



LEGITIMIZING HEALTH INJUSTICE THROUGH
COLORBLINDNESS



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EXECUTIVE SUMMARY

Despite the advancements that have been made in addressing death and disease, the health of racial minorities still lags in many ways. Health disparities characterize the United States health system. African Americans are sicker than their white peers and are more likely to die prematurely from all causes. The COVID-19 pandemic laid bare the drivers of health disparities and how the law has long underwritten those drivers.

Despite the glaring health disparities, the Supreme Court has continued to read colorblindness into the Constitution, scuttling race-conscious efforts to close racial gaps. In *Students for Fair Admissions v. Harvard*, the Supreme Court ruled that it is unlawful for higher education institutions to take affirmative race-conscious steps to diversify their student bodies. While that decision focused on admissions programs in institutions of higher education, its reasoning sweeps broadly. A colorblind conception of equality that sees no difference between laws designed to harm individuals because of their race and those adopted to ameliorate racial harms severely narrows how policymakers may craft policies that meaningfully close racial gaps in health.

To show how the Court's decision affects health policy, this report lays out how the law unequally shapes various socio-structural determinants of health, including housing, education, employment, and access to health care. By operating unequally, the law engenders health inequity by burdening racial minorities with disease, injury, and premature death.

Colorblind equality that refuses to interrogate both the historical and contemporary meanings of race will not only entrench racial health disparities but also exacerbate them.

Today, various public and private players continue to weaponize colorblindness to challenge race-conscious policies in health, including efforts to diversify the health care workforce and encourage clinicians to guard against implicit racial bias. The report calls for a more robust, race-conscious judicial understanding of equality that stares “*unblinkingly*” at the reality of racial domination in the United States. Otherwise, health gaps will continue to widen to the catastrophic detriment of all Americans.

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LEGITIMIZING HEALTH INJUSTICE THROUGH COLORBLINDNESS

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The COVID-19 pandemic has laid bare the drivers of racial health disparities in the United States.² By all measures, racial and ethnic minorities have suffered the burdens associated with the pandemic at disproportionately higher rates than their white counterparts. Disparities have long characterized health in the U.S., with racial and ethnic minorities suffering disease and death at rates that pale in comparison with those suffered by white Americans.³

Yet the U.S. Supreme Court insists that the United States is a post-racial society in which the stark evidence of these inequities is constitutionally irrelevant and that any race-conscious efforts to ameliorate the inequities are constitutionally suspect. The Supreme Court crowned its 2023 term by upending almost half a century of affirmative action precedent in *Students for Fair Admissions v. Harvard (SFFA v. Harvard)*,⁴ holding that it is unlawful for higher education institutions to take affirmative race-conscious steps to diversify their student bodies.

SFFA v. Harvard involved admissions policies aimed at advancing diversity and inclusion at two prestigious universities: Harvard College and the University of North Carolina (UNC). These schools use various metrics to assess students for admission, including academic achievement, standardized testing, extracurricular accomplishments, athletic prospects, recommendation letters, personal qualities and character, and overall accomplishments.⁵ To achieve the academic benefits associated with diverse student bodies, consistent with decades of Supreme Court precedent, the schools considered students' race as one of the factors in admissions decisions.⁶ Students for Fair Admissions (SFFA) challenged the universities' admissions policies, arguing that they violated Title VI of the Civil Rights Act and the Equal Protection Clause of the Fourteenth

Amendment.⁷ SFFA is a nonprofit organization founded by conservative strategist Edward Blum, who has spearheaded various legal battles against voting rights and race-conscious policies.⁸

Fully embracing a rigid, colorblind conception of equality, the Supreme Court likened considering race to achieve diversity in higher education with invidious racial discrimination and invalidated race-conscious admissions policies. To reach this conclusion, the Court had to rework its affirmative action decisions that, for almost half a century, permitted the consideration of race in higher education to achieve the academic benefits of student diversity. While that case dealt with higher education institutions, its reasoning sweeps broadly.⁹ It will forestall any meaningful efforts to advance health equity and minimize race-based disparities that consistently characterize the nation's health.¹⁰

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This report describes how litigation has been used as a tool to undermine race-conscious and equity-focused policies. Analyzing a series of Supreme Court decisions about race-conscious policies, this report shows how the Equal Protection Clause has been interpreted to foreclose efforts to address centuries of systemic racism and societal discrimination. Parsing affirmative action decisions, the report lays out how the Court has narrowly interpreted the Constitution as permitting race-conscious admissions in higher education to promote student diversity — highlighting how the Court has gradually narrowed the scope of diversity-based admissions. Showing how race structures various determinants of health, especially access to health care and the quality of care, this report critiques the myth of colorblindness that undergirds the *SFFA* decision. This report also

discusses how colorblindness has forestalled race-conscious policies in other areas beyond higher education. It addresses how colorblindness and anti-discrimination have been weaponized in the courts to thwart race-conscious health policy measures in public and private spheres. While the report briefly alludes to some pathways that have been suggested because of the barriers the courts have created, it is beyond the report's scope to fully address those pathways or propose other meaningful solutions. The report mainly aims to show how colorblindness hampers race-conscious policies. Until the courts reverse course and ground their conception of anti-discrimination in the historical and contextual realities of racial domination in the United States, the report emphasizes, health gaps will continue to widen to the catastrophic detriment of all Americans.

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RACE-CONSCIOUS POLICIES IN THE COURTS

THE DIVERSITY JUSTIFICATION

The Supreme Court first recognized student diversity as a compelling interest that justified considering race in higher education admissions in 1978 in *Regents of the University of California v. Bakke*.¹¹ That case involved the University of California, Davis School of Medicine's (UC Davis) race-conscious admissions policy that set aside 16 out of 100 seats for four groups of non-white racial minorities.¹² UC Davis adopted this admissions policy to achieve four goals: (i) increase the number of racial minorities in medicine; (ii) address past societal discrimination; (iii) increase the number of physicians working in underserved communities; and (iv) promote the educational benefits of student diversity. When the medical school was established in 1968 — only 14 years after the Court declared school segregation unconstitutional in *Brown v. Board of Education*¹³ — nearly all the 50 admitted students were white. Only three Asian American students were admitted. None of the students were Black, Native American, or Latinx.¹⁴

While the admissions policy was designed to remedy some of the real-life “effects of societal discrimination on historically disadvantaged racial and ethnic minorities,”¹⁵ the Court insisted that the policy classified the students by race, and therefore, subject to the most rigorous standard for constitutional validity — strict scrutiny. Under that standard, a racial classification can be valid only if it advances a compelling governmental interest and is narrowly tailored to achieve that interest. Overcoming this standard is often an insurmountable challenge — strict scrutiny is strict in theory and largely fatal in fact.¹⁶ Indeed, in a highly fractured opinion,¹⁷ the Court invalidated the admissions policy because the first three goals that UC Davis had identified were not compelling enough. By rejecting those goals, the Court made it impermissible to consider race for benign, remedial purposes, including addressing the effects of societal discrimination.

Although the Court ruled that the fourth goal — achieving the educational benefits of a diverse student body — was a compelling goal that could be constitutionally pursued, it struck down the admissions policy because UC Davis had wrongly gone about achieving that goal. The Court ruled that setting aside specific seats for minority students established a race-based quota, which was untenable because it did not individually assess each applicant. In an individualized holistic assessment, however, race could be considered among many factors — including geographic origin, socioeconomic background, work experience, and so forth — in determining a student's ability to contribute to diversity. The Court noted that “the race of an applicant may tip the balance in his favor just as geographic origin or a life spent on a farm may tip the balance in other candidates' cases.”¹⁸

While *Bakke* functionally forbade race-conscious remedial policies in higher education, it allowed race to be narrowly considered to enhance student diversity. Diversity is a compelling goal in higher education institutions, the Court reasoned, because physicians serve heterogeneous communities, and educating physicians in diverse educational environments prepares them to serve diverse populations. Interestingly, the Court's justification for diversity as the only constitutionally permissible goal for race-conscious admissions policies mainly centered other students — who are predominantly white — instead of the racial minorities, the victims of widespread, systemic discrimination.¹⁹ The Court rejected all the other justifications that centered racial minorities — including remedying societal discrimination — but upheld the goal that enriched the learning experiences of all the other students to prepare them for a diverse world and global marketplace.²⁰ In doing so, the Court failed “to adopt a conception of equal protection that acknowledges and accounts for the legacy [and persistent reality] of racial subordination in the United States.”²¹

Bakke was decided barely two decades after the Court invalidated school segregation in *Brown v. Board of Education*. And *Brown* was met with so much resistance that its promise was never fully

realized. Indeed, by the time *Bakke* was decided, the Court had issued a series of decisions that weakened measures to ensure unitary schools and rebuffed other measures to ensure equal access to education.²²

DIVERSITY AFTER BAKKE

The *Bakke* decision shaped the Court’s approach to affirmative action in subsequent cases and guided higher education institutions nationwide for almost the last half-century.

Indeed, over two decades after *Bakke*, the Court decided *Grutter v. Bollinger* and affirmed that it was permissible for schools to consider race to diversify their student bodies.²³ *Grutter* involved the University of Michigan Law School’s race-conscious admissions program, which, in line with *Bakke*, was adopted to harness the educational benefits of student diversity. The law school did not set aside any number of seats — or a quota, as in *Bakke*. Rather, it sought to enroll “a critical mass” of underrepresented minority students. The law school considered racial identity a “plus” among several factors in the holistic, individualized assessment of each student. The Court upheld the admissions program against an equal protection challenge. Affirming *Bakke*’s rationale, the Court ruled that diversity was a compelling governmental interest that could be constitutionally pursued. The Court reiterated that diversity was a compelling interest because it enhanced the education of all students by “promot[ing] cross-racial understanding, help[ing] to break down racial stereotypes, and enabl[ing]

students to better understand persons of different races.”²⁴

The means by which the law school sought to achieve that goal — individualized, holistic assessment to attain a critical mass of minority students — were also meaningfully tailored. Unlike UC Davis in *Bakke*, the law school did not set aside a specific number of seats for minority students. Rather, it used a flexible assessment method through which a person’s race is considered among several factors that contribute to diversity. This approach, the Court reasoned, “ensure[s] that each applicant is evaluated as an individual and not in a way that makes the applicant’s race or ethnicity the defining feature of his or her application.”²⁵ The Court further held that the law school did not need to exhaust every race-neutral or colorblind alternative for the admissions policy to be constitutional.²⁶ It was enough that the school considered race-neutral alternatives in good faith. Interestingly, although the Court upheld the law school’s policy, it warned that race-conscious admissions were temporal and expected them to lose their constitutional currency in 25 years.²⁷ The Court, however, did not provide any justification whatsoever for this arbitrary 25-year limitation period other than the fact that *Bakke* had been decided 25 years prior.²⁸

RETRENCHING DIVERSITY

Soon after *Grutter*, the Court decided *Parents Involved in Community Schools v. Seattle School District No. 1*²⁹ and invalidated racial integration plans for K-12 schools in Seattle and Louisville. Although the schools did not have explicit race-based school segregation policies, they maintained segregated student populations through residential segregation and other race-neutral means, including drawing school boundaries and adopting restrictive student

transfer policies. After protests from Black parents and various lawsuits, the schools adopted race-conscious admissions policies — like other school integration measures adopted across the country after *Brown v. Board of Education*.³⁰ But because the schools had maintained segregated student populations through race-neutral policies, the Court ruled that the race-conscious admissions measures were impermissible.

Deploying an ahistorical and acontextual colorblind tautology that treats invidious racial discrimination and race-conscious remedial measures symmetrically, Chief Justice Roberts declared, “The way to stop discrimination on the basis of race is to stop discrimination on the basis of race.”³¹ Essentially, the Court saw no constitutional difference between Jim Crow laws that had long subordinated racial minorities and race-conscious efforts to rectify such subordination. Put differently, it was impermissible to consider race in integrating schools. The schools could take race-conscious affirmative steps only to correct explicit, intentional racist admissions policies, the Court ruled. The Court thus made it impossible to ameliorate racial burdens achieved through purportedly “neutral” policies that nevertheless harm racial minorities.³² The Court also doubted that achieving diverse student bodies was constitutionally justifiable in primary and secondary schools. Undercutting *Brown’s* central holding, the Court suggested that *Grutter’s* diversity rationale applied only in higher education.³³

Even then, diversity-based admissions in higher education continued to face coordinated legal attacks. Ten years after *Grutter*, affirmative action was again before the Court in *Fisher v. University of Texas*, which involved the University of Texas’s (UT) efforts to enroll a “critical mass” of minority students.³⁴ The Court again affirmed that diversity was a compelling interest that justified race-conscious admissions policies. UT’s use of race to promote diversity was also narrowly tailored because race was not given “an explicit numerical value.”³⁵ Instead, it was one of the factors in an individualized, holistic assessment of each student. Although the Court upheld UT’s policy, it narrowed how schools could achieve diversity. While *Grutter* had ruled that schools did not need to exhaust all colorblind alternatives,³⁶ *Fisher* rolled back that deference and held that race-conscious policies would be allowed only if “no workable race-neutral alternatives would produce the educational benefits of diversity.”³⁷ In other words, a race-conscious admissions policy would be invalidated if diversity could be achieved through a colorblind process.

DIVERSITY FULLY ROLLED BACK

With the newly reconstituted conservative supermajority Supreme Court, the challengers renewed their attack on diversity as a vehicle for race-conscious admissions. Though cloaked in colorblind rhetoric, Edward Blum’s strategy peddled racial stereotypes and weaponized the “model minority” myth to draw a racial narrative that pits Asian Americans against other minorities.³⁸ And that strategy worked.

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In *SFFA v. Harvard*, the Court ruled that diversity was no longer a compelling goal that justified deviating from colorblindness. First, the Court noted

that *Grutter* warned that race-conscious admissions had a limited shelf-life of 25 years, and it had been 20 years since then.³⁹ Then, equating race-conscious admissions policies with invidious racial discrimination, the Court reasoned that schools may consider race to promote diversity only if diversity can advance measurable goals. The Court found that the goals that Harvard and UNC argued diversity advanced, including training future leaders, preparing students for a diverse world, and breaking down racial stereotypes — much like the goals endorsed in *Bakke*, *Grutter*, and *Fisher* — were imprecise, thus not measurable.⁴⁰ The Court thus severely narrowed the scope of permissible race-conscious measures that it is hard to imagine how any meaningful race-conscious policy can survive judicial scrutiny.

BEYOND DIVERSITY IN HIGHER EDUCATION

The courts have used colorblind constitutionalism to defeat race-conscious policies in other areas, including public works contracting,⁴¹ employment,⁴² and voting.⁴³ The courts have maintained that systemic, widespread racism does not justify race-conscious remedial measures. In that vein, race-conscious policies are allowed only in response to specific, discrete acts of intentional racial discrimination. And only the governmental unit that has intentionally discriminated may remedy such discrimination.

PUBLIC WORKS CONTRACTING AND EMPLOYMENT

Limiting race-conscious remedial policies to only explicit government policy has been the bane of racial equity efforts in public works contracts. In *City of Richmond v. J.A. Crosson*, the Court invalidated a program adopted by the City of Richmond, Virginia — the former capital of the Confederacy — that set aside a percentage of public works contracts for minority-owned businesses.⁴⁴ At the time the program was adopted, although 50% of Richmond’s population was Black, only 0.67% of public works construction contracts were awarded to minorities. Richmond found that this mismatch was because of widespread racial discrimination in the nation’s construction industry. But the Court ruled that the city could not adopt its race-conscious remedial program because of generalized societal discrimination. The Court ruled that Richmond could remedy only its own discrimination, not general societal discrimination, because such discrimination was “inherently unmeasurable.”⁴⁵ Put simply, Richmond had no business addressing racial inequality in the construction industry, no matter how such inequality impacted the city’s own construction projects. Later, in *Adarand Constructors, Inc. v. Peña*, the Court extended its limitation of race-conscious remedies for systemic racism to the federal government.⁴⁶

What is more, the Court has made it impossible to redress employment practices and policies

that disproportionately harm racial minorities. In *Washington v. Davis*, the Court held that absent proof that a policy was purposefully designed to harm racial minorities, the racially disproportionate harm of such policy would not violate the Constitution.⁴⁷ The Court feared that invalidating laws because of how they disproportionately harmed racial minorities would unravel the whole socioeconomic system. Challenging laws based on their disproportionate racial harms, the Court observed, “would raise serious questions about, and perhaps invalidate, a whole range of tax, welfare, public service, regulatory, and licensing statutes that may be more burdensome to the poor and to the average black than to the more affluent white.”⁴⁸ So colorblindness is both a sword and a shield against racial equality. As a sword, it can be used to invalidate race-conscious affirmative action policies. As a shield, it forecloses remediation of so-called neutral policies that disproportionately harm racial minorities.

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COVID-19 RELIEF

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Colorblindness has informed lower courts' negative treatment of measures that address structural racism and remedy past harms. A recent example is litigation challenging race-conscious efforts under the American Rescue Plan Act (ARPA) — a law enacted in 2021 to address the economic and public health crisis related to the COVID-19 pandemic. Under the ARPA, Congress appropriated short-term funds to help small businesses stay afloat because of the pandemic. To ensure that small businesses operated by marginalized groups were not left behind, Congress prioritized granting funds to businesses owned by women, veterans, or racial/ethnic minorities during the first 21 days of the program.⁴⁹ Congress drew that narrow prioritization period after finding that historical discrimination and contemporary systemic barriers — including federally-sanctioned redlining, denial of G.I. Bill benefits to Black veterans, exclusionary zoning, and Jim Crow — had prevented these businesses from fully accessing previous COVID-19 relief programs.⁵⁰ It also found that “minority-owned businesses were more vulnerable to economic distress than businesses owned by White entrepreneurs” and “minority-owned businesses were more likely to be in areas with higher rates of COVID-19 infections.”⁵¹ For those reasons, a thoughtful approach was necessary to ensure equitable access to federal relief. Consistent with federal law, the Small Business Administration (SBA) — the agency that administers

the grants — presumed racial minorities to be socially disadvantaged.

In *Vitolo v. Guzman*, a white business owner challenged the program's implementation, arguing that ARPA's race-based prioritization was unconstitutional. The court agreed. The *Vitolo* court ruled that the federal government may adopt a race-conscious remedial policy if the policy targets *specific* episodes of the federal government's past *intentional* discrimination.⁵² To justify a race-conscious remedy, the court noted, the government must show specific acts of purposeful discrimination against specific racial minorities. Data showing disparities was not enough. The court reasoned that Congress could not rely on generalized assertions of past racial discrimination, like redlining, Jim Crow, and G.I. Bill exclusions, to prioritize access to the funds by racial minorities. In other words, the Constitution bars the federal government from taking affirmative steps to remedy racial inequities that it did not explicitly and directly sanction or create.

Justice Samuel Alito recently echoed this reasoning in a case challenging the characterization of individuals who are “non-white race or Hispanic/Latino ethnicity” as “higher priority risk groups” for access to COVID-19 treatments. The disproportionately high rates of COVID-19-related hospitalization and death of racial and ethnic minorities notwithstanding, he suggested that “government actors may not provide or withhold services based on race or ethnicity as a response to generalized discrimination.”⁵³ This reasoning severely hampers the government's ability to address systemic and immanent legal forces that keep racial minorities at the bottom of the social order.⁵⁴

FARMERS' DEBT RELIEF

Following the same reasoning in *Vitolo*, other courts have also struck down related race-conscious policies. In *Faust v. Vilsack*, for example, a federal district court in Wisconsin prohibited the U.S. Department of Agriculture (USDA) from implementing a race-conscious debt relief program for farmers under the ARPA.⁵⁵ There, too, Congress earmarked funds to alleviate the burdens of USDA loans on racial and ethnic minority farmers and ranchers,⁵⁶ especially because of “longstanding and widespread discrimination” against racial minorities

in USDA programs.⁵⁷ Again, the court ruled that the debt relief program was unconstitutional because the program did not target “a specific episode of past or present discrimination.”⁵⁸ The court characterized the long-standing and widespread discrimination borne out by statistical disparities — including USDA's own past discrimination against Black farmers — as “a generalized assertion” of past discrimination that was not enough to meet the narrow scope of permissible race-conscious remedial action.⁵⁹

THE ROLE OF RACE IN SHAPING HEALTH AT VARIOUS LEVELS

The Court’s ruling in *SFFA* fully embracing race-blindness as the guiding star in equal protection inquiries obstinately fails to interrogate how the law unequally creates and sustains racial domination across the U.S. “The problem of the color-line”⁶⁰ persists today — especially in health where there are “gulf-sized raced-based gaps.”⁶¹ These gaps are not accidental. Rather, they are products of deeply rooted oppressive structures that relegate racial minorities to the lowest rungs of the social order. The inescapable evidence of racial inequality glares across different levels that impact health and mortality.⁶²

This section demystifies the myth of colorblindness by showing how race governs various sociostructural determinants of health, including residence, education, employment, and access to health care — all of which have been shaped by the unequal operation of the law.

RESIDENTIAL SEGREGATION AND THE BUILT ENVIRONMENT

Place matters. And racialized places affect health. In that context, a look at residential segregation — “the physical separation of the races in residential contexts”⁶³ — reveals how the law underwrites health disparities. Race has shaped neighborhoods and the built environment in the U.S., leading to residential racial segregation, concentration of poverty in minority communities, and poor housing conditions. Residence also mediates other key determinants of health, including education, employment, recreation, clean air, water, and nutritious food — which tend to be poor in hyper-segregated minority neighborhoods. Consequently, these neighborhoods have disproportionately higher morbidity and mortality rates.

Residential segregation stems from both historical and contemporary racial discrimination mechanisms, such as government-subsidized housing development policies, exclusionary zoning, redlining, financing, and race-based restrictive covenants.⁶⁴

Because of public and private disinvestment in segregated neighborhoods, those neighborhoods are economically and medically underserved. Racially segregated neighborhoods typically have a shortage of primary care providers, ambulatory facilities, physicians, and surgeons.⁶⁵ Predominantly racial and ethnic minority neighborhoods are also likely to be pharmacy deserts, and the few that do exist do not adequately stock essential drugs.⁶⁶

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Moreover, segregated neighborhoods are targeted for the siting of toxic waste facilities and other pollutants, thus exposing inhabitants to high concentrations of environmental toxicants.⁶⁷

Racial and ethnic minorities have limited access to safe, affordable housing — a key determinant of health.⁶⁸ Along with the unsanitary conditions that increase the risk of poor air quality, lead poisoning, and hazardous climate events, poor

housing conditions have long been associated with the spread of communicable diseases.⁶⁹ And studies continue to show the association between poor housing and higher incidence of COVID-19 mortality.⁷⁰

EDUCATION, EMPLOYMENT, AND HEALTH CARE COVERAGE

As noted previously, education — a significant determinant of health — hinges on residence. The history of school segregation in the United States is well documented. Although the Court declared that segregation in public schools was unconstitutional in *Brown v. Board of Education*, school integration was forcefully resisted,⁷¹ and today, the promise of equal education remains elusive. The U.S. Government Accountability Office recently analyzed data from the U.S. Department of Education and concluded that “schools remain divided along racial, ethnic, and economic lines” throughout the country.⁷²

Education also shapes other life prospects, such as employment opportunities, that are critical for health. Employment, in turn, determines income, access to health care, sick leave, working conditions, and social networks — all of which are also critical to health. Employment is especially critical for health care coverage because of the central role that employer-sponsored insurance plays. Although significant progress has been made over the last decade in ensuring coverage — thanks to the Affordable Care Act and Medicaid expansion⁷⁸ — racial disparities in coverage persist. According to the U.S. Census Bureau, in 2022, employer-based insurance covered 54.5% of the U.S. population.⁷⁹ The racial disparities in employer-based health care coverage are stark as well. The Kaiser Family Foundation reports that, in 2022, while 65.7% of whites were covered by employer-sponsored health care coverage, the coverage rates for Black, Latinx, and Native Americans were 46%, 42.1%, and 33.8%, respectively.⁸⁰

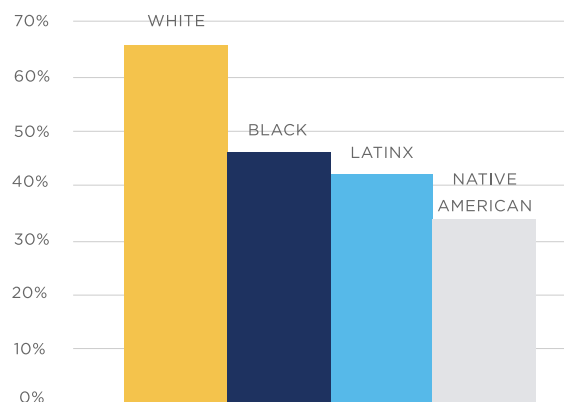
“Schools remain divided along racial, ethnic, and economic lines”

— The U.S. Government Accountability Office

And the Court essentially ended race-conscious school integration efforts in *Parents Involved in Community Schools v. Seattle*.⁷³

Residential racial segregation and concentration of poverty in predominantly minority neighborhoods have engendered poor education for racial minorities. This is especially because public schools are predominantly funded through local property taxes.⁷⁴ And the Court has held that differential school financing based on property taxes does not offend the Constitution.⁷⁵ Because schools in racially segregated neighborhoods are under-resourced, racial and ethnic minority students have high staff and teacher turnover, limited access to advanced placement and college preparatory courses, and low college-going rates.⁷⁶ High education attainment is associated with healthier lifestyles and low mortality rates.⁷⁷ Access to good education increases health knowledge, the ability to navigate the health care system, better coping, and ultimately healthy behaviors.

ETHNIC DISPARITIES IN HEALTH CARE COVERAGE



What is more, racial minorities with higher education attainment still face barriers to accessing health insurance. For example, while only 3.5% of white

Americans with a bachelor’s degree or higher are uninsured, the rates are very high for racial minorities — with Native Americans at 12.5%, Hispanic/Latino Americans at 9.9%, and Black Americans at 7%.⁸¹

The persistence of unequal access to health care coverage, even at high education attainment levels,

QUALITY OF CARE

Racial and ethnic minorities who can access health care still face race-based institutional and interpersonal barriers in the quality of care they receive. In its 2002 seminal report, *Unequal Treatment*, the Institute of Medicine (IOM)⁸³ reported that racial and ethnic minorities received poor quality of care compared to white Americans, even when access-related factors (e.g., insurance status, income) are controlled.⁸⁴

The lower quality of care that racial and ethnic minorities receive cuts across a wide range of medical conditions, including cardiovascular care, cancer diagnosis, treatment for AIDS, diabetes care, kidney disease, maternal care, and pain management. The report attributed the inferior quality of care racial minorities received to provider bias, prejudice, racial stereotyping, and clinical uncertainty.⁸⁵ The report added that the under-enforcement of anti-discrimination civil rights laws — especially Title VI of the 1964 Civil Rights Act — against providers has exacerbated the poor quality of care that Black patients receive.⁸⁶

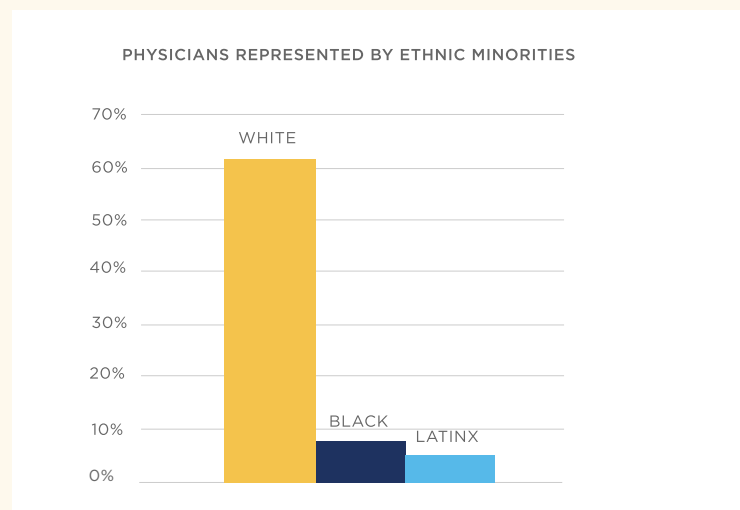
Still more, medical education is deeply rooted in white racial superiority, slavery, colonialism, eugenics, grotesque experimentation on Black bodies, and erasure of non-white medical knowledge and labor.⁸⁷ Biology was central to the original political and social construction of racial difference, and such thought continues to suffuse scientific thought.⁸⁸ Thus, white normativity and Eurocentric logics largely inform health education, culture, and care delivery — all of which lead to substandard care for non-white patients.⁸⁹ For example, the race-based physiological myth that Black people feel less pain than white people still has a substantial foothold in the medical field, which leads providers to prescribe inadequate pain management for Black patients.⁹⁰

can be attributed to “inequities in educational attainment and unequal returns on the educational attainment achieved.”⁸² These disparities bear out the social meaning of race in the United States. Race is not an abstract notion that can be addressed by appealing to decontextualized, formalistic ideas of neutrality and colorblindness that the courts have fully embraced.

Following the IOM report, Congress asked the Agency for Healthcare Research and Quality (AHRQ) to report on the state of disparities annually. AHRQ’s most recent report shows that racial disparities in health care persist. In maternal health, for example, AHRQ notes that Black women have higher “rates of cesarean deliveries in first-time, low-risk pregnancies” compared to their white peers.⁹¹

Black women have higher rates of severe maternal morbidity and preeclampsia/eclampsia.⁹² The Centers for Disease Control and Prevention reports that the Black maternal mortality rate is nearly three times the rate for white women.⁹³ These severe health outcomes persist even when income and receipt of prenatal care are accounted for.⁹⁴

AHRQ also reports that racial and ethnic minorities continue to be underrepresented in the health care workforce. While 61.7% of the physicians in the U.S. are white, only 7.9% are Latinx, and 5.2% are Black.⁹⁵ The lack of diversity is replicated at various levels of health care workers, including nurses, EMTs and paramedics, psychologists, and substance use counselors.⁹⁶



The lack of diversity in the health care workforce creates provider-patient discordance, which is associated with poor health outcomes for racial and ethnic minorities.⁹⁷

Provider-patient discordance also engenders poor provider-patient communication, patients' inability to recollect medical information, and patients' failure to adhere to treatment.⁹⁸ At the same time, because of "negative racial experiences in other contexts, or to real or perceived mistreatment by providers,"⁹⁹ there is legitimate mistrust of the health care system by some minority community members, which hampers the development of meaningful patient-provider relationships. These mutually reinforcing factors perpetuate the health burdens racial and ethnic minorities continue to bear.

Even in the face of all these barriers, race-conscious policies in health care continue to face colorblind-based litigation challenges. Take a modest regulation by the U.S. Department of Health and Human Services to address provider racial bias.¹⁰⁰ Under the regulation, health care providers who adopt and implement an anti-racism plan may qualify for enhanced payments under Medicare. Adopting such a plan is optional. The regulation is grounded in acknowledging that "systemic racism is the root cause for differences in health outcomes between socially defined groups" and helps providers not just collect data but also take concrete "steps to naming and eliminating" health disparities.¹⁰¹ Litigation challenging this regulation is pending.¹⁰² Echoing colorblindness, the challengers argue that the rule involves racial categorization that offends the notions of equality "guaranteed by the constitution and confirmed by

the Supreme Court."¹⁰³ Thus, carried to its logical conclusion, colorblindness would make any measure touching on race — including addressing persistent racial bias in health care delivery — constitutionally impermissible.

Racism permeates every level of society that determines people's health, and its salience cannot be written off as an evanescent blemish of a distant past.¹⁰⁴ Race is embedded in our structures, institutions, and interpersonal interactions; it works to saddle racial and ethnic minorities with unequal health burdens and premature death.

Racism permeates every level of society that determines people's health, and its salience cannot be written off as an evanescent blemish of a distant past. Race is embedded in our structures, institutions, and interpersonal interactions; it works to saddle racial and ethnic minorities with unequal health burdens and premature death.

Thus, a colorblind conception of racial equality that the Court fully canonized in *SFFA v. Harvard* not only ignores the glaring reality of racial subordination borne out by health disparities but also betrays the Fourteenth Amendment's original purpose and promise — to accord African Americans equal rights of American citizenship.¹⁰⁵ Closing the existing limited avenue of considering race to achieve diversity in higher education will entrench and exacerbate the "gulf-sized" racial disparities in health.

WEAPONIZATION OF COLORBLINDNESS

The Court’s colorblind approach has not only created a pathway for lower courts to invalidate benign race-conscious policies but has also emboldened various actors who deploy colorblind arguments — inside and outside the courts — to challenge race-conscious and equity-focused measures in both public and private spheres.

In a breathtaking weaponization of the Equal Protection Clause and colorblindness, legal challenges have been leveled against the Indian Child Welfare Act (ICWA) — a law that seeks to rectify the well-documented history of state-sponsored forced removal of Native children from their families.¹⁰⁶ To protect Native American families from being broken up through abusive child welfare practices, Congress enacted ICWA, which requires Native children to be placed with their extended families or their Tribes. Before the Supreme Court, the challengers argued that ICWA’s placement preferences are impermissible racial classifications that discriminate against non-Native adoptive parents. Although ICWA litigation before the Supreme Court failed on other grounds, Justice Kavanaugh stated that ICWA presented a “serious” equal protection issue and laid out a pathway for a potential successful equal protection challenge against ICWA.¹⁰⁷ This deployment of decontextualized notions of equality impedes any efforts to address historical, systemic abuses and advance the interests of subordinated racial minorities.

In health, equity-focused policies that are being challenged through colorblind arguments run

the gamut. Examples include measures aimed at addressing implicit bias in clinical practice,¹⁰⁸ diversifying medical boards and workplaces,¹⁰⁹ ensuring equitable distribution of COVID-19 treatments,¹¹⁰ and providing scholarships for racial minorities to diversify the health care workforce.¹¹¹ While most of the lawsuits have been brought against governmental units, the challengers have extended colorblind arguments to civil rights laws that govern private entities. This litigation’s end goal is to roll back the progress ushered in by the Civil Rights Movement. In some cases, the challenged policies have been rolled back without full litigation.

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For example, Arkansas rolled back its health care diversity scholarship program shortly after a suit challenging the program was filed.¹¹²

CONCLUSION

Health disparities bear out systemic racial inequality in the United States. Achieving health equity requires robust, race-conscious interventions that address both the historical and contemporary ways in which the law subordinates racial and ethnic minorities. The Supreme Court’s decision in *SFFA v. Harvard* endorsing colorblindness not only legitimates inequality but also insulates the inequitable status quo from racial justice interventions. Still, because “society’s progress toward equality cannot be permanently halted,”¹¹³ advocates will continue to devise other meaningful, creative ways of achieving health equity, no matter how challenging and “stony the road”¹¹⁴ may be.

Indeed, some pathways are already underway. To address unfairness in admissions, for example, some institutions have revised their legacy admissions programs. Others have limited their reliance on standardized tests, which have long operated as artificial race- and class-based gatekeeping mechanisms. To build on that approach, policymakers may want to rethink other “neutral” mechanisms — such as zoning, policing, minimum wage, and siting of waste facilities — that still work to harm racial and ethnic minorities disproportionately.¹¹⁵ Although other facially neutral metrics, such as ZIP codes, socioeconomic status, and progressive economic policies, including remediating the wealth gap through universal “baby bonds,” typically fall short of delivering fair racial remedies, some experts still see their net benefit and argue for their use in light of the courts’ assault on race-conscious policies.¹¹⁶

ENDNOTES

- 1 The author is grateful for the insightful feedback received from Zachary Baron, Suhasini Ravi, Sheela Ranganathan, Madison Fields, Emily Schneider, Tiffany D. Atkins, Kimá J. Taylor, Derek M. Griffith, Brian D. Smedley, and Giridhar G. Mallya.
- 2 Ruqaiyah Yearby & Seema Mohapatra, *Law, Structural Racism, and the Covid-19 Pandemic*, 7 J.L. & Biosciences 1, 3-4 (2020); Scott J. Schweikart et al, COVID-19 and Racial Justice in America in COVID-19 and the Law: Disruption, Impact and Legacy (I. Glenn Cohen, Abbe R. Gluck, Katherine Kraschel, & Carmel Shachar eds., 2023) 105-115. <https://tinyurl.com/bdh4hmbb>.
- 3 See U.S. DEP'T OF HEALTH AND HUMAN SERVS., REPORT OF THE SECRETARY'S TASK FORCE ON BLACK AND MINORITY HEALTH (1985).
- 4 600 U.S. 181 (2023).
- 5 *Id.* at 194-96.
- 6 *Id.* at 195.
- 7 *Id.* at 197-98.
- 8 Robert Barnes, *How One Man Brought Affirmative Action to the Supreme Court. Again and Again*, WASHINGTON POST, Oct. 24, 2022, <https://www.washingtonpost.com/politics/2022/10/24/edward-blum-supreme-court-harvard-unc/>.
- 9 See *SFFA*, 600 U.S. at 379 (Sotomayor, J., dissenting) ("The costly result of today's decision harms not just respondents and students but also our institutions and democratic society more broadly."):
- 10 *SFFA*, 600 U.S. at 403 (Jackson, J., dissenting).
- 11 438 U.S. 265 (1978).
- 12 Specifically, the non-White groups were "Blacks," "Chicanos," "Asians," and "American Indians." *Bakke*, 438 U.S. at 274.
- 13 347 U.S. 483 (1954).
- 14 *Bakke*, 438 U.S. at 272.
- 15 Brief for Petitioner at 3, *Regents of the University of California v. Bakke*, 438 U.S. 265 (1978) 1977 WL 187977 at 3.
- 16 *Fullilove v. Klutznick*, 448 U.S. 448, 519, (1980) (Marshal, J., concurring); see Peter J. Rubin, *Reconnecting Doctrine and Purpose: A Comprehensive Approach to Strict Scrutiny After Adarand and Shaw*, 149 U. PA. L. REV. 1, 3-4 (2000); but see *Adarand Constructors, Inc. v. Pena*, 515 U.S. 200, 237 ("[W]e wish to dispel the notion that strict scrutiny is "strict in theory, but fatal in fact.").
- 17 There was no majority opinion in *Bakke*, but the Court's judgment announced by Justice Powell struck down U.C. Davis's admissions policy. Justice Powell's opinion in which no other justice joined, however, shaped the Court's treatment of race-conscious admissions policies in subsequent years. See e.g., *Grutter v. Bollinger*, 539 U.S. 306 (2003); *Gratz v. Bollinger*, 539 U.S. 244 (2003); *Fisher v. University of Texas*, 570 U.S. 297 (2013). When this report refers to the Court's decision in *Bakke*, it means Justice Powell's opinion.
- 18 *Bakke*, 438 U.S. at 323.
- 19 See Tomiko Brown-Nagin, *Elites, Social Movements, and the Law: The Case of Affirmative Action*, 105(5) COLUM. L. REV. 1436, 1480-81 (2005) ("Grutter steers clear of expressions of support for minority interests that are untethered to considerations of the interests of society as a whole."):
- 20 *Id.*; Juan F. Perea, *Buscando América: Why Integration and Equal Protection Fail to Protect Latinos*, 117 HARV. L. REV. 1420, 1453 (2004) ("The Court thus privileges Whiteness by endorsing a diversity principle that is justified by its educational, economic, and political usefulness to Whites."); Cf. Derrick A. Bell, Jr., *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 HARV. L. REV. 518, 524-25 (1980) (arguing that the Court's decision in *Brown v. Board of Education* was largely motivated by the value of school integration to Whites both economically and politically).
- 21 *Regents of the University of California v. Allan Bakke*, in CRITICAL RACE JUDGMENTS: REWRITTEN U.S. COURT OPINIONS ON RACE AND THE LAW 246-267 (Bennett Capers, Devon W. Carbado, R.A. Lenhardt & Angela Onwuachi-Willig eds., 2022).
- 22 In the 1970s, the Court retreated from enforcing the desegregation remedy of *Brown v. Board of Education* and there was continued political resistance to desegregation. See e.g., *Milliken v. Bradley*, 418 U.S. 717 (1974) (holding that an inter-district desegregation order was impermissible under the Fourteenth Amendment); *Swann v. Charlotte-Mecklenburg Bd. of Ed.*, 402 U.S. 1 (1971) (limiting desegregation to only dual school systems, not social factors that lead to segregation, and limiting when students could be bused for desegregation purposes); *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1 (1973) (upholding school financing based on neighborhood wealth against an equal protection challenge). Anti-desegregation sentiments had fueled the Nixon's ascendancy to the White House. Through his campaign, Nixon promised he would oppose desegregation and championed ending busing during his administration. See *Transcript of Nixon's Statement on School Busing*, NEW YORK TIMES, Mar.17, 1972, <http://tinyurl.com/2trwxsth>.
- 23 539 U.S. 306 (2003).
- 24 *Grutter*, 539 U.S. at 330.
- 25 *Id.* at 337. In a companion case, *Gratz v. Bollinger*, 539 U.S. 244 (2003), however, the Court invalidated a formulaic undergraduate admissions policy at the University of Michigan. To achieve student diversity, the program awarded 20 points to minority student applicants out of the 100 needed to guarantee admission. The same number of points could be awarded to other students based on socioeconomic status, athletics, or upon designation by the provost. The Court ruled that the point-awarding method was an impermissible way to promote diversity because it failed to assess each student individually.
- 26 *Grutter*, 539 U.S. at 309.
- 27 *Id.* at 343. Following the decision in *Grutter*, Michigan amended its constitution to prohibit race-conscious admissions policies in public universities. The Supreme Court upheld the amendment in *Schuetz v. Coalition to Defend Affirmative Action*, 572 U.S. 291 (2014). Similar initiatives prohibiting race-conscious policies were adopted in California, Washington, Nebraska, Arizona, Florida, New Hampshire, Idaho, and Oklahoma. Stephanie Saul, *9 States Have Banned Affirmative Action. Here's What That Looks Like*, NEW YORK TIMES, Oct. 31, 2022, <https://www.nytimes.com/2022/10/31/us/politics/affirmative-action-ban-states.html>. The Court's affirmative action decisions embracing race-neutrality and colorblindness provided a pathway for stymieing race-conscious efforts through pro-majoritarian political processes without offending constitutional notions of equality. See Osamudia R. James, *Diversity, Democracy and White Racial Identity: Schuetz v. Coalition to Defend Affirmative Action*, 71 NAT'L LAW. GUILD REV. 1, 4-5 (2014).
- 28 See *SFFA*, 600 U.S. at 369 (Sotomayor, J., dissenting).
- 29 551 U.S. 701 (2007).
- 30 *Id.* at 803 (Breyer, J., dissenting).

- 31 *Id.* at 748.
- 32 See generally Eduardo Bonilla-Silva, *Racism Without Racists: Color-Blind Racism and the Persistence of Racial Inequality in America* (6th Ed. 2022); Dorothy A. Brown, *The Whiteness of Wealth: How the Tax System Impoverishes Black Americans—And How We Can Fix It* (2021).
- 33 That diversity in primary and secondary schools is not a compelling goal under the Equal Protection Clause is a startling position considering that integrating those schools and ensuring students were educated in a diverse environment were central *Brown v. Board of Education*. As the Court emphasized in *Brown*, education “is a principal instrument in awakening the child to cultural values in preparing him for later professional training, and in helping him adjust normally to his environment.” 347 U.S. at 493. Indeed, as Prof. Patricia J. Williams noted following the Court’s decision, Parents Involved essentially overruled *Brown*. Patricia J. Williams, *Mourning in America*, *THE NATION*, (Jul. 12, 2007) <https://www.thenation.com/article/archive/mourning-america/>. See also *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. at 842-43 (Breyer, J., dissenting) (discussing how diversity was central to the *Brown* decision).
- 34 570 U.S. 297 (2013).
- 35 *Id.* at 306.
- 36 *Grutter*, 539 U.S. at 309.
- 37 570 U.S. at 312.
- 38 Robert S. Chang, *Asian Americans, Dog Whistles, and the Psychological Wages of “Honorary” Whiteness*, 103 B.U. L. Rev. Online 136 (2023); Nancy Leong, Preliminary Thoughts on the Summary Judgment Motions in the Harvard Affirmative Action Lawsuit, TAKE CARE BLOG (June 18, 2018), <https://tinyurl.com/mj5pcahz>; OiYan Poon, 0:01 / 1:26:01 Edward Blum: “I Needed Asian Plaintiffs”, YouTube (July 30, 2018), <https://youtu.be/DiBvo-05JRg?t=1123>.
- 39 *SFFA*, 600 U.S. at 213.
- 40 *SFFA*, 600 U.S. at 230.
- 41 See *Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989); *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200 (1995).
- 42 See *Wygant v. Jackson Bd. of Educ.*, 476 U.S. 267 (1986).
- 43 See *Shaw v. Reno*, 509 U.S. 630 (1993), *Miller v. Johnson*, 515 U.S. 900 (1995), *Shaw v. Hunt*, 516 U.S. 899 (1996), *Bush v. Vera*, 517 U.S. 952 (1996).
- 44 488 U.S. 469 (1989).
- 45 *J.A. Croson*, 488 U.S. at 506.
- 46 515 U.S. 200 (1995).
- 47 426 U.S. 229 (1976).
- 48 *Washington v. Davis*, 426 U.S. at 248. The Court had previously expressed similar fears about the evidence of disparate impact in the criminal justice system. In *McCleskey v. Kemp*, 481 U.S. 279 (1987), the Court held that without proof of purposefulness, the racially discriminatory use of the death penalty in Georgia did not violate the Equal Protection clause. The Court feared that allowing such challenge would “throw[] into serious question the principles that underlie our entire criminal justice system.” *McCleskey*, 481 U.S. at 314–15. See also *J.A. Croson*, 488 U.S. at 505 (“To accept Richmond’s claim that past societal discrimination alone can serve as the basis for rigid racial preferences would be to open the door to competing claims for ‘remedial relief’ for every disadvantaged group.”). In *McCleskey v. Kemp*, Justice Brennan characterized the Court’s concerns about systemwide implications of such interpretation as “a fear of too much justice.” *McCleskey*, 481 U.S. at 339 (Brennan, J., dissenting).
- 49 The ARPA used to phrase “socially and economically disadvantaged.” ARPA cross-referenced the Small Business Act’s definition of “socially disadvantaged,” which includes “those who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities.” 15 U.S.C. § 637 (a)(5). Consistent with federal law, the Small Business Administration (SBA)—the agency that administers the grants—adopted a definition of that presumed racial minorities to be socially disadvantaged. Under SBA regulations, “Black Americans, Hispanic Americans, Native Americans (including Alaska Natives and Native Hawaiians), Asian Pacific Americans, and Subcontinent Asian Americans” are presumed to be socially disadvantaged. 13 C.F.R. § 124.103(b)(1). This presumption is rebuttable. 13 C.F.R. § 124.103(b)(3).
- 50 The Congressional record supporting these findings included: *Access Denied: Challenges for Women- and Minority-Owned Businesses Accessing Capital and Financial Services During the Pandemic: Hearing before the H. Comm. on Fin. Services*, 116th Cong. (2020), <https://www.govinfo.gov/content/pkg/CHRG-116hrg43195/pdf/CHRG-116hrg43195.pdf>; Memorandum on February 24, 2021, *Oversight & Investigations Subcommittee Hearing, How Invidious Discrimination Works and Hurts: An Examination of Lending Discrimination and Its Long-Term Economic Impacts on Borrowers of Color*, H. Financial Services Staff, (Feb. 24, 2021), <https://www.congress.gov/117/meeting/house/111236/documents/HHRG-117-BA09-20210224-SD002-U1.pdf>.
- 51 *Vitolo v. Guzman*, 999 F.3d 353, 371 (6th Cir. 2021) (Donald, circuit judge, dissenting).
- 52 999 F.3d at 361. Emphasis added.
- 53 *Roberts v. McDonald*, 143 S. Ct. 2425 (2023) (denying cert.).
- 54 There were other challenges to the ARPA’s race conscious prioritization similar to those in *Vitolo v. Guzman* in other courts. See e.g., *Greer’s Ranch Café v. Guzman*, 540 F. Supp. 3d 638 (N.D. Tex. 2021); *Nuziard v. Minority Bus. Dev. Agency*, No. 4:23-CV-0278-P, 2023 WL 3869323, (N.D. Tex. Dec. 1, 2023).
- 55 519 F. Supp. 3d 470 (E.D. Wis. 2021). The portion of the ARPA that was the subject of this litigation was repealed by the Inflation Reduction Act in August 2022.
- 56 Consistent with federal law, USDA defined “social disadvantaged” to include “American Indians or Alaskan Natives, Asians or Asian-Americans, Blacks or African Americans, Native Hawaiians or other Pacific Islanders, and Hispanics.” 7 C.F.R. § 760.107(b).
- 57 American Rescue Plan Act of 2021, H.R. 1319, 117th Cong. § 1005 (as reported in House, Feb. 24, 2021). Indeed, in *Pigford v. Glickman*, Black farmers maintained a successful civil right action against the USDA for discriminating against them. 185 F.R.D. 82 (D.D.C. 1999), *aff’d*, 206 F.3d 1212 (D.C. Cir. 2000), and enforcement denied sub nom. *Pigford v. Schafer*, 536 F. Supp. 2d 1 (D.D.C. 2008). For a detailed catalogue of how the USDA excluded Black farmers from most of its programs, see Joy Milligan, *Protecting Disfavored Minorities: Toward Institutional Realism*, 63 UCLA L. Rev. 894 (2016).
- 58 *Faust v. Vilsack*, 519 F. Supp. 3d at 475.
- 59 *Id.* at 475-6.
- 60 W.E.B. DuBois, *THE SOULS OF BLACK FOLK* 9 (Stanley Applebaum & Candace Ward eds., Dover Publications, Inc. 1994)(1903); See also Frederick Douglass, *The Color Line*, 132(295) *THE NORTH AMERICAN REVIEW* 567, 575 (June 1881) (“Slavery, ignorance, stupidity, servility, poverty, dependence, are undesirable conditions. When these shall cease to be coupled with color, there will be no color line drawn.”).

- 61 SFFA, 600 U.S. at 384 (2023) (Jackson, J., dissenting).
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- 64 See RICHARD ROTHSTEIN, *THE COLOR OF LAW* (2017).
- 65 MARIANA C. ARCAÑA & ALINA SCHNAKE-MAHL, *HEALTH IN THE SEGREGATED CITY*, (Furman Center, Oct. 2017) <https://furmancenter.org/research/iri/essay/health-in-the-segregated-city>; Darrell J. Gaskin et al, *Residential Segregation and the Availability of Primary Care Physicians*, 47(6) HEALTH SERV RES 2353 (2012) doi: 10.1111/j.1475-6773.2012.01417. Darrell J. Gaskin et al, *Residential segregation and disparities in Health Care Services Utilization*. MED CARE RES REV (2012) doi: 10.1177/1077558711420263.
- 66 Jenny S. Guadamuz et al, *Fewer Pharmacies in Black and Hispanic/Latino Neighborhoods Compared with White or Diverse Neighborhoods*, 2007-15, 40 HEALTH AFFAIRS 802 (2021) <https://www.healthaffairs.org/doi/10.1377/hlthaff.2020.01699>; Carmen R. Green et al, *Differences in Prescription Opioid Analgesic Availability: Comparing Minority and White Pharmacies across Michigan*. 6(10) J PAIN. 689 (2005) [https://www.jpain.org/article/S1526-5900\(05\)00730-3/fulltext](https://www.jpain.org/article/S1526-5900(05)00730-3/fulltext).
- 67 *Ben Chavis Charges 'Environmental Racism,'* THE CHARLOTTE POST, April 23, 1987, UNC Libraries, accessed November 30, 2023, <https://exhibits.lib.unc.edu/items/show/7443>; COMMISSION FOR RACIAL JUSTICE, UNITED CHURCH OF CHRIST, *TOXIC WASTES AND RACE IN THE UNITED STATES: A NATIONAL REPORT ON RACIAL AND SOCIO-ECONOMIC CHARACTERISTICS OF COMMUNITIES WITH HAZARDOUS WASTE SITES* (1987), <https://www.nrc.gov/docs/ML1310/ML13109A339.pdf>.
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- 74 Emily Bramhall, *Why Does Segregation Between School Districts Matter for Educational Equity?*, URBAN INSTITUTE, (May 12, 2021) <https://housingmatters.urban.org/articles/why-does-segregation-between-school-districts-matter-educational-equity>.
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- 76 David R. Williams & Chiquita Collins, *Racial Residential Segregation: A Fundamental Cause of Racial Disparities in Health*, in RACE, ETHNICITY, AND HEALTH: A PUBLIC HEALTH READER 333-34 (Thomas A. LaVeist & Lydia A. Isaac eds., 2d ed. 2013); DAYNA BOWEN MATTHEW, *JUST HEALTH: TREATING STRUCTURAL RACISM TO HEAL AMERICA* 184-88 (2022)
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