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Submitted to the U.S. Senate Small Business Committee
In Connection with the May 6, 2024 Hearing Entitled
"Promoting Opportunity: The Need for Targeted Federal Business Programs to Address Ongoing Racial Discrimination"

I. **Introduction**

Thank you for holding this important hearing on discrimination against small business owners of color in federal contracting.

As the Supreme Court explained four decades ago, "[i]t is beyond dispute that any public entity, state or federal, has a compelling interest in assuring that public dollars, drawn from the tax contributions of all citizens, do not serve to finance the evil of private prejudice."[1] Yet nearly forty years later, less than 2 percent of federal contracting dollars go to Black-owned businesses,[2] even though 9 percent of small businesses are owned by Black people.[3] As the witnesses at the hearing testified, these racial disparities in federal contracting do not result from a lack of qualified businesses. Rather, they are the product of pervasive discrimination against Black and other business owners of color.

For generations, the federal government both actively and passively participated in this discrimination by, among other things, encouraging racial discrimination in housing and lending; denying Black people equal access to government benefits; perpetuating racial wealth gaps through federal tax policy; and failing to remedy public and private discrimination through adequate civil rights enforcement. As a result, Black business owners face persistent barriers in access to financial and social capital that prevent them from starting and sustaining their businesses and hinder their ability to compete on a level playing field in their respective markets.

Racial discrimination that persists and is not fully remediated hurts the U.S. economy and threatens the stability of our multiracial and multiethnic democracy. To prosper as a nation, we must continue to invest in remedial initiatives like the U.S. Small Business Administration's 8(a) program to ensure that taxpayer dollars ameliorate, rather than exacerbate, racial inequality.

Founded in 1940 by Thurgood Marshall, LDF is the nation's oldest civil rights law organization.[4] LDF was launched at a time when the United States' aspirations for equality and due process of law were stifled by widespread, state-sponsored racial inequality. For over eight decades, LDF has been at the forefront of shaping the legal meaning of the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution, most notably through its watershed victory in *Brown v. Board of Education*. LDF has also always endeavored to ensure Black people's equal access to economic opportunity. To that end, LDF has litigated numerous economic justice cases[5] and filed *amicus* briefs supporting remedial federal contracting

[1] *City of Richmond v. J. A. Croson Co.*, 488 U.S. 469, 492 (1989).
[2] Press Release 24-41, U.S. Small Business Admin., Biden-Harris Administration Awards Record-Breaking $178 Billion in Federal Procurement Opportunities to Small Businesses (Apr. 29, 2024), https://www.sba.gov/article/2024/04/29/biden-harris-administration-awards-record-breaking-178-billion-federal-procurement-opportunities.
[3] U.S. SMALL BUSINESS ADMIN. OFF. OF ADVOCACY, FREQUENTLY ASKED QUESTIONS (Mar. 2023), https://advocacy.sba.gov/wp-content/uploads/2023/03/Frequently-Asked-Questions-About-Small-Business-March-2023-508c.pdf.
[4] LDF has been fully separate from the National Association for the Advancement of Colored People (NAACP) since 1957.
[5] *See, e.g.*, *Lewis v. Chicago,* 560 U.S. 205 (2010); *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971); *Sniadach v. Fam. Fin. Corp.*, 395 U.S. 337 (1969); *Mandala v. NTT Data, Inc.,* 88 F.4th 353 (2d Cir. 2023); *Pickett v. City pf Cleveland,* No.: 1:19 CV 2911 (N.D. Ohio); *Taylor v. City of Detroit*, 368 F.Supp.2d 676 (E.D. Mich. 2005); *Hall v. Coburn Corp. of Am.*, 26 N.Y.2d 396 (N.Y. 1970); *Russell v. Coburn Corp. of Am.*, 298 N.Y.S.2d 893 (N.Y. App. Div. 1969); *Cline v. Credit Bureau of Santa Clara Valley*, 1 Cal.3d 908 (Cal. 1970).

programs.[6] LDF's mission has always been transformative: to achieve racial justice, equality, and an inclusive society.

II. **The Federal Government Has Engaged, and Continues to Engage, in Active and Passive Discrimination Against Black People.**

For decades, the federal government has engaged in active and passive discrimination against Black people that continues to limit their ability to start and sustain their businesses. These actions, both past and present, include direct encouragement of housing and lending discrimination, denial of equal access to government benefits, tax policies that perpetuate the effects of these discriminatory policies, and inadequate civil rights enforcement that permits racial discrimination to continue. While the federal government may have ended some of its egregious conduct, it has never taken sufficient action to remedy the substantial harm that reverberates to this day and continues to limit the opportunities of Black people throughout the country.

A. *Housing Discrimination*

Over the course of multiple decades, the federal government played a direct role in encouraging racial discrimination in housing and mortgage lending, intentionally devaluing Black-owned homes and discouraging lending in predominantly Black neighborhoods. At the same time, during the New Deal, federal programs dramatically expanded access to financial services, particularly through the rapid dissemination of low-cost credit to homeowners.[7]

The federal government's discriminatory housing policies, known as redlining, denied people of color—especially Black people—access to mortgage refinancing and federal underwriting opportunities.[8] In the 1930s, the Federal Home Owners Loan Corporation (HOLC) created maps to assess the risk of mortgage refinancing and set new standards for federal underwriting.[9] These maps assessed risk, in part, based on a neighborhood's racial composition, designating predominantly Black neighborhoods and other neighborhoods of color as hazardous.[10] The Federal Housing Administration, which covered the insurance of over one-third

[6] Br. of NAACP Legal Defense & Educational Fund, Inc., et al., as *Amicus Curiae, Rothe Development, Inc. v. U.S. Dep't of Defense & U.S. Small Business Admin.,* No. 15-5176 (Jan. 28, 2016 D.D.C.); Br. of NAACP Legal Defense & Educational Fund, Inc., as *Amicus Curiae, Dynalantic Corp. v. U.S. Dep't of Defense, et al.,* No. 95-2301 (Jan. 19, 2005 D.D.C.), 2005WL3803518;

[7] Written Testimony of Janai Nelson, President and Director-Counsel, NAACP Legal Defense and Educational Fund, Inc., Before the U.S. Senate Committee on Banking, Housing & Urb. Affairs, *Fairness in Financial Services: Racism and Discrimination in Banking* (Dec. 1, 2022); Mehrsa Baradaran, *Jim Crow Credit,* 9 UC IRVINE L. REV. 887, 888-89 (2019), *available at* https://scholarship.law.uci.edu/ucilr/vol9/iss4/4.

[8] *Id.*

[9] Danyelle Solomon, et al., *Systematic Inequality: Displacement, Exclusion, and Segregation How America's Housing System Undermines Wealth Building in Communities of Color*, CTR. FOR AM. PROGRESS (Aug. 2019), https://www.americanprogress.org/wp-content/uploads/sites/2/2019/08/StructuralRacismHousing.pdf; Testimony of Richard Rothstein, Distinguished Fellow of the Economic Policy Institute and Senior Fellow, Emeritus, NAACP Legal Defense and Educational Fund, Inc. on behalf of himself and Sherrilyn Ifill President and Director-Counsel NAACP Legal Defense and Educational Fund, Inc. Before the U.S. Senate Committee on Banking, Housing & Urb. Affairs, *Separate and Unequal: The Legacy of Racial Discrimination in Housing* 6 (Apr. 13, 2021), https://www.naacpldf.org/wp-content/uploads/LDF-Testimony-Senate-Banking-Racial-Discrimination-in-Housing_FINAL.pdf.

[10] BRUCE MITCHELL & JUAN FRANCO, NAT'L CMTY. REINVESTMENT COAL., HOLC "REDLINING" MAPS: THE PERSISTENT STRUCTURE OF SEGREGATION AND ECONOMIC INEQUALITY (Mar. 20, 2018), https://ncrc.org/holc/.

of the U.S. mortgage market by the middle of the century,[11] later developed similar maps.[12] In doing so, the federal government codified and perpetuated the racial stereotype that residents of color were financially risky and a threat to local property values. As a result, just two percent of the $120 billion in Federal Housing Administration (FHA) loans distributed between 1934 and 1962 went to nonwhite families.[13]

The federal government took additional steps to discourage lending to borrowers and communities of color.[14] For example, the FHA's 1939 Underwriting Manual explicitly prohibited lending in neighborhoods that were changing in racial composition.[15] The FHA also instructed appraisers to focus on the uniformity of neighborhoods, with the presumption that the highest value would be assigned to all-white neighborhoods,[16] and to investigate "areas surrounding a location . . . to determine whether incompatible racial and social groups are present, for the purpose of making a prediction regarding the probability of the locations being invaded by such groups."[17] In a 1941 memorandum concerning St. Louis, Missouri, the Federal Housing Administration similarly warned that "the rapidly rising Negro population ha[d] produced a problem in the maintenance of real estate values."[18] These racist views were then explicitly incorporated by the appraisal industry and reinforced in appraiser manuals through the mid-1970s.[19] Finally, the Federal Housing Administration refused to guarantee mortgages for developers who were building subdivisions unless the deeds included racially-restrictive covenants, effectively blocking development of integrated suburban communities.[20]

Institutionalized housing discrimination persisted for decades, compounding and legitimizing private bias and barring Black people from building inter-generational wealth through home ownership. In its 1961 report, the U.S. Commission on Civil Rights documented numerous discriminatory housing and lending practices, from requiring Black borrowers to make higher down payments and adopt faster repayment schedules, to refusing to approve loans on the basis of applicants' race.[21] Due to these discriminatory acts, many borrowers of color could only access credit in the form of a high-cost loans or contract sales[22] that imposed higher costs in

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[11] KRISTEN BROADY, ET AL., BROOKING INST., AN ANALYSIS OF FINANCIAL INSTITUTIONS IN BLACK-MAJORITY COMMUNITIES: BLACK BORROWERS AND DEPOSITORS FACE CONSIDERABLE CHALLENGES IN ACCESSING BANK SERVICES (2021), https://www.brookings.edu/research/an-analysis-of-financial-institutions-in-black-majority-communities-black-borrowers-and-depositors-face-considerable-challenges-in-accessing-banking-services/.
[12] RICHARD ROTHSTEIN, THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA (2017).
[13] *Id.* at 7.
[14] *Id.* at 8-10.
[15] *See* DALTON CONLEY, BEING BLACK, LIVING IN THE RED: RACE, WEALTH, AND SOCIAL POLICY IN AMERICA 37 (2010); *see also* DOUGLAS MASSEY & NANCY DENTON, AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS 54 (1993).
[16] Scott N. Markey, Planning Spatial Obsolescence: Racial Capitalism, the Home Owner Loan Corporation, and the Production of Racialized Devaluation (University of Georgia, May 2023) https://s3.amazonaws.com/na-st01.ext.exlibrisgroup.com/01GALI_UGA/storage/alma/7F/B2/E8/80/6D/F3/3C/2B/80/CD/5C/69/02/22/E4/F5/MarkleyScottPHD.pdf?response-content-type=application%2Fpdf&X-Amz-Algorithm=AWS4-HMAC-SHA256&X-Amz-Date=20230814T171800Z&X-Amz-SignedHeaders=host&X-Amz-Expires=119&X-Amz-Credential=AKIAJN6NPMNGJALPPWAQ%2F20230814%2Fus-east-1%2Fs3%2Faws4_request&X-Amz-Signature=10a706d255334ae3127bf1c0574e5a2e38d93bceb3820af15e4140bcf0c34031.
[17] NAT'L FAIR HOUS. ALLIANCE, ET AL., IDENTIFY BIAS AND BARRIERS, PROMOTING EQUITY: AN ANALYSIS OF THE USPAP STANDARDS AND APPRAISER QUALIFICATIONS CRITERIA (2022), https://nationalfairhousing.org/wp-content/uploads/2022/02/2022-01-28-NFHA-et-al_Analysis-of-Appraisal-Standards-and-Appraiser-Criteria_FINAL.pdf.
[18] Conley, *supra* note 15, at 37.
[19] *Id.*
[20] HEATHER MCGEE, THE SUM OF US 80 (2022).
[21] U.S. COMM'N ON CIV. RTS., BOOK 4: HOUSING (1961), https://www2.law.umaryland.edu/marshall/usccr/documents/cr11961bk4.pdf.
[22] Baradaran, *supra* note 7, at 893.

exchange for limited, if any, home equity—if they could access credit at all. Moreover, these acts devalued the equity that Black people accumulated in their homes.

Today, lenders continue to engage in redlining by refusing to provide credit services to individuals living in communities of color.[23] For example, a 2018 study of 61 metro areas across the country found that Black and Latinx homebuyers were more likely to be denied a conventional mortgage than their white counterparts, even when they: 1) made the same amount of money; 2) tried to borrow the same amount of money; and 3) wanted to buy in the same neighborhood.[24] A 2022 FDIC study likewise found that Black borrowers are more likely to be denied home loans and pay higher interest rates than white borrowers, even when controlling for other factors.[25] A report by the National Association of Real Estate Brokers published that same year found similar results.[26] In several cases, banks have allegedly redlined some of the same neighborhoods that were first redlined by HOLC maps in the 1930s.[27]

Racial bias and disparities in home valuations also remain a persistent problem. For example, a 2021 Federal Housing Finance Agency review of appraisals found that appraisers made many overt and indirect references to race, ethnicity, and other prohibited and irrelevant traits in their appraisal reports.[28] That same year, researchers at Freddie Mac analyzed millions of appraisals submitted for purchase transactions and found unexplained racial disparities in the percentage of properties that received an appraisal value lower than the contract price (the "appraisal gap").[29] This appraisal gap is more likely to occur in census tracts with predominantly Black or Latinx residents, and this racial gap increases as the concentration of Black or Latinx individuals increases, even when controlling for structural and neighborhood characteristics.[30] Noted fair housing researcher Dr. Junia Howell similarly found in her 2023 analysis of FHFA data that appraisers assess homes in predominantly white neighborhoods at double the value than similar homes located in neighborhoods of color with the same socioeconomic status and

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[23] *E.g.,* Press Release, U.S. Dep't of Just., *Justice Department Secures Over $31 Million from City National Bank to Address Lending Discrimination Allegations* (Jan. 23, 2023), https://www.justice.gov/opa/pr/justice-department-secures-over-31-million-city-national-bank-address-lending-discrimination.

[24] *The Community Reinvestment Act: Assessing the Law's Impact on Discrimination and Redlining: Hearing Before the Subcomm. on Consumer Prot. and Fin. Insts. of the H. Comm. on Fin. Servs.,* 116th Cong. 14-15 (2019) (statement of Aaron Glantz, Senior Reporter, Reveal From the Center for Investigative Reporting), *available at* https://www.congress.gov/116/meeting/house/109303/witnesses/HHRG-116-BA15-Wstate-GlantzA-20190409.pdf.

[25] Stephen Popick, *Did Minority Applicants Experience Worse Lending Outcomes in the Mortgage Market? A Study Using 2020 Expanded HMDA Data*, FED. DEPOSIT INS. CO. (June 2022), https://www.fdic.gov/analysis/cfr/working-papers/2022/cfr-wp2022-05.pdf?source=govdelivery&utm_medium=email&utm_source=govdelivery.

[26] Debra Kamin, *Discrimination Seeps Into Every Aspect of Home Buying for Black Americans*, N.Y. TIMES (Nov. 29, 2022), https://www.nytimes.com/2022/11/29/realestate/black-homeowner-mortgage-racism.html?smid=tw-nytimes&smtyp=cur.

[27] Press Release, U.S. Dep't of Justice, Justice Department Reaches Significant Milestone in Combating Redlining Initiative After Securing Over $107 Million in Relief for Communities of Color Nationwide (Oct. 19, 2023), https://www.justice.gov/opa/pr/justice-department-reaches-significant-milestone-combating-redlining-initiative-after.

[28] Chandra Broadnax & James Wylie, Fed. Hous. Finance Agency, Reducing Valuation Bias by Addressing Appraiser and Property Valuation Commentary (Dec. 14, 2021), http://www.fhfa.gov/Media/Blog/Pages/Reducing-Valuation-Bias-by-Addressing-Appraiser-and-Property-Valuation-Commentary.aspx.

[29] Melissa Narragon, et al., *Racial and Ethnic Valuation Gaps in Home Purchase Appraisals*, FREDDIE MAC ECON. & HOUS. RES. NOTE (Sept. 2021), http://www.freddiemac.com/fmac-resources/research/pdf/202109-Note-Appraisal-Gap.pdf.

[30] *Id.*

comparable amenities.[31] Unfortunately, appraisal bias is increasing, rather than decreasing, with racial inequality in appraised values rising 75 percent over the last decade.[32]

B. *Discrimination in Government Benefits*

At the same time that it encouraged housing discrimination, the federal government also deliberately excluded Black people from other government benefits that offered economic security and a pathway to the middle class, including wage protections under the Fair Labor Standards Act, Social Security, and unemployment insurance.[33] These bills were structured to conform to the policy preferences of racist Southern members of Congress, who demanded that the bills uphold racial hierarchies by devolving authority to the states or excluding Black people entirely.[34]

The Servicemen's Readjustment Act—commonly referred to as the GI Bill—offers one of the starkest examples of state-sanctioned discrimination against Black people with respect to government benefits. After World War II, the federal government provided veterans with unemployment insurance, educational benefits, low-cost mortgages, and low-interest loans. However, 1.2 million Black veterans were denied equal access to many of these benefits despite serving their country during that conflict.[35] Like other New Deal legislation, the GI Bill "was deliberately designed to accommodate Jim Crow," shifting implementation to states and private entities and limiting federal oversight.[36]

Although the GI Bill made veterans eligible for low-interest home loans with no down payment, veterans first had to convince local banks to lend to them—yet banks denied the overwhelming majority of loans to Black veterans who were eligible for this government benefit.[37] According to historian Ira Katznelson, "In New York and the northern New Jersey suburbs, fewer than 100 of the 67,000 mortgages insured by the GI bill supported home purchases by non-whites."[38] In Mississippi, just two out of 3,229 U.S. Department of Veterans' Affairs-insured mortgages went to Black servicemembers seeking to finance a home, business, or farm in the first three years of the program.[39] Racially-restrictive covenants and redlining further limited where Black veterans could buy a home.[40]

Similarly, local Veteran Affairs officers, who had to approve GI bill benefits, made it difficult for Black veterans to access educational benefits or decreased the value of these benefits by steering them away from predominantly white, four-year colleges and toward vocational and

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[31] JUNIA HOWELL & ELIZABETH KORVER-GLENN, APPRAISED: THE PERSISTENT EVALUATION OF WHITE NEIGHBORHOODS AS MORE VALUABLE THAN COMMUNITIES OF COLOR (2022), https://static1.squarespace.com/static/62e84d924d2d8e5dff96ae2f/t/6364707034ee737d19dc76da/1667526772835/Howell+and+Korver-Glenn+Appraised_11_03_22.pdf.

[32] Debra Kamin, *Widespread Racial Bias Found in Home Appraisals*, N.Y. Times (Nov. 2, 2022), https://www.nytimes.com/2022/11/02/realestate/racial-bias-home-appraisals.html.

[33] IRA KATZNELSON, WHEN AFFIRMATIVE ACTION WAS WHITE: AN UNTOLD HISTORY OF RACIAL INEQUALITY IN TWENTIETH-CENTURY AMERICA (2005).

[34] *Id.*

[35] Peter C. Baker, *The Tragic, Forgotten History of Black Military Veterans*, NEW YORKER (Nov. 27, 2016), https://www.newyorker.com/news/news-desk/the-tragic-forgotten-history-of-black-military-veterans.

[36] KATZNELSON, *supra* note 33, AT 113.

[37] EQUAL JUSTICE INITIATIVE, LYNCHING IN AMERICA: TARGETING BLACK VETERANS 38 (2017).

[38] Ira Katznelson, When Affirmative Action Was White: An Untold History of Racial Inequality in Twentieth-Century America 140 (2005).

[39] *Id.*

[40] *See* DEDRICK ASANTE-MUHAMMAD, ET AL., THE ROAD TO ZERO WEALTH: HOW THE RACIAL WEALTH DIVIDE IS HOLLOWING OUT AMERICA'S MIDDLE CLASS 15 (2017).

other non-degree programs.[41] Veterans who tried to use their benefits to study at segregated educational institutions were denied certain opportunities that were only available to white students.[42] Historically Black Colleges and Universities were underfunded and so overwhelmed by the influx of Black applicants that they had to turn tens of thousands of veterans away.[43] Ultimately, according to historian Hilary Herbold, “the segregationist principles of almost every institution of higher learning effectively disbarred a huge proportion of Black veterans from earning a college degree.”[44]

In effect, the federal government provided a massive transfer of wealth and opportunity to white veterans while denying Black veterans similar wealth and opportunities. As a result, the cash equivalent of Black veterans’ GI Bill benefits was only 40 percent of what white veterans received,[45] a difference in value of $170,000 per veteran in today’s dollars.[46]

C. *Discrimination in the Federal Tax Code*

The federal government has perpetuated the racial wealth gaps created by its discriminatory policies through provisions in the federal tax code that allow white taxpayers to accumulate and retain capital at higher rates than their Black counterparts despite substantial evidence of these racially disparate impacts. For example, the federal tax code generally taxes income from investments (such as stocks, businesses, or real estate) at lower rates than income from salaries or wages.[47] These benefits are some of the largest federal tax expenditures, imposing a cost of nearly $150 billion per year on taxpayers in 2023.[48] Yet this policy disproportionately benefits wealthy white people,[49] who are more likely to own these kinds of investments.[50] According to a 2023 study by the U.S. Department of the Treasury, an estimated 92 percent of the tax value of the preferential treatment of these assets went to white families, even though white families represent only 67 percent of all families in the United States.[51] A 2022 study by a team of economists found that the racial disparities resulting from this preferential tax treatment of investment assets are driving the current racial wealth gap.[52]

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[41] Aaron Morrison & Kat Stafford, *Veterans Day legislation targets GI Bill racial inequities*, AP NEWS (Nov. 11, 2021), https://apnews.com/article/lifestyle-business-veterans-affairs-world-war-ii-discrimination-b2d02e6030ef44e798d4e2d4165ae13e.
[42] Erin Blakemore, *How the GI Bill's Promise Was Denied to a Million Black WWII Veterans*, HISTORY (Apr. 20, 2021), https://www.history.com/news/gi-bill-black-wwii-veterans-benefits.
[43] *Id.*
[44] Hilary Herbold, *Never a Level Playing Field: Blacks and the GI Bill*, J. OF BLACKS IN HIGHER EDUC. 104, 107 (1994).
[45] Morrison & Stafford, *supra* note 41.
[46] *Id.*
[47] Tax Pol’y Ctr., Key Elements of the U.S. Tax System: How are capital gains taxed?, https://www.taxpolicycenter.org/briefing-book/how-are-capital-gains-taxed (last updated Jan. 2024).
[48] URBAN INST. & TAX POL’Y CTR., HOW THE FEDERAL INCOME TAX SYSTEM CAN WORSEN RACIAL DISPARITIES (Feb. 14, 2024), https://apps.urban.org/features/federal-income-tax-system-can-worsen-racial-disparities/.
[49] Assistant Secretary for Tax Policy Lily Batchelder & Deputy Assistant Secretary for Tax Analysis Greg Leiserson, U.S. Dep’t of Treasury, Disparities in the Benefits of Tax Expenditures by Race and Ethnicity (Jan. 20, 2023), https://home.treasury.gov/news/featured-stories/disparities-in-the-benefits-of-tax-expenditures-by-race-and-ethnicity
[50] Urban Inst. & Tax Pol’y Ctr., *supra* note 48.
[51] Julie-Anne Cronin, et al., *U.S. Treasury Dep’t, Tax Expenditures by Race and Hispanic Ethnicity: An Application of the U.S. Treasury Department's Race and Hispanic Ethnicity Imputation* (Jan. 4, 2023), https://home.treasury.gov/system/files/131/WP-122.pdf
[52] Ellora Derenoncourt, et al., *Wealth of Two Nations: The U.S. Racial Wealth Gap, 1860-2020*, NAT’L BUR. ECON. RES. (June 2022), https://www.nber.org/system/files/working_papers/w30101/w30101.pdf

D. *Inadequate Civil Rights Enforcement*

Finally, the federal government has failed to live up to its obligation to enforce federal civil rights laws, as the agencies charged with enforcement have never received sufficient funding or other necessary resources to do so.

While many civil rights laws permit enforcement by private parties, federal agencies have the broadest authority to enforce antidiscrimination laws in financial services, housing, employment, and other areas, as well as the unique ability to issue guidance and regulations to help covered entities comply with their legal obligations. Federal agencies also have additional investigative authority that is not available to private parties, such as subpoena power.

Yet these agencies are chronically underfunded and lack sufficient staff or other resources to investigate and respond to civil rights complaints, bring agency-initiated charges and systemic litigation, and issue affirmative civil rights policy guidance.[53] In its first comprehensive analysis of federal civil rights enforcement in 1970, the U.S. Commission on Civil Rights (the Commission) found "a number of inadequacies common to nearly all Federal departments and agencies—inadequacies in agency recognition of the nature and scope of their civil rights responsibilities, in the methods used to determine civil rights compliance, and in the use of enforcement techniques to eliminate noncompliance."[54]

While the federal government has made some progress in the decades since 1970, the failure to satisfy its enforcement obligations unfortunately continues to this day. In 2002, the Commission found that its "reviews of civil rights implementation, compliance, and enforcement at several agencies over the past decade revealed a system that was often unequal to the task."[55] Nearly 20 years later, in 2019, the Commission likewise found that federal "agencies generally lack adequate resources to investigate and resolve discrimination allegations within their jurisdiction, leaving allegations of civil rights violations unredressed."[56] In some cases, these resource constraints have worsened with time. Several agencies—including the Department of Justice's (DOJ) Civil Rights Division, which enforces fair lending laws in conjunction with other agencies, and the Department of Labor's Office of Contract Compliance Programs, which enforces federal contractors' affirmative action requirements— experienced a decrease in funding requests and allocations between FY 2016 and FY 2018, even as they fielded an increasing number of complaints.[57] In fact, five agencies were forced to cut staff during that time period.[58] Similar funding issues continue in federal agencies to this day: the number of staff at the U.S. Department of Education's Office of Civil Rights, for example, was cut in half between 1981 and 2022, even though that agency received more than six times as many complaints in 2022 as in 1981.[59]

Federal agencies' resource constraints have a significant impact on civil rights enforcement. Without sufficient resources, agencies generally do not meet their goals for timely

[53] U.S. COMM'N ON CIVIL RIGHTS, ARE RIGHTS A REALITY? EVALUATING FEDERAL CIVIL RIGHTS ENFORCEMENT (2019), https://www.usccr.gov/files/pubs/2019/11-21-Are-Rights-a-Reality.pdf [hereinafter ARE RIGHTS A REALITY?].
[54] Letter of Transmittal from Rev. Theodore M. Hesburgh, C.S.C. Chair, with fellow Commissioners and Staff Director, U.S. Comm'n on Civil Rights, to U.S. President and U.S. Congress in Federal Civil Rights Enforcement Effort: A Report, 1970, p. ii, http://www2.law.umaryland.edu/marshall/usccr/documents/cr12en2.pdf.
[55] U.S. COMM'N ON CIVIL RIGHTS, TEN-YEAR CHECK-UP: HAVE FEDERAL AGENCIES RESPONDED TO CIVIL RIGHTS RECOMMENDATIONS? VOLUME ONE: A BLUEPRINT FOR CIVIL RIGHTS ENFORCEMENT (2002), http://www2.law.umaryland.edu/marshall/usccr/documents/tenyrchekupvol1.pdf.
[56] ARE RIGHTS A REALITY?, *supra* note 53.
[57] *Id.*
[58] *Id.*
[59] U.S. DEP'T OF ED. OFF. OF CIV. RTS., FY 2022 ANNUAL REPORT TO THE PRESIDENT AND SEC. OF ED. (2023), https://www2.ed.gov/about/reports/annual/ocr/report-to-president-and-secretary-of-education-2022.pdf.

investigation of complaints, including those filed by individuals who may have been significantly harmed from racial discrimination.[60] Some investigations can languish for years, ultimately diminishing their effectiveness as witnesses, documents, and other evidence disappear with time. Indeed, the U.S. Equal Employment Opportunity Commission told the Commission that "it 'can only file lawsuits in a very small number of the charges where [EEOC] find[s] reasonable cause to believe that there was discrimination.'"[61] Similarly, the DOJ Civil Rights Division's enforcement actions decreased by 23.7 percent between FY 2016 and FY 2018 during the Trump Administration.[62] During this time, federal agencies also initiated fewer regulatory actions, rolled back civil rights rules, and repealed guidance, severely impacting civil rights enforcement that already had been severely deficient.[63] Despite the reversal of some of these harmful policies, federal agencies remain underfunded and under-resourced.[64]

As much as strong enforcement regimes promote deterrence, inadequate enforcement invites noncompliance. For example, weak enforcement of fair lending laws has likely contributed to the persistence of redlining that continues to disadvantage Black individuals' access to credit. In 1977, Congress passed the Community Reinvestment Act (CRA) to address America's systemic denial of credit services to Black and other communities of color. The CRA requires regulators to assess a financial institution's record of "meeting the credit needs of the entire community, including low- and moderate-income [LMI] neighborhoods."[65] Yet, as described above, banks continue to fail to meet the needs of Black borrowers and communities, even within LMI neighborhoods, and maintain their longstanding discriminatory practices.[66] Despite these lasting disparities in lending, 98 percent of banks nevertheless pass their CRA exams.[67]

Much of the disadvantages experienced by Black-owned businesses are directly attributable to the federal government, which has yet to fully remediate its past acts of explicit racial discrimination and continues to implement policies that perpetuate the harms from that discrimination. Thus, present-day barriers to opportunities for Black business owners are not products of chance in a free marketplace, but instead entrenched inequalities that are directly connected to the federal government's own complicity in acts of racial discrimination. The federal government should not allow these inequalities to persist.

III. **<u>Black Business Face Significant and Unfair Barriers Resulting from Government Discrimination.</u>**

As a result of past and ongoing discrimination, unequal economic systems deprive Black people of the financial and social capital they need to create and sustain successful businesses.

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[60] ARE RIGHTS A REALITY?, *supra* note 53.
[61] *Id.*
[62] *Id.*
[63] *Id.* at 58-60 (detailing testimony); Sherrilyn Ifill, *President Trump's First Year Was an Affront to Civil Rights,* TIME (Jan. 17, 2018 3:42 PM EST), https://time.com/5106648/donald-trump-civil-rights-race/; The Leadership Conference on Civil & Hum. Rts., Trump Administration Civil and Human Rights Rollbacks, https://civilrights.org/trump-rollbacks/ (last visited May 13, 2024).
[64] U.S. DEP'T OF ED. OFF. OF CIV. RTS., *supra* note 59.
[65] 12 U.S.C. § 2903(a)(1).
[66] LINNA ZHU, ET AL., SHOULD THE COMMUNITY REINVESTMENT ACT CONSIDER RACE? 10 (2022), https://www.urban.org/sites/default/files/2022-04/should-the-community-reinvestment-act-consider-race_1.pdf. *Id.* at 10.
[67] *Better Together: Examining the Unified Proposed Rule to Modernize the Community Reinvestment Act: Hearing Before the Subcomm. on Consumer Prot. and Fin. Insts. of the H. Comm. on Fin. Servs.*, 117th Cong. 2 (2022) (statement of Seema Agnani, Executive Director, National Coalition for Asian Pacific American Community Development), https://financialservices.house.gov/uploadedfiles/hhrg-117-ba15-wstate-agnanis-20220713.pdf.

Barriers include lack of access to wealth, loans, and investments, causing Black-owned businesses to start with less funding and more debt, to encounter more obstacles to growth, and be more likely to fail than white-owned businesses. These barriers do not result from the fundamentals of the business or the acumen of the owner, but rather ongoing discrimination.

A. Lack of Access to Loans and Investments

Access to capital—whether through bank loans or investments—is essential to small business creation and success. Yet Black small business owners are not able to obtain funding from banks and other investors at the same rates as white businesses, limiting their ability to start and succeed. These disparities exacerbate the harms of the racial wealth gap by limiting Black people's ability to utilize external financing opportunities outside of their own wealth.[68]

Black-owned businesses struggle to access bank loans. According to the Federal Reserve, creditworthy Black-owned firms were 7 percent less likely to get approved for business loans overall, and 20 percent less likely to obtain credit at large and small banks, respectively, than other businesses, even when controlling for business characteristics and performance.[69] Furthermore, when Black-owned businesses are approved for financing, it is often at substantially lower levels than white-owned businesses. For example, the Federal Reserve found that only approximately 14 percent of Black small business owners and 19 percent of Latinx small business owners received all the financing they sought from banks in 2021, compared to 34 percent of white small business owners.[70] Similarly, Black-owned businesses received loans through the Paycheck Protection Program that were approximately 50 percent smaller than white-owned businesses with similar characteristics.[71]

Banks often require Black business owners to take additional steps to secure a loan—actions that they do not ask white business owners to take. A 2019 study published in the Journal of Public Policy and Marketing found that 73 percent of Black loan applicants were asked to provide financial statements for their businesses, compared with only 50 percent of white applicants with comparable profiles.[72] The study also found that 31 percent of Black applicants were asked to provide their personal W-2 forms, while no white applicants received such a request.[73]

In addition, Black founders of businesses receive minimal funding from venture capital and other outside investors at every stage of growth. In 2022, for example, Black founders received only 1 percent of total venture capital funding; Black women founders received only 0.1

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[68] KRISTEN BROADY, ET AL., BROOKING INST., AN ANALYSIS OF FINANCIAL INSTITUTIONS IN BLACK-MAJORITY COMMUNITIES: BLACK BORROWERS AND DEPOSITORS FACE CONSIDERABLE CHALLENGES IN ACCESSING BANK SERVICES (2021), https://www.brookings.edu/research/an-analysis-of-financial-institutions-in-black-majority-communities-black-borrowers-and-depositors-face-considerable-challenges-in-accessing-banking-services/; Mels de Zeeuw & Brett Barkley, *Mind the Gap: Minority-Owned Small Businesses' Financing Experiences in 2018*, CONSUMER & CMTY. CONTEXT, A FED. RESERVE SYST. PUB., Vol. 1, No. 2, p. 16 (Nov. 2019), https://www.federalreserve.gov/publications/2019-november-consumer-community-context.htm.
[69] DANA M. PETERSON & CATHERINE L. MANN, CITI GPS, CLOSING THE RACIAL INEQUALITY GAPS: THE ECONOMIC COST OF BLACK INEQUALITY IN THE U.S. 61 (2020), https://www.citigroup.com/global/insights/citigps/closing-the-racial-inequality-gaps-20200922.
[70] ANN MARIE WIERSCH, ET AL., U.S. FED. RESERVE SYS., THE SMALL BUSINESS CREDIT SURVEY 2022 REPORT ON EMPLOYER FIRMS 18 (2022).
[71] Rachel Atkins, et al., *Discrimination in lending? Evidence from the Paycheck Protection Program*, 58 SMALL BUS. ECON. 843 (2022).
[72] Sterling A. Bone, *Shaping Small Business Lending Policy Through Matched-Pair Mystery Shopping*, 38 J. of Publ. Pol'y & Marketing 391-399, https://doi.org/10.1177/0743915618820561.
[73] *Id.*

percent.[74] Black-owned businesses also receive less total funding, with white male founders receiving over $210 million compared to $91.1 million for businesses owned by Black, Latinx, and other underrepresented businesses owners combined.[75] In 2023, the amount of venture capital funding for Black-owned businesses declined precipitously, falling 71 percent nationally.[76] This decline was nearly double the overall decline in venture capital funding.[77]

As a result of this discrimination, Black business owners are less likely to rely on bank loans to launch their business than white entrepreneurs, and are more dependent on capital from friends, family, and their own personal resources[78]–even though these sources tend to yield less capital and are disproportionately less available due to the racial wealth gap.[79]

B. Lack of Access to Wealth

Due to government-sponsored discrimination and practices that limit wealth accumulation and devaluation of assets, Black people have less wealth than white people. These disparities limit the resources Black people have on hand to start their businesses and sustain them through hard times.

As a result of past and modern-day redlining and other unfair discriminatory practices, the gap in home ownership between Black and white individuals is wider now than it was in 1968, when Congress passed the Fair Housing Act (FHA).[80] In 2023, only 44 percent of Black people owned a home, compared to 72.7 percent of white people, and Black homeowners and renters are more cost-burdened than other racial groups.[81]

The racial wealth gap also continues to grow.[82] According to a 2023 analysis by the Federal Reserve's Survey of Consumer Finances, the median white household owns $240,120 more in wealth than the median Black household.[83] This persistent racial wealth gap held even as median

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[74] McKinsey & Co., Underestimated start-up founders: The untapped opportunity (Jun. 23, 2023), https://www.mckinsey.com/featured-insights/diversity-and-inclusion/underestimated-start-up-founders-the-untapped-opportunity.
[75] *Id.*
[76] J. Scott Trubey, *Venture funding of Black startups in U.S., Atlanta withers, data show,* Atlanta J.-Const. (Feb. 29, 2024), https://www.ajc.com/news/business/huge-drop-in-vc-funding-of-black-owned-startups-in-us-and-atlanta-report-says/DGCP22KEMZBNDASTONGCCXA5XQ/.
[77] Chris Metinko & Gene Teare, *Drop In Venture Funding To Black-Founded Startups Greatly Outpaces Market Decline,* Crunchbase News (Feb. 27, 2024), https://news.crunchbase.com/diversity/venture-funding-black-founded-startups-2023-data/#:~:text=The%20decline%20in%20capital%20to,%25%2C%20according%20to%20Crunchbase%20data.
[78] Peterson & Mann, *supra* note 69, at 59-60.
[79] *Id.* at 59.
[80] Brad Blower et al., Nat'l Cmty. Reinvestment Coal., Adding Robust Consideration of Race to Community Reinvestment Act Regulations: An Essential and Constitutional Proposal (2021), https://ncrc.org/adding-robust-consideration-of-race-to-community-reinvestment-act-regulations-an-essential-and-constitutional-proposal/#ftnref7.
[81] Nat'l Assoc. of Realtors, 2024 Snapshot of Race and Home Buying in America (2024), https://cdn.nar.realtor/sites/default/files/documents/2024-snapshot-of-race-and-home-buying-in-america-02-20-2024.pdf?_gl=1*1u2pfb2*_gcl_au*MjA2Njk1ODY1NS4xNzE1MTA4NzY1.
[82] *See* Tom Shapiro et al., LDF Thurgood Marshall Inst. & Inst. on Assets and Soc. Pol'y at Brandeis Univ. The Black-White Racial Wealth Gap 5 (2019), https://tminstituteldf.org/wp-content/uploads/2019/11/FINAL-RWG-Brief-v1.pdf; Andre Perry, et al., *Black wealth is increasing, but so is the racial wealth gap*, Brookings Inst. (Jan. 9, 2024), https://www.brookings.edu/articles/black-wealth-is-increasing-but-so-is-the-racial-wealth-gap/.
[83] Bd. of Gov. of the Fed. Reserve Syst., Greater Wealth, Greater Uncertainty: Changes in Racial Inequality in the Survey of Consumer Finances, Accessible Data, https://www.federalreserve.gov/econres/notes/feds-notes/greater-wealth-greater-uncertainty-changes-in-racial-inequality-in-the-survey-of-consumer-finances-accessible-20231018.htm#fig1 (last updated Oct. 23, 2023).

wealth increased overall by $51,800 from 2019 to 2022 because of the ongoing gaps in homeownership rates, as well as racial disparities in business and stock equity.[84] Gaps in stock equity are due, in part, to equally pervasive employment discrimination, which relegates Black people to lower wage jobs in less lucrative industries compared to white people with similar levels of education,[85] as well as industries that do not offer stock or pension benefits.[86]

C. *Consequences for Black Businesses*

As a result of persistent barriers to equal access and opportunities, Black-owned businesses face an uphill battle to survive. Many Black-owned businesses fail at early stages: While 20 percent of Black people start businesses, only 4 percent of these businesses survive the start-up stage[87]–the lowest survival rate of all new business[88] These negative outcomes are, in part, a consequence of undercapitalization. Black entrepreneurs start their businesses with approximately one-third the capital of white entrepreneurs, which amount to$35,000 compared to $107,000[89] According to a 2016 report by the Kauffman Foundation, "Black entrepreneurs . . . are almost three times as likely as whites to have profitability hurt by lack of access to capital and more than twice as likely as whites to have profits negatively impacted by the cost of capital.[90]

Black-owned businesses also struggle to grow and thrive. A disproportionate number of Black-owned businesses have no employees, and their growth is unfairly limited by inadequate access to wealth, loans, networks, and other resources. While the number of Black-owned businesses grew between 2017 to 2021, their overall share of employer businesses—i.e., businesses with at least one employee other than the owner-operator—remains low.[91] Although Black Americans made up 14.4 percent of the population in 2021, they represented only 2.7 percent of employers.[92] By contrast, white Americans made up 72.5 percent of the population but owned 82 percent of employer businesses.[93]

Black-owned businesses are also in more precarious financial positions. Even before the COVID-19 pandemic, "58 percent of Black-owned businesses were at risk of financial distress . . . compared with about 27 percent of white-owned businesses."[94] Black-owned businesses also earn

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84 Perry, et al., *supra* note 82.
85 Ashley Jardina, et al., *The Limits of Educational Attainment in Mitigating Occupational Segregation Between Black and White Workers,* Nat'l Bureau of Econ. Research (Aug. 2023), https://doi.org/10.3386/w31641.
86 PETERSON & MANN, *supra*.note 69, at 48.
87 David Baboolal, et al., *Building supportive ecosystems for Black-owned US businesses*, MCKINSEY INST. FOR BLACK ECONOMIC MOBILITY (Oct. 29, 2020), https://www.mckinsey.com/industries/public-sector/our-insights/building-supportive-ecosystems-for-black-owned-us-businesses.
88 U.S. Small Business Admin, Frequently Asked Questions, *supra* note 3.
89 *Id.*
90 ALICIA ROBB & ARNOBIO MORELIX, EWING MARION KAUFMANN FOUNDATION, STARTUP FINANCING TRENDS BY RACE: HOW ACCESS TO CAPITAL IMPACTS PROFITABILITY: ANNUAL SURVEY OF ENTREPRENEURS DATA BRIEFING SERIES (2016), https://www.kauffman.org/wp-content/uploads/2019/12/ase_brief_startup_financing_by_race.pdf.
91 Andre M. Perry, et. Al., *Closing the Black employer gap: Insights from the latest data on Black-owned businesses*, BROOKINGS INST., https://www.brookings.edu/articles/closing-the-black-employer-gap-insights-from-the-latest-data-on-black-owned-businesses/.
92 *Id.*
93 *Id.*
94 CLAIRE KRAMER MILLS & JESSICA BATTISTO, FED. RESERVE BANK OF NEW YORK, DOUBLE JEOPARDY: COVID-19'S CONCENTRATED HEALTH AND WEALTH EFFECTS IN BLACK COMMUNITIES (2020), https://www.newyorkfed.org/medialibrary/media/smallbusiness/DoubleJeopardy_COVID19andBlackOwnedBusinesses.

lower revenues and are overrepresented in low-growth, low-revenue industries, such as food service and accommodations.[95]

Without sufficient business networks, Black-owned businesses are also underutilized. According to a 2016 study by the Minority Business Development Agency (MBDA), the median share of contract dollars awarded to Black-owned businesses across five key industries—architecture and engineering, construction, goods and supplies, professional services, and other services—was 4 to 44 percent of contractors' availability, compared with 49 to 61 percent for white-owned businesses.[96]

IV. **Racial Inequality Unduly Suppresses U.S. Economic Growth.**

Racial inequality and discrimination in economic opportunities limit America's economic growth and competitiveness in the global economy. As Deputy Secretary of the Treasury Wally Adeyemo noted, "The exclusion of communities of color from the ladder of economic opportunity holds back economic growth for the entire country. Pursuing racial equity is a vital opportunity to drive innovation and boost growth across the U.S. economy."[97] Remediating the obstacles that artificially suppresses the success of Black small businesses would help the U.S. economy grow by trillions of dollars.

Racial segregation limited U.S. economic growth throughout American history, particularly in the Jim Crow South. Racial segregation in southern states drove educated Black and white people to leave the region and travel northward,[98] creating a drain of human capital and entrepreneurship. Southern lawmakers often rejected proposals that could have improved the regional economy, such as investments in education, in order to adhere to the racial hierarchy.[99] State-sanctioned racial violence undercut economic growth, destroying prosperous Black communities and causing severe economic losses.[100] This violence also decreased innovation and technological advancements in the region: Research by economist Lisa Cook found that riots and lynchings "depressed patent activity among blacks by more than 15 percent annually" across the country, and "conflict and hate-related violence, and the resulting uncertainty in property-rights enforcement . . . [,] may substantially affect the level, direction, and quality of inventive activity and economic growth."[101] As a result, the economy in the South became dependent on low labor costs, with limited incentives for innovation and development, leading to economic stagnation.[102] By contrast, reductions in racial occupational segregation and other forms of discrimination led to economic growth. Recent research by economists Chang-Tai

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[95] David Baboolal, et al., *supra* note 87.

[96] MINORITY BUSINESS DEV. AGENCY, CONTRACTING BARRIERS AND FACTORS AFFECTING MINORITY BUSINESS ENTERPRISES: A REVIEW OF EXISTING DISPARITY STUDIES (2016), https://www.mbda.gov/sites/default/files/migrated/files-attachments/FINAL-MBDA-Disparity-Report-Summary.pdf.

[97] DEPUTY SECRETARY WALLY ADEYEMO, U.S. DEPARTMENT OF THE TREASURY THE AMERICAN RESCUE PLAN: CENTERING RACIAL EQUITY IN POLICYMAKING (2021), https://home.treasury.gov/system/files/136/American-Rescue-Plan-Centering-Equity-in-Policymaking.pdf.

[98] ROBERT A. MARGO, RACE AND SCHOOLING IN THE SOUTH, 1880-1950: AN ECONOMIC HISTORY (1990).

[99] Vanessa Williamson, *The Long Shadow of White Supremacist Fiscal Policy,* TAX POL'Y CTR. (Nov. 4, 2020), https://www.taxpolicycenter.org/publications/long-shadow-white-supremacist-fiscal-policy-0.

[100] Alex Albright, et al., *After the Burning: The Economic Effects of The 1921 Tulsa Race Massacre,* Nat'l Bureau of Econ. Res. (July 2021), https://www.nber.org/system/files/working_papers/w28985/w28985.pdf.

[101] Lisa D. Cook, *Violence and Economic Activity: Evidence from African American Patents, 1870 to 1940,* 19 J. OF ECON. GROWTH 221 (2014), https://lisadcook.net/wp-content/uploads/2014/02/pats_paper17_1013_final_web.pdf.

[102] Vanessa Williamson, *Democracy is good for the economy. Can business defend it?,* Brookings Inst. (Apr. 29, 2024), https://www.brookings.edu/articles/democracy-is-good-for-the-economy-can-business-defend-it/; Richard Hornbeck & Suresh Naidu, *When the Levee Breaks: Black Migration and Economic Development in the American South,* 104 AM. ECON. REV. 963 (2014), https://www.aeaweb.org/articles?id=10.1257/aer.104.3.963.

Hsieh, Erik Hurst, Charles I. Jones, and Peter J. Klenow shows that up to 40 percent of growth in the U.S. GDP per capita between 1960 and 2010 can be attributed to increases in the shares of women and Black men working in highly skilled occupations.[103]

Today, racial discrimination continues to hurt the U.S. economy. According to a 2020 study by Citi, the United States' aggregate economic output would have been $16 trillion higher since 2000 if we had closed racial gaps in wages, access to higher education, lending, and mortgage access.[104] Researchers at McKinsey estimated that the racial wealth gap alone will cost the U.S. economy between $1 trillion and $1.5 trillion between 2019 and 2028—4 to 6 percent of the projected GDP in 2028.[105] By contrast, financial institutions could earn approximately $2 billion annually in additional revenue if Black Americans had the same access to financial products as white Americans, and up to $60 billion annually in additional revenue if Black Americans reached full wealth parity.[106] Finally, equal parity in Black and Latinx business ownership compared to their share of the population, as well equalization of their business revenues with those of their peers, would generate an additional $1.6 trillion and $2.3 trillion respectively[107] and create millions of jobs per year.[108]

V. Our Multiracial and Multiethnic Democracy Depends on an Inclusive Economy that Gives Everyone the Opportunity to Thrive.

Ultimately, racial inequality is not only bad for the economy; it is anathema to a functioning democracy. As President Biden recognized, "the ideal of equal opportunity is the bedrock of American democracy."[109] Systems that exclude people from economic opportunity and social mobility based on race are inherently unequal; exclusion, in turn, can impact how people experience and think about the validity and integrity of political institutions and processes.[110] While most research has focused on how economic inequality—which itself is driven by race in the United States—reduces support for democracy, exposure to systemic racial inequality has similar effects.

Extensive research has shown that economic inequality is associated with less support for democracy in principle and practice, reduced institutional trust, and lower levels of civic engagement—all of which threaten the stability of democratic institutions.[111] The United States has substantially higher income and wealth inequality than almost any other developed nation,

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[103] Chang-Tai Hsieh, et al., *The Allocation of Talent and U.S. Growth*, 87 ECONOMETRICA 1439 (2019).
[104] PETERSON & MANN, *supra* note 69, at 7.
[105] Nick Noel, et al., *The economic impact of closing the racial wealth gap*, MCKINSEY & CO. (Aug. 13, 2019), https://www.mckinsey.com/industries/public-and-social-sector/our-insights/the-economic-impact-of-closing-the-racial-wealth-gap.
[106] Aria Florant, et al., *The case for accelerating financial inclusion in black communities*, McKinsey Inst. for Black Econ. Mobility Ex. 3 (Feb. 25, 2020), https://www.mckinsey.com/industries/public-and-social-sector/our-insights/the-case-for-accelerating-financial-inclusion-in-black-communities
[107] MCKINSEY & CO., *supra* note 74.
[108] PETERSON & MANN, *supra* note 69, at 4.
[109] The White House, Advancing Equity and Racial Justice Through the Federal Government, https://www.whitehouse.gov/equity/ (last visited May 14, 2024).
[110] BARBARA CRUIKSHANK, THE WILL TO EMPOWER: DEMOCRATIC CITIZENS AND OTHER SUBJECTS (1999).
[111] In the discussion below, we rely on research examining subjective as well as objective measures of economic inequality. Economic inequality can be captured by objective measures like the GINI coefficient, which reflects income distribution per capita or individual income. However, subjective measures of inequality, often captured by surveys, provide more insight into the relationship between economic inequality and democracy. Subjective measures elucidate how individual perceptions of inequality facilitate the relationship between economic inequality and political attitudes and behaviors.

and that inequality is growing at a faster rate than in many other democracies.[112] And, as discussed above, these income and wealth disparities disproportionately fall along racial lines.[113]

Economic inequality fosters feelings of distrust between groups, making it difficult for people to come together to identify and advance policies that benefit the whole community: people with more wealth want to keep what they have, while those at the lower end of the economic scale feel insecurity about what they do not have.[114]

Subjective experiences of economic inequality decrease democratic support and corrodes institutional trust, regardless of one's political ideology.[115] Perceived income inequality makes people with less wealth feel incapable of influencing policy and government, thus reducing trust in democratic institutions.[116] These perceptions are corroborated by research demonstrating that politicians are more responsive to wealthier constituents—which, given the connection between wealth and race in America, means constituents who are disproportionately white.[117] Research has further shown that rising perceptions of economic inequality coincide with more support for radical and autocratic forms of governance[118] and facilitates increasing desires for an authoritarian leader and the proliferation of conspiracy theories.[119]

Support for democracy similarly declines when people become aware of not only economic inequalities but systemic racial inequalities.[120] In a 2022 study, researchers conducted both quantitative and qualitative analyses using data from original and existing surveys to identify the impact of racial inequality on democratic legitimacy in the mass public.[121] They found that learning about the systemic inequalities confronting Black people undermined support for and

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[112] Anshu Siripurapu, *The U.S. Inequality Debate,* Council on Foreign Relations (Apr. 20, 2022 5:14 pm EST), https://www.cfr.org/backgrounder/us-inequality-debate; CONGRESSIONAL BUDGET OFFICE, THE DISTRIBUTION OF HOUSEHOLD INCOME, 2018 (2021), https://www.cbo.gov/system/files/2021-08/57061-Distribution-Household-Income.pdf.

[113] In addition to gaps in wealth, Black people also earn less income than similarly-educated white people and are more likely to experience disruptions in employment. *See, e.g.,* Jardina, et al., *supra* note 85; Valerie Wilson & William Darity Jr., *Understanding black-white disparities in labor market outcomes requires models that account for persistent discrimination and unequal bargaining power*, ECON. POL'Y INST. (Mar. 25, 2022), https://www.epi.org/unequalpower/publications/understanding-black-white-disparities-in-labor-market-outcomes/.

[114] RICHARD WILKINSON & KATE PICKETT, THE SPIRIT LEVEL: WHY GREATER EQUALITY MAKES SOCIETIES STRONGER (2010).

[115] Sarah Engler & David Weisstanner, *The threat of social decline: income inequality and radical right support*, 28 J. of European Pub. Pol'y 153 (2021), https://doi.org/10.1080/13501763.2020.1733636; Jolanda Jetten, et al., *Consequences of economic inequality for the social and political vitality of society: A social identity analysis*, 42 POLITICAL PSYCH. 241 (2021), https://onlinelibrary.wiley.com/doi/abs/10.1111/pops.12800; Jazmin L. Brown-Iannuzzi, et al., *Political Action in the Age of High-Economic Inequality: A Multilevel Approach*, 11 Soc. Issues & Pol'y Rev. 232 (2017), https://doi.org/10.1111/sipr.12032;
Jonathan Krieckhaus, et al., *Economic inequality and democratic support*, 76 J. OF POLITICS 139 (2014), https://doi.org/10.1017/S0022381613001229.

[116] Simon Bienstman, et al., *Explaining the 'democratic malaise' in unequal societies: Inequality, external efficacy and political trust*, 63 European J. of Political Res. 172-191 (2024), https://doi.org/10.1111/1475-6765.12611.

[117] TASK FORCE ON INEQUALITY AND AMERICAN DEMOCRACY AMERICAN POLITICAL SCI. ASSOC., AMERICAN DEMOCRACY IN AN AGE OF RISING INEQUALITY (2004), https://www.apsanet.org/portals/54/Files/Task%20Force%20Reports/taskforcereport.pdf (summarizing research); ADAM LIOZ, DEMOS, STACKED DECK HOW THE RACIAL BIAS IN OUR BIG MONEY POLITICAL SYSTEM UNDERMINES OUR DEMOCRACY AND OUR ECONOMY (2014), https://www.demos.org/sites/default/files/publications/StackedDeck2_1.pdf.

[118] Engler & David Weisstanner, *supra* note 115; Jetten et al., *supra* note 115.

[119] Jetten et al., *supra* note 115.

[120] Jane Morgan, et al., *Racial Inequality and the Fragility of Democracy: How Unequal Citizenship Threatens Democratic Legitimacy* (Feb. 10, 2022), https://www.wpsanet.org/papers/docs/Morgan,%20Christiani,%20and%20Kelly_Racial%20inequality%20and%20the%20Fragility%20of%20Democracy_2022_02_10.pdf.

[121] *Id.*

satisfaction with democratic governance, among both Black and white respondents regardless of partisan affiliation. The researchers also found that satisfaction with democracy is lower when there are deeper economic divides between Black and white residents; this dissatisfaction emerges among white as well as Black survey respondents. This research echoes earlier studies which found that racial inequality undermines trust in the institutions of government and provokes alienation from conventional democratic practices like voting, particularly for Black people and other underrepresented and under-resourced populations.[122]

VI. Conclusion

Active and passive discrimination by the federal government continues to impede economic opportunity for Black-owned small businesses, preventing them from competing equally with their white counterparts. The federal government's decades-long failure to acknowledge and remediate systems of inequality, much of which can be directly attributed to the federal government's own actions, weakens our economy and undermines our democracy, given the illegitimacy of any political system that denies equal access to opportunity on the basis of race. We therefore urge Congress and the Administration to continue to invest in remedial measures that will help undo the harm caused by the federal government's complicity in creating present-day inequalities for Black-owned businesses and ensure that federal tax dollars do not perpetuate racial discrimination.

Thank you.

[122] *Id.* (citing studies).