

STETSON BUSINESS LAW REVIEW

**Blaxit:
The Economic & Human Cost of Historic Racism, Recent Supreme Court Decisions
and Anti-Woke Laws**

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ABSTRACT

In highlighting the injustices and disparities against African Americans that has generated a massive wealth gap between the African Americans and Whites, *Blaxit: The Economic & Human Cost of Historic Racism, Recent Supreme Court Decisions and Anti-Woke Laws* exposes that not only have African Americans been hurt by America's policies, but America, too, has been negatively impacted economically. America is losing its brightest and best African Americans to a phenomenon called Blaxit. Most equatable to the Great Migration where Southern States lost half of their African American population,¹ Blaxit differs in that individual states are not losing their African American population, the whole country is as African Americans choose to call less hostile countries abroad their home. Solutions are provided, which call for action from the executive, judicial, and legislative branches of government, as well as American citizens, including through the domestication of international law and the implementation of reparations.

¹ The Great Migration was a period from the 1910s to 1970s when African Americans migrated from the South to the West, Midwest, and North in search of a better life. By the conclusion of the Great Migration, nearly 6 million African Americans had left the South, *see The Great Migration*, HIST. (Dec. 15, 2023), <https://www.history.com/topics/black-history/great-migration>.

ABOUT THE AUTHOR

Patriot,² African American, woman, wife, mother, retired law enforcement officer, and current law student. She backs the blue, the black, the brown, red, yellow, white, and every color of the rainbow. And she is considering a Blaxit...

² There is an incorrect narrative abound of what patriotism is and who qualifies as a patriot. Patriotism is not always blindly agreeing with everything your country does; patriotism is loving your country despite its flaws and working to make it better. The reason we are a nation of laws and not men is so that we commune and form consensus as a people on what is best as a country. This takes dialog that is often contrary to one's own personally held beliefs. That does not make one more patriotic, than another. It makes all who care enough to dialog patriots. I am a patriot.

Table of Contents

- I. Introduction
- II. U.S. History of Slavery and Resulting Harm
 - A. Slavery
 - i. Constitutional Support
 - ii. Statutory Support
 - B. The Great Nadir
 - i. Constitutional Support
 - ii. Statutory Support
 - C. The Short-Lived and Fraught Civil Rights Era
 - i. Congress and the Civil Rights Acts
 - ii. SCOTUS Decisions and the Impact on African Americans
 - iii. The President's Racial Weaponization of the Justice Department
 - D. Resulting Harm: Wealth Gap and Negative Impact on GDP
- III. The Second Nadir and Resulting Harm
 - A. Recent SCOTUS Decisions and the Impact on African Americans
 - i. Citizens United
 - ii. Rucho
 - iii. Dobbs
 - iv. Harvard
 - B. Anti-Woke Laws & the Impact on African Americans
 - i. Anti-Woke Laws
 - ii. Erasure of DEI & Re-whitewashing of History (Retrenchment)

- C. Resulting Harm: Blaxit
 - i. History of African American Migration
 - ii. Blaxit's Cost to America
 - iii. Countries of Expatriation
- IV. Recommendations
 - A. Citizen and NGO Action
 - i. Solidarity Dividend
 - ii. Domestication of International Laws
 - B. Executive Action
 - i. Executive Order
 - C. Judicial Action
 - i. Overturn Rational Basis Analysis
 - D. Legislative Action
 - i. Reparations
 - ii. Treaty Implementation
 - iii. Legislative Ban on Dark Money
- V. Conclusion

I. INTRODUCTION

The War of Independence³ would not have been won without France's assistance. France's aid was obtained through an exchange of tobacco... tobacco that was grown by slaves.⁴ Slave labor not only helped create the United States of America, but it literally was the fledgling nation's bank, as it used slaves as collateral to receive loans – the creation of today's Wall Street.⁵ By 1860, the four million slaves in America had a value of \$3 billion.⁶ For all of the contributions slaves made to America, once emancipated, the only proposition with a semblance of financial prosperity was money offered to them if they were to leave the only home they've ever known, the home they literally built, for the far away and unfamiliar lands of Liberia.⁷ Nearly all refused.⁸

³ The War of Independence (1775 – 1783), better known as “[t]he American Revolutionary War [...] was an insurrection by Patriots in the 13 colonies against British rule, resulting in American independence.” *Revolutionary War*, HIST. (June 24, 2024), <https://www.history.com/topics/american-revolution/american-revolution-history>.

⁴ HEATHER MCGHEE, SUM OF US: WHAT RACISM COSTS EVERYONE AND HOW WE CAN PROSPER TOGETHER 12 (2021).

⁵ *Id.* at 9.

⁶ *Id.*; see also *infra* note 61.

⁷ 1619, *The New York Times* (Aug. 23, 2019) (downloaded using Spotify).

⁸ Only 15,000 emancipated slaves were settled in Liberia, see Ralph Ellison, *What America Would Be Like Without Blacks*, TEACHING AMERICAN HIST. (Apr. 06, 1970), <https://teachingamericanhistory.org/document/what-america-would-be-like-without-blacks/>.

However, there is a change brewing, because from slavery to Jim Crow to the present - explicit racism, systemic racism, and white supremacy have caused irreparable economic harm to African Americans to the tune of a 13:1 wealth gap between White and African Americans⁹ that has not gone unnoticed. Interestingly, the aforementioned actions did not only cause harm to African Americans, but it affected the entire nation. During Jim Crow, businesses paid 50% more in construction costs to create “separate but equal” accommodations;¹⁰ common, basic, business strategies were ignored just for the sake of upholding racist practices. During the Civil Right Era, towns that paid exorbitant amounts of money to build beautiful community pools, chose to fill them in rather than letting White and African Americans swim side-by-side.¹¹ By oppressing African Americans, it has decreased African Americans’ contribution to America’s economy. In just the last two decades, the GDP lost \$16 trillion due to discriminatory practices;¹² imagine that twenty-fold to account for the time from the first slaves arriving in the country to the present¹³ - the hate has been self-destructive to the country. It is simply a fact that “[w]hen

⁹ MCGHEE, *supra* note 5, at 6.

¹⁰ *The Sum of Us, Higher Ground* (Sept. 21, 2022) (downloaded using Spotify).

¹¹ *Id.*

¹² *Closing the Racial Inequality Gaps*, CITI GPS: GLOB. PERSP. & SOL. (2020) <https://ir.citi.com/%2FPRxPvgNWu319AU1ajGf%2BsKbjJjBJSaTOSdw2DF4xynPwFB8a2jV1FaA3Idy7vY59bOtN2lxVQM%3D>.

¹³ *See generally id.*; The first slaves arrived in U.S. Colonies in 1619, the elapsed times is 405 years, which is twenty (20) two-decade spans. This is not to imply that every two-decade span would be identical or have the same results, but it is fair to assume that discriminatory practices

GDP is growing . . . workers and businesses are generally better off than when it is not,”¹⁴ by oppressing African Americans, workers and businesses are worse off.

against African Americans had overall negative ramifications to the GDP over this 405-year time span as it did in the two decades in the study.

¹⁴ Tim Callen, *Gross Domestic Product: An Economy's All*, INTERNATIONAL MONETARY FUND, <https://www.imf.org/en/Publications/fandd/issues/Series/Back-to-Basics/gross-domestic-product-GDP#:~:text=When%20GDP%20is%20growing%2C%20especially,than%20when%20it%20is%20not.&text=GDP%20measures%20the%20monetary%20value,a%20quarter%20or%20a%20year> (last visited: Mar. 10, 2025).

Now, the middle-class is all but gone, known as the Inequality Era,¹⁵ “the richest 1 percent own as much wealth as the entire middle class.”¹⁶ “An economy that used to look like a football, fatter in the middle, is now shaped like a bow tie... with a narrow middle class and bulging ends of high- and low-income households.”¹⁷ This is not by happenstance. It is the result of policies allowed to be put into effect, supported by voters who do not benefit from them,¹⁸ and

¹⁵ Adam Lioz, *Breaking the Vicious Cycle: How the Supreme Court Helped Create the Inequality Era and Why a New Jurisprudence Must Lead Us Out*, 43 SETON HALL L. REV. 1227, 1231 (2013) (The author’s thesis is:

the wealthy have systemically different policy preferences than the general public; that government in the United States responds deferentially (and sometimes exclusively) to the policy preferences of the wealthy; that this skewed responsiveness has led to economic policies that favor the already-rich; and that this is substantially due to the outsized influence of a small minority of wealthy donors who largely determine who runs for office and whom is elected to positions of power. Ultimately, the United States is caught in a vicious cycle wherein the wealthy dominate the democratic process, use their political power to craft favorable economic rules, and then channel their increased riches back into further political control.

These actions have caused the Inequality Era.)

¹⁶ MCGHEE, *supra* note 5, at 5.

¹⁷ MCGHEE, *supra* note 5, at 4.

¹⁸ MCGHEE, *see supra* note 5, at 5-6.

upheld by the Supreme Court of the United States (“SCOTUS”).¹⁹ These policies were supported because the average White American “views racism a zero-sum game,” in that “if things are getting better for black people, it must be at the expense of white people.”²⁰ This “zero-sum” mentality has led to the contemporary “post-racial”²¹ climate in which policies that were enacted to assist African Americans in achieving equality are being reversed (i.e. SCOTUS greenlighting gerrymandering²² and overturning of Affirmative Action;²³ state and local governments banning of DEI initiatives and other Anti-Woke laws²⁴). These actions are greatly due to “reverse racism,” which is “the notion that Whites have replaced Blacks as the primary victims of discrimination;” this perception remains unchanged regardless of age or education.²⁵

¹⁹ See Lioz, *supra* note 15, at 1255-77.

²⁰ MCGHEE, *supra* note 5, at 6.

²¹ After the election of the first Black President, President Barack Obama, some deemed America to be past its racist history in a new “post-racial” society. See Michael I. Norton & Samuel R. Sommers, *Whites See Racism as a Zero-Sum Game That They Are Now Losing*, 6(3) PERSP. ON PSYCH. SCI. 215, 215 (2011).

²² See *infra* Section III(A)(ii), Rucho.

²³ See *infra* Section III(A)(iv), Harvard.

²⁴ See *infra* Section III(B), Anti-Woke Laws & the Impact on African Americans.

²⁵ Norton, *supra* note 21.

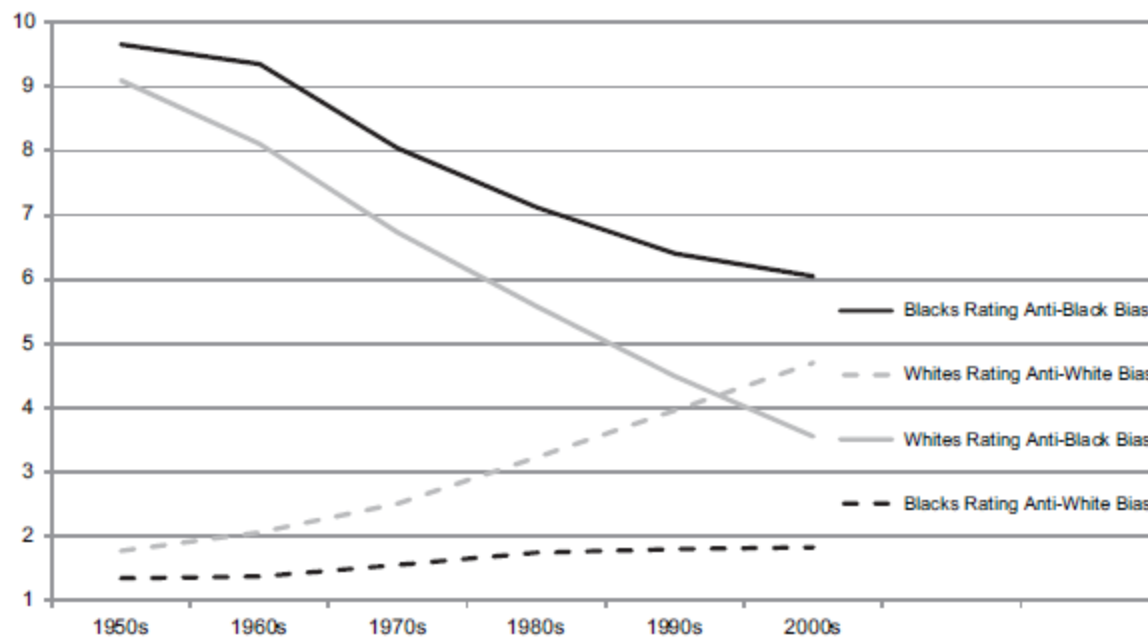


Fig. 1. White and Black respondents' perceptions of anti-White and anti-Black bias in each decade.

26

²⁶ *Id.* at 216 Fig. 1.

It is clear that the U.S.' domestic policies only attempted to protect the interests of African Americans at peaks in time: after the Civil War, with the passage of the 13th, 14th and 15th Amendments, and during the Civil Rights movement.²⁷ Presently, with the gridlock in the legislative branch²⁸ and the undoing of doctrines originally aimed at protecting African

²⁷ See *infra* Section II(C)(i), Congress and the Civil Rights Era.

²⁸ At the time of writing, the Congress currently seated, the 118th Congress, was on track to be one of, if not, the “least productive sessions in decades.” As of August 8, 2024, the 118th Congress has only passed 78 laws, “a fraction of the hundreds enacted during prior sessions.” Congress’ lack of productivity was due to infighting, political extremism with less centrist attitudes and drama with the Speaker of the House (it took 15 rounds of voting to seat the first Speaker of the House, followed by his ouster via a motion to vacate for the first time in U.S. history a little over eight months later, followed by three weeks with the House of Representatives having no Speaker). Jennifer Shutt, *Congress Limps Toward the End of a Disappointing Session, with Just 78 Laws to Show*, WASH. STATE STANDARD (Aug. 8, 2024, 3:26 PM), <https://washingtonstatestandard.com/2024/08/08/congress-limps-toward-the-end-of-a-disappointing-session-with-just-78-laws-to-show/>; see also, Lisa Mascaro & Farnoush Amiri, *Speaker McCarthy Ousted in Historic House Vote, as Scramble Begins for a Republican Leader*, ASSOCIATED PRESS (Oct. 3, 2023, 11:35 PM), <https://apnews.com/article/mccarthy-gaetz-speaker-motion-to-vacate-congress-327e294a39f8de079ef5e4abfb1fa555#>; see also, Joe Murphy & Catherine Allen, *How Long was the House Without a Speaker?*, NBCNEWS (Oct. 13, 2023, 11:15 AM), <https://www.nbcnews.com/data-graphics/speaker-of-the-house-time-tracker-rcna120179>.

Americans in the judicial branch,²⁹ the only viable law left for African American social justice³⁰ is international law. However, it is grossly imperfect.

So, faced with the “reverse racism” counter-reality,³¹ hostilities at a fever pitch, police brutality and no adequate legal protections, once again, African Americans must decide whether to stay or to go... many have decided to go, and this phenomenon has been dubbed “Blaxit.”

Unknown Black Abolitionist (circa 1860s)

“This is our home, and this is our country. Beneath its side lie the bones of our fathers. Here we were born, and here we will die.”³²

Ulysses Burley III (circa 2020s)

America is on the verge of #Blaxit – a mass exodus of black people. Where we will go[,] I don’t know, but it’s clear that black lives don’t matter here, and it’s

²⁹ See *infra* Section III(A), Recent SCOTUS Decisions & the Impact on African Americans.

³⁰ “Justice is the concept of fairness. Social justice is fairness as it manifests in society. That includes fairness in healthcare, employment, housing, and more. In a socially-just society, human rights are respected and discrimination is not allowed to flourish.” Emmaline Soken-Huberty, *What Does Social Justice Mean?*, HUMAN RIGHTS CAREERS, <https://www.humanrightscareers.com/issues/what-does-social-justice-mean/> (last visited: Sept. 7, 2024).

³¹ Whites overwhelming believe anti-White bias is more prevalent than anti-Black bias, studies show this is not true. See Norton & Sommers, *supra* note 21, at 216.

³² 1619, *supra* note 7.

even more apparent that the powers that be are doing everything possible to make America white again (except America was never white to begin with).³³

II. U.S. HISTORY OF SLAVERY AND RACISM AND RESULTING HARM

This section explores the history of racism and race relations in America from its inception through the 1970s. It concludes in showing the manifestations of that history in contemporary economics: (1) wealth disparities between African American households and White households, (2) depressed African American wages, homeownership, higher education, and business ownership/revenue, and (3) a \$16 trillion loss to the U.S. economy over the past 20 years.

A. Slavery

The institution of slavery was supported in the United States by both the constitution and through legislation. Detailed below is a SCOTUS decision and a Congressional Act that were attempts to cement slavery and slaveowners' rights indefinitely.

i. Constitutional Support (Dred Scott)

³³ Eleanor Lumsden, *How Much Is Police Brutality Costing America*, 40 U. HAW. L. REV. 141, 190 (2017-2018) (quoting Ulysses Burley III, #Blaxit: 21 Things We're Taking with Us if We Leave, SALT COLLECTIVE <http://thesaltcollective.org/6936-2/>).

Regarded as one of the SCOTUS' worst decisions and the impetus of the Civil War, in *Dred Scott v. Sandford*,³⁴ though scholars believed this could have been a simple opinion addressing a narrow issue,³⁵

SCOTUS exceeded what was necessary and made several detrimental holdings:

1. Slaves were not citizens of any of the several states;
2. Slaves were not citizens of the United States;
3. The Missouri Compromise (law that limited slave states entry into the Union only with an accompanying non-slave state) was unconstitutional;

³⁴ *Dred Scott v. Sandford*, 60 U.S. 393 (1857).

³⁵ Corydon Ireland, in *Notorious U.S. Supreme Court Decision is Revisited*, opined:

But the event's central question stayed in 1857: Was the *Dred Scott* decision inevitable?

A dual consensus emerged. The decision was probably inevitable historically, the product of a post-Constitution era in which slavery became increasingly entrenched in civil, economic, and legal society.

But the *Dred Scott* decision was not inevitable in legal terms. The Supreme Court could have refused to accept the case, for one, knowing that it opened up such a charged issue. . . .

Or the Supreme Court could have staked out its decision on narrow legal grounds, dismissing in two pages *Dred Scott*'s right to sue. (He lived in Missouri, which had never recognized black Americans as citizens.)

But another consensus emerged over two days: that the language of Taney's opinion — considered the majority decision — was so full of racial invective that it was by no means necessary, or inevitable. (Taney, for instance, famously wrote in the March 6, 1857, opinion that black Americans were "so far inferior, that they had no rights which the white man was bound to respect.")

HARVARD GAZETTE (Apr. 12, 2007),

<https://news.harvard.edu/gazette/story/2007/04/notorious-u-s-supreme-court-decision-is-revisited/>.

4. Slaves were not granted freedom solely because they entered a free state;

Slaves could not sue in federal court; and

5. Slavery was corporal (attached to the body) not territorial (based on geographic location).³⁶

- ii. Statutory Support (Fugitive Slave Act of 1850)

Part of [the] Compromise of 1850—a group of bills that helped quiet early calls for Southern secession—this new law forcibly compelled citizens to assist in the capture of runaways. It also denied enslaved people the right to a jury trial and increased the penalty for interfering with the rendition process to \$1,000 and six months in jail.

In order to ensure the statute was enforced, the 1850 law also placed control of individual cases in the hands of federal commissioners. These agents were paid more for returning a suspected runaway than for freeing them, leading many to argue the law was biased in favor of Southern slaveholders.³⁷

Many free African Americans in free states were feared to have been “improperly” forced into slavery due to the Fugitive Slave Act of 1850.³⁸

B. The Great Nadir (Featuring The Short-Lived Reconstruction Era)

³⁶ *Dred Scott* 60 U.S. 393.

³⁷ *Fugitive Slave Acts*, HIST. (June 29, 2023), <https://www.history.com/topics/black-history/fugitive-slave-acts>.

³⁸ *Id.*

The Great Nadir was the period between the end of slavery and the Civil Rights movement,³⁹ which saw horrific acts of violence against African Americans, and is often deemed to have been worse than slavery. Within this time was the Reconstruction Era, which followed the Civil War.⁴⁰ African Americans made many gains in equality during Reconstruction.⁴¹ However, the period was short as there was a “collapse of white Americans’ nerve” leading to Reconstruction’s overthrow in less than twelve (12) years,⁴² erasing the gains that were made.

i. Constitutional Support (*Plessy* & Federalism In General)

³⁹ The time span of the Great Nadir is in dispute, scholars differ to whether it started at the end of slavery or the end of reconstruction. For purposes of this article, the Great Nadir will be referenced to as the period at the end of slavery and the beginning of the Civil Rights movement in America, see Nikole Hannah-Jones, *The 1619 Project*, N.Y TIMES (Mar. 11, 2020), <https://www.nytimes.com/interactive/2019/08/14/magazine/black-history-american-democracy.html> ; see also 1619, *supra* note 7, at ep. 1; see also N. D. B. Connolly, *This, Our Second Nadir*, BOS. R. (Feb. 21, 2018), https://www.bostonreview.net/forum_response/n-d-b-connolly-our-second-nadir/.

⁴⁰ Allen C. Guelzo, *Reconstruction Didn’t Fail. It Was Overthrown*, TIME (Apr. 30, 2018, 10:30 AM), <https://time.com/5256940/reconstruction failure-excerpt>.

⁴¹ *Id.*

⁴² *Id.*

In *Plessy v. Ferguson*,⁴³ SCOTUS upheld Louisiana's Separate Car Act of 1890, greenlighting “separate but equal” nationwide. SCOTUS found that

Although the object of the Fourteenth Amendment is to promote the equality of all races before the law, it cannot have been intended to abolish all distinctions based on color, or to enforce social (as opposed to political) equality if African Americans and Caucasians do not actually want to be commingled. Laws permitting or requiring the separation of the two races are supported by precedent and do not necessarily imply the inferiority of either race to the other. If the African American race feels inferior because of the laws, that inferiority construction is placed on the race by itself. Legislative judgments forcing commingling cannot be used to improve race relations, and if the two races are to meet on terms of social equality, it has to be the result of an organic process.⁴⁴

- ii. Statutory Support (New Deal Era benefits statutorily denied to African Americans in concert with Black Codes (Jim Crow))

African American men fought, were injured, and died as soldiers in the Civil War, World War I and World War II,⁴⁵ just like White, male soldiers were injured and died. However, upon the White soldiers’ return from the Civil War and upon reaching the age of 62, they received

⁴³ *Plessy v. Ferguson*, 163 U.S. 537, 552 (1896).

⁴⁴ Megan Petersen, *Case Brief: Plessy v. Ferguson*, QUIMBEE, <https://www.quimbee.com/cases/plessy-v-ferguson> (last visited May 31, 2024).

⁴⁵ Willie J. Epps, Jr., *Resignation in Protest: Judge William Hastie's Uncompromising Battle Against Discriminatory Treatment of Blacks in the Armed Forces*, 90 UMKC L. REV. 549, 555-61 (2021-2022) (detailing African American participations in U.S. wars from the Revolutionary War through World War II, despite being expunged from the military roles immediately after the war when they were no longer needed, denial of the title of soldier even when performing those tasks, “40,000 Black soldiers [being] killed during the Civil War,” denial of citizenship after service, and military segregation).

Civil War pensions – African American soldiers did not.⁴⁶ When they died on the battlefield, the White soldiers’ families received their Civil War pensions – the African American families did not.⁴⁷ World War II was not much different; soldiers were able to collect Servicemen's Readjustment Act of 1944 benefits, also known as the G.I. Bill.⁴⁸ Though it was said that African American veterans too could benefit from the bill, using federalism, Southern states pushed for state control of the program.⁴⁹ This meant “[b]lack veterans and their families were denied their fair share of the multigenerational, enriching impact of home ownership and economic security that the GI Bill conferred on a majority of white veterans, their children, and their grandchildren.”⁵⁰

For non-military widowed wives and fatherless children, a “mothers’ pension”⁵¹ was created to provide support. This was the foundation of modern-day social security; however, this assistance was only for those living in “suitable homes” and those who were deemed to be “fit”

⁴⁶ Joel F. Handler, *Constructing the Political Spectacle: The Interpretation of Entitlements, Legalization, and Obligations in Social Welfare History*, 56 BROOK. L. REV. 899, 914-15 (1990).

⁴⁷ *Id.*

⁴⁸ Shannon Luders-Manuel, *The Inequality Hidden Within the Race-Neutral G.I. Bill*, JSTOR DAILY (Sept. 18, 2017), <https://daily.jstor.org/the-inequality-hidden-within-the-race-neutral-g-i-bill/>.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Infra*, note 52, at 199.

parents.⁵² Again, African Americans were excluded from this economic benefit that White Americans received.

The Social Security Act of 1935 had three main functions: unemployment insurance, old age insurance, and grants-in-aid.⁵³ Unemployment insurance (UI) provided citizens half of the wages earned at the time of loss of employment, up to \$15 per week, for sixteen (16) weeks.⁵⁴ Employee contributions and taxes funded the system; therefore, no person would get anything more than what they actually worked to contribute.⁵⁵ However, Southern states, under the guise of the necessity for “control over local labor markets,”⁵⁶ to have maximum control at the state

⁵² Juliet M. Brodie, et. al., *Poverty Law, Policy, and Practice*, c. 2 (2 ed., Aspen Publishing, 2021) (detailing how the Social Security Act excluded domestic servants and agricultural workers, who were predominantly minorities, and the Federal Housing Authority (FHA) refused to guarantee mortgages to minorities).

⁵³ *See generally* Handler, *supra* note 46.

⁵⁴ *See generally* Handler, *supra* note 46, at 916.

⁵⁵ *See generally* Handler, *supra* note 46, at 916.

⁵⁶ “Control over local labor markets” was the term used by Southern states to prevent Northern states from interfering with their dynamic of control over African American workers. Southern states felt the benefits threatened the incentive and need for African Americans to work; hence, to avoid any disincentive, the industries most utilized in the south were exempted from many of the New Deal programs. The benefit payouts were greatly minimized or there were almost insurmountable barriers implemented to effectively prevent qualification to receive benefits, *id.* at 915.

and local levels, again, mostly excluded African Americans from this economic benefit⁵⁷ that White Americans received.

Even the old and tired were not allowed reprieve. The Southern states also ensured those labor skills needed to keep their plantations afloat – agriculture and domestic workers – were excised with precision from coverage under Social Security’s old age insurance (OAI). Once again, African Americans were mostly excluded from this economic benefit⁵⁸ that White Americans received. It was not by happenstance that Blacks in the South primarily worked in agriculture and as domestic workers. Southern states, such as South Carolina, implemented Black Codes that imposed an annual tax of \$10 to \$100 on African Americans who chose to work in industries outside of agriculture. This economic pressure effectively forced them into these industries while also exempting them from Social Security OAI, thereby preventing African Americans from retiring and leaving the workforce.⁵⁹

The “mother’s pension” morphed into the survivor’s benefit of the Social Security Act. There was still the matter of the care for children whose fathers were not deceased but were absentee. Part of the grant-in-aid portion of the Social Security Act was the aid to dependent children (ADC). African Americans were mostly excluded from the economic benefit that White Americans received.⁶⁰

⁵⁷ *Id.*

⁵⁸ *Id.* at 917.

⁵⁹ *Black Codes*, HISTORY, <https://www.history.com/topics/black-history/black-codes> (last visited mar. 9, 2025).

⁶⁰ *See* Handler, *supra* note 46, at 910.

African Americans were denied the financial benefits afforded in the New Deal that White Americans were benefiting from. The big picture economic impact on African Americans was 300 years of the loss of wealth building during enslavement, followed by 100 years of tyranny and ravaging of any gains made by African Americans during Jim Crow and the Great Nadir, and the last thirty (30) years of those 100 years was the denial of economic benefits that White Americans were receiving. All of that amounted to the loss of generational wealth to African Americans.⁶¹

⁶¹ Netflix, *Explained* | *Racial Wealth Gap* \ *FULL EPISODE* | Netflix, YOUTUBE (Apr. 17, 2020), <https://www.youtube.com/watch?v=Mqrhn8khGLM> (chronicling how past racial injustices has led to Whites having a higher median household wealth than African Americans).

C. The Short-Lived and Fraught Civil Rights Era

The Civil Rights Movement was the period from the 1940s through 1960s when African Americans and allies fought for equal rights and the end of racial discrimination.⁶² This was done through organized and unyielding protests, marches, jailings, sit-ins, boycotts, and negotiations with government, businesses, and communities.⁶³ Thanks to the tireless efforts of those known, bust mostly unknown, this period ended with many gains for African Americans,⁶⁴ but there were also many losses along the way.

i. Congress and the Civil Rights Acts

Every great legislative accomplishment during the Civil Rights Movement was literally in the wake of blood and tears. From the angry, White mob that coalesced around the Little Rock 9 when they tried to attend school in 1957, to the assassination of Fred Hampton in 1969.

1. Civil Rights Act of 1957

After the Little Rock 9 were blocked by state National Guard in Arkansas from entering their newly desegregated school,⁶⁵ on September 4, 1957, President Dwight Eisenhower sent

⁶² *Civil Rights Movement Timeline*, HIST., <https://www.history.com/topics/black-history/civil-rights-movement-timeline> (last visited Mar. 9, 2025).

⁶³ *See generally id.*

⁶⁴ *Id.*

⁶⁵ *Brown v. Board of Education*, HIST., <https://www.history.com/topics/black-history/brown-v-board-of-education-of-topeka> (last visited Mar. 9, 2025).

federal protection to intervene. Five days later, he signed the Civil Rights Act of 1957,⁶⁶ offering federal protection for voter rights.⁶⁷

2. Civil Rights Act of 1964

In the wake of the 16th Street Baptist Church Bombing where four girls were murdered,⁶⁸ and the assassination of President John F. Kennedy,⁶⁹ both in 1963,⁷⁰ President Lyndon B. Johnson signed the Civil Rights Act of 1964. The law “prevent[ed] employment discrimination due to race, color, sex, religion, or national origin.”⁷¹

3. Voting Rights Act of 1965

Macolm X was assassinated in February 1965 and Bloody Sunday occurred on March 7, 1965.⁷² On August 6, 1965, “President Johnson sign[ed] the Voting Rights Act of 1965 to

⁶⁶ CIVIL RIGHTS MOVEMENT TIMELINE, *supra* note 63.

⁶⁷ CIVIL RIGHTS MOVEMENT TIMELINE, *supra* note 63.

⁶⁸ CIVIL RIGHTS MOVEMENT TIMELINE, *supra* note 63.

⁶⁹ November 22, 1963: Death of the President, John F. Kennedy Presidential Library and Museum, <https://www.jfklibrary.org/learn/about-jfk/jfk-in-history/november-22-1963-death-of-the-president> (last visited Aug. 3, 2024).

⁷⁰ *Id.*; CIVIL RIGHTS MOVEMENT TIMELINE, *supra* note 62.

⁷¹ CIVIL RIGHTS MOVEMENT TIMELINE, *supra* note 62.

⁷² CIVIL RIGHTS MOVEMENT TIMELINE, *supra* note 62. (attempting a “Selma to Montgomery March, around 600 civil rights marchers walk to Selma, Alabama to Montgomery—the state’s

prevent the use of literacy tests as a voting requirement. It also allowed federal examiners to review voter qualifications and federal observers to monitor polling places.”⁷³

4. Civil Rights Act of 1968

On April 4, 1968, the Reverend Dr. Martin Luther King, Jr. was assassinated in Memphis, Tennessee, while helping African American workers on strike for safer working environments and better pay.⁷⁴ On April 11, 1968, “President Johnson sign[ed] the Civil Rights Act of 1968, also known as the Fair Housing Act, providing equal housing opportunity regardless of race, religion or national origin.”⁷⁵

capital—in protest of Black voter suppression. Local police block and brutally attack[ed] them.”

The nation watched the horror live and there was a swift condemnation of the police actions).

⁷³ *Id.*

⁷⁴ Joseph Louw, *Dr. Martin Luther King Jr. Assassinated in Memphis*, EQUAL JUST. INITIATIVE, <https://calendar.eji.org/racial-injustice/apr/4#:~:text=%2C%201968%2C%20Dr.-,Martin%20Luther%20King%20Jr.,protest%20by%20Black%20sanitation%20workers>. (last visited Mar. 25, 2025).

⁷⁵ CIVIL RIGHTS MOVEMENT TIMELINE, *supra* note 62.

ii. SCOTUS Decisions and Impact on African Americans

1. *Brown v. Board of Education I/II* - 1954/1955

In *Brown v. Board of Education*⁷⁶, SCOTUS found school segregation unconstitutional and in *Brown v. Board of Education II*,⁷⁷ SCOTUS dealt with the implementation, and lack thereof, of school integration. The Court ordered the integration to be done "with all deliberate speed" – the subjectivity of this requirement resulted in the equivalent of no time requirement at all.⁷⁸ The vague wording of this order led Southern states like Arkansas (Little Rock 9 mentioned above) to defy the Court's order through "judicial and political evasion of desegregation."⁷⁹ With the enforcement of the Civil Rights Act of 1964 through President Eisenhower's Justice Department, desegregation was implemented.⁸⁰

2. *Dandridge v. Williams* - 1970

Dandridge v. Williams is widely regarded as the death knell to the swift social changes achieved through the courts in the 1950s and 1960s.⁸¹ In *Dandridge v. Williams*,⁸² the State of Maryland allotted a maximum Aid to Families With Dependent Children ("AFDC") payment of \$240 – \$250 per family per month; the total amount was determined on a per-person allowance

⁷⁶ *Brown v. Board of Education*, 347 U.S. 483, 692 (1954).

⁷⁷ *Brown v. Board of Education II*, 349 U.S. 294, 299 (1955).

⁷⁸ *Brown v. Board of Education*, *supra* note 65.

⁷⁹ *Brown v. Board of Education*, *supra* note 65.

⁸⁰ *Brown v. Board of Education*, *supra* note 65.

⁸¹ See Brodie, *supra* note 52, at 119-21.

⁸² *Dandridge v. Williams*, 397 U.S. 471, 472 (1970).

that decreased with each additional family member.⁸³ The result of the “family cap” was families with more than four or five children received no benefits for the excess children.⁸⁴ This policy had a disparate impact on large families, as such, the families raised Equal Protection Clause violations under the Constitution.⁸⁵ Though there was not specifically a racial classification claim raised,⁸⁶ the implications were clear that large African American families were losing financial assistance. SCOTUS stated:

[I]t does not offend the Constitution simply because the classification is not made with mathematical *nicety* or because in practice it results in some inequality. . . . A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it.⁸⁷

SCOTUS provided a covenant in which the government had full reign to initiate policies that had discriminatory impacts as long as they could find a legitimate government interest in doing it.

3. *San Antonio Independent School District v. Rodriguez* - 1973

In *San Antonio Independent School District v. Rodriguez*,⁸⁸ SCOTUS upheld the city’s method of funding its school districts as constitutional, using the rational basis analysis as its

⁸³ *Id.* at 474-75.

⁸⁴ *Id.* at 476-77.

⁸⁵ *Id.* at 475.

⁸⁶ *Id.* at 485 n.17.

⁸⁷ *Id.* at 485 (emphasis added)(citations omitted).

⁸⁸ *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 54-55 (1973) (holding that education is not a fundamental right under the Fourteenth Amendment, thus under rational basis analysis upheld San Antonio’s education funding scheme where 20 percent of a district’s revenue came

support; this case is particularly impactful because SCOTUS found that education is not a fundamental right.⁸⁹ Additionally with this decision, SCOTUS sanctioned the creation of an underclass when it stated, “the Equal Protection Clause does not require. . . equal advantages.”⁹⁰ Apparently, it does not.

from property taxes on citizens residing within the districts when property values in poor districts were far lower than property values in other districts, making the amount collected to educate those children significantly less per pupil than those from affluent districts - resulting in disparity in the funding and quality of the education).

⁸⁹ *Id.* at 35.

⁹⁰ *Id.* at 24.

4. *Village of Arlington Heights v. Metropolitan Housing Development Corp.* - 1977

In *Village of Arlington Heights v. Metropolitan Housing Development Corp.* (MHDC), SCOTUS upheld Village of Arlington Heights' denial of MHDC's rezoning request, though it had discriminatory impacts. SCOTUS added the requirement of a showing of proof of discriminatory intent – increasing the burden of proving discrimination under the Fourteenth Amendment's Equal Protection Clause.⁹¹ Ultimately making it harder for African Americans to seek remedy.

5. *McCleskey v. Kemp* - 1987

In *McCleskey v. Kemp*,⁹² the impact of the two-prong Equal Protections requirement created by SCOTUS in *Village of Arlington Heights v. Metropolitan Housing Development Corp.*⁹³ showed its detrimental effect when

McCleskey filed a petition for a writ of habeas corpus in federal district court, alleging that Georgia's capital-s entencing process was administered in a racially discriminatory manner in violation of the Eighth and Fourteenth Amendments

⁹¹ *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 268-71 (1977); *Arlington Heights*, 429 U.S. at 265.

⁹² *McCleskey v. Kemp*, 481 U.S. 279 (1987).

⁹³ *Arlington Heights* was referenced a total of eight times throughout SCOTUS' *McCleskey* opinion: in the opinion, dissent, and footnotes. *Id.* at 291 n.8, 292 n.10, 293–94, 298 n. 20, 351 n.4, 352 n.5, 359, 361. SCOTUS stated, “[o]ur analysis begins with the basic principle that a defendant who alleges an equal protection violation has the burden of proving ‘the existence of purposeful discrimination,’” with a footnote to *Arlington Heights*. *Id.* at 292 (quoting *Whitus v. Georgia*, 385 U.S. 545, 550 (1967)).

to the United States Constitution. To support his claim, McCleskey offered a statistical study that purported to prove a disparity in the imposition of death sentences in Georgia based on the race of the murder victim and the race of the defendant. For example, the study concluded that in instances where a White victim was killed by an African American defendant, the defendant was [twenty-two] [(22)] times more likely to be sentenced to death than if the victim was also African American. The study also suggested that prosecutors were significantly more likely to seek the death penalty for African American defendants than for White defendants.⁹⁴

Even faced with the data, SCOTUS stated it was an insufficient showing of discriminatory intent and upheld McCleskey's capital sentence as constitutional, leading more African Americans to slaughter.

iii. The President's Racial Weaponization of the Justice Department

To stymie the Civil Rights Movement, President Nixon's "War on Drugs" led to the disproportionate and wrongful incarceration of thousands of African American men for committing the same offenses for which White men received more lenient treatment. In an interview for Harper's magazine, John Ehrlichman, President Richard Nixon's domestic policy chief "admitted that the war on drugs was designed to have" a devastating consequence on communities of color in America:⁹⁵

After President Richard Nixon declared a "war on drugs" in 1971, the number of people incarcerated in American jails and prisons escalated from 300,000 to 2.3 million. Half of those in federal prison are incarcerated for a drug offense, and two-thirds of those in prison for drug offenses are people of color. Disproportionate arrest, conviction, and sentencing rates for drug offenses have devastated communities of color in America.

⁹⁴ Megan Petersen, *Case Brief: McCleskey v. Kemp*, QUIMBEE, <https://www.quimbee.com/cases/mccleskey-v-kemp> (last visited Apr. 1, 2025).

⁹⁵ *Nixon Adviser Admits War on Drugs Was Designed to Criminalize Black People*, EQUAL JUST. INITIATIVE (Mar. 25, 2016), <https://eji.org/news/nixon-war-on-drugs-designed-to-criminalize-black-people/>.

Between 1980 and 2011, arrests of African Americans for violent and property crimes fell, but rose dramatically for drug offenses. . . . African Americans are far more likely to be arrested for selling or possessing drugs than whites, even though whites use drugs at the same rate and are more likely to sell drugs. . . . In . . . [the] 1994 interview, Mr. Ehrlichman said, “You want to know what this was really all about?” He went on:

“The Nixon campaign in 1968, and the Nixon White House after that, had two enemies: the antiwar left and Black people. You understand what I’m saying? We knew we couldn’t make it illegal to be either against the war or Black, but by getting the public to associate the hippies with marijuana and Blacks with heroin, and then criminalizing both heavily, we could disrupt those communities. We could arrest their leaders, raid their homes, break up their meetings, and vilify them night after night on the evening news. Did we know we were lying about the drugs? Of course we did.”⁹⁶

D. Resulting Harm: Wealth Gap and Negative Impact on GDP

Due to generations of racial injustice, the median household wealth of White Americans is \$171,000, compared to just \$17,600 for Black Americans.⁹⁷ African American children who are born into poverty were 54 percent more likely to remain there than their white counterparts at 31 percent.⁹⁸ In 2019, African Americans were more likely than Whites to be among the working poor, 7.2 percent to 3.5 percent, respectively.⁹⁹ The same year, 9.1 percent of Whites were in

⁹⁶ *Id.*

⁹⁷ Wealth gap stated is as of 2016. *Explained: Racial Wealth Gap*, *supra* note 61.

⁹⁸ Julia B. Isaacs, *Economic Mobility of Black and White Families*, BROOKINGS INST. (Nov. 13, 2007), <https://www.brookings.edu/articles/economic-mobility-of-black-and-white-families>.

⁹⁹ U.S. BUREAU OF LAB. STATS., BLS REPORTS: A PROFILE OF THE WORKING POOR, 2019 (2021), [https://www.bls.gov/opub/reports/working-poor/2019/home.htm#:~:text=In%202019%2C%20the%20working%2Dpoor%20rates%20for%20men%20and%20women,and%20Asians%20\(4.6%20percent\)](https://www.bls.gov/opub/reports/working-poor/2019/home.htm#:~:text=In%202019%2C%20the%20working%2Dpoor%20rates%20for%20men%20and%20women,and%20Asians%20(4.6%20percent).).

poverty, where over twice that percentage of African Americans were in poverty at 18.8 percent.¹⁰⁰ For the middle-income,

After adjusting for inflation, two out of three white children from the middle quintile grow up to have higher real family incomes than their parents. In stark contrast, only one out of three black children from the same income group surpass their parents in absolute income levels. In other words, a majority of black children born to parents in the middle quintile grow up to have less family income than their parents in inflation-adjusted dollars.¹⁰¹

Per a study conducted by Citi GPS:

Not addressing racial gaps between Blacks and Whites has cost the U.S. economy up to \$16 trillion over the past 20 years,

Closing the Black racial wage gap . . . [could have added] \$2.7 trillion in income available for consumption or investment,

Improving access to housing credit might have added an additional 770,000 Black homeowners . . ., adding another \$218 billion to GDP.

Facilitating easy access to higher education . . . for Black students could have increased “lifetime incomes . . . \$90 – \$113 billion,” [and]

Providing fair and equitable lending to Black entrepreneurs might have resulted in the creation of an additional \$13 trillion in business revenue and potentially created 6.1 million jobs per year.¹⁰²

¹⁰⁰ *Id.*

¹⁰¹ Isaacs, *supra* note 98, at 4.

¹⁰² Citi GPS, *supra* note 12.

This is not just the Black economy or Black consumption, or investment or Black sales and expenditures or Black jobs lost, this would have benefited all of America – it is America’s loss, too, to the tune of 51 trillion dollars by some estimates.¹⁰³

III. THE SECOND NADIR¹⁰⁴ AND RESULTING HARM

There has been a backlash since President Barak Obama’s election in 2008.¹⁰⁵ This backlash, the Second Nadir, manifested in a steady cadence of manipulations to the election process, stripping of reproductive rights, and the elimination of affirmative action. Done under

¹⁰³ See *Racial and Ethnic Inequality Has Cost US Economy \$51 Trillion Since 1990*, WORLD ECON. F. (Sept. 12, 2021), <https://www.weforum.org/agenda/2021/09/racial-and-ethnic-inequality-has-cost-us-economy-51-trillion-since-1990/>.

¹⁰⁴ N.D.B. Connolly, the Herbert Baxter Adams Associate Professor of History at Johns Hopkins University, intimated in 2018 that we are in our Second Nadir. See Connolly, *supra* note 39. This theory was highlighted by PhD student in African and African American Studies and History at Harvard, Panashe Chigumadzi’s review of Isabel Wilkerson’s *Caste: The Origins of Our Discontents*. Panashe Chigumadzi, *Who Is Afraid of Race? There is a Cost to Replacing Race with Caste in Our Analysis of Oppression: We Erase Anti-Blackness*, BOS. R. (Mar. 10, 2021), <https://www.bostonreview.net/articles/who-is-afraid-of-race/>. Per Chigumadzi, “building on . . . [the Great Nadir] nomenclature, Wilkerson notes that the Trumpian ‘backlash’ to the Obama presidency has led many Black historians to identify our current moment as the ‘Second Nadir.’” *Id.*

¹⁰⁵ Chigumadzi, *supra* note 104.

the guise of America achieving the status of being a “post-racial” society,¹⁰⁶ but unable to hide its impacts (which the last section discussed is of no concern to the Supreme Court), the aforementioned actions have effectively reversed the hard-fought protections that created an environment that allowed an African American man to achieve the Office of the Presidency like so many White men had before him. The guise also did not hide the truth of the matter from African Americans either, that this is not a post-racial society. However, while few African Americans had options to leave America during the First Nadir, many do now—and are choosing to leave—during the Second Nadir. This backlash has resulted in Blaxit.

A. Recent SCOTUS Decisions and Impact on African Americans

i. *Citizens United* - 2010

In *Citizens United v. Federal Election Commission*,¹⁰⁷ by a 5-to-4 vote, SCOTUS held that suppressing corporate political speech was a violation of the First Amendment and that cash contributions are a form of political speech.¹⁰⁸ The

Broad appeal of tackling political corruption [has] heightened awareness of how Big Money exacerbates inequality, especially along race and class lines. As a growing body of research shows, most big political donors are white and male, drowning out the voices of the country's increasingly diverse electorate. What's more, the skyrocketing cost of elections blocks many lower-income and people of color candidates from running for office. . . .

A series of studies in recent years show that, while the voters and population of the South and country are becoming increasingly racially diverse, the class of big donors that shapes politics and policy continues to be overwhelmingly white. . . .

¹⁰⁶ Norton & Sommers, *supra* note 21.

¹⁰⁷ *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310 (2010).

¹⁰⁸ *See id.* at 365.

From 2012 to 2016, 91 percent of these elite contributors to presidential campaigns were white. In the same time period, just 3 percent of high-level presidential donors were people of color; the share of non-white top contributors to congressional races was only 4 percent. . . .

[E]lite donors also push an agenda that often serves their interests, which is often out of step with the broader public. . . .

[Also,] “[t]he dominance of big money in our politics makes it far harder for poor and working-class Black people to exert political power and effectively advocate for their interests as both wealth and power are consolidated by a small, very white, share of the population . . . Black candidates are less likely to run for elected office, raise less money when they do, and are less likely to win.”¹⁰⁹

Furthermore, “[t]o the extent that *Citizens United* shifts political power to corporations, fundamentally, it shifts power away from communities of color”¹¹⁰

ii. *Rucho* - 2019

In *Rucho v. Common Cause*, voters challenged the districting map in North Carolina and in Maryland for gerrymandering which resulted in racial disparities.¹¹¹ Political gerrymandering is when, to the benefit of one political party, voters are strategically lumped into a particular

¹⁰⁹ Chris Kromm, *Citizens United at 10: Why Fighting Corruption is a Racial Justice Issue*, INST.

FOR S. STUD. (Jan. 17, 2020) (internal citations omitted)

<https://www.facingsouth.org/2020/01/citizens-united-10-why-fighting-corruption-racial-justice-issue>.

¹¹⁰ Atiba R. Ellis, *Citizens United and Tiered Personhood*, 44 J. MARSHALL L. REV. 717, 748 (2011) (citations omitted).

¹¹¹ *Rucho v. Common Cause*, 588 U.S. 684, 691, 694 (2019).

voting district.¹¹² This has been a repetitive practice in the United States because states are constitutionally required to redraw voting districts every 10 years, after the census to ensure constitutionally mandated representation.¹¹³ For example

If you're a Republican trying to keep power, you want to do two things. First, "pack" as many Democratic voters as possible into a single district. If you have a district where almost everyone votes Democrat, that means almost half of those votes are basically wasted. You can also "crack" big Democratic areas into separate districts — where there are slightly more Republicans. So even though an area has a lot of Democratic votes, they would actually lose . . . in [both] district[s]. These are the two elements of classic gerrymandering: packing and cracking.¹¹⁴

Both Democrats and Republicans utilize gerrymandering. In most states, the party in power of the state government at the time of the redistricting controls the process.

However, racial gerrymandering, where the political power of African Americans is deliberately diluted, is unconstitutional and justiciable under the Equal Protection Clause.¹¹⁵ SCOTUS held that political gerrymandering was a non-justiciable political question, again ignoring the impacts of government policies. Political gerrymandering has detrimentally

¹¹² Vox, *The Man Who Rigged America's Election Maps*, YOUTUBE (Oct. 17, 2019), <https://www.youtube.com/watch?v=KpamjJtXqFI&t=124s>.

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.*

disenfranchised African Americans and directly affects socio-economic outcomes, thus it also limits the U.S.' economic growth.¹¹⁶

iii. *Dobbs* - 2022

In *Dobbs v. Jackson Women's Health Org.*, SCOTUS held that the ability to have an abortion is not a fundamental right, overturning almost 50 years of precedent and ignoring the doctrine of stare decisis.¹¹⁷ “To put it simply, stare decisis holds that courts and judges should honor ‘precedent’—or the decisions, rulings, and opinions from prior cases. Respect for precedents gives the law consistency and makes interpretations of the law more predictable—and less seemingly random”.¹¹⁸

When broken down by race, the research consistently suggests that abortion access has greater economic impacts for Black women than White women (due to data restrictions, no other racial/ethnic backgrounds are considered in the studies). Abortion legalization led to significant increases in high school graduation, college entrance, and labor force participation among Black women. (Increases for White women were not statistically significant.) These increases

¹¹⁶ David S. Mitchell et al., *How Combating Voter Suppression Can Help Close the Economic Divides Between Black and White Americans and Spur U.S. Economic Growth*, WASH. CTR. FOR EQUITABLE GROWTH (Feb. 3, 2021), <https://equitablegrowth.org/how-combating-voter-suppression-can-help-close-the-economic-divides-between-black-and-white-americans-and-spur-u-s-economic-growth>.

¹¹⁷ *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022)

¹¹⁸ *Understanding Stare Decisis*, AM. BAR ASS'N (Dec. 16, 2022), https://www.americanbar.org/groups/public_education/publications/preview_home/understand-stare-decisis/?spredfast-trk-id=sf187550820# (emphasis added).

were in addition to the higher rates of labor force participation Black women already experienced relative to White women.¹¹⁹

The *Dobbs* decision will reverse the economic gains made by African American women and limit their economic contributions to the U.S. economy.

iv. *Harvard* - 2023

In *Students for Fair Admissions v. Harvard*, SCOTUS held that diversity in higher education is no longer a compelling government interest and that race-based admissions will be evaluated using strict scrutiny when determining equal protection violations, effectively ending affirmative action in higher education.¹²⁰ Eliminating affirmative action will have a negative impact on African American college enrollment and their future economic outcomes. In 1996, voters barred the State of California from using affirmative action in public college admissions by passing Proposition 209; UCLA is an example of the negative result of this action, where “admissions rates for unrepresented minorities plummeted from 52.4% in 1995 to 24% in 1998.”¹²¹ SCOTUS was aware of this impact but ruled to eliminate affirmative action anyway.

¹¹⁹ Kelly Jones and Anna Bernstein, *The Economic Effects of Abortion Access: A Review of the Evidence*, INSTIT. FOR WOMEN’S POL’Y RSCH. (July 2019), https://iwpr.org/wp-content/uploads/2020/07/B377_Abortion-Access-Fact-Sheet_final.pdf.

¹²⁰ *Students for Fair Admissions, Inc. v. President and Fellows of Harvard Coll.*, 600 U.S. 181, 213 (2023).

¹²¹ Erwin Chemerinsky, *Op-Ed: If the Supreme Court Bans Affirmative Action, It Continues the U.S. Legacy of Racial Discrimination*, L.A. TIMES (Jan. 25, 2022, 11:31 AM), <https://www.latimes.com/opinion/story/2022-01-25/op-ed-supreme-court-bans-affirmative-action-discrimination>.

The detrimental impacts of the Harvard decision are already presenting themselves, even before institutes of higher learning are required to implement the ruling. In August 2024, the Massachusetts Institute of Technology (MIT) reported only 5% of its incoming class were African American, down 8% from its prior year due to the end of race consideration in the admission process.¹²² The Dean of Admission, Stu Schmill, stated because of the ruling, MIT “expected that . . . [it] would result in fewer students from historically underrepresented racial and ethnic groups enrolling at MIT . . . [and] [t]hat’s what has happened.”¹²³ Other underrepresented groups have dropped down to 0% enrollment.¹²⁴

The same month, Amherst College and Tufts University also reported decreased Black enrollment since the Harvard decision. “Black students at Amherst College for the incoming freshman class decreased by eight percentage points, from 11% . . . to 3% . . . the percentage of white students . . . rose sharply, from 33% to 39% . . . Black students in Tuft University’s

¹²² Char Adams, *MIT's Black Student Enrollment Drops Significantly After Supreme Court Affirmative Action Ruling*, NBCNEWS (Aug. 21, 2024, 4:33 PM), <https://www.nbcnews.com/news/nbcblk/mits-black-student-enrollment-slides-affirmative-action-supreme-court-rcna167622>.

¹²³ *Id.*

¹²⁴ *Id.*

incoming class of 2028 fell from 7.3% to 4.7% – while white students went up from 46.8% to 49.3%.”¹²⁵

Notably, at the University of North Carolina at Chapel Hill, “one of two schools, along with Harvard University, whose admissions practices were challenged”¹²⁶ in the *Harvard* decision, incoming African American admission dropped to 7.8%, down from 10.5% the prior year.¹²⁷

Finally, at Harvard, admissions of African American students dropped from 18% in the prior year to 14%.¹²⁸

¹²⁵ Léonie Chao-Fong, *Elite US Colleges See Black Enrollment Drop After Affirmative Action Strike-Down*, GUARDIAN (Aug. 30, 2024, 6:23 PM), <https://www.theguardian.com/us-news/article/2024/aug/30/black-college-student-enrollment-declines-affirmative-action-strike-down>.

¹²⁶ Susan Svrluga, *Black Enrollment Drops at UNC After Ruling; Other Schools Vary*, WASH. POST (Sept. 5, 2024), <https://www.washingtonpost.com/education/2024/09/05/diverse-college-enrollment-down-post-affirmative-action-ruling/>.

¹²⁷ *Id.*

¹²⁸ Susan Svrluga, *Harvard’s Black Enrollment Drops After Supreme Court Ruling*, WASH. POST (Sept. 11, 2024), <https://www.washingtonpost.com/education/2024/09/11/harvard-black-enrollment-drop-affirmative-action/>.

B. Anti-Woke Laws & Impact on African Americans

“Indeed, white supremacy stays alive in American institutions through the pointed erasure of historical thinking, which is necessarily race thinking.”¹²⁹

In March 2020, the world watched in horror as George Floyd was murdered by Officer Derek Chauvin under the glares of other Minneapolis Police officers who did nothing. This sparked world-wide protests and the Black Lives Matter movement, which called for inflection, acknowledgment, and redress for the racial harms against African Americans and other minorities. Businesses led the charge in reviewing the systemic racism, white supremacy, and bias in their structure.¹³⁰ Many businesses established diversity, equity, and inclusion (DEI) offices where there were none before, or greatly improved DEI programs already in place. By October 2022, 40% of Fortune 1000 companies “made public statements of support of racial justice,” 30% “made external commitments to promote racial equity with regard to economic opportunities,” and 25% “made internal commitments to promote diversity and inclusion.”¹³¹ From May 2021 to October 2022, companies pledged approximately “\$340 billion to driving racial equity.”¹³²

¹²⁹ Connolly, *supra* note 104.

¹³⁰ See Megan Armstrong, Eathyn Edwards, & Duwain Pinder, *Corporate Commitments to Racial Justice: An Update*, MCKINSEY INSTIT. FOR BLACK ECON. MOBILITY (Feb. 21, 2023), <https://www.mckinsey.com/bem/our-insights/corporate-commitments-to-racial-justice-an-update>.

¹³¹ *Id.*

¹³² *Id.*

The year and a half that followed George Floyd’s murder was a small reprieve from the already decade-long onslaught of the Second Nadir. In virulent response to the progress made during this period, a wave of Anti-Woke, Anti-DEI, and whitewashing laws blanketed the nation. DEI offices were shuttered with claims that they were no longer needed because America is a “post-racial” society. Those who made statements to the contrary were labeled as “anti-patriotic” and were told they were living in the past.

i. Anti-Woke Laws

“Woke” used to be a term advising people, African American people, to be aware of their surroundings.¹³³ Then, as with much African American cultural vernacular, it was incorporated into mainstream American use. First, to signify those awakened to the social issues in the world. Then, as a rallying cry for the modern civil rights movement.¹³⁴ Next, it was more cynically adopted as a pejorative political term, often used in the same vein as ‘cancel culture’ and ‘political correctness.’¹³⁵ Finally, it is now used “‘with a sneer.’ . . . fueled by a political backlash from conservatives who decried “wokeness” in connection with the teaching of critical race theory, an academic construct positing that racism in the United States has been reinforced over time by society’s institutions.”¹³⁶

¹³³ Ken Paulson, *The Woke Movement and Backlash*, FREE SPEECH CTR. MIDDLE TENN. STATE UNIV. (July 3, 2024), <https://firstamendment.mtsu.edu/article/the-woke-movement-and-backlash/>.

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.*

In response to political correctness and a hyper focus on critical race theory (CRT) (a course of study usually only taught in graduate programs on college campuses¹³⁷), the State of Florida, under the leadership of its governor and then future presidential candidate,¹³⁸ Ron DeSantis, led the nation in introducing “Anti-Woke Laws.” Per an official State of Florida flyer, the Stop W.O.K.E. Act (Stop Wrongs to Our Kids and Employees Act) protects schools and corporations. Schools are protected by prohibiting the teaching of CRT in K-12 schools and “prohibiting school districts, colleges, and universities from hiring woke CRT consultants.”¹³⁹ Corporations are protected through their employees, by preventing a “hostile work environment due to critical race theory training.”¹⁴⁰ Riding the high of a commanding reelection victory,

¹³⁷ *Id.*

¹³⁸ Ron DeSantis ran for the Republican Party’s presidential nomination from May 2023 and ended his bid in January 2024. *See* Steve Peoples, Adriana Gomez Licon & Anthony Izaguirre, *DeSantis Launches GOP Presidential Campaign in Twitter Announcement Plagued by Glitches*, ASSOC. PRESS (May 24, 2023), <https://apnews.com/article/ron-desantis-2024-presidential-election-live-updates-0495d567326db1e760179d01f1f7c45e>; Steve Peoples, Thomas Beaumont & Holly Ramer, *DeSantis Drops Out of Presidential Race, Leaving Trump and Haley to Face Off in New Hampshire*, ASSOC. PRESS (Jan. 21, 2024), <https://apnews.com/article/ron-desantis-250c8ed4b49843350e258f0c2754c8ba>.

¹³⁹ Stop WOKE Handout, State of Florida <https://www.flgov.com/wp-content/uploads/2021/12/Stop-Woke-Handout.pdf>

¹⁴⁰ *Id.*; The Stop W.O.K.E. Act incorrectly synonymizes Critical Race Theory with DEI training, though DEI training takes some of the concepts of CRT, it is nowhere next to as comprehensive

during his victory speech, DeSantis infamously trumpeted that “Florida is where woke goes to die.”¹⁴¹

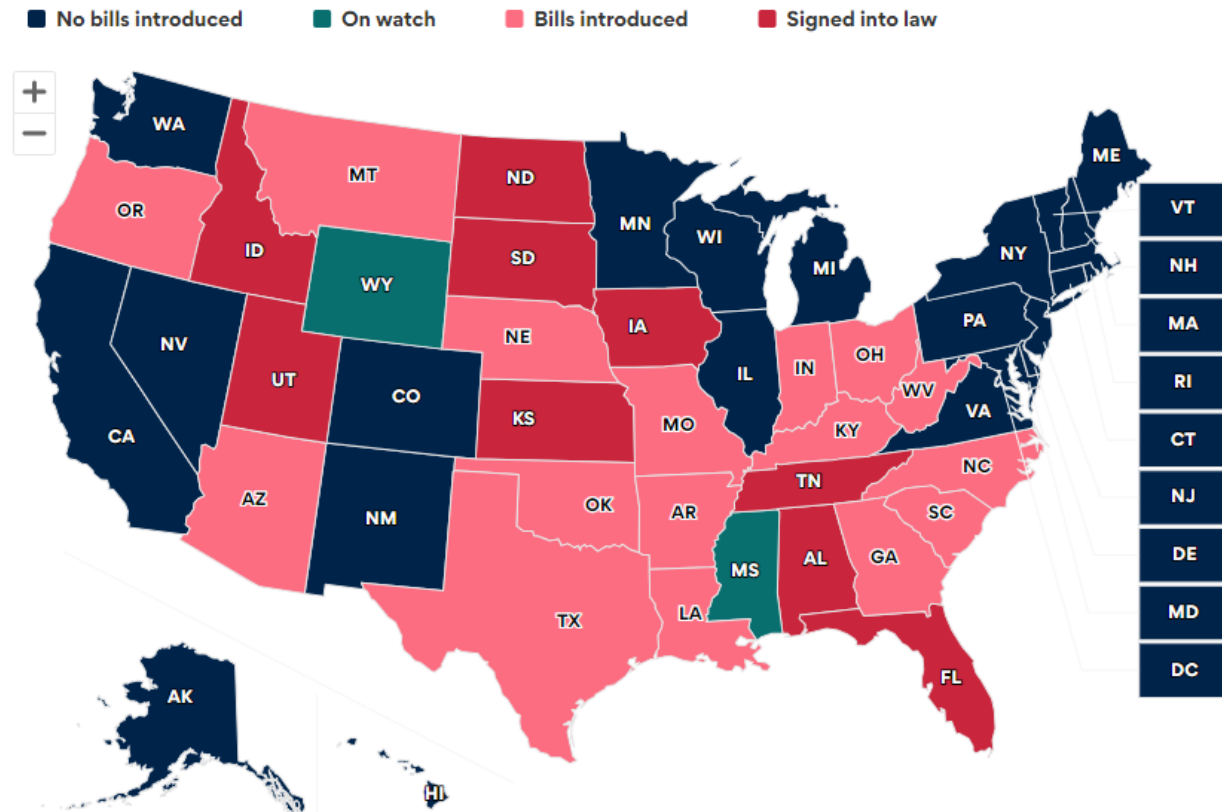
as CRT. DEI trainings are often a poor representation of the minimal CRT concepts it utilizes. It is accepted among CRT scholars that many DEI Trainings need to be improved to ensure an inclusive environment. See Benjamin Wallace-Wells, *How a Conservative Activist Invented the Conflict Over Critical Race Theory*, NEW YORKER (June 18, 2021), <https://www.newyorker.com/news/annals-of-inquiry/how-a-conservative-activist-invented-the-conflict-over-critical-race-theory>.

¹⁴¹ Emily Mae Czachor, *"Florida is Where Woke Goes to Die," Gov. Ron DeSantis Says After Reelection Victory*, CBS NEWS (Nov. 9, 2022), <https://www.cbsnews.com/news/ron-desantis-florida-where-woke-goes-to-die-midterm-election-win/>.

ii. Erasure of DEI & Re-whitewashing of History (Retrenchment)

States Where DEI Legislation Has Been Introduced, Been Approved, or Failed

Hover over states for bill details.



Note: States that are "on watch" have not formally introduced or proposed DEI bills as of March 2024, but have begun digging into the allocation of state funds on DEI programs at public institutions or introduced other legislation that indirectly impacts DEI offerings.

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142

¹⁴² Patricia Morgan, *DEI Is Under Attack. Here's What's Happening And Why*, LINKEDIN (Aug. 27, 2024), <https://www.linkedin.com/pulse/dei-under-attack-heres-whats-happening-why-patricia-morgan-ph-d--depje/>.

Whitewashing is “to portray (the past) in a way that increases the prominence, relevance, or impact of White people and minimizes or misrepresents that of nonwhite people.”¹⁴³ The erasure of DEI policies and the re-whitewashing of history, is again “politicians [feeding] their constituents the stale bread of hatred and the spoiled meat of racism.”¹⁴⁴ Instead of politicians educating their constituency, to ensure their re-elections they have allowed the 21st century’s version of the “forgotten man” ideology to fester while in reality

White men hold most leadership positions and decision-making power in US society (and globally). So, at first glance, it may seem surprising to learn that they are feeling excluded from anything. But according to the White Men's Leadership Study, a study of white men and DEI, nearly 70% report feeling “forgotten” by diversity, equity, and inclusion efforts. Feeling uncertain about whether DEI includes them is the main reason they say they either disengage or are not as committed to it as others in their organization.¹⁴⁵

As of May 2024, 25 out of 50 of the states in the Union has or had some sort of legislative effort to target DEI policies – half of the country!¹⁴⁶ These measures include:

Prohibiting state public colleges and universities from promoting, sponsoring, or maintaining DEI offices and programs. . .

¹⁴³ *Whitewashing*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/whitewash> (last visited April 7, 2025).

¹⁴⁴ Rev. Dr. Martin Luther King, Jr., Eulogy of Jimmie Lee Jackson (Mar. 3, 1965).

¹⁴⁵ Teresa Hopke, *White Men Are Feeling Left Out Of Diversity, Equity, & Inclusion. Why Should We Care and What Should We Do?*, FORBES (Mar. 30, 2022), <https://www.forbes.com/sites/teresahopke/2022/03/30/white-men-are-feeling-left-out-of-dei-diversity-equity--inclusion-why-should-we-care-and-what-should-we-do/?sh=6293660faa60>.

¹⁴⁶ See Morgan, *supra* note 142.

Prohibit[ing] [the] require[ment] [of] an employee to engage with DEI programming; spending public funds on DEI programming or goods and services for a DEI program. . .

"[E]nd[ing] state-sponsored discrimination" by prohibiting state and local government agencies, including public universities, from using affirmative action programs. . .

[P]rohibit[ing] [state public institutions] from giving preferential consideration for employment, admission, or promotion to individuals who show support for "any ideology or movement that promotes the differential treatment of a person or a group of persons based on race or ethnicity, including an initiative or a formulation of diversity, equity, and inclusion." . .

[B]an[ning] diversity statements in hiring and admissions decisions. . . .

[P]rohibiting public institutions from requiring enrolled students from engaging "in any form of mandatory gender or sexual diversity training or counseling." . . . [and] attend[ing] any student orientation, other training, or presentation "that presents information regarding race or sex stereotyping or bias on the basis of race or sex." . . .

[B]ann[ing] the promotion of "divisive concepts" from training students and employees . . . [including] the belief that "an individual, by virtue of the individual's race or sex, bears responsibility for actions committed in the past by other members of the same race or sex." . . .

[P]rohibit[ing] race-based and sex-based scholarships . . . at the state's public colleges. . . .

[P]rivate institutions would only receive funding from the chancellor of higher education if they comply with a list of commitments, including intellectual diversity, freedom of speech, and syllabus compliance. . . .

[P]ublic colleges in the state would be prohibited from . . . using state funds to endorse or promote "divisive concepts" . . . includ[ing] beliefs that ". . .the United States is fundamentally or irredeemably racist or sexist" and that "an individual should feel discomfort, guilt, anguish, or another form of psychological distress solely because of the individual's race or sex." . . .

[B]anning critical race theory teaching at the university level.¹⁴⁷

In sum, these laws are clearly saying that White men living today are not at fault for slavery, white supremacy or systemic racism and should not be made to feel any burden for the

¹⁴⁷ See Morgan, *supra* note 142.

fact that these institutions created a caste system which has created an environment where “White men hold most leadership positions and decision-making power.”¹⁴⁸ Furthermore, continuing the dialog about this caste system is racist within itself and perpetuates racism in this post-racial society. Moreover, as this is a post-racial society, there is no need for DEI or to talk about racial injustice because that was in the past and we are beyond that now.

While not even delving into the broader human impact, if analyzed solely from an economic standpoint, these laws ignore the simple fact that “evidence shows firms who do not abandon D&I protocols [DEI] may fare better. Companies in the top quartile for both gender and ethnic diversity are 12 percent more likely to outperform companies in lower quartiles. Top quartile companies outperformed those in the fourth quartile by 36 percent in terms of profitability.”¹⁴⁹ Diversity, equity and inclusion in the workplace increases revenue, employee engagement, and productivity.¹⁵⁰ Additionally, the lack of diversity in higher institutions such as Harvard and Stanford have caused depressions in some areas of investment.¹⁵¹

Again, the solutions being tendered in these anti-woke and DEI laws by politicians are only solving one problem: how they can get re-elected. The concept of the “forgotten man,” is no more than fearmongering to create a set of “others” at which to create contempt. This is not a zero-sum game— there is room for everyone.

¹⁴⁸ Hopke, *supra* note 145.

¹⁴⁹ Citi GPS, *supra* note 12.

¹⁵⁰ Citi GPS, *supra* note 12.

¹⁵¹ Citi GPS, *supra* note 12.

Unfortunately, these attacks on DEI have not been limited to legislatures, they are also incurring in board rooms, where many companies have shuttered DEI programs in response to the negative connotations that have been associated with the programs.¹⁵² In his poignant article, *‘Sometimes, the Facts Don’t Matter’: Attacks on DEI are an Anti-Capitalist War on American Prosperity*, Roy Swan exposes how Corporate America is in dereliction of its fiduciary duty in failing to explain to its stakeholders that “DEI is a capitalist tool to increase income and wealth through fairness. Increased fairness results in increased employee engagement. Increased employee engagement leads to greater innovation, productivity and profitability;”¹⁵³ profitability upwards of \$550 billion annually.¹⁵⁴ Swain goes on to explain that the attacks on DEI are a form of “oppression psychology – tactics designed to protect superiority by erecting and maintaining race-based barriers to opportunity under the flawed assumption of a zero-sum world.”¹⁵⁵ Even when these flawed assumptions are against self-interest as it is with DEI policies. Studies show

¹⁵² See generally Roy Swan, *‘Sometimes, the facts don’t matter’: Attacks on DEI are an anti-capitalist war on American prosperity*, FORTUNE (June 19, 2024), <https://fortune.com/2024/06/19/facts-matter-attacks-on-dei-anti-capitalist-war-american-prosperity/>.

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

“that non-Black people have benefited more from DEI programs than Black people.”¹⁵⁶ But in the words of Swan, “sometimes, the facts don’t matter.”¹⁵⁷

Anti-woke and anti-DEI policies hurt the American people by stunting economic growth. It is worth repeating that “when GDP is growing . . . workers and businesses are generally better off than when it is not,”¹⁵⁸ It is this retrenchment, the failure to accept that facts *do* matter and the perpetuation of the “post-racial”/“reverse racism” counter-reality that has led African American’s to Blaxit.

C. Resulting Harm: Blaxit

i. History of African American Migration

At the beginning of the Great Migration, Southern Whites did not attempt to prevent African Americans from departing the south because the Southern Whites believed that the African Americans were mentally incapable of performing the type of manufacturing jobs being offered in the north. The Southern Whites believed that the African Americans would return because they would be unable to find a better living elsewhere. However, after seeing that

¹⁵⁶ *Id.*; see Janice Gassam Asare, How DEI Helps Everyone—including White People (Aug. 31, 2023), <https://www.forbes.com/sites/janicegassam/2023/08/30/is-dei-anti-white/?sh=b45d5661494c>.

¹⁵⁷ See generally Swan, *supra* note 152; see also Gassam, *supra* note 156.

¹⁵⁸ Callen, *supra* note 14.

African Americans were not returning, and faced with losing their cheap labor, Southern Whites resorted to coercive tactics to prevent African Americans from leaving the south.¹⁵⁹

The United States of America is the greatest country in the world, but it is not the only great country in the world and African Americans have become acutely aware of that fact. As one American seeking citizenship in Europe acknowledged that it has its problems, but it “[s]eems like the people in power in America are committed to moving backwards. The E.U. is at least committed to moving forward.”¹⁶⁰

Starting around World War II, after many notable African American citizens and soldiers returned from war only to find race relations in a perpetual stagnant position, they decided to leave the U.S. to pursue a new life in a foreign land. Among the notable African Americans from that period were James Baldwin and Josephine Baker. James Baldwin, originally of New York, was a renowned writer who expatriated to France, among other countries. He vividly wrote of his struggles as a negro in America. Quoted by one of the Blaxit families featured below,¹⁶¹ this is how Baldwin described his predicament in America: “to be a Negro in this country and to be

¹⁵⁹ Alexis Clark, How Southern Landowners Tried to Restrict the Great Migration, HIST., <https://www.history.com/articles/great-migration-southern-landowners> (last visited Mar. 24, 2025).

¹⁶⁰ Ashley Feters Maloy, *Their Ancestors Came to America. After Dobbs, They Want Out*, WASH. POST (Aug. 29, 2022), <https://www.washingtonpost.com/lifestyle/2022/08/29/dual-citizenship-european-union-germany-italy/>.

¹⁶¹ *Infra*, note 179.

relatively conscious is to be in a state of rage almost, almost, all of the time.”¹⁶² Josephine Baker, born in St. Louis, Missouri, decided to expatriate to France in 1936.¹⁶³ Gaining fame in France after a decade of lauded performances, Baker decided to return home to America to capitalize on her notoriety.¹⁶⁴ However, after she was met with racism and hostilities in America, she returned to France where she obtained citizenship.¹⁶⁵

More contemporarily, Tina Turner’s experience mirrored that of Baker’s. Turner was born in Tennessee.¹⁶⁶ While a member of the Ike & Tina Turner Revue

U.S. programmers stunted [their] growth. . . . Not allowing a song like “River Deep, Mountain High” to exist on American radio is exactly what pigeonholed Tina as an R&B or soul artist. In a 1971 issue of *Rolling Stone*, journalist Ben Fong-Torres quotes Ike Turner as saying the song didn’t get airplay because the soul stations found it too pop and the white stations found it too R&B. “Rather than accept something for its value . . . America mixes race in it,” he added.¹⁶⁷

Turner expressed that

¹⁶² *Infra* note 179.

¹⁶³ BIOGRAPHY.COM EDITORS, *Josephine Baker*, BIOGRAPHY (Feb. 8, 2024), <https://www.biography.com/artists/josephine-baker>.

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ Jennifer Hassan, *Tina Turner Left a Life of Pain in the U.S. and Found a Home in Europe*, WASH. POST (May 25, 2023), <https://www.washingtonpost.com/lifestyle/2023/05/25/tina-turner-life-europe/>.

¹⁶⁷ Devon Renaldo, *Tina Turner and the All-Too-Radical Existence of the Black Woman Rock Star*, RINGER (Apr. 8, 2021), <https://www.theringer.com/music/2021/4/8/22373139/tina-turner-documentary-hbo-corinne-bailey-rae-fefe-dobson>.

“It hurts to be a minority. I am looked down upon because I’m Black. It’s forever. It’s like a curse on you. . . . We can stand now, but it’s still there—it’s a memory, because you are branded. It’s wishing that we, as a Black people, had had a chance to be as fantastic as we were before being knocked down and made slaves.”¹⁶⁸

Turner left the United States for Europe because she, like Baker, felt more supported abroad.¹⁶⁹

In Europe her Ike and Tina Revue hits were mainstream, not limited to the R&B circuit.¹⁷⁰

Unlike Baker, Turner eventually gained mainstream success in the United States, but only with help of British star David Bowie.¹⁷¹ Even so, she made clear that “she found more sustained success in Europe,” stating “what I find with my homeland is that nothing lasts very long. . . .

Europe is different.”¹⁷² Turner moved to Switzerland, relinquishing her U.S. citizenship in 2013.¹⁷³

¹⁶⁸ Nancy Collins, *Tina Turner: Queen of Rock & Roll: 'I Didn't Act My Life. I Lived It'*, ROLLINGSTONE (Oct. 23, 1986), <https://www.rollingstone.com/feature/tina-turner-queen-of-rock-roll-190581/>.

¹⁶⁹ Hassan, *supra* note 166.

¹⁷⁰ Hassan, *supra* note 166.

¹⁷¹ Hassan, *supra* note 166.

¹⁷² Hassan, *supra* note 166.

¹⁷³ Hassan, *supra* note 166.

In May 2024, Stevie Wonder, became a citizen of Ghana¹⁷⁴ three years after announcing he was leaving the United States.¹⁷⁵ Wonder decided to leave the U.S. due to the political turmoil stating, he did not “want to see [his] children’s children’s children have to say, ‘Oh please like me. Please respect me, please know that I am important, please value me.’”¹⁷⁶ Under the pressures of the Second Nadir, other celebrities have made the decision to leave the U.S. or gain citizenship in other countries in recent years.¹⁷⁷ However, the U.S. is losing to Blaxit far more than just entertainers.

ii. Blaxit’s Cost to America

There is an economic and brain drain impacting America through Blaxit as every day African American citizens, in search of peace and community, decide to call other countries

¹⁷⁴ Thomas Naadi, *Stevie on the Wonder of Becoming a Ghanaian Citizen*, BBC NEWS (May 14, 2024), <https://www.bbc.com/news/articles/c4n1137nj29o>.

¹⁷⁵ Chloe Melas, *Stevie Wonder is Moving to Ghana*, CNN (Feb. 22, 2021), <https://www.cnn.com/2021/02/22/entertainment/stevie-wonder-moving-ghana-trnd/index.html>.

¹⁷⁶ *Id.*

¹⁷⁷ Entertainers Ludacris, Tiffany Haddish, Samuel L. Jackson, and Cardi B. have obtained dual citizenship in various African countries. Daniel Mumbere, *Chasing African citizenship: Anthony Joshua, Cardi B, Ludacris, Idris Elba, Tiffany Haddish*, AFRICANEWS., <https://www.africanews.com/2020/02/20/chasing-citizenship-in-african-countries-cardi-b-ludacris-idris-elba-tiffany/> (last visited Sept. 9, 2024).

home. Although there are no official statistics tracking the cultural cohort of African American emigres,¹⁷⁸ but there are increasingly documented journalistic reports of this exodus.

Bank executive, Nancy Armand, states of her international working experience, that her nationality now comes first, “I’d never been an American first and then Black.”¹⁷⁹ When she worked in the U.S., she was always made her race and gender.¹⁸⁰ Najoh Tita-Reid, a pharmaceutical executive, was promoted to a position in London, and now refuses to return to the United States.¹⁸¹ She likens working in London “like wearing an oxygen mask... [she can] breathe, lead and perform without feeling the crushing weight of America’s dysfunctional racial dynamics at every moment.”¹⁸² She calls it the “James and Josephine effect.”¹⁸³ When presented

¹⁷⁸ Kim Hjelmgaard, *‘I’m Leaving, and I’m Just Not Coming Back’: Fed Up with Racism, Black Americans Head Overseas*, USA TODAY (June 26, 2020), <https://www.usatoday.com/story/news/world/2020/06/26/blaxit-black-americans-leave-us-escape-racism-build-lives-abroad/3234129001/>.

¹⁷⁹ Beth Kowitt, *American’s Black Brain Drain: Why African American Professionals are Moving Abroad – and Staying There*, FORTUNE (Aug./Sept. 2020), <https://fortune.com/2020/08/10/black-african-americans-leaving-us-moving-abroad-professionals-race-opportunity-careers/>.

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ *Id.*

with a job opportunity that would have returned her to the U.S., Tita-Reid declined the position because “the stress that [she] felt in the U.S. and concern for [her] husband and son was gone.”¹⁸⁴

This sentiment is so well understood globally that the continent of Africa has built in the value of African American expatriation into their long-term development plans. As will be detailed greater below, Africa Agenda 2063 “recognize[s] and signal[s] the historical imperative and expectation of the contribution of American Americans to the development of Africa.”¹⁸⁵ A study of African American migrants to Ghana shows that only 13% were retired, indicating those migrating would be “productive.”¹⁸⁶ 91.6% of the African American migrants had university education, where only “30.9% of [the] U.S. population [has] a Bachelor’s degree or higher,” indicating a high concentration of highly educated African Americans are leaving the United States to migrate to Ghana.¹⁸⁷ The study went on to find that African American migrants in Ghana have grown the national purse with contributions through taxes, and had positive impacts on economic growth and the labor market.¹⁸⁸

¹⁸⁴ *Id.*

¹⁸⁵ Chanda Elbert & Fred Boadu, *Potential Contribution of African-American Migrants to Economic and Cultural Development in Africa*, 53(7) J. of Black Stud. 660, 663 (2022).

¹⁸⁶ *Id.* at 668.

¹⁸⁷ *See generally id.*

¹⁸⁸ *Id.* at 669.

Though it cannot yet be quantified, indications are that America's brightest African Americans are leaving the country or at least are preparing exit plans.¹⁸⁹ These pathways include "citizenship based on diasporic descent and investment-based migration."¹⁹⁰

¹⁸⁹ Jayesh Rathod, *Pressured Exit*, 98 Tul. L. Rev. 805, 807-08, 827, 844-45, 876 (2024).

¹⁹⁰ *Id.*

iii. Countries of Expatriation

The United States has been rated the 20th most education population,¹⁹¹ while being ranked the 73rd least racist country.¹⁹² For ease of comparison, the following sample of the countries chosen as favorite Blaxit destinations will include the same statistics. Blaxit has global reach with preferred destinations in North, Central and South America, Africa, Asia, and Europe.¹⁹³ Some countries, like Ghana, have made an active effort to attract African Americans, while African Americans have identified others due to their “James and Josephine effect.”

1. Africa

Africa is relentlessly focused on the continent’s development. The African Union’s Agenda 2063 [Africa 2063] ‘is Africa’s blueprint and master plan for transforming Africa into the global powerhouse of the future.’”¹⁹⁴ One of the explicit goals of Africa 2063 is to garner

¹⁹¹ *These Countries Have the Most Educated Populations*, U.S. NEWS & WORLD RPTS., <https://www.usnews.com/news/best-countries/rankings/educated-population> (last visited June 1, 2024).

¹⁹² *Least Racist Countries 2024*, WORLD POPULATION REV., <https://web.archive.org/web/20240508190556/https://worldpopulationreview.com/country-rankings/least-racist-countries> (web archive last visited Mar. 26, 2025).

¹⁹³ *Infra* note 197; Mitti Hick, *The 11 Best Place for Black Americans to Move Abroad*, TRAVEL NOIRE (Apr. 21, 2021), <https://travelnoire.com/the-10-best-places-for-black-americans-to-move-abroad?item=10>.

¹⁹⁴ Elbert & Boadu, *supra* note 185, at 662.

contributions of African Americans to Africa's development.¹⁹⁵ However, sought after contributions are not only evaluated in economics, but also on the human level of culture, heritage, and belonging through the diaspora.¹⁹⁶ One popular Blaxit location in Africa is Ghana.¹⁹⁷ Ghana will be elaborated on below in further detail due to its initiative towards African American migration.

a. Ghana

The Year of Return is what Ghana coined its initiative to have African Americans and other descendants of Africa return to its shores.¹⁹⁸ Timed to coincide with the 400th anniversary of the Transatlantic Slave Trade in 2019, the program has since expanded from welcoming the diaspora, to apply for citizenship to making it a right to stay.¹⁹⁹ Ghana is ranked 81 for most education population²⁰⁰ and as the 33rd least racist country.²⁰¹ Of Ghana, Blaxiter Lakehia Ford, a

¹⁹⁵ Elbert & Boadu, *supra* note 185, at 663.

¹⁹⁶ Elbert & Boadu, *supra* note 185, at 663-64, 670.

¹⁹⁷ Blaxit Global, *Leaving the Ordinary for the Extraordinary | Top Countries for Black Americans*, YOUTUBE (Jan. 4, 2024), <https://www.youtube.com/watch?v=VM56PDCRdgM&t=3540s>.

¹⁹⁸ Eromo Egbejule, *Ghana's 'Year of Return' Delivers a Bittersweet Buzz as Tourists Push Up Prices*, THE GUARDIAN, <https://www.theguardian.com/world/2024/dec/14/ghana-year-return-tourists-prices-africa> (last visited Mar. 24, 2025); Naadi, *supra* note 174.

¹⁹⁹ Naadi, *supra* note 174.

²⁰⁰ *These Countries Have the Most Educated Populations*, *supra* note 191.

²⁰¹ *Least Racist Countries 2024*, *supra* note 192.

communications firm owner, states, “[h]ere I don’t have to think of myself as a Black woman and everything that comes with that,. . . [h]ere I am just a woman.”²⁰²

2. Europe

Many countries have a less racist environment than the United States, and have a higher level of education among their population. . As detailed in the *History of African American Migration* section, European countries have long been a destination for African American expatriates. In recent years, most notably with Brexit, Blaxit’s namesake muse, there has been an anti-immigration sentiment in Europe.²⁰³ Much of this sentiment stems from disapproval of illegal immigration²⁰⁴ and the increase to cost of living due to foreigners purchasing real estate that they do not inhabit and hold out for tourism rentals.²⁰⁵ Similar to the United States, countries

²⁰² Hjelmgaard, *supra* note 178.

²⁰³ Luke Hanrahan, *Anti-immigrant Sentiment Has Arguably been Bubbling Under the Surface of the UK for Many Years. It Prompted Millions to Vote for Brexit and Led the Conservative Government to Propose Plans to Fly Immigrants to Migrant Camps in Rwanda*, EURONEWS (Aug. 8, 2024), <https://www.euronews.com/my-europe/2024/08/08/uk-government-faces-battle-with-anti-immigration-sentiment-stoked-by-previous-governments->.

²⁰⁴ Agence France-Presse, *Hundreds in Canary Islands Protest Against Influx of Migrants*, THE GUARDIAN (July 6, 2024), <https://www.theguardian.com/world/article/2024/jul/06/hundreds-in-canary-islands-protest-against-influx-of-migrants>.

²⁰⁵ *Id.*; see Patricia Vicente Rua & Miguel Pereira, *Thousands Protest in Portugal Over Surging House Prices and Rents*, REUTERS (Sept. 28, 2024),

in Europe are grappling with the handling of illegal immigration; however, the rebuke of far-right parties in recent elections during the summer of 2024²⁰⁶ leave open legal immigration avenues for Blaxiters.

Blaxiters have frequented several countries in Europe. Top destinations include the United Kingdom,²⁰⁷ the Netherlands,²⁰⁸ and France.²⁰⁹ The United Kingdom is ranked above the United States in its population's education at 8th,²¹⁰ while ranking as the 16th least racist country,²¹¹ which is remarkably higher than the United States. The same holds true with European Union

<https://www.reuters.com/world/europe/thousands-protest-portugal-over-surging-house-prices-rents-2024-09-28/>.

²⁰⁶ See Frank Langfitt, *What's Behind the Elections Results in France and the U.K.*, NPR (July 8, 2024), <https://www.npr.org/2024/07/08/nx-s1-5029508/whats-behind-the-elections-results-in-france-and-the-u-k>.

²⁰⁷ See Kowitt, *supra* note 179.

²⁰⁸ See DeNeen L. Brown, *The Case for Leaving America to Escape Racism*, WASH. POST (Sept. 26, 2022), <https://www.washingtonpost.com/magazine/2022/09/26/case-leaving-america-escape-racism/>.

²⁰⁹ See Priscilla Lalissee-Jespersen, *Black Americans Left a Lasting Mark on Paris. Modern Creatives are Walking in Their Footsteps Today*, WASH. POST (Feb. 23, 2021), <https://www.washingtonpost.com/travel/2021/02/23/black-history-paris/>.

²¹⁰ *These Countries Have the Most Educated Populations*, *supra* note 191.

²¹¹ *Least Racist Countries 2024*, *supra* note 192.

countries, the Netherlands and France; ranking 10th and 11th in education²¹² and 3rd and 15th least racist countries,²¹³ respectively.

IV. RECOMMENDATIONS

If the following recommendations were to be achieved without the loss of life that occurred during the Civil Rights Movement, they could help to foster an environment that *might* temper Blaxit.

A. Citizen and NGO Action

i. Solidarity Dividend

Americans could begin to unite to address plutocracy, the true plague on society.²¹⁴ The “zero-sum game” mentality of White Americans has allowed the Inequality Era because of their focus on “Black and brown people, and new immigrants,”²¹⁵ propagated by the wealthy’s political control; the government has been allowed to resemble more of a plutocracy than a democracy.²¹⁶ Identifying this issue as a solidarity dividend²¹⁷ would allow for all Americans of

²¹² *These Countries Have the Most Educated Populations*, *supra* note 191.

²¹³ *Least Racist Countries 2024*, *supra* note 192.

²¹⁴ A plutocracy occurs where a country or society is governed by the wealthy.

²¹⁵ *See* MCGHEE, *supra* note 4, at 4-6.

²¹⁶ Lioz, *supra* note 15, at 1236.

²¹⁷ “Solidarity dividend refers to the gains that accrue when people come together to work for the benefit of all involved,” *see* HEATHER MCGHEE, STUDY GUIDE: THE SUM OF US 49 (SuperSummary 2021).

all races in the middle- and lower-classes to collaborate on the real solution, the end of plutocracy; his would be a movement away from the oppression psychology driving the need to defend a perceived superiority that is a fallacy of the non-elite.²¹⁸

ii. Domestication of International Law

Due to the recent SCOTUS decisions and the Court's continued use of the rational basis analysis in justifying the allowance of policies that have disparate and detrimental impacts on African Americans, other legal means must be sought for recourse. The only remaining avenue to evince attention to the inequities is international law.

The International Convention on the Elimination of All Forms of Racial Discrimination (CERD) is a treaty that was drafted by the United Nations (U.N.) in 1965.²¹⁹ Although the U.S. signed and ratified the CERD, the U.S. avoids its obligation to the treaty by failing to create laws enacting the CERD.²²⁰ This failure to enact the CERD allows SCOTUS to continue to ignore the

²¹⁸ "Research from Nobel Prize-winning economist Gary Becker suggests, the tendency for non-elite white individuals to internalize this superiority means they will become defensive if it is threatened," Swan, *supra* note 152.

²¹⁹ International Convention on the Elimination of All Forms of Racial Discrimination, Dec. 21, 1965, 660 U.N.T.S. 195.

²²⁰ Though CERD was ratified, Congress made it non-self-executing, meaning Congress must enact statutes to make them controlling law in judicial proceedings. In *Foster v. Neilson*, 27 U.S. 253, 314 (1829), SCOTUS described the dynamic of a ratified non-self-executing as follows:

impacts of government policies which the CERD strictly prohibits. The U.N. states in its introductory note to the CERD that

Article 1 describes the elements of the violation termed “racial discrimination”. The term “purpose or effect” in article 1 refers to the nature of the violation not being dependent on whether the action was taken with discriminatory purpose or rather, unintentionally created a discriminatory impact or effect. Some commentators refer to the distinction between direct and indirect discrimination or between actions that are discriminatory on their face or facially neutral but with disparate negative impact on a protected group. CERD has explained that to determine whether an action is discriminatory it must have “an unjustifiable disparate *impact* upon a group distinguished by race, colour, descent, or national or ethnic origin” . . . (emphasis added)²²¹

Implementation of the following recommendations for incorporating international law, coupled with the attention already being garnered by American migration, including Blaxit, will amplify global attention to the disparate impacts endured by African Americans in the U.S. and draw a response from the international community that can affect change within the country.

1. Incorporate International Law Language

Non-Government Organizations (NGO) should include language in their informationals, briefs, and arguments related to the CERD and any other relevant international treaties. When referring to the treaty, language can include this suggestion from Professor Ian M. Kysel in *Domesticating Human Rights Norms in the United States: Considering the Role and Obligations of the Federal Government as Litigant*:

the ‘[U.S.] Constitution declares a treaty to be the law of the land,’ when ‘either of the parties [to a treaty] engages to perform a particular act, the treaty addresses itself to the political, not the judicial department; and the legislature must execute the [treaty] before it can become a rule for the Court.’

Kysel, *infra* note 234, at 1036.

²²¹ Introductory Note to the International Convention on the Elimination of All Forms of Racial Discrimination (Dec. 21, 1965), <https://legal.un.org/avl/ha/cerd/cerd.html>.

While, because it is non-self-executing, this ratified treaty does not provide a rule of decision for this court, it does constitute an international law obligation of the United States of America.²²² The Constitution and laws of the United States which apply to the instant case should therefore be interpreted in a manner consistent with this treaty, in order to avoid putting the United States in breach of those obligations.²²³

2. Treaty Reviews

The U.S. has treaty reviews with the respective U.N. committees every two to four years.²²⁴ Here, NGOs can be most effective at receiving international spotlight concerns.²²⁵

There are several actions NGOs can take surrounding the U.S.' treaty reviews. First, NGOs should attend civil society consultations with the U.S. government before drafting their official reports for review by a treaty body.²²⁶ "Advocates can draw attention to and urge action on specific issues."²²⁷

Second, NGOs should submit shadow reports to treaty committees.²²⁸

²²² Kysel, *infra* note 234, at n. 145.

²²³ Kysel, *infra* note 234, at n. 146.

²²⁴ Eric Tars, *Who Knows What Lurks in the Hearts of Human Rights Violators - The Shadow (Reporter) Knows - Human Rights Shadow Reporting: A Strategic Tool for Domestic Justice*, 42 CLEARINGHOUSE REV. 475, 476 (2009).

²²⁵ *Id.* at 477.

²²⁶ Risa E. Kaufman & Jonn Kamuf Ward, *Using Human Rights Mechanisms of the United Nations to Advance Economic Justice*, 45 CLEARINGHOUSE REV. 259, 264 (2011).

²²⁷ *Id.*

²²⁸ Tars, *supra* note 224, at 477-78.

Shadow reports, a kind of amicus brief for the committees, give the committees additional information on which to question the U.S. during the hearing and suggest language for Concluding Observations.

The treaty committees convene formal meetings with organizations before holding the U.S.’ review.²²⁹ NGOs should be vigilant in the course of their work to identify victims with compelling stories to testify at the hearings.²³⁰

NGOs should use the Concluding Observations issued by the treaty committees widely as a third step to the domestication of international law. There would be great benefit from NGOs presenting the Concluding Observations to “judges, local politicians, agency officials”²³¹ and the public at large in their advocacy.²³² Additionally, they should request local hearings from officials “to consider the concluding observations in light of local policy and practice.”²³³

B. Executive Action

i. Executive Orders

The Executive must revitalize Executive Order (EO) 13107. It affirmed that

[I]t shall be the policy and practice of the Government of the United States, being committed to the protection and promotion of human rights and fundamental

²²⁹ Tars, *supra* note 224, at 477-78.

²³⁰ Tars, *supra* note 224, at 477-78.

²³¹ Tars, *supra* note 224, at 477-78.

²³² Tars, *supra* note 224, at 477-78.; Kysel, *infra* note 234, at 1045; *see also* Kaufman, *supra* note 226, at 262.

²³³ Kysel, *infra* note 234, at 1045; *see also* Kaufman, *supra* note 226, at 262.

freedoms, fully to implement its obligations under the international human rights treaties to which it is a party, including the ICCPR, the CAT, and the CERD.²³⁴

Most importantly for present purposes, it directed “all executive departments and agencies” to “maintain a current awareness of United States international human rights obligations that are relevant to their functions and, further, to, “perform such functions so as to respect and implement those obligations fully. EO 13107 also created an Interagency Working Group with responsibility, among other things, to “develop effective mechanisms to ensure that legislation proposed by the Administration is reviewed for conformity with international human rights obligations.”²³⁵

This follows the Charming Betsy²³⁶ cannon of jurisprudence, where SCOTUS stated that “an act of Congress ought never to be construed to violate the law of nations if any other possible constructions remain.” SCOTUS has applied this principle relatedly ever since.²³⁷ The *enhanced* Charming Betsy interpretive enforcement approach, “imposes a domestic law obligation – arguably derived from the U.S. Constitution²³⁸ – to avoid breach of all U.S. international law obligations.”²³⁹

²³⁴ Exec. Order No. 13107, 63 Fed. Reg. at §1(a); Ian M. Kysel, *Domesticating Human Rights Norms in the United States: Considering the Role and Obligations of the Federal Government as Litigant*, 46 GEO. J. INT’L. 1009, 1063 (2015).

²³⁵ Kysel, *supra* note 234.

²³⁶ *Murray v. Schooner Charming Betsy*, 2 Cranch 64, 118 (1804).

²³⁷ Kysel, *supra* note 234, at 1040.

²³⁸ Kysel, *supra* note 234, at n.110.

²³⁹ Kysel, *supra* note 234, at 1043.

C. Judicial Action

i. Overturn Rational Basis Analysis

The rational basis analysis has been one of the most detrimental of SCOTUS' cannons to equal rights in America. Ignoring the disparate impact of governmental policies to racial groups solely on the basis of the government's debatable purpose is an inexcusable aberration of the Court's duty. SCOTUS must overturn stare decisis and immediately halt the use of the rational basis analysis in any Equal Protections litigation. Strict scrutiny should apply whenever there is an *impacted* racial class. Thus, as it relates to affirmative action, the *impact* on racial classes with the loss of race-based admission would be a compelling government interest.

D. Legislative Action

i. Reparations

“‘Stolen wealth’ . . . is defined. . . as economic theft from slavery, Jim Crow racial terrorism, separate and unequal segregation, redlined housing, or mass incarceration from over-policing. This definition of harm as stolen wealth is objectively measured by the racial wealth gap data.”²⁴⁰ As discrimination took on many forms, reparations can take on different forms as well such as: scholarships, housing grants, and cash payments²⁴¹ from various levels of

²⁴⁰ Sarah Moore Johnson & Raymond C. Odom, *The Forgotten 40 Acres: How Real Property, Probate & Tax Laws Contributed to the Racial Wealth Gap and How Tax Policy Could Repair It*, 57 REAL PROP. TR. & EST. L. J. 1 (2022).

²⁴¹ Char Adams, *Evanston is the First U.S. City to Issue Slavery Reparations. Experts Say it's a Noble Start.*, NBC NEWS (Mar. 26, 2021) <https://www.nbcnews.com/news/nbcblk/evanston-s-reparations-plan-noble-start-complicated-process-experts-say-n1262096>.

government. State and local governments, as well as corporations have an obligation to rectify the wealth gap, as it was not only the federal government that participated in slavery and discrimination.

The U.S. could use international law to support payment of reparations to African American descendants of slaves under CERD.²⁴² Article 6 of CERD states

States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as *the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination* (emphasis added).²⁴³

Additionally, as recently as September 2022, the United Nations' Committee on the Elimination of Racial Discrimination (the U.N. Committee) admonished the U.S. for its "lingering legacies of colonialism and slavery continu[ing] to fuel racism and racial discrimination in the [Country], undermining the full enjoyment of all human rights and fundamental freedoms by all individuals and communities."²⁴⁴ The U.N. Committee suggested the United States Congress

Pass [House Bill 40 (H.R. 40)] on the Commission to Study and Develop Reparation Proposals for African Americans, the Committee recommends that the State party take the appropriate measures towards the establishment of such a commission to study and develop reparation proposals for people of African

²⁴² International Convention on the Elimination of All Forms of Racial Discrimination, *supra* note 219.

²⁴³ International Convention on the Elimination of All Forms of Racial Discrimination, *supra* note 219.

²⁴⁴ U.N. Comm. On the Elimination of Racial Discrimination, Concluding observations on the combined tenth to twelfth reports of the United States of America*, U.N. Doc. CERD/C/USA/CO/10-12, p. 14, #55 (2022)

descent, including issuing an executive order, in close consultation with relevant stakeholders, in particular people of African descent.²⁴⁵

H.R. 40 was first introduced in the House in 1989 and again on January 3, 2019, but has still yet to come to the floor for a vote. The bill

Establishes the Commission to Study and Develop Reparation Proposals for African-Americans. The commission shall examine slavery and discrimination in the colonies and the United States from 1619 to the present and recommend appropriate remedies. Among other requirements, the commission shall identify (1) the role of the federal and state governments in supporting the institution of slavery, (2) forms of discrimination in the public and private sectors against freed slaves and their descendants, and (3) lingering negative effects of slavery on living African-Americans and society.²⁴⁶

And there still has been no executive action on reparations either despite the U.N.'s recommendations.²⁴⁷ The U.S. has struggled to address former enslaved peoples' compensation since emancipation, over 150 years ago, from the reneged Field Order No. 15's "40 acres and a mule" in 1865 to the stalled H.R. 40 first introduced by Representative John Conyers in 1989 and

²⁴⁵ *Id.*, pp. 14 – 15, #56.

²⁴⁶ H.R.40, 116th Cong. (2019) - Commission to Study and Develop Reparation Proposals for African-Americans Act.

²⁴⁷ See Heath Brown, *President Biden, the Time for National Reparations is Now*, HILL (June 23, 2024) <https://thehill.com/opinion/white-house/4733623-reparations-slavery/>; U.N. Comm. On the Elimination of Racial Discrimination, Concluding observations on the combined tenth to twelfth reports of the United States of America*, *supra* note 244, pp. 14 – 15, #56.

the most recent S. 1083; although reparations have been paid to Native Americans and Japanese-Americans in that time.²⁴⁸

The reparations process requires three steps referred to by “the acronym ARC: acknowledgment, redress, and closure. Acknowledgement requires the receipt of a formal apology and commitment to the pursuit of redress by perpetrators and beneficiaries.”²⁴⁹ Between the years 2006 and 2007, Congress began the ARC process by acknowledging and apologizing for slavery.²⁵⁰ However, the Senate in its apology specifically stated that the apology was not

²⁴⁸ Roberts, *infra* note 252 (issuing Field Order No. 15, Union General William Tecumseh Sherman confiscated land from Confederate States and awarded it to freedmen, “40 acres and mule”; however, when President Abraham Lincoln was killed, Andrew Johnson, his successor reversed the field order) (introducing S.1083, Senator Cory Booker’s legislation proposed establishing the Commission to Study and Develop Reparation Proposals for African Americans to “address the fundamental injustice, cruelty, brutality, and inhumanity of slavery in the United States and the 13 American colonies between 1619 and 1865”); Brown, *supra* note 247; Adeel Hassan & Jack Healy, *America Has Tried Reparations Before. Here is How it Went.*, N.Y. TIMES (June 19, 2019).

²⁴⁹ Olivia J. Reneau, *Justice Delayed: An Analysis of Local Proposals for Black Reparations*, 10 RSF: RUSSELL SAGE FOUND. J. OF THE SOC. SCI. 3 (2023).

²⁵⁰ *Into America with Trymaine Lee, Uncounted Millions: The Power of Reparations*, MSNBC (Feb. 8, 2024) (downloaded using Spotify).

grounds for reparation;²⁵¹ thus, preventing them from completing even the first step of ARC, acknowledgment, because of the lack of commitment to redress.

In light of the federal government's inaction in the face of a growing wealth gap, several states and municipalities have begun reparation inquiries to restore African Americans' stolen wealth, including New York, California, Missouri, Amherst, Massachusetts, Providence, Rhode Island, Asheville, North Carolina, and, Iowa City, Iowa.²⁵² However, Evanston, Illinois, is the first city to issue slavery reparations.²⁵³

1. Present Efforts

With a wealth disparity of \$46,000 between their Black and White residents, a life expectancy gap of thirteen(13) years, and Black homeownership rates at its lowest point since the 1960s, ²⁵⁴ in the summer of 2019, Resolution 58-R-19 was adopted by the City of Evanston,

²⁵¹ *Id.*

²⁵² Brown, *supra* note 247; Candice Williams, *Nikole Hannah-Jones Makes a Case for Reparations with 'The 1619 Project' Series*, NBCNEWS (Jan. 26, 2023), <https://www.nbcnews.com/news/nbcblk/-1619-project-series-makes-case-reparations-rcna67495>; Keeshea Turner Roberts, *Reparations Can Mitigate Wealth Inequity*, 48 HUM. RTS. 20, 21 (2023); Associated Press, *infra* note 258; Paul Solman & Ryan Connelly Holmes, *The Impact of the Nation's First Cash Reparations Program for Black Residents*, PBS NEWS (June 22, 2023) <https://www.pbs.org/newshour/show/the-impact-of-the-nations-first-cash-reparations-program-for-black-residents>.

²⁵³ Adams, *supra* note 241.

²⁵⁴ *The Big Payback* (PBS television broadcast Jan. 16, 2023).

the Commitment to End Structural Racism and Achieve Racial Equity.²⁵⁵ It mandated “the City Council [take] action to address the historical wealth and opportunity gaps that African Americans/Black residents of Evanston experienced. The Council identified five categories that should be the focus on local reparation funding: (1) housing, (2) economic development, (3) education, (4) finances, and (5) history/culture.”²⁵⁶

In November 2019, Resolution 126-R-19 was adopted by the City of Evanston which established the City of Evanston Reparation Fund and the Reparations Committee.²⁵⁷ The resolution would use the revenue from 3% taxes from the sale of recreational marijuana and donations to source \$10 million devoted to reparations over 10 years.²⁵⁸ The Reparations

²⁵⁵ Roberts, *supra* note 252.

²⁵⁶ Roberts, *supra* note 252.

²⁵⁷ Stephanie Kulke, *Overwhelming Support for Evanston Reparations Program, Survey Finds*, NW. NOW (Oct. 24, 2023) <https://news.northwestern.edu/stories/2023/10/reparations-survey-conducted-by-northwestern-center-reveals-overwhelming-community-support-for-evanston-program-across-every-ethnic-and-racial-demographic-group/>.

²⁵⁸ Robinson, Jr., Morris & Jenny Thompson, *Evanston Policies and Practices Directly Affecting the African American Community, 1900-1960 (and Present)*, pg. 65 (2020) <https://www.cityofevanston.org/home/showpublisheddocument?id=59759>; Associated Press, *Evanston Illinois, Becomes First U.S. City to Pay Reparations to Black Residents*, NBC NEWS (Mar. 23, 2021), <https://www.nbcnews.com/news/us-news/evanston-illinois-becomes-first-u-s-city-pay-reparations-blacks-n1261791>; Memorandum from Kimberly Richardson, Interim Assistant City Manager, City of Evanston, to Honorable Mayor and Members of the City Council, at 3 (Mar.

Committee made clear that its mission was about justice of the reparative nature and *not* charity.²⁵⁹

The Reparations Committee engaged the community to develop the reparation plan and by March 2021, Resolution 37-R-21 was adopted, establishing the Restorative Housing Program, the initial reparations program out of the Reparations Committee by a city council vote of 8-to-1.²⁶⁰

“Qualifying residents must either have lived in or been a direct descendant of a Black person who lived in Evanston between 1919 to 1969 and who suffered discrimination in housing because of city ordinances, policies or practices.”²⁶¹ The plan’s original execution “g[ave] 16 residents \$25,000 each, for home repairs[,] property costs[,]”²⁶² and mortgage assistance; there were no direct payments likely because they are often “declared to be an unearned and unfair advantage.”²⁶³ The first of the reparations plan to come out of the Reparations Committee, the

22,

2021),

<https://cityofevanston.civicweb.net/document/50624/Adoption%20of%20Resolution%2037-R-27,%20Authorizing%20the.pdf?handle=E11C7B73E1B6470DA42362AB80A50C46>.

²⁵⁹ *The Big Payback*, *supra* note 254.

²⁶⁰ Kulke, *supra* note 257; *The Big Payback*, *supra* note 254.

²⁶¹ Associated Press, *supra* note 258.

²⁶² Adams, *supra* note 241.

²⁶³ Sarah Moore Johnson & Raymond C. Odom, *The Forgotten 40 Acres: How Real Property, Probate & Tax Laws Contributed to the Racial Wealth Gap and How Tax Policy Could Repair It*, 57 REAL PROP. TR. & EST. L. J. 1 (2022).

Restorative Housing Program, targeted housing because an impact study showed that generations of African Americans were harmed with “diminished economic opportunities, health disparities, over-policing, and reduced access to educational resources” due to Evanston’s prior racist housing practices.²⁶⁴ Lifelong, Black residents of Evanston were forced to relocate due to increased property taxes and values, combined with a lack of generational wealth.²⁶⁵

The City of Evanston later amended its program to allow for the direct payment of the \$25,000 to its qualified residents and allocated real estate transfer taxes to the program for additional funding.²⁶⁶ In the two years following the program’s implementation, Evanston disbursed \$1,092,924 of housing reparations.²⁶⁷ As of June 2024, over 200 Evanston residents received a distribution from the program.²⁶⁸

In preparation for implementing a race-based program in America where “reverse racism” is the counter-reality, Evanston gathered evidence “specifically implicating actions of the city with respect to discrimination.”²⁶⁹ The City states

Reparations, and any process for restorative relief, must connect between the harm imposed and the City. The strongest case for reparations by the City of Evanston is in the area of housing, where there is sufficient evidence showing the City’s part in housing discrimination as a result of early City zoning

²⁶⁴ Roberts, *supra* note 252.

²⁶⁵ Solman, *supra* note 252.

²⁶⁶ Solman, *supra* note 252.

²⁶⁷ Kulke, *supra* note 257.

²⁶⁸ CBS News, *Chicago suburb sued for paying reparations to Black residents*, YOUTUBE (June 7, 2024) <https://www.youtube.com/watch?v=d0qqvk0xxaM>.

²⁶⁹ *The Big Payback*, *supra* note 254.

ordinances in place between 1919 and 1969, when the City banned housing discrimination.²⁷⁰

Evanston maintains a working document on its webpage titled the “Evanston Policies and Practices Directly Affecting the African American Community City.”²⁷¹ The most recent version, published in November 2021, is an 84-page chronicle of all the documented harms the City of Evanston perpetrated against its African American population. The working document includes historical original documents, photos, article clippings, and flyers.²⁷² It recounts the injustices perpetrated against Evanstonian Blacks in the areas of employment, cultural and social representations, services - public and private, schools, housing and zoning policies, policing, and lawsuits.²⁷³ The working document also shared stories of the people’s resistance to the tyranny,²⁷⁴ possibly in an effort to show that Evanstonians were never subjugated peoples, complacent or complicit in their circumstances. The City believes this history will justify the reparations program and help it withstand any 14th Amendment, Equal Protection Clause challenges.²⁷⁵

²⁷⁰ City of Evanston, Evanston Local Reparations
<https://www.cityofevanston.org/government/city-council/reparations> (last visited July 29, 2024).

²⁷¹ Morris Robinson, Jr. & Jenny Thompson, Evanston Policies and Practices Directly Affecting the African American Community, 1900-1960 (2021)
<https://www.cityofevanston.org/home/showpublisheddocument/67191/637715545144570000>

²⁷² *Id.*

²⁷³ *Id.*

²⁷⁴ *Id.* at 6.

²⁷⁵ *The Big Payback*, *supra* note 254.

The Evanston framework of connecting the harm to the reparations is one which the federal government and other state and local governments can build upon.

2. Possible Outcomes: A Case Study

In the podcast, *Into America with Trymaine Lee*,²⁷⁶ reparations paid for slavery were examined. Unfortunately, these reparations were paid to slaveowners for the loss of their slaves in D.C.; however, an African American slaveowner, Gabriel Coakley, used the law to buy his family's freedom. He "owned" 8 of them: his sister, wife, and six children. He bought them and maintained "ownership" of them, so to prevent them from being expelled from the state, tearing his family apart. At the time, states were expelling freed African Americans from their states, so not to give the still enslaved African Americans any delusions of "freedom grandeur," which was known as a disease called drapetomania.²⁷⁷ Mr. Coakley, forced to "own" his family to keep them together, petitioned for his slaveowner reparations and received payment in the amount of \$1,489.20. Those reparations, that seed money, led his lineage to remarkable things.

The heirs of Gabriel Coakley are Presidential Medal of Freedom recipients (helping others), founders of Historical Black Colleges and Universities (empowering others), and National Aeronautics and Space Administration (NASA) aerospace engineers (advancing others). They are Harvard graduates, priests, doctors, professors, and "firsts" in their professions.

²⁷⁶ *Into America with Trymaine Lee*, *supra* note 250.

²⁷⁷ Samuel A. Cartwright, *Diseases and Peculiarities of the Negro Race*, XI DE BOW'S R. S. & W. STATES (1851), <https://www.pbs.org/wgbh/aia/part4/4h3106t.html> (last visited May 11, 2024) (describing drapetomania disease as a means to explain why slaves were fleeing plantations because they had to be ill, it was the only way to reconcile why the slaves would be fleeing their happy lives with their great conditions).

This is not to say that everyone that is to receive reparations would be this successful. However, the U.S. is a nation of freewill. It is not and it should not be for anyone to attach paternalistic ideations of how those who receive reparations should have to use their funds, nor should anyone who is entitled by lineage be denied because they are financially in good standing.

3. Potential Impact on GDP

Citi GPS estimates that within 5 years the U.S. GDP could grow an additional \$5 trillion if the racial wealth gap was closed.²⁷⁸ Professor William Darity Jr. (Duke University) and his wife Kirsten Mullen estimate it would take “\$800,000 per black household” “to eliminate the gap in mean net worth between black and white households.”²⁷⁹ This equates to a little less than \$12 trillion.²⁸⁰ This figure at first blush may be jarring; however, the continued wealth gap depresses the U.S. economy by as much as \$1.5 trillion a year but by no less \$1 trillion.²⁸¹ With the

²⁷⁸ Citi GPS, *supra* note 12.

²⁷⁹ Keith Griffith, *Daily Mail: Economist Proposes Slavery Reparations of up to \$12TRILLION – Equivalent to \$800,000 per Black Household or More than Half of the American GDP*, SAMUEL DUBOIS COOK CTR. ON SOC. EQUITY DUKE UNIV. (Aug. 13, 2020) <https://socialequity.duke.edu/news/economist-proposes-slavery-reparations-of-up-to-12trillion-equivalent-to-800000-per-black-household-or-more-than-half-of-the-american-gdp/>.

²⁸⁰ *Id.*

²⁸¹ *The Economic Impact of Closing the Racial Wealth Gap*, MCKINSEY & CO. (Aug. 2019) <https://www.mckinsey.com/~/media/mckinsey/industries/public%20and%20social%20sector/our%20insights/the%20economic%20impact%20of%20closing%20the%20racial%20wealth%20gap/the-economic-impact-of-closing-the-racial-wealth-gap-final.pdf>.

elimination of the wealth gap, the economic depression would be corrected, and the U.S. GDP could grow by 4 to 6 percent in less than a decade.²⁸²

ii. Treaty Implementation

Congress should create and pass a comprehensive set of laws²⁸³ to implement CERD. Current civil rights statutes can be modified with jurisdictional provisions including “reference to relevant non-self-executing treaties or treaty provisions.”²⁸⁴ This may be an easier action for both the House of Representatives and Senate to agree on.

iii. Legislation to Ban Dark Money

“I am not bound to win, but I am bound to be true,” is a quotation often attributed erroneously to Abraham Lincoln, there is no evidence that he ever said it, but there is no evidence that he didn’t say it either.²⁸⁵ Regardless of whether Lincoln said it or not, it is a mantra that our political representatives should, but are not following. For if they were following it, their priority would be to their constituents, not their donor class which provides campaign financing to ensure the representatives “win.”²⁸⁶

Per Daniel Weiner,

²⁸² *Id.*

²⁸³ U.S. CONST. art. I, § 8, cl. 18.

²⁸⁴ *Id.*; Kysel, *supra* note 234, at 1067.

²⁸⁵ John J. Pitney Jr., *Honest, Mr. President: Abe Never Said It*, NPR (Mar. 25, 2010), <https://www.npr.org/2010/03/25/125169095/honest-mr-president-abe-never-said-it>.

²⁸⁶ Kromm, *supra* note 109.

This is perhaps the most troubling result of *Citizens United*: in a time of historic wealth inequality, the decision has helped reinforce the growing sense that our democracy primarily serves the interests of the wealthy few, and that democratic participation for the vast majority of citizens is of relatively little value.²⁸⁷

The people are no longer the priority of Members of Congress, donors are. The interest of donors is not in alignment with the needs of average Americans. Thus, to return our democracy to a democracy from its present plutocracy, Congress must pass legislation banning dark money and return transparency to campaign finance.

V. CONCLUSION

America has a history of attacking African Americans, to its own detriment. Not only have these horrible atrocities impacted our economy, but now America is facing a new migration by African Americans: Blaxit. The loss of the knowledge, skills, experience, and consumption that African Americans contribute to America will now benefit other countries, further weakening the U.S. positioning on the world stage.

What has been, does not have to continue to be. Where the domestic courts are foreclosed and have been turned against improvements for African Americans, the U.S. as a collective can choose to domesticate international law to rectify past and present injustices. White Americans need to shift their belief that this is a zero-sum game and come to an understanding that when one group of Americans prosper, all Americans prosper. A crucial aspect of African Americans prospering is the elimination of the wealth gap between White and African Americans. By

²⁸⁷ Daniel I. Weiner, *Citizens United Five Years Later*, BRENNAN CTR. FOR JUST. (Jan. 15, 2015), <https://www.brennancenter.org/our-work/research-reports/citizens-united-five-years-later>.

utilizing the U.S.’ CERD obligations to implement reparations to African Americans, the wealth gap can be closed.

However, the process of reparations includes acknowledgment, redress, and closure.²⁸⁸ This acknowledgment cannot be qualified, as it was by Senator Mitch McConnell in the Senate’s apology for slavery; it must be complete with a “commitment to the pursuit of redress by perpetrators and beneficiaries.”²⁸⁹

All Americans need to understand that reparations take different forms: scholarships, housing grants and cash payments; though it is undisputed that cash is the most effective means to growing wealth.²⁹⁰ If there were a shift in the zero-sum mentality, if Americans were educated on the benefits of a closed wealth gap which includes an approximately 6 percent increase in the GDP in less than a decade, the approval of reparation program would increase.²⁹¹ Unfortunately, our elected representatives in Congress refuse to vote on H.R. 40 to research reparations, to educate themselves and their constituents on the benefits of a closed wealth gap. Congressional members are too focused on pleasing donors whose priorities do not align with most Americans while they fan the fire of “the others” taking away U.S. jobs and milking U.S. benefits, consistent with their “anti-woke” culture war. Dark money has turned our republic into a

²⁸⁸ Reneau, *supra* note 249.

²⁸⁹ Reneau, *supra* note 249.

²⁹⁰ Jamie Block, *The Secret to Building Wealth? Know How Your Cash is Flowing*, MERCER GLOBAL ADVISORS, <https://www.merceradvisors.com/insights/personal-finance/mine-your-cash-flow-to-build-your-wealth/> (last visited Mar. 24, 2025); Adams, *supra* note 241.

²⁹¹ *The Economic Impact of Closing the Racial Wealth Gap*, *supra* note 281.

plutocracy and between frustration of lack of representation in the legislature, the reversal of laws that were meant to protect African Americans being used to harm African Americans by the judiciary, and inaction by the executive, African Americans are blaxiting the U.S. and will continue to do so until the wrongs are made right.