth percentile in reading. These findings, she concludes, point to the lack of research that examines the diverse needs of Asian American groups in the areas of language and readings skills.¹⁰ In 2011, Pang, Peggy Han, and Jennifer Pang conducted a similar study examining the test scores of over one million seventh grade AAPIs in the California testing program. Their findings revealed that AAPIs, in aggregate form, performed significantly lower than White Americans in reading, but higher in math. Additionally, while Japanese and Chinese students scored over six points higher than the average AAPI reading scores, Cambodians and Laotians scored over eleven points and Samoans over fifteen points below the average.¹¹

Other studies pointing to the disproportional academic achievement within the AAPI community further demonstrate the need for data disaggregation to increase awareness about and target resources at bilingual education, poverty-related barriers, varying levels of English language proficiency, and AAPI-specific support programs and services, among other educational challenges and needs.¹² The advocacy for disaggregated data is further supported by the release of the

2013 iCount report, which highlights the major postsecondary educational attainment disparities among AAPI subgroups. The report reveals, for example, that while 74.1 percent of Taiwanese, 71.1 percent of Asian Indians, and 52.7 percent of Koreans have a bachelor's degree or higher, only 12.4 percent of Laotians, 14.1 percent of Cambodians, and 14.7 percent of Hmong have attained the same educational status.¹³ As these studies show, the forty-eight AAPI ethnic subgroups range vastly above and below the average educational attainment rate and therefore cannot accurately be represented or served by aggregate data that masks their educational realities.

As evidenced by the three decades of research that have passed since the earliest recommendation for AAPI data disaggregation, this continues to be a persistent issue today and an increasingly critical one given the nation's growing AAPI population. Increasing by 2.9 percent in 2012, the U.S. Census Bureau reported that Asians were the fastest growing demographic in the United States. Native Hawaiians and Pacific Islanders (NHPIs) grew 2.2 percent, falling only behind Latinos, the second fastest growing ethnic population.¹⁴ Most of the growth in the Asian population was accounted for by international migration from various Asian countries to the United States, which highlights not only the rate of growth among AAPIs, but also the increasing heterogeneity experienced by this community.¹⁵ The impressive rise in the AAPI population indicates that it is more critical now than ever to find ways in which to accurately represent and understand the various histories, cultures,

languages, and, most importantly, needs of these diverse communities. In order to achieve this, the AAPI data quality campaign must be nestled within a national context that influences sweeping change through political will.

The National Context

The national dialogue regarding data disaggregation is complex, as it involves multiple levels of overlapping federal government branches, departments, agencies, and offices. The frequent reporting of oversimplified, aggregated data is exacerbated by the fact that federal databases do not consistently collect or report AAPI racial and ethnic categories. For example, while one database may aggregate AAPIs in one group, another may collect up to forty-eight different ethnicities. This patchwork of federal data collection methodologies can be difficult and frustrating to navigate, particularly as disaggregated data becomes increasingly important to the accurate delivery of culturally competent and meaningful services to ethnic specific populations.

In addition to the inconsistent reporting of ethnicities in various national data sets, many institutional administrators, researchers, and community leaders are faced with a number of challenges that hinder their ability to change their data collection methodologies. For example, at the iCount symposium, jointly hosted by CARE and the White House Initiative on Asian Americans and Pacific Islanders (WHIAAPI) in June of 2013, a group of administrators, institutional researchers, faculty, students, and other educational stakeholders from across

the nation cited political will as one of the greatest barriers to data change. This finding echoes the sentiments of Professor Milbrey Wallin McLaughlin who poignantly notes, "Pressure from policy can be important even in settings that subscribe voluntarily to reform objectives simply because most institutions and individuals are allergic to change."¹⁶ Change, McLaughlin continues, "requires a combination of pressure and support from policy."¹⁷ In other words, despite the recognition that there is a deep need for better and more accurate data, institutions and administrators need to generate political will on campus to influence change. Data reform can be motivated by the application of pressure and support from education policy at the federal level. These policies may also be implemented by states, institutional systems, or local districts; however, federal policy is vital for change that universally impacts AAPI students across the nation.

To achieve this, ongoing efforts for data policy reform at the national level are taking place, and calls from members of Congress and officials within the Executive Branch have echoed similar sentiments. Congresswoman Judy Chu (U.S. House of Representatives and Chair of the Congressional Asian Pacific American Caucus), Congressman Mark Takano (U.S. House of Representatives), and Dr. Martha Kanter (Under Secretary of Education) attended the iCount symposium as keynote speakers and proponents of the data quality campaign, recognizing the importance of data disaggregation for the AAPI community. Additionally, one of the top educational priorities of the Congressional Asian

Pacific American Caucus (CAPAC) is to “increase the reporting of disaggregated student achievement data based on ethnicity and increase the reporting of the school resources provided to communities that face educational challenges.”¹⁸

As evidenced by the inclusion of an increasing number of AAPI ethnic subgroups over the past twenty years, these efforts have been fruitful. For example, in 1990, the U.S. Census categories included ten Asian American and eight Pacific Islander ethnic groups. In 2000, the ethnic categories increased to eighteen Asian American and nine Pacific Islander ethnic subgroups. By 2010, the U.S. Census had expanded its subgroups to twenty Asian American and ten Pacific Islander categories—totaling thirty AAPI recognized subgroups as of today.¹⁹ These signs of incremental federal progress showcase the slow, but significant, success that the data quality campaign has experienced.

According to CARE’s 2008 report, however, there are at least forty-eight AAPI ethnicities in the United States, which highlights the work that has yet to be done to better represent the heterogeneity within the AAPI demographic.²⁰ As the AAPI population continues to grow at an impressive rate, it is more important than ever that data disaggregation become a widespread practice among institutions. These efforts must be nested within a national context that (1) decreases the complexity that exists between various federal data sets, and (2) builds political will through education policy change.

In the current educational landscape, localized efforts have made positive gains

to collect, utilize, and report disaggregated data; however, these successes are rarely spotlighted to make the case for data disaggregation at the national level. Therefore, while federal policy relies on institutions to make the case for data change, institutions simultaneously rely on federal policy to generate political will. This conundrum is the very site of data policy stagnation despite three decades of requests for data disaggregation. To overcome this stall in data change, case studies, which spotlight how the effective collection, use, and reporting of disaggregated data at the institutional level, must be used as a tool for advancing the data quality campaign. For example, the following case study, which demonstrates the successful data disaggregation efforts at one institution, provides a model and rationale for the advocacy of federal data policy that supports AAPI data change nationally.

Institutional Case Study: Coastline Community College

Coastline Community College (CCC) is a two-year public community college located in California. CCC was established in 1976 and comprises four separate centers located in different cities within the same county. Three of the centers, one of which includes a community art gallery, are instructional. The fourth facility houses administrative staff. CCC offers a variety of educational opportunities for students including associate degrees, career and technical education, and basic college readiness skills training and education programs, which have guaranteed transfer to a four-year university. One such program, in partnership with the University of Illinois,

Springfield, offers a bachelor's degree in computer science. CCC's distance-learning program is extremely robust, as over half of its students take classes at a distance. CCC brands itself as a highly innovative institution that is capable of delivering a high-quality education, both in the classroom and through a variety of technologies. Located in four neighboring suburban cities, CCC caters to a diverse set of student constituencies, including traditional college students and nontraditional students (military, adult learners, students with intellectual disabilities, incarcerated students, and international students).

CCC has a total population of 12,577 students (fall 2013), 12 percent of whom are enrolled full-time, while the remaining 88 percent are part-time and noncredit students.²¹ It should be noted that contracted military students (estimated at 3,800) are not counted among the total state-funded population. AAPIs account for 29 percent of the student population and are the largest ethnic group of color. Latino students make up 12 percent of the student body, followed by 8 percent African American students. White students are the largest ethnic group at 34 percent. CCC currently collects disaggregated ethnic data on ten Asian ethnic subgroups including Asian, Chinese, Indian, Japanese, Korean, Laotian, Cambodian, Vietnamese, Other Asian, and Filipino. In addition, CCC collects data on four Pacific Islander ethnic categories including Pacific Islander, Guamanian, Hawaiian, and Samoan. Vietnamese students account for the largest of the AAPI ethnic population making up 71.5 percent of the AAPI student body, followed by Chinese at

5.7 percent, Korean at 4.2 percent, and Japanese at 2.4 percent.²²

The institution, located in Orange County, does not mirror the county demographics exactly, but generally reflects the population's ethnic statistics. Orange County is located in Southern California with a population of just over 3 million residents; 17.9 percent of the population is AAPI, with Vietnamese being the largest AAPI ethnic group at 6.1 percent of the total population. The majority of Vietnamese Americans are foreign born, 70.3 percent, compared to 29.7 percent native born.²³ The cities of Westminster and Garden Grove have the strongest concentration of Vietnamese Americans, in an area designated as Little Saigon. Within the Vietnamese American population (twenty-five years or older) of Orange County, 26.4 percent have less than a high school diploma, 19.7 percent graduated high school or equivalent, 25.3 percent have some college or an associate degree, 21.5 percent have a bachelor's degree, and 7.2 percent possess a graduate or professional degree.²⁴ Both CCC and Orange County have majority-minority demographics.

With its large AAPI student population, CCC applied for and received the Asian American Native American Pacific Islander-Serving Institutions (AANAPISI) federal designation and funding in 2010. The AANAPISI grant award totals \$2 million over five years. For its proposal, CCC identified two main problems that needed to be addressed: (1) too few AAPI students were earning associate degrees; and (2) too few AAPI students were transferring to a four-year institution. In addition, CCC recognized that

the low number of AAPI students enrolling in degree-applicable courses was a matter of concern. Thus, CCC's project design focused on three goals:

1. Increase the number of AAPI students, originally underprepared for college work, in degree-applicable courses by 250 (baseline of 1,207 AAPI students)
2. Increase associate degree attainment by 150 more AAPI students (baseline of 49 AAPI students)
3. Increase transfer to a four-year institution by 100 more AAPI students (baseline of 27 AAPI students)

To achieve these goals, CCC developed thirteen unique activity components. Ten of these programs were developed for students, while three targeted college staff and faculty. Specific activity components include a supplemental instruction program where students receive extra tutoring and assistance with math and science courses, a volunteer faculty and staff mentoring program that fosters civic engagement as well as creates a campus community and provides an avenue for AAPI students to receive answers to all CCC-related questions. An unintended, yet positive, outcome of the peer-mentoring program is a revival of active participation in student government. This is particularly compelling as the majority of CCC's students utilize the distance learning program or commute to campus for their classes. A new program, still in the developmental stages, is to create a culturally sensitive college success course for students.

Although the majority of these student

programs are not explicitly targeted at specific AAPI ethnic groups, our findings indicate that with access to disaggregated data, CCC had the option to narrowly identify which student populations are facing the greatest educational barriers and, further, to target specific interventions that could respond to those students' needs. CCC's usage of disaggregated ethnic data, on multiple levels, informs the educational philosophy of the staff and faculty. In fact, one of CCC's goals to fulfill their campus mission is to "improve its collection, analysis, and use of data to enhance the teaching, learning, and institutional effectiveness resulting in increased student success."²⁵ It is clear that CCC, including the AANAPISI staff, rely on a culture of inquiry and data-use to understand the demographics of their student population as well as the surrounding community, and work to ensure their programs best meet the needs of their AAPI students. This sentiment was reaffirmed by CCC's Title III activity coordinator, as he stated, "I believe it is very critical to the nature of what we are trying to do that we use disaggregated data to make immediate, informed decisions which allow us to redirect or refocus activities and services."

CCC demonstrates the use of this data to target ethnic-specific student needs in its programs and services for its Vietnamese students. For example, the Title III project facilitator at CCC recognized that "the new immigrant issues are very important for the Vietnamese population. When we wrote the proposal, our number one objective was helping that population transition." This analysis was based on his previously stated knowl-

Figure 1 - Disaggregated data impact model.



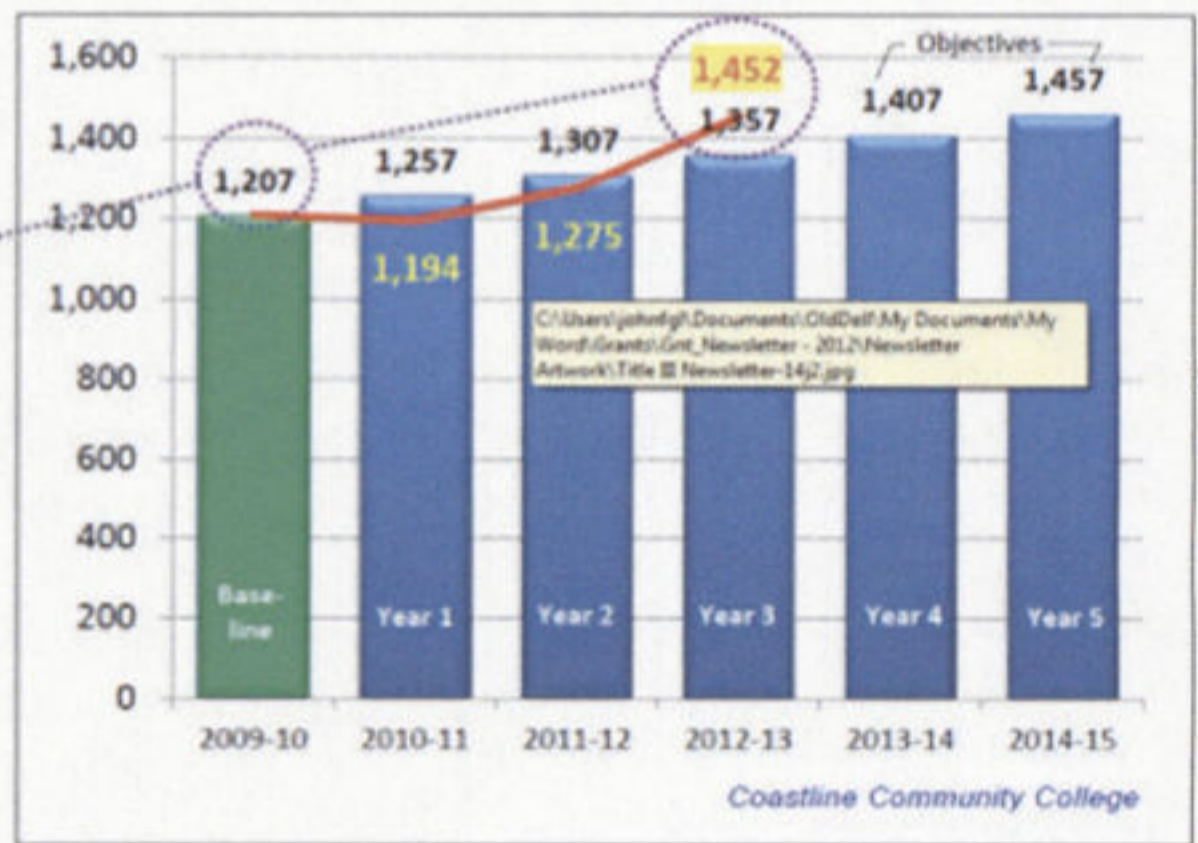
Figure 2 - Coastline Community College (CCC) Asian American and Pacific Islander (AAPI) students in degree-applicable courses.

Title III AANAPISI Outcome Charts

Three years of imaginative planning, dedicated execution, and meticulous attention to detail produced the Title III AANAPISI outcomes shown on these charts.

At the end of the third project year, **1,452** AAPI students were enrolled in degree-applicable courses: 7% above the objective (1,357 students) and **20% above baseline** (1,207 students in 2009-10).

Objective #1: AAPI Students in Degree-Applicable Courses



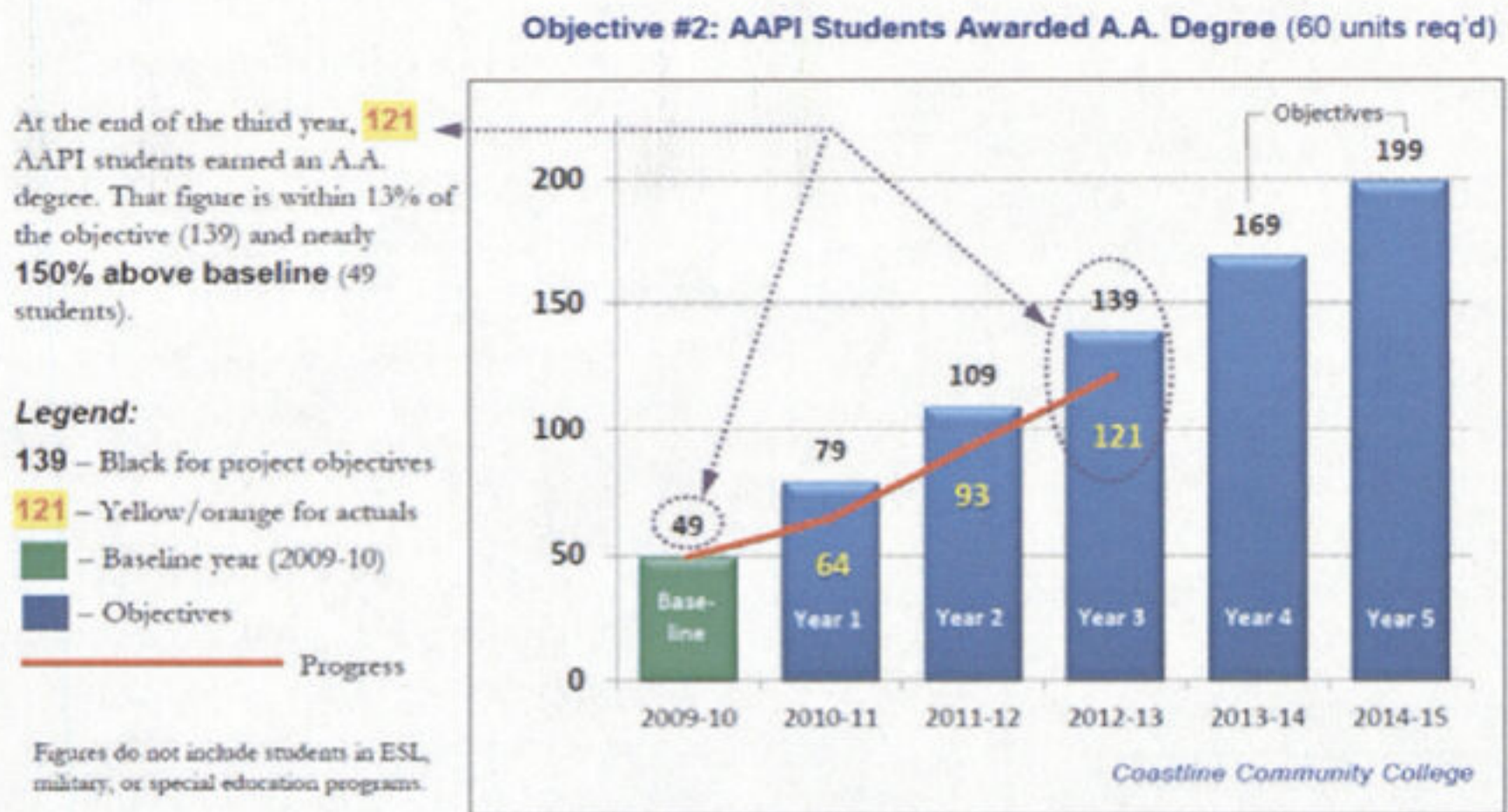
Source: CCC AANAPISI Fall 2013 Newsletter

edge that Vietnamese students represent nearly 75 percent of the Asian population. Accordingly, CCC utilized the seven-level English as a second language (ESL) program that had been initiated before the grant began and implemented the Student Success Centers, which provide free embedded, online, and on-site tutoring through each of CCC’s centers. According to the project facilitator, these efforts “succeeded and went way beyond our objective for transitioning students from the highest-level ESL to regular college transfer courses.” In this example, disaggregated data informed CCC of the

academic challenge and the population that faced that barrier; CCC administrators and staff utilized the data to implement programmatic change resulting in improved student outcomes (see Figure 1).

These efforts have shown promising signs of impact and increased student success. One student shared his experience with the Student Success Program in the quarterly CCC AANAPISI newsletter. He writes about his tutor, “Donna was instrumental in my success in this course, and I would like anyone who takes this course to have the same

Figure 3 - CCC AAPI students awarded associate degrees



Source: CCC AANAPISI Fall 2013 Newsletter

opportunity to succeed as I have.” More concretely, Figure 2 demonstrates the gains CCC has experienced in transitioning students to “degree-applicable courses” (see Figure 2).

CCC has also experienced success with its second objective focused on increasing the number of associate degrees awarded to AAPI students (see Figure 3).

In addition to the focus on ESL to college-level courses and increasing the number of associate degrees awarded, CCC has taken measures to be more responsive to and inclusive of its large Vietnamese population by considering language barriers. In response to this need, the CCC AANAPISI grant partly funded the creation of a fast-track program brochure in Vietnamese, citing its efforts to better serve its largely Vietnamese immigrant students. CCC has also offered a faculty-led “Culturally Responsive Customer Service Workshop” for staff to gain communication

skills to more effectively speak with English Language Learner students. This presentation included a guide to pronouncing Vietnamese first names, and several pieces of literature from the White House Initiative on Asian American and Pacific Islanders (WHIAAPI), Asian and Pacific Islander American Scholarship Fund (APIASF), and CARE. Staff also received a presentation about the cultural nuances of the Vietnamese community, which included pedagogical traditions within Vietnamese education and examples of Vietnamese student behavior and reactions, particularly among new immigrants and refugees. Informed by its access to disaggregated AAPI data, specifically the large Vietnamese student population, CCC has effectively put this data into practice.

The institutional data used at CCC, as evidenced by its data-driven program implementation and evaluation processes, is a valuable tool for examining the

impact of its AANAPISI programs and services, as well as for capturing those student populations that need more attention and resources. CCC demonstrates an explicit culture of data use for strategizing AANAPISI program proposals, assessing the outcomes of those interventions, and developing future changes based on those results. CCC is but one example of several institutions across the nation that have collected and utilized granular ethnic data to effectively target resources and improve educational outcomes for their underserved AAPI students. The University of Hawaii System and the University of Guam are two other models.²⁶

In each of these cases, the institutions had the support of campus and/or system administrators that applied the needed pressure and support to generate political will. CCC, for example, is one of 112 community colleges in the California Community Colleges system (CCCS), the largest system of higher education in the United States. CCCS collects data on nine Asian American and four Pacific Islander ethnic categories and allows students to select multiple categories that reflect their identity. In their response to the WHIAPPI request for information on data methodologies, CCCS stated, "There aren't any hurdles to disaggregating the groups since we have been collecting the separate Asian and Pacific Islander categories for twenty years." Given this, CCC has a strong culture of inquiry in which to follow as it is nested within a system that also collects disaggregated data. A system of support, then, is key to addressing the unique needs of the most underserved students on campus through the use of

data that best represents their educational experiences.

This case study sheds light on the benefits of having access to disaggregated data on college campuses and advances the AAPI data quality campaign as it spotlights the effectiveness of employing disaggregated data to impact student outcomes. While it is an excellent example of the positive work that can be achieved through using granular ethnic data, it must be noted that CCC is part of a system that has established a culture of collecting disaggregated data. This is not the case for many other institutions that are in need of data methodological changes. Therefore, policy makers play a critical role in the AAPI data quality movement

Conclusion

Although AAPI scholars have recognized and cited the need for more accurate data for more than thirty years, it remains a bullet point that has been relegated to the recommendation or conclusion sections of AAPI scholarship. The stagnation between federal and institutional change must be overcome by using the point of intersection where policy and practice meet as a site for advancing this critical issue. Therefore, research that highlights the benefits of data disaggregation and its tangible impact on student outcomes are key to building rationale and promoting progress. Although seemingly sparse, the districts, systems, and institutions that currently collect and use disaggregated data are remarkable sites of innovation that should be used as models of success for future data policy.

In collaboration with the ongoing efforts of CARE, WHIAPPI, CAPAC, and other Congressional leaders, education and AAPI policy makers can support the advancement of this critical issue in three ways:

1. Advocate for the implementation of federal, state, and local policies that requires the collection and reporting of disaggregated ethnic data
2. Support efforts that make federal data sets more consistent across collection and reporting categories
3. Provide institutional supports for data disaggregation in the form of incentives and technical assistance

These three recommendations provide a necessary foundation to support the AAPI data quality campaign and to advance the call for data disaggregation.

AAPI students, who are a heterogeneous population that vary widely on the educational attainment pipeline, face educational barriers that are being masked by the common perception that they achieve universal academic success. Misrepresentation through inaccurate data is arguably the greatest, and certainly the most persistent, barrier for this group of students. As the fastest-growing ethnic group in the nation, education policy must find ways in which to respond to the unique needs of AAPIs and to serve those subgroups that are most in need of attention and resources. Aggregate data that masks the educational realities of various AAPI subgroups not only discounts their needs, but also fails to realize this growing population's full potential. Data disaggregation is the

first step for addressing this issue, but it is necessary to move beyond a research recommendation. In order to directly address the needs of underserved AAPI students across the nation, data disaggregation must be adopted as both a policy and practice.

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Empowering the Asian American Community

An Interview with Filmmaker Curtis Chin

Interviewed by Rebecca Yang and Tam Duong

AAPR: Could you tell me about your background?

CHIN: I like to say I'm Detroit-born, New York-raised, and Los Angeles-based. I'm the middle child of a large Chinese American family that somehow ended up in the Midwest in the late 1800s. I'm currently working on a memoir of my childhood growing up in the family business that my great grandfather started in 1939. It's called *Everything I Learned, I Learned in a Chinese Restaurant*. I'm also currently filming a new documentary in New York City called *Tested*. It's about the fight that families have to go through to get their kids into one of the elite public schools in the city, like Stuyvesant or Bronx Science. Prior to that, I've written poetry, plays, and for mainstream television.

AAPR: What was it like growing up as an Asian American in the Midwest?

CHIN: Oftentimes, I think of myself

more as a Detroiter rather than an Asian American because I think that experience of growing up in a Motor City really binds you. Whenever you're the underdog, it forces you to pull together and fight for your identity. One of the defining moments of growing up there was the Vincent Chin murder, which happened when I was a kid. Prior to that, Detroit had always been a black and white city. As Asian Americans, we seemed to be respected by both sides. When Vincent, who was a family friend, was brutally murdered like that, I think that really forced me to question my position, not just as an Asian American, but also as a Detroiter. That's really shaped my identity since then.

AAPR: What has been your inspiration for your work?

CHIN: My parents have always instilled a sense of fairness and social justice in our family. My five siblings and I are all involved in some type of charity or

Curtis Chin is an award-winning writer and producer who has written for ABC, NBC, Fox, the Disney Channel, and more. A member of the Writers Guild of America, he has also won awards from the National Endowment for the Arts, the New York Foundation for the Arts, the San Diego Asian American Film Festival, and others. He has also served on panels for the New York State Arts Council, the New Jersey State Council for the Arts, and the Liberty Hill Foundation.

*As a community activist, he cofounded the Asian American Writers Workshop and Asian Pacific Americans for Progress. In 2008, he served on U.S. President Barack Obama's Asian American Leadership Council, where he participated in helping the campaign reach out to the Asian American and Pacific Islanders community. He has appeared on MSNBC, CNN, NPR, Newsweek, and other media outlets. He has personally toured more than 200 colleges, libraries, and corporations for his film *Vincent Who?**



This interview took place on 22 February 2014.

activism. In some ways, I think it was inevitable. Not only did I grow up with a strong sense of racial justice because of the Vincent Chin case, but when I moved to New York City at the age of twenty-one, I was able to see the devastation AIDS had brought to the LGBT [lesbian, gay, bisexual, trans*] community. In both situations, lives depended on everyone getting a fair shake.

AAPR: There are many ways to tell stories, make an impact, and advance social justice. Why film?

CHIN: In terms of making *Vincent Who?*, I was already working as a writer. Writing was something I studied in college and pursued immediately afterwards. Making the transition from television writing to filmmaking wasn't that hard because you pick up a lot of the necessary skills. Also, as a community activist, I had a lot of experience producing cultural events. So it was a marriage of both of those skill sets. I think the

reason why film is so powerful is because it's the medium in which young people talk. So many younger people learn things through video. So it seemed like an easier way to tell that story.

AAPR: What were you trying to achieve with the production of *Vincent Who?*

CHIN: *Vincent Who?* started off as a personal project. My father had just died in a car crash in Detroit. I had to go back home to sell the family business and sell the family home. When I was back there, I was just looking for a personal project to work on. That's when I remembered the Vincent Chin case as a story that had really inspired me growing up. So I decided to take a year off to write and produce this film. I didn't even tell my agent about it because he would have said, "Go get a studio job." But it was a story I was committed to telling—I felt like it was a project that not only connected me closer to my family, but

also to my community and my hometown. So that's why I decided to make the film. In terms of the response that it's gotten, it's been overwhelming to think that such a small film could have such an impact. It's been really heartwarming. Hopefully, it's helped keep Vincent's name alive, but more importantly, provides a focal point for the Asian American community to move forward.

AAPR: Is there anything else you would like to add about your work with Vincent Who?

CHIN: With *Vincent Who?*, we really wanted to take an honest assessment of the Asian American community. We didn't want to make film that was just cheerleading, rah-rah, everything's great. There's a lot of work to be done for the community to achieve its full equal rights. In order for that to happen, we need to take an honest assessment of our victories but also our failures.

AAPR: In making *Vincent Who?*, were you hoping to advance a larger issue?

CHIN: I had no idea how popular the film would be, how many people would watch it, or who would be interested in it. So, I don't know. I felt compelled to make the film because I needed to connect to this story, to explore an idea that was personally interesting to me. As for its anticipated reception, I didn't have specific goals, such as I want this many people to watch it, or these many people to teach it in their classes, or this many people to write me. I don't know if I had any specifics, but I felt like this was a story that touched me and I would hope that it would touch other people, too.

AAPR: What inspired you to produce the documentary *Tested*?

CHIN: After making *Vincent Who?* and being out of television writing for a few years, I realized I was now a documentary filmmaker. In order to be called a documentary filmmaker, I figured I needed to make a second film. So I was looking for a project, and a lot of people were coming up to me and asking me to produce a film on their story. While there were some interesting stories out there, none of them really spoke to me. In order to make a really good film, you have to be passionate about the subject because you're going to be sacrificing a lot of your time, your resources, and expending a lot of emotions on the project. So you really have to feel this is a story that you need to tell, and one that you can bring something to the table. I didn't run across any subjects like that until I read this article in the *New York Times* about a Chinese American student in New York City who was preparing to take an exam to get into one of the specialized high schools in the city. After reading that article and the issues surrounding that debate, such as access, public education, and social justice, I felt like that would be a perfect follow-up to *Vincent Who?* because it addressed a lot of the themes that I was exploring in the first film.

AAPR: What are you trying to achieve with *Tested*?

CHIN: With this second film, I have a better sense of the potential of a documentary in terms of impacting debate. In America, oftentimes, the debate is framed in the context of black and

white, rich and poor. Anytime you include the Asian American perspective, it oftentimes muddies the water—it challenges prevailing paradigms. My goal with this film is to insert the Asian American perspective when it comes to education policy in America. Education has been one of the primary tools in which the Asian American community has been able to advance itself despite facing discrimination in this country. Because of that, I think it's vitally important that our voices are heard whenever any type of debate comes up regarding education policy.

AAPR: How do we begin to shift the mainstream dialogue from “too many Asians” to talk about actual issues of access and educational disparities?

CHIN: It's very easy to stereotype people in a community when you don't get to know them on an individual level. One of the powers of filmmakers is that we can tell individual stories. We can humanize the community. We can put a face to our struggles. That's what I hope to do with this next film. We're featuring several different types of families, not just Asian American—Jewish, Italian, Puerto Rican, Dominican, African American, as well as Chinese American, Bangladeshi Americans—to show that the experiences are similar, but also, at times, different. That's probably the greatest thing that filmmakers can contribute. A lot of times, people are more interested in hearing a personal story than facts, data, and numbers. That doesn't really affect people.

AAPR: Tested will examine how communities of color, using stereotypes,

are pitted against one another in a fight for dwindling public resources. What are some ways that we can combat this? What needs to change?

CHIN: It's a concerted effort by certain people in power to pit various communities of color against each other because it deflects attention from who's really causing the problem. For instance, with the New York City public school system, instead of fighting over these few thousand seats at these eight high schools, why aren't the communities working together to increase access to even more educational opportunities for every student in every neighborhood? Instead, these communities are forced to fight over a few thousand seats. That doesn't make sense to me.

AAPR: What are ways in which Asian Americans and Pacific Islanders (AAPI) can build coalitions to address education policy?

CHIN: We need to have sensitivities toward each other's issues. By that, I mean as it relates to communities of color or, in general, poorer communities. It's a two-way street. Other communities need to be more sensitive to Asian American issues, but Asian Americans also need to learn more about other communities, too, particularly when it comes to poor African American and poor Latino communities. We also need to become more aware of the particular histories of those communities and the challenges that they face. Just as much we want them to know about our history and be more sympathetic and to support us, we should be willing to give just as much in return.

AAPR: You mentioned in your blog post “A Case of T.M.A.” that “[as education policy changes], it’s important to take into account all disadvantaged minorities, including poor immigrant Asian American families.” How can we make sure that poor immigration Asian American families are included in the debate?

CHIN: Part of that is breaking down the stereotype that (a) all Asian Americans are naturally good at math and science and (b) that we don’t have any particular needs. Once you break down these stereotypes, you’ll understand that while we do have some measure of success as a community, it’s because we’ve faced discrimination, and education has been one of the outlets we’ve been able to utilize to overcome the racism we’ve encountered. There are also parts of our community that don’t have some of these advantages that other parts of our community have [and] that need additional resources. When you disaggregate the educational achievements within our community, there are some segments of the Asian American community that actually perform at even lower rates than African American and Latino communities.

AAPR: What are concrete ways the Asian American community can break down stereotypes?

CHIN: In terms of stereotypes of Asian Americans, I think these issues are becoming better. In general, America is heading in the right direction, but there’s still a long way to go. When it comes to combating stereotypes, the greatest weapon we have is exposure and being able to share our stories. One of the

greatest things about new technology is that it has provided our community with that opportunity. As Hollywood continues to ignore and misrepresent our community, we can use new technology to tell our own authentic stories and to attach a face to the community.

AAPR: What do you think are the most pressing issues facing Asian Americans and Pacific Islanders in this country?

CHIN: As a community, we are still searching for a unified agenda that brings all the different elements of our community together. It’s been hard because our community is so diverse and each ethnic community oftentimes seems to have its own priorities. But there are a couple of issues that unite our communities more so than others and those issues are access to education and comprehensive immigration reform. Those are the two areas we have a lot of room to make progress on.

AAPR: The AAPI community is one of the fastest-growing segments in this country. What can we do as a community to influence and mobilize around the political process? What role can media play in this process?

CHIN: Media plays a big role in terms of mobilizing—not just getting out information, but also getting people involved. Asian Americans, as the most wired community, should use new technology to advance us forward. This is true for all communities of color. Studies have shown that we are the most connected: we watch movies more regularly than White communities, we watch more television, we’re on our smart-

phones more than other White communities, and because of that, that's how we communicate. We should use these tools to our advantage.

AAPR: How would you like to change the perception of Asian Americans in media?

CHIN: In the end, I have my own personal biases about how I want the Asian American community to be presented. As a progressive, I would like that image to be a forward-thinking community. At the end of the day, for filmmakers and other artists, it's really about equal opportunity to have their voices heard, too. So there could be a hundred or a thousand different interpretations of that Asian American story. I would never want to dictate how each of those artists should tell their story or what story they want to tell. I can only have my own sense of my vision for the community. If I can help increase more opportunities for various filmmakers and artists to get their word out, then I feel like I've done my job. That's partly why I helped found this organization, the Asian Americans Writers' Workshop. It's an organization founded to help many writers get their voices out there. I don't want a situation where you only have a few spokespeople speaking out for the community. I want as many people to have their voices out there as possible.

AAPR: What are future issues that you would like to explore in your work?

CHIN: At some point, I'd like to do something on gay and lesbian Asian Americans. Right now, in addition to this film *Tested*, I've been spending a lot of time working on a memoir called *Ev-*

everything I Learned, I Learned in A Chinese Restaurant. I hope it's a book that works on many different levels. On the one hand, it's a personal memoir about the time when I lost my father and had to move back to Michigan to sell the family business and the family home. On the other hand, it's also a story about the city of Detroit and the loss of a great American city. The book will also cover a lot of Asian American history, but told through the personal journey of a single family. I hope the book will provide a different perspective of the Asian American experience. It's a unique story. It's about a gay Asian kid growing up in Detroit, the worst neighborhood, with prostitutes and heroin dealers. It's a different take. Hopefully that will help expand the definition of what it means to be Asian American.

AAPR: Do you have any advice for young Asian Americans?

CHIN: Follow your passion. Never think that the story you want to tell or the issue you want to work on is too small. For instance, with the *Vincent Chin* movie, the fact that I traveled to so many colleges and so many different countries tells me that if there's a story that you feel passionate about and you want to get it out there, just work on it. Do it. You'll find that audience or that audience will find you. Don't second-guess yourself in terms of the passions that you have in life. Just follow your heart.

AAPR: Is there anything else that you would like to add?

CHIN: Culture is very important in terms of impacting policy because

politics is oftentimes something that happens in the head. It's something you think about. It's something you strategize over. But culture is something that happens in the heart. It's something you feel. Part of the challenge in the Asian American community is making people feel like they're Asian American, making them feel like they're part of the community. You can't politically mobilize people unless they feel like they're part of something. That's where culture and filmmakers and artists play a vital role. We are the ones out there making people feel Asian American, making them feel proud to be Asian American, making them feel that our community is something worth fighting for. It's important for us to support the artistic and cultural endeavors in our community, because that's going to lead to political empowerment and social justice for the community. This is what I'm about.

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Traversing Borders

Possibilities for Art Informing Public Policy Analysis

by Patricia Nguyen

Art opens up the door of interpretative possibilities—art can link us to new ways of seeing the everyday and can expand new modes of inquiry that hold potential to deeply inform public policy. Dominant literature in public policy relies heavily on quantitative forms of analysis and, more recently with a methodological shift away from positivist paradigms, qualitative data, through interviews and ethnographic research. Although there has been a methodological expansion with the inclusion of qualitative methods, those methods still remain validated by quantitative data. This essay offers another method of research inquiry for public policy analysis that addresses the gaps between “hard” and “soft” data to a place where meaning is interpretative and the boundaries of meaning are expanded to include different ways of approaching immigration issues. This article focuses on Nguyen Thao Phan’s mixed media installation *Renal Calculus*, an art object that interrogates and opens up questions about U.S. immigration policies in Asian American communities. Asian American immigration history is crucial to understanding the genesis of U.S. policies on immigration. Currently, with over 12

million Asian American immigrants and more than 1.5 million undocumented immigrants from Asian countries, linking Asian American immigration history to current policy debates remains evermore urgent.¹ Through an analysis of *Renal Calculus*, this article expands upon current immigration debates to include Asian American immigration history, discusses the categorization of Asian bodies as modes of border control, and examines the containment and surveillance of Asian American communities.

Renal Calculus is a mixed media installation piece that takes its name from the Latin word for kidney. Phan’s installation featured at the School of the Art Institute’s 2013 Masters of Fine Arts Show at the Sullivan Galleries in Chicago, Illinois. Phan’s artwork is simple yet rich in meaning. On a steel rectangular table sits a glass encasement of a kidney stone about three inches long and two inches wide. The kidney stone is displayed with a gold-rimmed magnifying glass (see Figure 1). On the wall above the glass display is a projection of two contrasting images. On the left is a video loop of the kidney stone magnified, revealing crystallized formations. On the right is a



Figure 1 - Renal Calculus (2013)
Source: Patricia Nguyen

still of Frances Alÿs's "The Loop, Tijuana-San Diego" postcard photograph of the Pacific Ocean with the words below them framed out (see Figure 2). As the kidney stone becomes animated through video, Alÿs's photographed ocean slowly disappears from view with a progressing black out of the image from the bottom to the top. The journey to understanding the piece is one where the viewer must investigate its nuances and the messages that lie in between to unlock its possibilities that inform us of our current historical moment.

I argue the visual and narrative elements of *Renal Calculus* shed light onto immigration issues in the United States to expand the historical and transnational scope of the debate. In the first part of this essay, I examine how Phan's citation of Alÿs's "The Loop, Tijuana-San Diego" postcard made in 2011 critiques dominant debates on immigration in terms of Mexicans as the

main targets and Mexico as the main source of illegal immigration to reframe the origins of U.S. immigration policies to Asian American history. In the second section, I center my discussion on issues of categorization methods as forms of border control through an analysis of Phan's narrative description of the kidney stone's journey across transnational borders. Lastly, I focus on the installation of the kidney stone itself as a metaphor for

issues of containment and surveillance in Asian American immigrant communities. Historical references, transnational connections, and structural critiques become lost amidst policy debates that focus on contemporary issue-centered solutions devoid of historical and transnational resonances. Art provides the space where these gaps can be addressed and can generate the possibilities of opening up policy debates.

Figure 2- FRANCIS ALYS "The Loop, Tijuana-San Diego" (1997) Postcard (2011)

Source: <http://artpdf.wordpress.com/2012/03/19/francis-aly-s-the-loop-tijuana-san-diego-1997-postcard-2011/>



In order to go from Tijuana to San Diego without crossing the Mexico/United States border, I followed a perpendicular route away from the fence and circumnavigated the globe, heading 67° South East, North East and South East again until I reached my departure point. The project remained free and clear of all critical implications beyond the physical displacement of the artist.

Transnational Border Contexts

News coverage and political discourse on immigration typically focus on Mexican Americans and on land borders, but there are other routes to understanding immigration history and migration processes. This section discusses Phan's use of Alÿs's "The Loop, Tijuana-San Diego" postcard and transnational borders. Images of Mexicans illegally crossing the border became the dominant scene portrayed in the mass media and became legally reified in political discourse. In his 2008 State of the Union Address, U.S. President George W. Bush declared, "America needs to secure our borders. . . . We're increasing worksite enforcement, deploying fences and advanced technologies to stop illegal crossings."²

In 2006, to "combat the war on terror" and to secure U.S. borders as a measure for national security, Bush enacted the Secure Fence Act. The Secure Fence Act authorized an extension of the U.S.-Mexico fenced border by 700 miles, focusing specifically on California and Arizona. Alongside fence expansion was the increase in Border Patrol staffing. Investing financial means into protecting the United States from Mexican migrants distorts the U.S. immigration debate geographically and historically. Alternate migration paths and immigrant populations are left out of mainstream political discourse. In addition, an analysis of the global political and economic situation becomes erased from the larger national immigration debate. In *Immigrants in the United States: A Profile of America's Foreign-Born Population*, Steven A. Camarota writes that illegal immigrants are predominately poor,

uneducated, and uninsured and a "net fiscal drain" on the welfare and public education systems.³ Instead of asking why there are large numbers of immigrants and refugees from countries in the Global South seeking job opportunities and residency in the United States, the U.S. becomes fixed as a nation that suffers from an influx of poor illegal migrants. The debate becomes divorced from extreme economic disparities and issues of war between countries in the Global North and Global South. Nevertheless, the targeting of Mexicans represents a racialized national discourse that is not isolated in the historical context of U.S. immigration, which will further be discussed in the next section.

In *Renal Calculus*, Phan juxtaposes close-up images of the kidney stone with Alÿs's "The Loop, Tijuana-San Diego" image of a vast panoramic shot of the Pacific Ocean. Alÿs is a Belgian artist living in Mexico City; his work comments directly on spatial justice. Postcards typically capture a location that marks where a person is visiting and is sent to show proof of having passed through a place or visited a particular destination. Here, the notion of the postcard plays an ironic role, being neither a solid destination nor a location—much like the plight of undocumented immigrants living in limbo in the United States, not being fully recognized as citizens, which would assure them legal rights and protections as citizens.

The postcard is a color photograph of the Pacific Ocean. An endless body of water stretched beyond the horizon takes up the photograph. The waters are a calm deep greenish-blue color. Below the

image, Alÿs writes the caption:

In order to go from Tijuana to San Diego without crossing the Mexico/United States border, I followed a perpendicular route away from the fence and circumnavigated the globe, heading 67° South East, North East and South East again until I reached my departure point. The project remained free and clear of all critical implications beyond the physical displacement of the artist.

Phan strategically chose to leave out the text while maintaining the integrity of the photograph. The departure away from the text reveals an underlying narrative that guides interpretation of the photograph's meanings. The text contextualizes the photograph in relationship to U.S.-Mexico borders, but Phan's reuse of the photograph, consciously cropping out the words, expands interpretive possibilities on the issues of borders and migration.

Water as a place of migration and place of enforcing immigration policy enters the conversation. Migration over water pushes the boundaries of how the immigration debate is remapped not only along the U.S.-Mexico land border but also over the waters, where boundaries between countries on the other side of the Pacific come into the picture.

As "The Loop, Tijuana-San Diego" image begins to fade, the disappearance of the ocean incites larger questions about the disappearance of these migratory paths. Alÿs's photograph not only references a different way of migrating to the United States but alludes to other

modes of migration and populations of migrants. By reconfiguring how people can arrive to the United States through the use of "The Loop, Tijuana-San Diego," a history of immigration exclusion and strict border regulation is invoked. Although the intention of the artist does not directly evoke this connection to U.S. immigration history, Phan's installation provokes contemplation of U.S. immigration laws. Phan's aestheticized use of the postcard panoramic of the Pacific Ocean opens up room for a more expansive analysis of migration to include a history of Asian migration to the United States. In the next section, I discuss a few significant immigration policies that have greatly impacted Asian migration to the United States and marked Asian bodies "foreign" and "illegal."⁴

Categorization as Modes of Border Control

Categorizing Asian migrants has been a critical mode of border control. I focus specifically on the notion of how categorizing Asian immigrants on the spectrum of deviants to victims can restrict or expedite immigration processes. These categories impact the rights and protections people can claim as citizens of the United States, all of which relate to how the U.S. government views its relationship to the population under review, respective to the historical time period.

In Phan's narratives of the process of securing the kidney stone across customs and U.S. borders, she writes:

I thought the stone would not be able to come to America because its origin was suspicious. If I listed it as a "kidney stone" on the decla-

ration form from the Vietnamese post office, the stone would not be able to depart. So we thought of a tactic. He labeled the kidney stone as a “souvenir rock” and displayed it in an ordinary gift box. The stone, with its new identity as a souvenir, arrived to America in the month of November. . . . Once the stone arrived to America, the land of liberty, thinking of the stone as a new immigrant . . .

As Phan writes, the kidney stone becomes a metaphor for an immigrant body traversing across transnational borders.

Historically, the immigration process for Asians to the United States has been filled with exclusion acts, quota limitations, and deportation clauses. As far back as 1875, Congress enacted the Page Act, which “forbid the entry of Chinese, Japanese, and Mongolian contract laborers, women for the purpose of prostitution, and felons.”⁵ As profits from the California Gold Rush started to decline during the post-Civil War era, Euro-Americans needed a “scapegoat” for their economic troubles and labeled the Chinese as those who were stealing their labor and wages.⁶ These increasing antiforeign sentiments in relation to labor paved the way for the Chinese Exclusion Act to pass in 1882. Moreover, the Immigration Act of 1917 had a section specifically titled the Asiatic Barred Zone Act. The act itself banned “insane,” “diseased defectives,” “criminals,” “prostitutes,” and “contract laborers.”⁷ The Asiatic Barred Zone expanded the ban on Chinese immigrants to most of Asia and the Pacific Islands.

Then the Immigration Act of 1924 and the 1946 Luce-Celler Act placed quota limits on immigration, tokenizing who was allowed to immigrate to the United States. The history of immigration laws to the United States originated with the development of anti-Asian federal legislation that banned those deemed as deviant and thus undesirable from entering the country. The abject nature of the kidney stone itself represents this history of U.S. immigration law’s commitment to marking Asian bodies as deviant and thus unwanted.

Nevertheless, the history of Asian immigration to the United States has not always been one to ban or limit people from entry, but one where the support of Asian migration also served a political purpose. Marked as “refugees” under the Indochina Migration and Refugee Assistant Act in 1975, Vietnamese, Cambodian, and Laos refugees were able to seek U.S. assistance in the process of migration after the Vietnam War. The welcoming of Southeast Asian immigrants allowed the United States to play the heroes after the loss of the Vietnam War. Southeast Asians served the purpose of “helpless victim” that depended on American aid.⁸ As masses of Southeast Asian refugees move to the United States and lived in low-income neighborhoods with high rates of crime and violence, they became marked as criminals and their undocumented status assisted in their deportation.⁹ In 2002, the United States signed a treaty with Cambodia for repatriation, and in 2008 the U.S. and Vietnam signed a Repatriation Agreement to authorize the “return of Cambodian and Vietnamese citizens,” or deportation of the undocumented.

Currently, the Republican Party refuses to grant citizenship to undocumented immigrants. Even though through the Deferred Action for Childhood Arrivals youth are granted legal status, there is no clear pathway to citizenship. Representative Darrell Issa stated, "It's halfway—and it always has been—halfway between full amnesty and simply rejecting people."¹⁰ Nevertheless, to be granted "amnesty" implies acknowledgement of illegal immigration as criminal behavior by undocumented immigrants. The history of Asian migration to the United States has depended on how bodies of Asian migrants are marked and then dealt with.

How do migrants get across borders? How does their identity get mapped onto them through immigration policy? How does their categorization impact the rights they are granted upon arrival and during their stay? *Renal Calculus* offers an opportunity to ask these questions—to dig deeper into the history of Asian migration to the United States and examine how categorization of people has deeply impacted whether they were banned or welcomed into the country. The original identity of the kidney stone shifted in the migration process to pass customs and the oceanic border in order to be granted legal rights to enter the United States. This transgression of border controls critiques how people cross borders and the power of categorizing people to either bar migration or expedite its process.

Naming becomes an important element to Phan's artwork. Although the kidney stone's origins were from Vietnam, Phan titles her piece *Renal Calculus*, taken

from the Latin word for kidney. The new identity becomes a label that carries over to the life of the immigrant who is able to make it to the United States but continues to be contained and surveilled in the assumption of perpetual foreign identity that becomes criminalized under the U.S. immigration and justice system.

Containment and Surveillance

The kidney stone is contained in a glass case next to a magnifying glass for the audience to interact with the kidney stone. In this final section, I discuss how the installation of the kidney stone in the glass case becomes a metaphor for containment, and the magnifying glass, along with the close-up screen shots of the kidney stone, becomes a metaphor for the surveillance of immigrant communities. Containment and surveillance intersect in terms of how immigrant communities are treated in the United States and relate directly to issues of deportation and the criminalization of immigrant bodies in the U.S. immigration system.

Many immigrant communities, such as Cambodian Americans who arrived as refugees with limited financial resources, relocate to low-income areas in the United States, where education is poor and rates of crime and violence are high.¹¹ In these neighborhoods, containment of immigrant communities is a result of a lack of educational and employment opportunities that limit opportunities for economic and geographical mobility. Nevertheless, misdemeanors and nonviolent crimes become grounds for "law violations" that deem deportation a viable direction for immigrant "law offenders" who are targeted in these

neighborhoods. In “Removing Refugees: U.S. Deportation Policy and the Cambodian-American Community” a report by the Walter Leitner International Human Rights Clinic, Phirun Phal was convicted of two nonviolent offenses (possession of marijuana and using his brother’s ID for a speeding ticket).¹² He was sentenced to sixteen months in prison but was released on good behavior. However, on the day of his release, Immigration and Customs Enforcement (ICE) took Phal for immigration detention without regard for his testimony, and he was sentenced to deportation.

The criminalization and lack of economic, educational, and infrastructural investment in immigrant neighborhoods become critical reasons to the containment and surveillance of these communities. This is further exemplified in the case of the New York Police Department’s surveillance and mapping of Muslims across New York City as suspected terrorists after the events of September 11. According to “Mapping Muslims: NYPD Spying and Its Impact on American Muslims,”¹³ the NYPD have been surveilling ethnic communities since 1919, mapping immigrant groups and their offspring to investigate suspected socialists, communists, and anarchists.

Furthermore, during World War II, under Executive Order 9066, Japanese Americans were herded into internment camps or “War Relocation Camps” as perceived threats to national security. “The executive order resulted in the legally mandated, forced removal and imprisonment of approximately 120,000 Japanese-Americans, two-thirds

of whom were natural-born citizens.”¹⁴ According to Joshua Takano Chambers-Letson’s *A Race So Different: Performance and Law in Asian America*, “The camps evidence the violent history of Asian American racialization by the state, a history that is often denied or at least elided by a pervasive national amnesia.”¹⁵

The kidney stone displayed in the glass case reveals the containment of immigrant communities—asking the viewer to acknowledge this history. The magnifying glass next to the glass case invites the viewer to survey the kidney stone, to take a closer look into this foreign object. Allowing the audience to participate in this viewing implicates them in the process of surveillance and what it means to have the power to overlook something from a contained and safe distance. The distance between the kidney stone and the viewer reflects the distance between policy makers from the people they are making policies for as well as the distance between police enforcement and the communities themselves. These disconnects speak to the lack of critical engagement and conversations with the communities that immigration policies affect the most. The concept of containment and surveillance becomes revealed in *Renal Calculus* through a reflection of the kidney stone as a new immigrant and what it must go through to cross borders to finally arrive in the United States. The status of the kidney stone is as precarious as the status of immigrants, especially undocumented immigrants in the United States.

Conclusion

The minimalist aesthetics of *Renal Cal-*

culus highlight larger immigration policy issues that invite the audience to expand their view beyond the U.S.-Mexico land borders to transnational oceanic migration, while invoking Asian immigration history into the core of U.S. immigration policy discussions. This essay is a commentary on the possibilities of art as a tool to inform policy, to allow us to look at various dimensions beyond the confines of the current political debate. Art can fill in the missing history, the transnational landscape of the debate, and evoke the slippery nature of what crossing borders means. Renal Calculus, when examined closely, allows us to see how borders can be transgressed, the political nature of categorizing immigrants, and the continued containment and surveillance of immigrant communities in the United States. The art piece does not provide any answers to the policy debates, but provokes important historical, transnational, and local questions as to how policy analysts are able to contextualize immigration policy and thus create policies that do not repeat modes of marking immigrant bodies as perpetually foreign and a possible threat to the nation. There are no final solutions, but this essay offers another mode of research inquiry and analysis that can offer a more comprehensive look at immigration policies.

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