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"The rich man's dog gets more in the way of vaccination, medicine and medical care than do the workers upon whom the rich man's wealth is built."[1]

Poor health outcomes are linked to long-standing wealth disparities for people of color in the United States. Wealth inequality has gotten worse over the past decades, despite attempts to improve it. The 2017 Opportunity Zone (OZ) tax program is the federal government's most recent economic-development intervention. The OZ program provides for low-income census tracts in each state to be designated as "Opportunity Zones" and offers tax benefits for people who make investments in certain types of businesses and properties in OZs. Notwithstanding the bipartisan popularity of the OZ program, this Note reveals why it is largely symbolic and will fall short of its policy goals. Specifically, this Note argues that the OZ program will not increase the income or wealth of OZ community members. In addition to describing the flaws of the program, this Note explains why it should be replaced with economic-development policy that makes direct cash payments to low-income community members. The disparate infection and death rates of COVID-19 on communities of color demonstrate the need for substantive, rather than symbolic, federal economic-development interventions.

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1. Arthur Chatora, *Remembering an African Icon: 10 Quotes from Samora Machel*, THIS IS AFR. (Oct. 19, 2015), https://thisisafrica.me/politics-and-society/10-quotes-from-pres-samora-machel/ [https://perma.cc/VP4R-BFU8] (quoting Samora Machel, first president of Mozambique).

INTRODUCTION

The United States' infection and death rates during the COVID-19 pandemic shocked the world—it defied logic that the global superpower would have the most infections and the highest death toll of any country on the planet.[2] But a closer look at the data reveals a long-standing pattern of health disparity in the United States: what you do, where you live, and the color of your skin can determine whether you live or die.[3] Low-income neighborhoods have higher COVID-19

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2. *See, e.g.*, Guo Rui, *China's Top Virus Warrior 'Shocked' by US Coronavirus Death Toll*, S. CHINA MORNING POST (May 26, 2020, 10:00 PM), https://www.scmp.com/news/china/society/article/3086174/chinas-top-virus-warrior-shocked-us-coronavirus-death-toll [https://perma.cc/Z2MZ-L228]; Julian Borger, Helen Davidson, Leyland Cecco, Daniel Boffey, Philip Oltermann, Angela Giuffrida, Tom Phillips & Emmanuel Akinwotu, *World Looks on in Horror as Trump Flails Over Pandemic Despite Claims US Leads Way*, GUARDIAN (May 15, 2020, 4:00 AM), https://www.theguardian.com/us-news/2020/may/15/donald-trump-coronavirus-response-world-leaders [https://perma.cc/6HM5-V3ZS]; Brendan Miller & Adam Westbrook, Opinion, *'That's Ridiculous.': How America's Coronavirus Response Looks Abroad.*, N.Y. TIMES (July 27, 2020), https://www.nytimes.com/2020/07/27/opinion/covid-19-global-response.html [https://perma.cc/SDG7-TW3R] (quoting a Senegalese man saying, "It's really shocking, a superpower like the U.S. being, at this point, like a Third World country"). For statistics on COVID-19 death and infection rates by country, see *WHO Coronavirus (COVID-19) Dashboard*, WORLD HEALTH ORG., https://covid19.who.int/?gclid=EAIaIQobChMI8MnGz8e26wIVzcDACh0pfQyXEAAYASAAEgIHg_D_BwE [https://perma.cc/5U7K-534H] (last visited Oct. 19, 2021).

3. *See* William F. Marshall, III, *Coronavirus Infection by Race: What's Behind the Health Disparities?*, MAYO CLINIC (Aug. 13, 2020), https://www.mayoclinic.org/diseases-conditions/coronavirus/expert-answers/coronavirus-infection-by-race/faq-20488802 [https://perma.cc/388D-8EMR] ("[E]xperts also know that where people live and work affects their health."); *Risk for*

infection and death rates than their more affluent counterparts.[4] Yet these outcomes are predictable to low-income community members[5] because the disparities in COVID-19 death rates are merely an example of the long-term, nationwide trend that connects individual and community wealth to well-being.[6]

COVID-19 Infection, Hospitalization, and Death by Race/Ethnicity, CTRS. FOR DISEASE CONTROL & PREVENTION, https://www.cdc.gov/coronavirus/2019-ncov/covid-data/investigations-discovery/hospitalization-death-by-race-ethnicity.html [https://perma.cc/9K4N-DEX7] (Sept. 9, 2021) ("Race and ethnicity are risk markers for other underlying conditions that affect health, including socioeconomic status, access to health care, and exposure to the virus related to occupation, e.g., frontline, essential, and critical infrastructure workers."); *As US Deaths Mount, Coronavirus Takes Outsized Toll on Minorities*, AL JAZEERA (Aug. 21, 2020), https://www.aljazeera.com/news/2020/08/deaths-mount-coronavirus-takes-outsized-toll-minorities-200821154745726.html [https://perma.cc/G7TQ-HLLE] ("[D]eaths among minorities during the crisis have risen far more than they have among white people.").

4. *See* Samrachana Adhikari, Nicholas P. Pantaleo, Justin M. Feldman, Olugbenga Ogedegbe, Lorna Thorpe & Andrea B. Troxel, *Assessment of Community-Level Disparities in Coronavirus Disease 2019 (COVID-19) Infections and Deaths in Large US Metropolitan Areas*, JAMA NETWORK OPEN, July 28, 2020, at 1, 3 (finding an excess burden of infections and deaths in poorer and more diverse areas); W. Holmes Finch & Maria E. Hernández Finch, *Poverty and Covid-19: Rates of Incidence and Deaths in the United States During the First 10 Weeks of the Pandemic*, FRONTIERS SOCIO., June 2020, at 1, 6 (finding higher COVID-19 death rates in poorer counties during the first months of the pandemic).

5. *See, e.g.*, Andi Egbert, *The Color of Coronavirus: Response Panel*, APM RSCH. LAB, https://www.apmresearchlab.org/covid/response-panel [https://perma.cc/M3E9-WKBU] (last visited Oct. 19, 2021) (statement of Andrew Grant-Thomas) ("[D]ata and trends [of COVID-19] have also encouraged a broader conversation about why this pattern of racialized vulnerability is so painfully familiar . . . .").

6. *See* Frederick J. Zimmerman & Nathaniel W. Anderson, *Trends in Health Equity in the United States by Race/Ethnicity, Sex, and Income, 1993-2017*, JAMA NETWORK OPEN, June 28, 2019, at 1, 8 (finding that in the United States between 1993 and 2017, income disparities worsened and measures of health equity and health justice declined, "hint[ing] that increasing income disparities may be associated with stagnant health equity"). The authors suggest "policies that reduce the prevalence and penalties associated with poverty [as a potential] starting point to improving health equity." *Id. See also* Paola Scommegna, *Exploring the Paradox of U.S. Hispanics' Longer Life Expectancy*, POPULATION REFERENCE BUREAU (July 12, 2013), https://www.prb.org/us-hispanics-life-expectancy/ [https://perma.cc/2EJ3-4UCS] ("Infant and adult mortality rates are strongly associated with income and education levels . . . .").

Critically, wealth and health disparities are more likely to impact Black,[7] Native American,[8] and Latinx[9] people,[10] and these disparities are evident in the COVID-19 data.[11] For example, Black people have lower incomes and higher poverty rates compared to other racial groups,[12] and they have had the highest COVID-19 death rate.[13] This death rate mirrors general public-health outcomes for

7. In keeping with guidance from the National Association of Black Journalists Style Guide, this Note primarily uses the term "Black" to refer to people from African, Caribbean, and Afro-Latinx ethnic backgrounds, to be inclusive of people with black skin in the United States who may not identify as "African Americans" because they are American citizens or do not identify with an African ethnic background. *NABJ Style Guide A*, NAT'L ASS'N BLACK JOURNALISTS, https://www.nabj.org/page/styleguideA [https://perma.cc/23CB-4M2G] (last visited Oct. 19, 2021) ("In a story in which race is relevant and there is no stated preference for an individual or individuals, use black because it is an accurate description of race."). Because the term "African American" was particularly popular in the 1980s and 1990s, this Note will use that term when a historical source refers to African Americans. *See id.* This Note also capitalizes the term "Black" in an effort to "pay[] homage" to the struggle for political, social, and physical acceptance into American society. *See* John Eligon, *A Debate Over Identity and Race Asks, Are African-Americans 'Black' or 'black'?*, N.Y. TIMES (June 26, 2020), https://www.nytimes.com/2020/06/26/us/black-african-american-style-debate.html [https://perma.cc/376N-M2QD] (quoting a statement made by Brittney Cooper).

8. This Note uses the term "Native American" to refer to American Indian, Alaska Native, Native Hawaiian, and American Samoan people. Though members of indigenous tribal communities hold a variety of preferences for the terminology used, this Note uses "Native American" because it is inclusive of tribal communities in the continental United States and those in Alaska, Hawaii, and other U.S. territories. *See* Amanda Blackhorse, *Blackhorse: Do You Prefer 'Native American' or 'American Indian'? 6 Prominent Voices Respond*, INDIAN COUNTRY TODAY, https://indiancountrytoday.com/archive/blackhorse-do-you-prefer-native-american-or-american-indian-kHWRPJqIGU6X3FTVdMi9EQ [https://perma.cc/6BW6-6GLJ] (Sept. 13, 2018) (detailing diverse preferences of six Native-American individuals); *Frequently Asked Questions*, NATIVE AM. RTS. FUND, https://www.narf.org/frequently-asked-questions/ [https://perma.cc/X3RF-CWCZ] (last visited Oct. 19, 2021) ("[U]sage of the term ['Native American'] has expanded to include all Native people of the United States and its territories, including Native Hawaiians and American Samoans."). However, where sources cite to American Indian and Alaska Native communities, this Note uses those terms instead.

9. This Note uses the term "Latinx" in an effort to be inclusive of people of all genders who are of Hispanic/Latino ethnic background. Graciela Mochkofsky, *Who Are You Calling Latinx?*, NEW YORKER (Sept. 5, 2020), https://www.newyorker.com/news/daily-comment/who-are-you-calling-latinx [https://perma.cc/NBL4-JRSB].

10. *See, e.g.*, Gloria L. Beckles & Benedict I. Truman, *Education and Income — United States, 2009 and 2011*, 62 MORBIDITY & MORTALITY WKLY. REP. 9, 15 (Supp. 2013) (finding that the "lowest levels of education and income are most common and persistent among subgroups that systematically exhibit the poorest health," including Latinx, non-Hispanic Black, and American Indian/Alaska Native people).

11. *See* Carlos Irwin Oronce, Christopher A. Scannell, Ichiro Kawachi & Yusuke Tsugawa, *Association Between State-Level Income Inequality and COVID-19 Cases and Mortality in the USA*, 35 J. GEN. INTERNAL MED. 2791 (2020); *see also Risk for COVID-19 Infection, Hospitalization, and Death by Race/Ethnicity*, *supra* note 3.

12. *See* Dedrick Asante Muhammad, Rogelio Tec & Kathy Ramirez, *Racial Wealth Snapshot: American Indians/Native Americans*, NAT'L CMTY. REINVESTMENT COAL. (Nov. 18, 2019), https://ncrc.org/racial-wealth-snapshot-american-indians-native-americans/ [https://perma.cc/CC22-ZGBE] (reporting a poverty rate of 20.8 percent and a median household income of $41,361 for Black Americans, lower than all other racial groups except for American Indian and Alaskan Natives).

13. *Risk for COVID-19 Infection, Hospitalization, and Death by Race/Ethnicity*, *supra* note 3.

Black people, including shorter lifespans[14] and almost double the infant mortality rate than the general U.S. population.[15] Similarly, Native American and Latinx populations—who have lower incomes and higher poverty rates than the white population in the United States[16]—are tied for the highest COVID-19 infection rate.[17] To be sure, high COVID-19 infection and death rates have impacted every race of the U.S. population.[18] Yet the racial composition of people who have died from COVID-19 is striking.[19] After adjusting for death rates by age,[20] Black, Native American, and Latinx people are at least two times more likely to die from COVID-19 than white people.[21]

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14. Elizabeth Arias & Jiaquan Xu, *United States Life Tables, 2017*, NAT'L VITAL STAT. REPS., June 24, 2019, at 1, 5 (reporting a 3.5-year disparity in the life expectancy for white people (78.8 years) and Black people (75.3 years)).

15. *See Infant Mortality Rates by Race: United States, 2015-2017 Average*, MARCH DIMES, https://www.marchofdimes.org/peristats/ViewSubtopic.aspx?reg=99&top=6&stop=94&lev=1&obj=1&cmp=&slev=1&sty=&eny=&chy=20152017 [https://perma.cc/E6WD-37P2] (last visited Oct. 20, 2021).

16. *See* Muhammad et al., *supra* note 12 (reporting that Native Americans have the lowest median income of any racial/ethnic group in the United States ($40,315) and Hispanic households have an average income of $51,450). Native Americans also have the highest poverty rates of any racial/ethnic group, at 25.4%, and Latinx people have a poverty rate of 17.6%. *Id.*

Interestingly, Latinx people in the United States have higher life expectancies than the general U.S. population, which would not be expected given their low income and education levels relative to the general population. *See* Paola Scommegna, *New Studies Link U.S. Hispanics' Longer Life Expectancy to Migration Patterns, Less Smoking*, POPULATION REFERENCE BUREAU (Sept. 12, 2017), https://www.prb.org/hispanics-life-expectancy-migration-patterns/ [https://perma.cc/ZT8M-44E3] (describing what demographers call the "Hispanic Health Paradox"). Factors that might contribute to this phenomenon include less smoking in Latinx communities and migration patterns that may indicate that older and less healthy Mexican-born U.S. residents migrate back to Mexico for more accessible healthcare. *Id.* However, despite this long-term trend, the COVID-19 pandemic has devastated Latinx communities in the United States, causing high rates of infection. *See Risk for COVID-19 Infection, Hospitalization, and Death by Race/Ethnicity*, *supra* note 3. Native Americans, on the other hand, have predictably high rates of infant mortality and low life expectancy, given their low average income and poverty rates. *See Infant Mortality*, CTRS. FOR DISEASE CONTROL & PREVENTION, https://www.cdc.gov/reproductivehealth/maternalinfanthealth/infantmortality.htm [https://perma.cc/NMT8-DBWW] (last updated Sept. 8, 2021) (reporting an infant mortality rate of 8.2 per 1,000 live births for the American Indian/Alaska Native population); *Disparities*, INDIAN HEALTH SERV. (Oct. 2019), https://www.ihs.gov/newsroom/factsheets/disparities/ [https://perma.cc/Z2X2-USJ2] ("American Indians and Alaska Natives born today have a life expectancy that is 5.5 years less than the [general United States] population (73.0 years to 78.5 years, respectively).").

17. *Risk for COVID-19 Infection, Hospitalization, and Death by Race/Ethnicity*, *supra* note 3; *see also* Creede Newton, *Native Americans Look to Future Amid Grim Coronavirus Numbers*, AL JAZEERA (May 5, 2020), https://www.aljazeera.com/news/2020/05/native-americans-future-grim-coronavirus-numbers-200504222237507.html [https://perma.cc/QPA3-UZDF] ("The Navajo Nation has the third-highest infection rate per capita of any region of the US.").

18. *See* APM Research Lab Staff, *The Color of Coronavirus: COVID-19 Deaths by Race and Ethnicity in the U.S.*, APM RSCH. LAB (Mar. 5, 2021), https://www.apmresearchlab.org/covid/deaths-by-race [https://perma.cc/R2JL-NXXW].

19. *See id.*

20. The study authors accounted for age disparities within the population of each race because older people are much more likely to die from COVID-19 than younger people. *Id.*

21. *Id.*

Disproportionately low health outcomes are linked to long-standing income disparities in the United States.[22] Income inequality is a major social issue, and it is especially bad for people of color.[23] Unfortunately, income inequality has gotten worse over the past decades[24] despite attempts to improve it.[25] The 2017 Opportunity Zone (OZ) tax program is the most recent economic-development intervention.[26] The OZ program provides for low-income census tracts in each state to be designated as "Opportunity Zones" and offers tax benefits for people who make investments in businesses and properties in OZs.[27] The purpose of the program is to use tax benefits to incentivize the investment of trillions of dollars of unrealized capital gains into low-income communities that "have had difficulty attracting jobs and new business."[28] Despite the popularity of the OZ program,[29] this Note reveals why the OZ program falls short of its policy goals and likely will not be successful. Specifically, this Note argues that the program's design makes it an ineffective tool to generate prosperity for low-income OZ community members. In addition to explaining the flaws of the program, this Note explains why the OZ tax program should be replaced with economic-development policy that makes direct cash payments to people of color and low-income community members.

Part I provides a history on "Black-capitalism"[30] economic-development policies and public-health outcomes for low-income communities. In particular, this

22. *See* Finch & Hernández Finch, *supra* note 4, at 2 ("[U]nder-resourced communities frequently have less access to high quality health care, and [they] suffer from more illnesses that are associated with high mortality, such as diabetes, heart disease, and pulmonary issues.").

23. *See infra* Part I.

24. Juliana Menasce Horowitz, Ruth Igielnik & Rakesh Kochhar, *Trends in Income and Wealth Inequality*, PEW RSCH. CTR. (Jan. 9, 2020), https://www.pewsocialtrends.org/2020/01/09/trends-in-income-and-wealth-inequality/ [https://perma.cc/DX3E-6ZUK].

25. *See* Matthew Freedman, *Teaching New Markets Old Tricks: The Effects of Subsidized Investment on Low-Income Neighborhoods*, 96 J. PUB. ECON. 1000, 1001, 1009 (2012) (describing the New Market Tax Credit (NMTC) low-income community-development program); Dina Schlossberg, *Empowerment Zones/Enterprise Communities: The New Cure for Distressed Urban Communities or the Same Old Band-Aid?*, 2 HYBRID: J.L. & SOC. CHANGE 33, 35–36 (1994) (describing the Empowerment Zones/Enterprise Community economic-development program).

26. *See* I.R.C. §§ 1400Z-1 to -2.

27. *Id.*

28. *The Promise of Opportunity Zones: Hearing Before the J. Econ. Comm.*, 115th Cong. 1–2 (2018) (statement of Rep. Erik Paulson, Chairman, J. Econ. Comm.).

29. *See, e.g.*, Press Release, Tim Scott, U.S. Sen. for S.C., Senator Scott Introduces the Bipartisan Investing in Opportunity Act (Feb. 2, 2017), https://www.scott.senate.gov/media-center/press-releases/senator-scott-introduces-the-bipartisan-investing-in-opportunity-act [https://perma.cc/LZ8E-CCXV] (claiming that the OZ program will address "widening geographic disparities and increasingly uneven economic growth" by subsidizing investments in American communities that have been "left behind"); Steven Bertoni, *An Unlikely Group of Billionaires and Politicians Has Created the Most Unbelievable Tax Break Ever*, FORBES (July 18, 2018, 6:00 AM), https://www.forbes.com/sites/forbesdigitalcovers/2018/07/17/an-unlikely-group-of-billionaires-and-politicians-has-created-the-most-unbelievable-tax-break-ever/#12dcb4541485 [https://perma.cc/3YPF-JDVE] (quoting Senator Cory Booker saying, "[G]et the best investment minds coming into our communities [and] we can end up creating jobs and opportunity").

30. Black capitalism started as a campaign slogan and became the central pillar of President Richard Nixon's racial policy. It focused on promoting Black people's entrepreneurship as a way to

Note shows that Black-capitalism initiatives have been intermittent and inconsistent and continue to suffer from a lack of strategic oversight by the federal government. Part II describes the design of the OZ program and the optimism about it. Using legislative history and OZ project data, this Note shows how the OZ program is a new iteration of economic-development policy aimed at pacifying people of color's efforts to seek substantive economic reform while appealing to the sensibilities of white and middle-class voters.[31] Part III argues that solutions to income inequality and economic stagnation lie in direct payment programs to low-income community members to help alleviate poverty and enable more people to go to school. This Note describes how wealth redistribution programs, including reparations and universal basic income, are necessary to correct income inequality and prevent future public-health crises.

I. WEALTH AND HEALTH GAPS

The United States has a long-standing history of legally and socially marginalizing people of color[32] that has created extreme wealth and health inequalities between Black, Native American, and Latinx populations and their white counterparts.[33] This Part discusses the history of U.S. laws and programs that

solve racial inequality and quell racial unrest in ghettos across the United States in the late 1960s. *See infra* Section I.B. and accompanying footnotes. Presidents since Nixon have supported subsequent iterations of Black-capitalism policies, including the New Markets Tax Credit and Empowerment and Enterprise Zones. *Id.*

31. *See* Robert E. Weems, Jr. & Lewis A. Randolph, *The National Response to Richard M. Nixon's Black Capitalism Initiative: The Success of Domestic Detente*, 32 J. BLACK STUD. 66, 67 (2001); *see also* Mehrsa Baradaran, *We Need More Government, Not Less, in the War on Poverty*, WASH. POST (Dec. 8, 2017), https://www.washingtonpost.com/news/made-by-history/wp/2017/12/08/we-need-more-government-not-less-in-the-war-on-poverty/ [https://perma.cc/UU8Q-3WFN] (describing the history of ineffective economic-development policies that have "left black communities trapped in poverty while white politicians pat themselves on the back for taking ineffectual half-measures whose main virtue is their acceptability to white constituents").

32. Linde Riphagen, *Marginalization of African-Americans in the Social Sphere of US Society*, 5 INTERDISC. J. INT'L STUD., 96, 99–102 (2008) (describing the history of marginalization and current data revealing disparate social outcomes for Black people in the United States); Mary G. Findling, Logan S. Casey, Stephanie A. Fryberg, Steven Hafner, Robert J. Blendon, John M. Benson, Justin M. Sayde & Carolyn Miller, *Discrimination in the United States: Experiences of Native Americans*, 54 HEALTH SERVS. RSCH. 1431, 1432 (2019) (discussing impacts of "[c]enturies of massive trauma, genocide, forced migration, segregation, and discrimination" in Native American communities); Erin Blakemore, *The Brutal History of Anti-Latino Discrimination in America*, HISTORY (Aug. 29, 2018), https://www.history.com/news/the-brutal-history-of-anti-latino-discrimination-in-america [https://perma.cc/P3RY-WG8B] (describing how the end of the Mexican-American War in 1848 created a sizeable Mexican-American population, which set off the first wave of Latino-American discrimination in the United States).

33. *See, e.g.*, Beckles & Truman, *supra* note 10; *see also infra* Section I.C. This Section primarily discusses the policies and laws that impacted Black people because there were far greater numbers of Black people in the United States than other racial/ethnic minority groups. *See* Campbell Gibson & Kay Jung, *Historical Census Statistics on Population Totals by Race, 1790 to 1990, and by Hispanic Origin, 1970 to 1990, for Large Cities and Other Urban Places in the United States* (U.S. Census Bureau, Working Paper No. 76, 2005), https://www.census.gov/content/dam/Census/library/working-papers/2005/demo/POP-twps0076.pdf [https://perma.cc/J5H8-6MWA]. However, policies of

have created systemic racism and institutionalized wealth disparities through targeted community disinvestment.

A. The Development of Racialized Wealth Inequality in the United States

Since the initial European colonization of the area now comprising the United States, ethnic minorities have had limited economic opportunities. Starting in the early 1600s, colonizers stole land and resources from Native American tribal communities;[34] kidnapped, transported, and enslaved African people;[35] and vilified non-Anglo immigrants as threats to society.[36]

After the Emancipation Proclamation ended the institution of slavery in 1863,[37] there was a movement to provide formerly enslaved people land reparations.[38] Land reparations received substantial mainstream support, and in 1865, President Abraham Lincoln signed the Freedmen's Bureau Act, which provided for each Black male to have "forty acres at a low price on long credit."[39] People opposed to land reparations argued newly freed Black people would use

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forced removal also sowed the seeds of extreme wealth and health disparities in Native American communities.

Notably, Asian Americans, though racial minorities in the United States and considered people of color, actually have higher incomes and life expectancies than white people in the United States. Francesco Acciai, Aggie J. Noah & Glenn Firebaugh, *Pinpointing the Sources of the Asian Mortality Advantage in the United States*, 69 J. EPIDEMIOLOGY & CMTY. HEALTH 1006, 1007 (2015). Although Asian immigrants were legally marginalized in the United States, similar to other racial minority groups, this racial population does not have the same economic and health disadvantages as other populations of color in the United States today. This Note does not examine the historical, cultural, and legal influences that have led to higher wealth and health attainment for this racial population. Instead, this Note focuses on Black, Native American, and Latinx communities, who are the racial populations that experience most economic and health inequalities in the United States.

34. *See* Johnson v. M'Intosh, 21 U.S. 543 (1823) (holding that Native Americans did not have the right to sell property to entities other than the federal government).

35. *Early American Slavery in the Colonies and the Hardening of Racial Distinctions*, *in* 1 SLAVERY IN THE UNITED STATES: A SOCIAL, POLITICAL, AND HISTORICAL ENCYCLOPEDIA 84, 87–90 (Junius P. Rodriguez ed., 2007). Even free Black people were legally prohibited from owning property in many states. MEHRSA BARADARAN, THE COLOR OF MONEY: BLACK BANKS AND THE RACIAL WEALTH GAP 11–12 (2017).

36. *Immigration to the United States, 1851-1900*, LIBR. CONG., https://www.loc.gov/classroom-materials/united-states-history-primary-source-timeline/rise-of-industrial-america-1876-1900/immigration-to-united-states-1851-1900/ [https://perma.cc/GTS8-XZYV] (last visited Oct. 20, 2021) ("With the onset of hard economic times in the 1870s, European immigrants and Americans began to compete for the jobs traditionally reserved for the Chinese. With economic competition came dislike and even racial suspicion and hatred. Such feelings were accompanied by anti-Chinese riots [and efforts to end Chinese immigration].").

37. *The Emancipation Proclamation*, NAT'L ARCHIVES, https://www.archives.gov/exhibits/featured-documents/emancipation-proclamation#:~:text=President [https://perma.cc/S9B5-28ND] (Aug. 5, 2021).

38. BARADARAN, *supra* note 35, at 15.

39. *Id.* at 16 (quoting Walter L. Fleming, "*Forty Acres and a Mule.*," 182 N. AM. REV. 721, 729 (1906)); Act of March 3, 1865, ch. 90, 13 Stat. 507. *See also Freedmen's Bureau Acts of 1865 and 1866*, U.S. SENATE, https://www.senate.gov/artandhistory/history/common/generic/FreedmensBureau.htm [https://perma.cc/FY25-YHRJ] (last visited Oct. 20, 2021).

their land to plant subsistence crops, rather than valuable cotton, and the loss of this export would have widespread negative impacts on the U.S. economy.[40] Unfortunately, after President Lincoln was assassinated, President Andrew Johnson opposed Reconstruction efforts in the South and vetoed legislation that would have renewed the Freedmen's Bureau legislation.[41] Subsequently, southerners used violence and terror to keep Black people away from their newly obtained lands, and federal administrators took back land from Black people who remained on their land despite threats and violence.[42] There had been hopes during Reconstruction for a redistribution of wealth and potentially even racial equality, but when Reconstruction failed in 1877,[43] no such legal or economic changes took place.[44] Instead, Black codes[45] stifled the free movement of Black people in the market by preventing them from working in most occupations and limiting their civic participation.[46]

In the decades following the Civil War, economic policy and practices supported a racial hierarchy and employment segregation.[47] Even people from European ethnic backgrounds such as Italian, Polish, and Eastern European—people who today are legally and culturally considered white—were not considered to be white and were marginalized in the economic and political realms.[48] Union policies prevented people of different racial and ethnic groups from

40. BARADARAN, *supra* note 35, at 19–20.

41. *Freedmen's Bureau Acts of 1865 and 1866*, *supra* note 39.

42. BARADARAN, *supra* note 35, at 16–17.

43. *Black Codes and Pig Laws*, PBS, https://www.pbs.org/tpt/slavery-by-another-name/themes/black-codes-and-pig-laws/ [https://perma.cc/LWR4-E7UC] (last visited Oct. 20, 2021).

44. BARADARAN, *supra* note 35, at 16, 21–22.

45. Black codes were southern state laws that regulated and limited the movement, labor, and activities of formerly enslaved people. *Black Codes of Mississippi*, TEACHING AM. HIST., https://teachingamericanhistory.org/library/document/black-codes-of-mississippi/ [https://perma.cc/CE7U-RB3C] (last visited Oct. 20, 2021).

46. BARADARAN, *supra* note 35, at 20. Southern criminal laws also limited Black people's movement and freedom. *Id.* at 21 (describing "vagrancy violations," which could be used to arrest Black men who were not working for a white landlord).

47. Richard Rothstein, *A History of Residential Segregation in the United States*, IRP FOCUS, March 2019, at 2, 2–3; *see also* David E. Hamilton, *Herbert Hoover: The American Franchise*, MILLER CTR., https://millercenter.org/president/hoover/the-american-franchise [https://perma.cc/6ZLT-2Y59] (last visited Oct. 20, 2021) ("The majority of newcomers to the United States were of southern or eastern European descent . . . and worked in low-paying, blue-collar occupations . . . .").

48. Kamala Kelkar, *How a Shifting Definition of 'White' Helped Shape U.S. Immigration Policy*, PBS NEWS HOUR WEEKEND (Sept. 16, 2017, 1:51 PM), https://www.pbs.org/newshour/nation/white-u-s-immigration-policy [https://perma.cc/H2HL-VUTN] (discussing how people from Southern and Eastern Europe were not considered "purely" white in the early 1900s). Part of the reason Italian immigrants were not considered "white" was that they were willing to work in lower-wage jobs. For example, in Louisiana, Italians worked on plantations and lived alongside Black people. Brent Staples, Opinion, *How Italians Became 'White*,*'* N.Y. TIMES (Oct. 12, 2019), https://www.nytimes.com/interactive/2019/10/12/opinion/columbus-day-italian-american-racism.html [https://perma.cc/8WF4-NDNZ]. *See also* Rothstein, *supra* note 47.

entering certain professions and practicing skilled trades.[49] Interestingly, this employment segregation supported racially integrated urban neighborhoods because working class people—mostly white immigrants and Black people—lived near jobs in factories and transit centers in the downtown area of cities.[50]

Unfortunately, the Great Depression of the late 1920s and 1930s, and the federal government's policy response to it, destabilized working-class communities, and Black populations were most devastatingly impacted.[51] The Great Depression caused many people to lose their jobs and housing.[52] In response, the federal government created many workplace protections.[53] But the positions commonly held by Black people—farming and domestic servitude—were exempted from these protections. This exemption had the effect of denying Black people the wage growth and workplace-quality increases the new federal protections engendered.[54] To respond to the Great Depression's housing crisis, the Roosevelt administration's Public Works Administration initially planned to develop low-cost apartment buildings in urban centers across the country.[55] The plan was scrapped, however, in an effort to obtain private investments for housing development; officials replaced plans to rebuild affordable apartment buildings with plans for lucrative single-family homes.[56]

New Deal agencies and laws subsidized low-income home buyers but denied Black people access to these federally funded programs.[57] In 1936, the Home

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49. *E.g.*, Paul Moreno, *Unions and Discrimination*, 30 CATO J. 67, 71 (2010) (describing how labor leaders promoted racial egalitarianism at the federation level but failed to address the discriminatory policies implemented at the national and local union levels); *A Brief History of Labor, Race and Solidarity*, AFL-CIO LAB. COMM'N ON RACIAL & ECON. JUST., https://racial-justice.aflcio.org/blog/est-aliquid-se-ipsum-flagitiosum-etiamsi-nulla [https://perma.cc/3ZUD-9HWL] (last visited Oct. 20, 2021).

50. *See* Rothstein, *supra* note 47, at 2–3 (describing how the mostly white neighborhood of West Oakland, California, had a small Black population who worked for the transit company whose line started there).

51. *See* Christopher Klein, *Last Hired, First Fired: How the Great Depression Affected African Americans*, HISTORY (Aug. 31, 2018), https://www.history.com/news/last-hired-first-fired-how-the-great-depression-affected-african-americans#:~:text=African-American [https://perma.cc/7YM5-AF2Y] (noting that Black unemployment rates across the country were double or triple that of the local white population).

52. James Gregory, *Hoovervilles and Homelessness*, GREAT DEPRESSION WASH. STATE PROJECT, https://depts.washington.edu/depress/hooverville.shtml [https://perma.cc/L246-LE2J] (last visited October 20, 2021) (noting that following the stock market crash and subsequent job loss, homeowners lost their property and renters were evicted, leading millions of Americans to live outside the normal rent-paying housing market by 1932).

53. BARADARAN, *supra* note 35, at 101–02.

54. *Id.* at 103 (describing how the majority of Black southerners were excluded from workplace-protection legislation including wage and hour protections and the right to unionize). In the North, Union membership was frequently restricted to white members, so the benefits obtained by many union organizations did not extend to Black people. *Id.* at 102.

55. LOUIS HYMAN, DEBTOR NATION: THE HISTORY OF AMERICA IN RED INK 51 (2011).

56. *Id.* at 51–52; BARADARAN, *supra* note 35, at 104.

57. Charles L. Nier, III, *Perpetuation of Segregation: Toward a New Historical and Legal Interpretation of Redlining Under the Fair Housing Act*, 32 J. MARSHALL L. REV. 617, 619–27 (1999).

Owners Loan Corporation (HOLC) mapped neighborhoods across the country to determine a home's potential to appreciate in order to create standardized home appraisals.[58] Neighborhoods were categorized largely by their racial makeup, and the least desirable neighborhoods were colored red ("redlined").[59] The HOLC created policies that discouraged lending for purchases in neighborhoods that were racially heterogenous and predominantly Black.[60] Because Black people were denied loans for home purchases (both in cities and in suburbs), they were deprived of homeownership as a path to wealth.[61] This disparate treatment contributed to intergenerational wealth disparities between Black and white people.[62]

Redlining policy also incentivized white flight and led to the formation of ghettos: desolate, poverty-stricken, urban communities.[63] While Black people were trapped in ghettos, federal home-lending policies incentivized white people to leave urban neighborhoods because federally backed mortgage credit was mostly only available for home purchases in white neighborhoods.[64] To aid in the transportation of workers from their new suburban homes to downtown jobs, the United States poured millions of dollars into construction programs that bulldozed, bifurcated, and walled in urban communities, thereby physically separating and isolating ghetto communities.[65]

Decades after the Great Depression, New Deal programs solidified a new white middle class.[66] Yet Black communities were cut out of those wealth-building programs and faced systemic racism and economic deprivation.[67] Not only were Black people unemployed at higher rates, denied access to credit that would allow

58. *Mapping Inequality: Redlining in New Deal America*, U. RICH. DIGIT. SCHOLARSHIP LAB, https://dsl.richmond.edu/panorama/redlining/#loc=5/39.1/-94.58&text=intro [https://perma.cc/QZ32-BLCP] (last visited Oct. 20, 2021).

59. *Id.*

60. *See* FED. HOUS. ADMIN., UNDERWRITING MANUAL: UNDERWRITING AND VALUATION PROCEDURE UNDER TITLE II OF THE NATIONAL HOUSING ACT pt. 3, § 13, para. 1360 (1938) ("The infiltration of inharmonious racial groups . . . tend[s] to lower the levels of land values and to lessen the desirability of residential areas."). *See also* BARADARAN, *supra* note 35, at 105 ("[R]ace was a greater factor in a neighborhood's predicted decline than other structural characteristics such as the age of homes, proximity to city centers, creditworthiness of residents, transportation opportunities, public parks, or any other features.").

61. Nier, *supra* note 57, at 618–19 ("[M]ortgage lending discrimination in the form of racial redlining . . . limits minority access to homeownership.").

62. *Id.*

63. Laufman v. Oakley Bldg. & Loan Co., 408 F. Supp. 489, 496–97 (S.D. Ohio 1976) ("Little imagination is required to understand that the imposition of barriers to occupancy in the form of higher mortgage-interest rates or refusals to make loans in connection with housing in changing neighborhoods works to discourage families, white or black, which could afford to purchase homes in such neighborhoods. The practical effect is to discourage whites-who may freely move elsewhere-from moving into vacancies in 'changing' neighborhoods, thereby inducing 'massive transition' and, ultimately, 'white flight.' Thus, according to this view, redlining directly contributes to the decay of our cities.").

64. *Id.*

65. BARADARAN, *supra* note 35, at 104–05.

66. *Id.* at 103.

67. *See* Nier, *supra* note 57, at 618, 619.

them to become homeowners, and frequently prevented from entering higher-paying jobs, their more affluent, white neighbors had fled their neighborhoods, leaving behind poorer tax bases and schools.[68] Additionally, due to mainstream banking practices, many Black people lacked access to credit for smaller purchases and ventures.[69] This lack of mainstream credit created a market for predatory credit providers whose practices ultimately led to further wealth diminishment in Black households.[70] For decades, Black community members worked to create alternative Black banks that would meet their communities' credit needs and help build local wealth, but these efforts continually failed due to federal policies that actively restricted and neglected wealth-building efforts in Black communities.[71]

In the 1960s, activists and leaders in the Civil Rights Movement proposed policies to combat this deep economic, political, and social inequality.[72] President John F. Kennedy encouraged Congress to pass broad civil-rights policies, including integrating schools and restricting government funding for programs practicing discrimination.[73] His successor, President Lyndon Johnson, supported and passed the Civil Rights Act in 1964, conferring *legal* equality on Black people—yet civil-rights leaders' calls for economic policies to correct centuries of wealth deprivation went unanswered.[74] Many white people argued that Black people should not be given government support and subsidies because that would go against the

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68. John A. Gibson, K-12 School Funding and Resource Allocation: The Effect of White Flight on Education Funding Among Public School Districts in Rust Belt States (2010) (Ph.D. dissertation, Northern Illinois University) (ProQuest) (finding "significant correlations between White flight and property tax revenue reductions in 12 of 16 Rust Belt cities from 1960 to 2000 [and] statistical evidence of disparities in property tax revenue among school districts with high minority enrollments").

69. BARADARAN, *supra* note 35, at 75–76 (describing how mainstream banks, such as the banks in Harlem, would not make loans to Black people, and how Black banks sprang up in Northern cities to fill this need). Unfortunately, these banks generally failed due to heavy loan losses because Black ghetto properties lost their value. *Id.* at 87.

70. Douglas S. Massey, Jacob S. Rugh, Justin P. Steil & Len Albright, *Riding the Stagecoach to Hell: A Qualitative Analysis of Racial Discrimination in Mortgage Lending*, 15 CITY & CMTY. 118, 120, 122–23 (2016); BARADARAN, *supra* note 35, at 144 (noting that although credit cards had become popular in the 1960s, they were not widely available to Black people, who instead paid for purchases with high-cost installment credit).

71. BARADARAN, *supra* note 35, at 76, 127.

72. *See, e.g.*, *The Black Panthers: Ten Point Program*, BLACK LIVES MATTER SYLLABUS, http://www.blacklivesmattersyllabus.com/wp-content/uploads/2016/07/BPP_Ten_Point_Program.pdf [http://web.archive.org/web/20210605044926/http://www.blacklivesmattersyllabus.com/wp-content/uploads/2016/07/BPP_Ten_Point_Program.pdf] (last visited June. 5, 2021) (demanding the "overdue debt of forty acres and two mules").

73. *Civil Rights Movement*, JOHN F. KENNEDY PRESIDENTIAL LIBR. & MUSEUM, https://www.jfklibrary.org/learn/about-jfk/jfk-in-history/civil-rights-movement [https://perma.cc/J876-EYAQ] (last visited Oct. 20, 2021).

74. BARADARAN, *supra* note 35, at 135, 137–38 (explaining how Bayard Rustin and Dr. Martin Luther King, Jr. called for economic programs including housing integration, the allocation of public funds for economic development, and specific privileges for Black people to obtain equality).

notion of equality under the law.[75] In response, President Johnson created the "Great Society" program and waged a "War on Poverty" that supported poor (not "Black") people's economic advancement without altering the legal framework that created the wealth gap between white and Black people.[76] Instead of creating programs to help Black people build capital, President Johnson's efforts were focused on charity by providing food, income assistance, and educational opportunities, such as job training and early childhood education programs.[77]

B. Black-Capitalism Policy

As he campaigned for president, Richard Nixon simultaneously quelled calls for equality from Black people and concerns about racial unrest from white people by promoting "Black capitalism," which he said would create "bridges" between the two populations.[78] By advocating for bridges *between* the two economies—the Black, ghetto economy and the white, government-subsidized economy—he voiced his support for segregated economies,[79] appealing to white voters and some Black activists and leaders.[80]

Nixon subverted Black activists' rhetoric of Black Power and Black economic independence by advocating for Black *capitalism*, urging that Black people should raise themselves up to equality by building businesses.[81] "Black Power" had been a popular slogan among racial-justice leaders and advocates, including the revolutionary socialist organization the Black Panther Party.[82] Black Power emphasized economic independence from white people through property, business, and institutional ownership.[83] Black economic independence was also popular among more moderate civil-rights leaders who had become disheartened about the United States' political will for integration.[84] Nixon used the Black-capitalism

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75. *Id.* at 138 ("[W]hites demanded that blacks not be given any special favors based on their race.").

76. *See id.* at 151.

77. *Id.*

78. ROBERT E. WEEMS, JR. & LEWIS A. RANDOLPH, BUSINESS IN BLACK AND WHITE: AMERICAN PRESIDENTS AND BLACK ENTREPRENEURS IN THE TWENTIETH CENTURY 6 (2009); *see also* BARADARAN, *supra* note 35, at 164–65, 178; Mehrsa Baradaran, *A Bad Check for Black America*, BOS. REV. (Nov. 9, 2017) [hereinafter Baradaran, *A Bad Check*], http://bostonreview.net/class-inequality-race/mehrsa-baradaran-bad-check-black-america [https://perma.cc/A46Z-M8H5].

79. *See* Baradaran, *A Bad Check*, *supra* note 78.

80. *See* WEEMS & RANDOLPH, *supra* note 78; Dean Kotlowski, *Black Power—Nixon Style: The Nixon Administration and Minority Business Enterprise*, 72 BUS. HIST. REV. 409, 410–11 (1998); Baradaran, *A Bad Check*, *supra* note 78.

81. Kotlowski, *supra* note 80, at 411.

82. *Black Power*, NAT'L ARCHIVES (Mar. 16, 2021), https://www.archives.gov/research/african-americans/black-power [https://perma.cc/WE2B-C7QC].

83. *The Black Panthers: Ten Points Program*, *supra* note 72.

84. BARADARAN, *supra* note 35, at 162–64, 171; *see also The Black Panthers: Ten Points Program*, *supra* note 72.

rhetoric to suggest responsiveness to the trends and demands of the Black community.[85]

The Black-capitalism slogan was likewise appealing to white voters and their elected representatives.[86] Capitalism and entrepreneurship resonated with middle-class voters' bootstrap mentality.[87] At the same time, Nixon's emphasis on self-help and ending welfare dependency provided legitimacy for slashing social-support programs for Black people.[88] While he campaigned, he kept the mechanics of Black capitalism vague,[89] but he promised that the program would be cheap.[90]

After his election, President Nixon fulfilled his Black-capitalism promises by creating the Department of Commerce's Office of Minority Business Enterprise (OMBE), whose mission was to coordinate the federal government's minority-business programs and promote stories of Black entrepreneurial success.[91] There was no budget for OMBE to create its own minority business development programs—the only mandate was the *promotion* of minority business-development activities by state and local governments and private and nonprofit actors.[92]

Although President Nixon "promoted Black capitalism as a major remedy for America's racial ills,"[93] the Nixon administration ultimately provided minimal assistance to Black entrepreneurs.[94] The Black-capitalism programs included the failed Minority Enterprise Small Business Investment Company's program,[95] the

85. Kotlowski*, supra* note 80, at 412.

86. BARADARAN, *supra* note 35, at 164–66.

87. *Id.* at 164–65.

88. *Id.* at 177. His campaign also argued that the race riots of 1968, which erupted in ghettos after Dr. Martin Luther King, Jr. was assassinated, were *caused* by government aid. *Id.*

89. 2 STEPHEN E. AMBROSE, NIXON: THE TRIUMPH OF A POLITICIAN, 1962-1972, at 154 (1989). The Black-capitalism policy also sought to support locally owned businesses in the United States' ghettos. *Id.* "Nixon had not yet worked out many of the details of bringing the benefits of free enterprise to the inner cities . . . ." *Id.* He committed to induce businesses to invest in ghettos and support locally owned businesses in ghettos. *Id.* at 125, 154.

90. BARADARAN, *supra* note 35, at 164.

91. Exec. Order No. 11,458, 34 Fed. Reg. 4,937 (Mar. 5, 1969); Baradaran, *A Bad Check*, *supra* note 78, ("[T]he most important objective of the OMBE was to manufacture and broadcast success stories . . . .").

92. Exec. Order No. 11,458.

93. Weems & Randolph, *supra* note 31, at 67.

94. WEEMS & RANDOLPH, *supra* note 78, at 7. The program was designed to attract private investment in Black businesses. *Id.* at 6.

95. Timothy Bates, *Government as Financial Intermediary for Minority Entrepreneurs: An Evaluation*, 48 J. BUS. 541, 541 (1975). The program failed because its business model did not make sense and the program was underfunded. *Id.* The businesses enrolled in the program were entirely debt financed, and outside investors did not have equity in the companies, which meant that the businesses had little cushion to absorb market shocks. Market shocks were more likely because the businesses were based in low-income, high-crime communities. BARADARAN, *supra* note 35, at 183. Furthermore, Nixon's programs were focused on creating small businesses that "were the most vulnerable and least likely to succeed in this environment." Baradaran, *A Bad Check*, *supra* note 78.

Small Business Authority minority set-aside program,[96] the Minority Bank Deposit Program,[97] and affirmative-action policies initiated by the Equal Opportunity Office.[98] The initiatives were grossly inadequate to address any of the causes of wealth inequality between Black and white people: disparate access to government programs, government-sanctioned housing segregation, and denial of credit.[99] President Nixon's policy stood in stark contrast to the suggested economic-justice reforms championed by civil-rights activists, such as targeted housing integration, busing and integration of schools,[100] and reparations programs.[101]

Although the federal government and members of the private sector have criticized Black capitalism as a solution to racial-wealth disparities,[102] it enjoys continued popularity among policymakers. Despite Black capitalism's failure to address racialized economic inequality, both the rhetoric and market-based policy of Black capitalism have held prominent places in the racial-equity and community-development agendas of subsequent presidential administrations.[103]

C. The Enduring Legacy of Black Capitalism

Every president after President Nixon has promoted a form of Black-capitalism policy.[104] Although President Gerald Ford rebranded "Black capitalism" to "minority enterprise," he continued the Nixon administration's programs, including the minority set-aside program.[105] President Jimmy Carter promoted minority enterprise[106] while simultaneously cutting or reducing social

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96. Baradaran, *A Bad Check*, *supra* note 78. This program helped minority-owned businesses to receive government contracts. *Id.*

97. *Id.* This program encouraged federal agencies to make deposits in minority banks. *Id.*

98. *Id.* Affirmative action encouraged companies to hire more Black employees. *Id.*

99. *See* Weems & Randolph, *supra* note 31, at 68; *see also* BARADARAN, *supra* note 35, at 178.

100. AMBROSE, *supra* note 89, at 175.

101. BARADARAN, *supra* note 35, at 172–74. Baradaran describes various reparations policy proposals including $15 for every Black person in the United States, totaling $500 million to be paid by Christian churches and synagogues (advanced by James Forman of the Black Panthers); land for a "Republic of New Africa" in the South (advanced by Black separatists); ten percent of the United States' Fortune 500 companies put under Black control (advanced by Economist Richard F. America Jr.); the Ghetto Economic Development and Industrialization Plan that required outside funds, including $200 million from New York City, to support economic development in ghettos (advanced by banker Dunbar S. McLaurin); and the Community Self-Determination Bill that would create Community Development Corporations that would be owned by ghetto residents and supported with seed credit from the Treasury (advanced by the Congress of Racial Equity (CORE) and introduced in the Senate in 1968). *Id.*

102. *See, e.g.*, Phillip H. Wiggins, *Blacks Debate Black Capitalism*, N.Y. TIMES (Jan. 10, 1971) https://www.nytimes.com/1971/01/10/archives/blacks-debate-black-capitalism.html [https://perma.cc/5WZ5-2B8G] ("[T]he clenched fist of militancy has broken down few boardroom barriers.").

103. WEEMS & RANDOLPH, *supra* note 78, at 7–9; BARADARAN, *supra* note 35, at 220.

104. BARADARAN, *supra* note 35, at 220.

105. *Id.*

106. *Id.*

programs that were vitally important to Black people.[107] President Ronald Reagan increased the federal government's emphasis on Black capitalism by arguing that instead of welfare, tax breaks were the key to alleviating economic hardship in minority communities.[108] He called inner-city communities "enterprise zones," reduced regulations, and provided tax cuts to lure businesses to those communities.[109]

President George H. W. Bush, Sr., oversaw changes to the tax code that had mixed but overall negative impacts on low-income housing. The U.S. Tax Reform Act of 1986 (TRA86) reduced certain incentives for rental-housing investment[110] and created the Black-capitalism program called the Low-Income Housing Tax Credit (LIHTC)[111] "partly to mitigate the impact of [the reforms] on low-income housing construction."[112] Although the LIHTC helped spur affordable housing development, it was insufficient to make up for the lost investment incentives.[113] Overall, TRA86's changes to rental-housing investment incentives contributed to a decrease in the construction of multifamily homes from 515,000 in 1985 to only 140,000 by 1991, despite increased need for such housing.[114]

107. Mfanya D. Tryman, *Was Jesse Jackson a Third Party Candidate in 1988?*, BLACK SCHOLAR, Jan.–Feb. 1989, at 19, 27 (1989).

108. BARADARAN, *supra* note 35, at 221.

109. *Id.* at 222.

110. *See* Alex Muresianu, *Did 1986 Tax Reform Hurt Affordable Housing?*, TAX FOUND. (July 1, 2020), https://taxfoundation.org/1986-tax-reform-hurt-affordable-housing/ [https://perma.cc/F7QU-HQXV] (describing how the reform's longer depreciation schedules for residential structures and new limitations on passive loss deduction negatively impacted investing in rental construction).

111. I.R.C. § 42.

112. Muresianu, *supra* note 110. This program provides subsidies through taxes to promote the construction and improvement of affordable rental housing for low-income households. *What Is the Low-Income Housing Tax Credit and How Does It Work?*, TAX POL'Y CTR., https://www.taxpolicycenter.org/briefing-book/what-low-income-housing-tax-credit-and-how-does-it-work [https://perma.cc/JVX9-6T8M] (last visited Oct. 20, 2021).

113. Muresianu, *supra* note 110 ("On net, TRA86 favored owner-occupied housing over investment in rental housing.").

114. James M. Poterba, *Taxation and Housing: Old Questions, New Answers* 8 (Nat'l Bureau of Econ. Rsch., Working Paper No. 3963, 1992).

While supporting racial-wealth-promoting laws including the Earned Income Tax Credit (EITC),[115] Early Head Start,[116] and minimum-wage increases,[117] President Bill Clinton also increased spending on Black-capitalism programs by creating tax benefits to encourage private investments in low-income communities through the Empowerment Zone (EZ), Enterprise Community (EC), and Renewal Community (RC) programs.[118] Clinton additionally signed another Black-capitalism program, the New Markets Tax Credit (NMTC), into law just before leaving office.[119] These public-private partnership policies were all examples of Clinton's "Third Way" policies that purported to use market forces to improve people's lives.[120] President George W. Bush, Jr., enacted and expanded the LIHTC[121] and

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115. I.R.C. § 32. The EITC is a refundable tax credit, meaning that eligible recipients who do not owe taxes still receive the benefit. *See* MARGOT L. CRANDALL-HOLLICK, GENE FALK & CONOR F. BOYLE, CONG. RSCH. SERV., R43805, THE EARNED INCOME TAX CREDIT (EITC): HOW IT WORKS AND WHO RECEIVES IT 1 (2020). The EITC credit is primarily for low-wage workers, and eligibility is based on the recipient's income, residence, children, and age requirements for those without qualifying children. *Id.* at 1–6. The credit phases out once an individual's income reaches statutory limits. *Id.* at 8.

116. 42 U.S.C. § 9840a. Early Head Start provides child-development supports and other services to low-income pregnant women and families with infants and toddlers from birth to age three. The Head Start program began in 1965 and focused on children ages four and up; funding for the Head Start program additionally increased by forty-three percent under the Clinton administration. *Childcare Accomplishments: The Clinton Administration and Child Care*, WHITEHOUSE 2 (Oct. 23, 1997), https://clintonwhitehouse2.archives.gov/WH/New/Childcare/acomplish.html [http://web.archive.org/web/20210516032955/https://clintonwhitehouse2.archives.gov/WH/New/Childcare/acomplish.html].

117. Richard W. Stevenson, *Clinton Signs a Bill Raising Minimum Wage by 90 Cents*, N.Y. TIMES (Aug. 21, 1996), https://www.nytimes.com/1996/08/21/us/clinton-signs-a-bill-raising-minimum-wage-by-90-cents.html [https://perma.cc/7224-UR2S].

118. Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, 107 Stat. 312 (establishing the EZ/EC program and its package of grants and tax benefits); Taxpayer Relief Act of 1997, Pub. L. No. 105-34, 111 Stat. 788 (designating additional EC/EZ zones); Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999, Pub. L. No. 105-277, 112 Stat. 2681 (designating additional rural ECs); Community Renewal Tax Relief Act of 2000, Pub. L. No. 106-554, 114 Stat. 2763 (establishing the RC program); American Jobs Creation Act of 2004, Pub. L. 108-357, 118 Stat. 1418 (expanding RC boundaries based on new census data). The initial phases of these programs offered grants and tax incentives for community and economic development, but the later iterations of the policy primarily offered tax incentives for business development. U.S. GOV'T ACCOUNTABILITY OFF., GAO-10-464R, REVITALIZATION PROGRAMS: EMPOWERMENT ZONES, ENTERPRISE COMMUNITIES, AND RENEWAL COMMUNITIES (2010).

119. *H.R.4577 - Consolidated Appropriations Act, 2001*, CONGRESS.GOV, https://www.congress.gov/bill/106th-congress/house-bill/4577/all-actions?q=%7B%22search%22%3A%5B%22cite%3APL106-554%22%5D%7D&s=1&r=1&overview=closed#tabs [http://web.archive.org/web/20211012201457/https://www.congress.gov/bill/106th-congress/house-bill/4577/all-actions?q=%7B%22search%22%3A%5%20B%22cite%3APL106-554%22%5D%7D&s=1&r=1&overview=closed] (last visited Oct. 12, 2021). The Community Renewal Tax Relief Act created the NMTC, which provides tax credits to investors who make investments in Community Development Entities that invest in low-income communities.

120. Julia Sass Rubin & Gregory M. Stankiewicz, *The New Markets Tax Credit Program: A Midcourse Assessment*, 1 CMTY. DEV. INV. REV. 1, 1 (2005).

121. Housing and Economic Recovery Act of 2008, Pub. L. No. 110-289, 122 Stat. 2654 (modifying the LIHTC and temporarily increasing the LIHTC cap).

the NMTC.[122] President Barack Obama further expanded the Black-capitalism community-development model with the Promise Zones Initiative, which aimed to encourage private investment in designated high-poverty areas.[123]

Like the previous iterations of Black-capitalism policies, President Donald Trump's 2017 OZ program provides financial incentives and benefits to private developers and investors to engage in business development in low-income communities.[124] The long history of and varied approaches to Black-capitalist development policies provide ample opportunity for evaluating the efficacy of these programs. Overall, studies indicate these policies are ineffective drivers of community development and frequently yield outcomes counter to the stated goals of the policies. For example, though still in operation, the LIHTC is heavily criticized for its inefficiency.[125] Evaluations of the EZ/EC/RC incentives determined that the programs are wasteful from a cost-per-job perspective.[126] At best, the impacts of the NMTC are unclear,[127] but this mediocre outcome is

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122. Benson F. Roberts, *The Political History of and Prospects for Reauthorizing New Markets*, 1 CMTY. DEV. INV. REV. 21, 27–29 (2005) (detailing President Bush's role in administering and supporting the NMTC, signed into law by President Clinton just before President Bush took office).

123. *Fact Sheet: President Obama's Promise Zones Initiative*, OBAMA WHITE HOUSE (Jan. 8, 2014), https://obamawhitehouse.archives.gov/the-press-office/2014/01/08/fact-sheet-president-obama-s-promise-zones-initiative [https://perma.cc/K2NK-VS2L] (focusing on "partnering with local communities and businesses to create jobs, increase economic security, expand educational opportunities, increase access to quality, affordable housing and improve public safety"). Although the initiative envisioned tax benefits for private businesses investing in designated Promise Zones, the Promise Zones Job Creation Act of 2014, H.R. 4941, 113th Cong. (2014), which would have amended the Tax Code to provide such benefits, never passed. *H.R. 4941 (113th): Promise Zone Job Creation Act of 2014*, GOVTRACK.US, https://www.govtrack.us/congress/bills/113/hr4941 [https://perma.cc/N78E-4UQ8] (last visited Oct. 21, 2021).

124. Jesse Drucker & Eric Lipton, *How a Trump Tax Break to Help Poor Communities Became a Windfall for the Rich*, N.Y. TIMES (Sept. 27, 2020), https://www.nytimes.com/2019/08/31/business/tax-opportunity-zones.html [https://perma.cc/JA4N-G85N].

125. *See, e.g.*, Laura Sullivan & Meg Anderson, *Affordable Housing Program Costs More, Shelters Fewer*, NPR (May 9, 2017, 12:31 PM), https://www.npr.org/2017/05/09/527046451/affordable-housing-program-costs-more-shelters-less [https://perma.cc/LFH4-LWAX]. A 2018 report by the Government Accountability Office covering the years 2011–2015 found that the LIHTC program financed about 50,000 low-income rental units annually, with median costs per unit for new construction ranging from $126,000 in Texas to $326,000 in California. U.S. GOV'T ACCOUNTABILITY OFF., GAO-18-637, LOW-INCOME HOUSING TAX CREDIT: IMPROVED DATA AND OVERSIGHT WOULD STRENGTHEN COST ASSESSMENT AND FRAUD RISK MANAGEMENT (2018).

126. *See* Schlossberg, *supra* note 25, at 35–36 ("[E]nterprise zones have failed to produce the desired effects of jobs for low income residents, increased capital investment, and physical revitalization of the community."); Burt S. Barnow, *Job Creation for Low-Wage Workers: An Assessment of Public Service Jobs, Tax Credits, and Empowerment Zones*, *in* THE LOW-WAGE LABOR MARKET: CHALLENGES AND OPPORTUNITIES FOR ECONOMIC SELF-SUFFICIENCY 101, 116 (Kelleen Kaye & Demetra Smith Nightingale eds., 2000).

127. MARTIN D. ABRAVANEL, NANCY M. PINDUS, BRETT THEODOS, KASSIE BERTUMEN, RACHEL BRASH & ZACH MCDADE, METRO. HOUS. & CMTYS. POL'Y CTR., NEW MARKETS TAX CREDIT (NMTC) PROGRAM EVALUATION: FINAL REPORT, at vii (2013) (noting the program's "varying results" and stating that, *as expected*, as a "financing tool intended to encourage investment in low-income communities, NMTC projects varied with respect to the kinds of outputs and outcomes with which they were associated, the need for a public subsidy, and project viability"). One study found

problematic given that the federal government has already spent sixty-one billion dollars on the program.[128]

Although these programs have collectively saved developers and investors billions of dollars, these federal investments have not created substantive wealth-building impacts at the community level. While some of these programs have ended, others have expanded and increased their budgets[129] despite delivering subpar or mediocre performance on their economic-development goals. The federal government continues to sink funds into these modern Black-capitalist economic-development programs while the wealth gap continues to grow for all Americans.[130] Furthermore, income and wealth disparities continue to be the largest for Black, Native American, and Latinx people in the United States. Disparities in individual and neighborhood income directly contribute to negative health outcomes that decrease quality of life and cause higher mortality rates. Racial and neighborhood-based health disparities are unconscionable at any time but can be catastrophic during a pandemic. Therefore, it is imperative that the U.S. government uses its policy and financial resources to effectively decrease the income and wealth gap between low-income community members of color and white people in the United States.

D. Public-Health Outcomes for Low-Income Communities

Residence in a low-income neighborhood has negative health implications.[131] Living in a low-income community means greater exposure to environmental

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that the NMTC subsidy had little, if any, impact on economic activity. Freedman, *supra* note 25. Any modest benefits may have gone to new community members due to gentrification and potential crowding out of long-term residents. *Id.* at 1009, 1012–13.

128. *U.S. Treasury Awards $3.548 Billion in NMTC Allocations*, KPMG (July 16, 2020), https://home.kpmg/us/en/home/insights/2020/07/tnf-us-treasury-awards-nmtc-allocations.html [https://perma.cc/7AQ4-WX3Y].

129. *See* Sullivan & Anderson, *supra* note 125 (noting that the number of LIHTC units built annually has decreased while the tax credits obtained and associated spending have increased); Press Release, U.S. Dep't Treasury, $3.5 Billion in New Markets Tax Credits Awarded to Spur Economic Growth Nationwide (Feb. 13, 2018), https://home.treasury.gov/news/press-release/sm0288 [https://perma.cc/6NQQ-D66K].

130. Ana Hernandez Kent, Lowell Ricketts & Ray Boshara*, What Wealth Inequality in America Looks Like: Key Facts & Figures*, FED. RSRV. BANK ST. LOUIS (Aug. 14, 2019), https://www.stlouisfed.org/open-vault/2019/august/wealth-inequality-in-america-facts-figures [https://perma.cc/3WBT-YLAJ] ("Wealth inequality in America has grown tremendously from 1989 to 2016, to the point where the top 10% of families ranked by household wealth (with at least $1.2 million in net worth) own 77% of the wealth 'pie.' The bottom half of families ranked by household wealth (with $97,000 or less in net worth) own only 1% of the pie.").

131. *See Low-Income*, ANXIETY & DEPRESSION ASS'N AM., https://adaa.org/low-income-communities [https://perma.cc/P3B5-USH7] (Sept. 29, 2021) ("Low-income communities tend to have specific characterizations such as limited resources, poor houses, high crime and violence rates, and an inadequate school system, which are all associated with poor mental health outcomes."); Ernie Hood, *Dwelling Disparities*, 113 ENV'T HEALTH PERSPS. A 310, A 312–13 (2005) ("[I]t's important to examine the built environment in addition to individual risk factors when studying health disparities.").

burdens and less access to beneficial environmental features.[132] Environmental burdens like air, water, and soil pollution contribute to higher rates of asthma, lead poisoning, and neurological disorders.[133] Residents of high-poverty neighborhoods have less access to parks, safe streets, recreation opportunities, and healthy foods.[134] These differences contribute to cyclical, generational health disparities. Maternal mortality and infant mortality rates are higher in low-income communities, and average life expectancies are often lower than in similarly located high-income census tracts.[135] Therefore, it is imperative that the federal government creates a community-development program that effectively decreases poverty and raises neighborhoods' economic standing.

People of color are disproportionately likely to be residents of low-income communities in the United States.[136] About 5% of white people in the United States live in high poverty neighborhoods, whereas 26% of Black, 27% of Native American, and 20% of Latinx people live in high-poverty neighborhoods.[137] The nationwide trend is also evident in OZs: people of color make up 39% of the U.S. population but 57% of the Opportunity Zones population.[138] Furthermore,

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132. *Mapping Life Expectancy*, CTR. SOC'Y & HEALTH (Sept. 26, 2016), https://societyhealth.vcu.edu/work/the-projects/mapping-life-expectancy.html [https://perma.cc/4G2E-ZU8B].

133. *Id.*; DAVID AZOULAY, PRISCILLA VILLA, YVETTE ARELLANO, MIRIAM GORDON, DOUN MOON, KATHRYN MILLER & KRISTEN THOMPSON, PLASTIC & HEALTH: THE HIDDEN COSTS OF A PLASTIC PLANET 45 (Amanda Kistler ed. 2019), https://ipen.org/sites/default/files/documents/plastic-and-health-the-hidden-costs-of-a-plastic-planet-february-2019.pdf [https://perma.cc/LEG5-ECG7] ("It is estimated that in 2015, [incinerator-linked] airborne particulates caused the premature deaths of over four million people worldwide."); Robert D. Bullard, *Race and Environmental Justice in the United States*, 18 YALE J. INT'L L. 319, 319 (1993); Zoë Schlanger, *Race is the Biggest Indicator in the US of Whether You Live Near Toxic Waste*, QUARTZ (Mar. 22, 2017), https://qz.com/939612/race-is-the-biggest-indicator-in-the-us-of-whether-you-live-near-toxic-waste/ [https://perma.cc/8Q3V-6KKN].

134. *Neighborhood Poverty: All Neighborhoods Should Be Communities of Opportunity.*, NAT'L EQUITY ATLAS, https://nationalequityatlas.org/indicators/Neighborhood_poverty#/ [https://perma.cc/8XWY-2LCN] (last visited Oct. 21, 2021).

135. *Mapping Life Expectancy*, *supra* note 132 ("In some cases, life expectancy can differ by as much as 20 years in neighborhoods only about five miles apart from one another."); Dan Kopf & Daniel Wolfe, *Map: What Story Does Your Neighborhood's Life Expectancy Tell?*, QUARTZ (Feb. 24, 2021), https://qz.com/1462111/map-what-story-does-your-neighborhoods-life-expectancy-tell/ [https://perma.cc/2XQW-U3P8] (describing neighboring census tracts that have a twenty-one-year estimated life expectancy difference, where one census tract is high income and the other is low income).

136. *Neighborhood Poverty*, *supra* note 134 ("People of color—particularly African Americans, Latinos, and Native Americans—are significantly more likely than their White counterparts to live in high-poverty neighborhoods, even if they themselves are not poor.").

137. *Id.* A "high poverty" neighborhood has a poverty rate of twenty percent or more. WILL MAHER, INST. FOR RSCH. ON POVERTY & MORGRIDGE CTR. FOR PUB. SERV., POVERTY FACT SHEET: SUBURBAN POVERTY (2017–2018), https://www.irp.wisc.edu/wp/wp-content/uploads/2018/05/FactSheet14-Suburban-Poverty.pdf [https://perma.cc/AQ4J-WCLG].

138. *See Opportunity Zones: Facts & Figures*, ECON. INNOVATION GROUP [hereinafter *Facts & Figures*], https://eig.org/opportunityzones/facts-and-figures [https://perma.cc/KN4S-HHWC] (Dec. 2020).

Black people are the most overrepresented OZ residents: they make up 23% of OZ residents but only 12% of the U.S. population.[139]

Racial bias exacerbates negative health outcomes for people of color living in poor communities. People of color have significantly lower health outcomes than white people in the United States.[140] Health outcomes are worst for Black people, who "have higher rates of diabetes, hypertension and heart disease than other groups."[141] Black children have higher rates of obesity and higher instances of death rates from asthma.[142] Native Americans also experience lower quality health care, higher mortality rates, and higher rates of suicide, drug and alcohol abuse, depression, and sexual violence.[143] The United States' long-standing legacy of racially motivated economic deprivation and its impact on the health of communities of color necessitates federal intervention to improve the lives and health outcomes for all people in the United States.

II. THE OPPORTUNITY ZONE PROGRAM

A. The Law

The Economic Innovation Group, a think tank founded by Facebook's first president, Sean Parker, outlined a policy to create a tax incentive to promote economic development in low-income communities in 2015.[144] The Investing in Opportunity Act, sponsored by Senators Tim Scott (R-SC) and Cory Booker (D-NJ) and Representatives Pat Tiberi (R-OH) and Ron Kind (D-WI), created the

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139. *Id.*

140. AM. COLL. OF PHYSICIANS, RACIAL AND ETHNIC DISPARITIES IN HEALTH CARE 3 (2010) ("Racial and ethnic minorities tend to receive poorer quality care compared with nonminorities, even when access-related factors, such as insurance status and income, are controlled.").

141. Risa Lavizzo-Mourey & David Williams, *Being Black Is Bad for Your Health*, U.S. NEWS (Apr. 14, 2016, 8:00 AM), https://www.usnews.com/opinion/blogs/policy-dose/articles/2016-04-14/theres-a-huge-health-equity-gap-between-whites-and-minorities [https://web.archive.org/web/20210703032238/https://www.usnews.com/opinion/blogs/policy-dose/articles/2016-04-14/theres-a-huge-health-equity-gap-between-whites-and-minorities].

142. *Id.* ("Black children have a 500 percent higher death rate from asthma compared to white children.").

143. Findling et al., *supra* note 32, at 1432, 1434.

144. *See* JARED BERNSTEIN & KEVIN A. HASSETT, ECON. INNOVATION GRP., UNLOCKING PRIVATE CAPITAL TO FACILITATE ECONOMIC GROWTH IN DISTRESSED AREAS (2015). This paper argues that the federal government can remedy the geographically uneven economic recovery after the Great Recession by creating special incentives for private investors. *Id.* at 1. The authors state that the previous iterations of similar geographically-based economic development policies—Empowerment Zones, Enterprise Communities, Renewal Communities, and New Market Tax Credit—failed or had mixed results because they were too complex, failed to effectively target the increased employment and investment goals, too severely limited the size of investments that could qualify, did not pair easily with other federal programs, and did not effectively incentivize collaboration with other institutional investors like banks, private equity, and venture funds. *Id.* at 11–15. The authors then propose that the pitfalls of the prior programs could be avoided by focusing on incentivizing the deployment of capital gains in designated geographic regions and by enabling investors to pool funds into a venture capital, firm-like structure that would allow invested money to "easily sit on the sidelines for longer periods as the funds seek profitable investment opportunities." *Id.* at 16–17.

legal framework for the proposal. The bill's sponsors championed its ability to support entrepreneurs and small businesses "to grow, innovate and create jobs."[145]

The OZ program was signed into law as part of the Tax Cuts and Jobs Act of 2017.[146] President Trump discussed the policy's power to bring hope and revitalization to diverse, economically distressed communities across the country.[147] Progressive and conservative lawmakers and administrators heralded this legislation's ability to create substantive change for working people and people of color in poor communities.[148] Governors across the country spoke about the policy's ability to revitalize communities in their states.[149] Business leaders and policy advocates discussed the policy's power to harness wealth in support of economic revitalization.[150]

The policy empowered governors to nominate twenty-five percent of their state's "low income"[151] census tracts to become OZs by March 21, 2018.[152] Up to

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145. Press Release, Tim Scott, *supra* note 29.

146. I.R.C. §§ 1400Z-1 to -2.

147. *Remarks by President Trump at Signing of an Executive Order Establishing the White House Opportunity and Revitalization Council*, TRUMP WHITE HOUSE (Dec. 12, 2018, 2:37 PM) [hereinafter *Remarks*], https://trumpwhitehouse.archives.gov/briefings-statements/remarks-president-trump-signing-executive-order-establishing-white-house-opportunity-revitalization-council/ [https://perma.cc/DD62-V2MU] ("With Opportunity Zones, we are drawing investment into neglected and underserved communities of America so that all Americans, regardless of zip code, have access to the American Dream.").

148. *See, e.g.*, *The Promise of Opportunity Zones: Hearing Before the J. Econ. Comm.*, *supra* note 28 (statement of Sen. Martin Heinrich, Ranking Member, J. Econ. Comm.) ("They can support investments in affordable housing and small businesses while spurring job creation, and they can help lift living standards in neighborhoods across the country."); *Remarks*, *supra* note 147 (reporting Secretary Ben Carson saying, "By offering incentives that encourage investors to think in terms of decades instead of days, Opportunity Zones ensure that development is here today and here to stay. This long-term approach means that new growth becomes consistent growth and new jobs become steady job").

149. *Facts & Figures*, *supra* note 138 (quoting Governor Phil Murphy saying, "[T]he Opportunity Zone Program will be a vital resource in stimulating long-term economic growth and investment in cities and towns that need it most, and more importantly, in generating economic opportunities for our residents").

150. *See Remarks*, *supra* note 147 (quoting co-founder of the television network BET, Bob Johnson, saying, "And I am convinced that this program, where the tax incentives flowing out of the Treasury Department to business people, will cause people to invest money where before they saw risk, now they will see opportunity. And that combination of putting money into communities will allow for those communities to become vibrant, to become safe, to create ownership, and, most important, to contribute to the wellbeing of this country. . . . I'm a fundamental believer that there are business solutions to social problems. The Opportunity Zone program is that.").

151. As defined in I.R.C. § 45D(e). Under this section, a census tract is a "low-income community" if either (A) "the poverty rate for such tract is at least 20 percent" or (B) "in the case of a tract not located within a metropolitan area, the median family income for such tract does not exceed 80 percent of statewide median family income" or "in the case of a tract located within a metropolitan area, the median family income for such tract does not exceed 80 percent of the greater of statewide median family income or the metropolitan area median family income." *Id.*

152. § 1400Z-1; *see also* Press Release, U.S. Dep't of the Treasury, Treasury, IRS Announce First Round of Opportunity Zones Designations for 18 States (Apr. 9, 2018), https://home.treasury.gov/news/press-releases/sm0341 [https://perma.cc/8DB2-V78P].

five percent of a state's OZs were allowed to be higher income[153] so long as they were contiguous with a qualifying low-income census tract.[154]

The tax benefit is threefold. First, investors are able to defer paying taxes on their capital gains if they invest them in Qualified Opportunity Funds (OZ funds).[155] The tax must be paid by December 31, 2026, or when the investment is sold, whichever is first.[156] Second, if the original investment in the OZ fund is held for at least five years, the investor will be able to exclude ten percent of the original gain from taxation.[157] If the original investment is held for at least seven years, the investor can exclude fifteen percent of the original gain from taxation.[158] Third, if the investment is held in an OZ fund for ten years, any new capital-income gains from the sale or exchange of that investment in the OZ fund are permanently excluded from taxation.[159]

There are minimal requirements for OZ fund investments to qualify for the tax benefit. To receive the tax benefit, an OZ fund must have ninety percent of its assets in "qualified opportunity zone property," which includes "qualified opportunity zone stock, [] qualified opportunity zone partnership interest, or [] qualified opportunity zone business property."[160] The law prohibits claiming the tax benefit for investments in certain "sin businesses"[161] including golf courses, country clubs, casinos, liquor stores, and tanning salons.[162] The law also prohibits OZ funds from obtaining benefits for land investments, unless the fund then makes substantial developments on the land, to avoid incentivizing land speculation.[163] To prevent OZ funds from simply moving an already existing business from outside an OZ to inside an OZ (which would defeat the goal of increasing capital

153. Up to five percent of designated OZs may be non-low-income census tracts, so long as they are contiguous with low-income OZs and the median family income of the non-low-income tract does not exceed 125% of the median family income of that contiguous low-income community qualified OZ. I.R.C. § 1400Z-1(e).

154. *Id.*

155. § 1400Z-2(a)(1).

156. § 1400Z-2(b).

157. § 1400Z-2(b)(2)(B)(iii).

158. § 1400Z-2(b)(2)(B)(iv).

159. § 1400Z-2(c).

160. § 1400Z-2(d)(2)(A).

161. Investing in Qualified Opportunity Funds, 85 Fed. Reg. 1866, 1896 (Jan. 13, 2020).

162. § 1400Z-2(d)(3)(A)(iii) (citing § 144(c)(6)(B)); § 144(c)(6)(B) ("[N]o portion of the proceeds of such issue is to be used to provide (including the provision of land for) any private or commercial golf course, country club, massage parlor, hot tub facility, suntan facility, racetrack, or other facility used for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off premises.").

163. Investing in Qualified Opportunity Funds, 85 Fed. Reg. at 1916; *see also* SEAN LOWRY & DONALD J. MARPLES, CONG. RSCH. SERV., TAX INCENTIVES FOR OPPORTUNITY ZONES: IN BRIEF 9 (2019) (citing Investing in Qualified Opportunity Zones, 84 Fed. Reg. 18,652, 18,654 (proposed May 1, 2019) (to be codified at 26 C.F.R. Part 1)).

investments), qualified OZ business properties must either have been "originally used" in the OZ or the OZ fund must "substantially improve" the property.[164]

B. The Impact: Black Capitalism Repackaged for 2017

OZ proponents say the policy addresses "widening geographic disparities and increasingly uneven economic growth" by spurring long-term private-sector investments in American communities that have been "left behind."[165] Three years after the OZ program was signed into law, President Trump and other elected officials touted the success of the OZ program.[166] President Trump highlighted this program as part of his racial-equity policy.[167] Some elected officials have had more measured responses to the program, including calling for increased reporting on the expenditure and the projects it funds.[168] Others have called for stricter requirements on funded entities to ensure more jobs and affordable housing are generated.[169] Ultimately, though, reforms will not be sufficient to make this modern-day Black-capitalism program meet its community-development and racial wealth-building goals. At its core, the policy's premise of market-based economic development is insufficient to correct the history of legalized economic disparity in the United States.

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164. Investing in Qualified Opportunity Funds, 85 Fed. Reg. at 1908–09; *see also* LOWRY & MARPLES, *supra* note 163, at 9 ("[T]he proposed rule encourages investments in new tangible property, as opposed to property that a business might have used elsewhere and then moved to business operations within an OZ.").

165. Press Release, Tim Scott, *supra* note 29; *see also History of Opportunity Zones*, ECON. INNOVATION GRP., https://eig.org/opportunityzones/history [https://perma.cc/5P3H-4BCQ] (last visited Oct. 22, 2021).

166. David Jeans, *"It's All Working": Trump Lauds Opportunity Zones During State of the Union*, REAL DEAL (Feb. 5, 2020, 9:38 AM), https://therealdeal.com/2020/02/05/its-all-working-trump-lauds-opportunity-zones-during-state-of-the-union/ [https://perma.cc/DB9B-ZRW9].

167. *See Donald Trump & Joe Biden Final Presidential Debate Transcript 2020*, REV (Oct. 22, 2020), https://www.rev.com/blog/transcripts/donald-trump-joe-biden-final-presidential-debate-transcript-2020 [https://perma.cc/NK8K-7YXK]. In response to a question about the dangers Black and brown people of color face when interacting with the police, Trump responded by discussing his policies, including OZs. *Id.* He stated "[OZs are] one of the most successful programs. People don't talk about it. Tremendous investment is being made, biggest beneficiary, the black and Hispanic communities." *Id.*

168. *See, e.g.*, Press Release, Cory Booker, U.S. Sen. for N.J., Booker, Scott, Hassan, Young Introduce Bipartisan Bill to Strengthen Reporting Requirements for Opportunity Zone Tax Incentive (May 8, 2019), https://www.booker.senate.gov/news/press/booker-scott-hassan-young-introduce-bipartisan-bill-to-strengthen-reporting-requirements-for-opportunity-zone-tax-incentive [https://perma.cc/8ZWZ-76ES].

169. *See, e.g.*, Oscar Perry Abello, *Boulder Presses Pause on Some Opportunity Zone Development*, NEXT CITY (Mar. 6, 2019), https://nextcity.org/daily/entry/boulder-presses-pause-on-some-opportunity-zone-development [https://perma.cc/G5MK-SVAT] (describing the city moratorium on building permits in the city's OZ if the proposals do not meet affordability requirements); Emilie Raguso, *Council May Require Developers to Build Low-Income Units in 'Opportunity Zones,'* BERKELEYSIDE (Apr. 13, 2020, 4:55 PM), https://www.berkeleyside.com/2020/04/13/city-council-may-start-requiring-affordable-units-in-parts-of-berkeley [https://perma.cc/L6DP-LNBL] (describing a Berkeley City Council proposal that would require developers to build affordable units in construction projects in any of the city's qualified OZs).

A tax that redistributes wealth to improve overall social welfare is generally seen as a positive program by tax law scholars,[170] lawmakers,[171] and businesspeople,[172] yet the OZ program is just another iteration of Black-capitalism policy, aimed at quelling the concerns of poor people of color without actually working toward equitable community development.

Despite the increased capital flowing into certain OZs, the program will not empower, enrich, or bring equity to the long-term, low-income residents of those communities.[173] The three main issues with the OZ program are that it fails to focus on job-creating investments, ignores the United States' history of inequitable growth and access to capital, and will provide windfalls to investors rather than substantially changing investor behavior.

1. Missed Opportunity to Create Good Jobs

One of the goals of the OZ tax program is to create jobs in OZs.[174] Policy advocates say it will "seed new startups, accelerate business expansions, [and] create jobs."[175] The Internal Revenue Service (IRS) states that OZs "are designed to spur economic development and job creation in distressed communities."[176] President Trump claimed that the program has created tens of thousands of jobs.[177] Senator Tim Scott, the policy's main sponsor, announced that 1,500 permanent jobs will come to South Carolina through an OZ project.[178] Yet these success stories gloss

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170. Sarah B. Lawsky, *On the Edge: Declining Marginal Utility and Tax Policy*, 95 MINN. L. REV. 904, 910 (2011).

171. *See, e.g.*, 164 CONG. REC. S618 (daily ed. Feb. 6, 2018) (statement of Sen. Mitch McConnell) ("[The OZ program] will help deliver targeted relief to communities that need it the most.").

172. *See* Sophie Quinton, *Luxury Apartments Get the Tax Breaks Meant to Boost Low-Income Areas*, PEW TRS. (Sept. 25, 2019), https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2019/09/25/luxury-apartments-get-the-tax-breaks-meant-to-boost-low-income-areas [https://perma.cc/JV2X-F5AS] (quoting Kevin Shields, chairman and CEO of alternative investment asset management company Griffin Capital Company, stating, "The tax break will generate significant wealth for investors while driving money into communities").

173. I.R.C. § 1400Z-2; *see also* Drucker & Lipton, *supra* note 124 ("[B]illions of untaxed investment profits are beginning to pour into high-end apartment buildings and hotels, storage facilities that employ only a handful of workers, and student housing in bustling college towns, among other projects.").

174. *See* WHITE HOUSE OPPORTUNITY & REVITALIZATION COUNCIL, REPORT TO THE PRESIDENT 7 (2019) [hereinafter WHITE HOUSE ORC REPORT], https://www.ncsha.org/wp-content/uploads/OZ_One_Year_Report_2019.pdf [https://perma.cc/2H44-VPKQ].

175. *Facts & Figures*, *supra* note 138.

176. *Opportunity Zones Frequently Asked Questions*, IRS [hereinafter *FAQ*], https://www.irs.gov/credits-deductions/opportunity-zones-frequently-asked-questions [https://perma.cc/LCM9-9KEC] (last visited Dec. 15, 2020).

177. *See* Laura Strickler & Blayne Alexander, *Trump Is Touting Opportunity Zones as a Huge Success with No Proof*, NBC NEWS (Sept. 26, 2020, 5:47 AM), https://www.nbcnews.com/business/economy/trump-touting-opportunity-zones-huge-success-no-proof-n1231546 [https://perma.cc/3E4P-TBJA]. Part of the reason Trump's statements are problematic is that the law's lack of reporting requirements makes it harder to fact-check his claims.

178. Press Release, Tim Scott, U.S. Sen. for S.C., Huge Opportunity Zone Announcement, 1,500 Permanent Jobs Coming to South Carolina (Sept. 2, 2020), https://www.scott.senate.gov/media-

over a fundamental issue of the program: there is no requirement that Qualified Opportunity Funds invest in projects or activities that create jobs.[179]

The infusion of development money alone is insufficient to ensure that any new jobs will be created,[180] let alone the kinds of jobs that would support larger community-wealth development. This Section examines how community investments can create jobs that strengthen local economies by enabling more people to enter the workforce and get "good jobs."[181]

Within the U.S. labor market, some workers are treated as more valuable than others.[182] Though the COVID-19 pandemic has generated the term "essential worker,"[183] these laborers work in some of the lowest paid positions.[184] Many essential workers are employed in low-wage industries such as the meatpacking,

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center/press-releases/huge-opportunity-zone-announcement-1500-permanent-jobs-coming-to-south-carolina [https://perma.cc/ZU3K-6B9V].

179. LOWRY & MARPLES, *supra* note 163, at 9. Congress has designed other place-based economic-development tax expenditures to ensure the return on investment in the form of job creation.

180. *See* SPENCER M. COWAN, WOODSTOCK INST., PATTERNS OF DISPARITY: SMALL BUSINESS LENDING IN THE CHICAGO AND LOS ANGELES-SAN DIEGO REGIONS, at i (2017), https://s3.documentcloud.org/documents/5028189/Chicago-and-LASD-Report-CC-License-Update.pdf [https://perma.cc/W877-4VEW].

181. Good jobs are defined as "stable, formal-sector employment that comes with core labor protections such as safe working conditions, collective bargaining rights, and regulations against arbitrary dismissal" that "enables at least a middle-class existence, by a region's standards, with enough income for housing, food, transportation, education, and other family expenses, as well as some saving." Dani Rodrik & Charles Sabel, *Building a Good Jobs Economy* 2–3 (Harvard Kennedy Sch., Working Paper No. RWP20-001, 2019), https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=3612&context=faculty_scholarship [https://perma.cc/6RLW-CEPJ]. Another formulation is provided by Chad Shearer and Isha Shah: good jobs pay or exceed median earnings for the local area and provide health insurance. CHAD SHEARER & ISHA SHAH, BROOKINGS METRO. POL'Y PROGRAM, OPPORTUNITY INDUSTRIES: EXPLORING THE INDUSTRIES THAT CONCENTRATE GOOD AND PROMISING JOBS IN METROPOLITAN AMERICA (2018), https://www.brookings.edu/wp-content/uploads/2018/12/2018.12_BrookingsMetro_Opportunity-Industries_Report_Shearer-Shah.pdf [https://perma.cc/UJ2U-95VJ].

182. *See, e.g.*, Rodrik & Sabel, *supra* note 181 (describing a dualistic economy where "insiders" have good jobs that provide a good quality of life and "outsiders" have low-quality jobs with wages that keep them on the margins of society).

183. Essential workers are employees of infrastructure, manufacturing, healthcare, telecoms, defense, food and agriculture, transportation and logistics, energy, water, and law enforcement. The Department of Homeland Security includes among its list of essential workers "businesses, organizations, and government agencies whose functions are critical to public health, safety, and economic and national security." Adie Tomer & Joseph W. Kane, *To Protect Frontline Workers During and After COVID-19, We Must Define Who They Are*, BROOKINGS METRO. POL'Y PROGRAM (June 10, 2020), https://www.brookings.edu/research/to-protect-frontline-workers-during-and-after-covid-19-we-must-define-who-they-are/ [https://perma.cc/T5Q7-4HH2].

184. Molly Kinder, Laura Stateler & Julia Du, *The COVID-19 Hazard Continues, But the Hazard Pay Does Not: Why America's Essential Workers Need a Raise*, BROOKINGS METRO. POL'Y PROGRAM (Oct. 29, 2020), https://www.brookings.edu/research/the-covid-19-hazard-continues-but-the-hazard-pay-does-not-why-americas-frontline-workers-need-a-raise/[https://perma.cc/5BBD-Y6JW]. While there are higher-paid essential workers, like public servants and healthcare workers, other essential workers do not have the same financial safety net, workplace and union protections, and healthcare access as their higher-wage counterparts.

food-service, and grocery industries.[185] These industries are part of a secondary labor sector that "has few ladders to job advancement, little job stability, and more gender and racial discrimination than the primary market."[186] In contrast to low-wage workers, people with "good jobs"[187] make up the primary labor market where workers are paid according to their value and promoted as that value increases.[188] Although people in the primary and secondary labor markets live and exist alongside each other,[189] some communities in the United States have a higher proportion of low-wage workers and relatively fewer higher earners.[190] Shifting unemployed and secondary labor sector members into the primary labor sector is an effective way to increase community wealth and well-being in lower-income communities.[191]

Unfortunately, almost half of the U.S. workforce are in low-skilled jobs in the secondary labor market,[192] and the proportion of low-wage or near-low-wage workers is increasing, from thirty-six percent in the early 1990s to forty-four percent in late 2019.[193] Poor people are less likely to have the skills and education to qualify

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185. Tomer & Kane, *supra* note 183.

186. Kaye & Smith Nightingale, *Executive Summary* of THE LOW-WAGE LABOR MARKET: CHALLENGES AND OPPORTUNITIES FOR ECONOMIC SELF-SUFFICIENCY, *supra* note 126, at ix.

187. *See* Rodrik & Sabel, *supra* note 181.

188. Kaye & Smith Nightingale, *Executive Summary* of THE LOW-WAGE LABOR MARKET: CHALLENGES AND OPPORTUNITIES FOR ECONOMIC SELF-SUFFICIENCY, *supra* note 126, at ix.

189. Rodrik & Sabel, *supra* note 181, (describing today's dualistic labor markets as "islands of productive, high-wage activities exist in a sea of poor jobs").

190. *See* Martha Ross & Nicole Bateman, *Low-Wage Work is More Pervasive Than You Think, and There Aren't Enough "Good Jobs" to Go Around*, BROOKINGS (Nov. 21, 2019), https://www.brookings.edu/blog/the-avenue/2019/11/21/low-wage-work-is-more-pervasive-than-you-think-and-there-arent-enough-good-jobs-to-go-around/ [https://perma.cc/A7FU-KXQA] (noting that in some towns, low-wage workers make up more than sixty percent of the workforce). Historically, labor markets tended to be stronger in suburbs and rural areas than in central cities. *See* Kaye & Smith Nightingale, *Introduction and Overview* to THE LOW-WAGE LABOR MARKET: CHALLENGES AND OPPORTUNITIES FOR ECONOMIC SELF-SUFFICIENCY, *supra* note 126, at 4 (noting trends from the late 1980s to late 1990s in job growth and opportunity showed a higher rate of development in suburbs and that the recovery after the recession in the 1990s occurred more slowly in central cities than in suburbs and rural areas).

191. Jerome M. Adams, *Improving Individual and Community Health Through Better Employment Opportunities*, HEALTH AFFS. (May 8, 2018), https://www.healthaffairs.org/do/10.1377/hblog20180507.274276/full/ [https://perma.cc/K875-28QN] ("In addition to providing personal income, employment addresses broader societal needs: it helps accrue, through the collection of taxes, resources for various community programs. This in turn reduces the need for social benefits, and helps maintain social cohesion. Community revitalization due to an influx of well-employed and higher earning residents can help make neighborhoods healthier, including through the creation of new opportunities for physical activity and improved nutrition.").

192. Ross & Bateman, *supra* note 190.

193. *See* Kaye & Smith Nightingale, *Executive Summary* of THE LOW-WAGE LABOR MARKET: CHALLENGES AND OPPORTUNITIES FOR ECONOMIC SELF-SUFFICIENCY, *supra* note 126, at ix (noting the rise from thirty-six to forty-one percent from 1990 to 2000). Ross and Bateman define low-wage workers as people who earn two-thirds or less of the median wages for full-time/full-year male workers, with wages adjusted for the cost of living across the country. MARTHA ROSS & NICOLE

for high and moderately skilled jobs.[194] Many members of the working poor are thus employed in unskilled jobs.[195] These jobs frequently pay wages that keep full-time employees below the poverty line.[196] Secondary sector jobs that low-income people are most likely to obtain tend not to change an individual's or their family's class or provide a financial safety net.[197] Therefore, unless OZ projects are designed with an emphasis on creating good jobs, the program runs the risk of merely shifting people from being unemployed to becoming part of the working poor.

The "trickle-down impacts" (larger impacts on communities and individuals not directly employed by an economic-development project) are often limited, so careful planning and consideration are needed to ensure that community-development programs actually help poor communities.[198] To reach their full economic potential, government programs should pair any development incentives with subsidies or other incentives for firms to provide medium-income jobs.[199] Businesses that create a substantial number of medium-income[200] jobs efficiently provide local welfare gains[201] by enabling more people to enter the workforce with fewer job changes by people who are already employed in the

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BATEMAN, BROOKINGS METRO. POL'Y PROGRAM, MEET THE LOW-WAGE WORKFORCE 6–7 (2019), https://www.brookings.edu/wp-content/uploads/2019/11/201911_Brookings-Metro_low-wage-workforce_Ross-Bateman.pdf#page=5 [https://perma.cc/Z8A6-KGWX].

194. *See* Kaye & Smith Nightingale, *Executive Summary* of THE LOW-WAGE LABOR MARKET: CHALLENGES AND OPPORTUNITIES FOR ECONOMIC SELF-SUFFICIENCY, *supra* note 126, at xi (stating that welfare recipients' low skills and education lead to a concentration of job opportunities in the secondary labor market); *see also* WHITE HOUSE ORC REPORT, *supra* note 174, at 7 (noting that twenty-two percent of "adults living in Opportunity Zones have not attained a high school diploma, compared to [thirteen] percent nationally").

195. *See* Kaye & Smith Nightingale, *Executive Summary* of THE LOW-WAGE LABOR MARKET: CHALLENGES AND OPPORTUNITIES FOR ECONOMIC SELF-SUFFICIENCY, *supra* note 126, at xi.

196. *See id.* at 2 (noting that in 1997, twenty-nine percent of all workers and thirty-five percent of female workers "had hourly wages that would be insufficient to lift a family of four out of poverty even if they were to work full-year, full-time"); *see also* Anne L. Alstott, *Work vs. Freedom: A Liberal Challenge to Employment Subsidies*, 108 YALE L.J. 967, 969 (1999) ("The vast majority of welfare recipients will enter a labor market characterized by sub-poverty wages and little job security.").

197. *See supra* note 181 and accompanying text.

198. JOSEPH PERSKY, DANIEL FELSENSTEIN & VIRGINIA CARLSON, DOES TRICKLE DOWN WORK?: ECONOMIC DEVELOPMENT STRATEGIES AND JOB CHAINS IN LOCAL LABOR MARKETS 8–9 (2004).

199. Rodrik & Sabel, *supra* note 181 (suggesting tax easements or tailored public services as potential incentives to encourage firms to create good jobs).

200. *See* PERSKY ET AL., *supra* note 198, at 44 tbl.3.4. The authors categorize jobs into five groups based on income. Level one workers are the highest paid, and level five are the lowest paid. Levels two, three, and four jobs are in the medium income range.

201. Relatedly, an alternative measurement of the impact of an economic-development project is to measure the aggregate improvement of circumstances for all workers in a local vicinity. *See* Daniel Felsenstein & Joseph Persky, *Evaluating Local Job Creation*, 73 J. AM. PLAN. ASS'N 23, 23 (2007) (noting that this number would most accurately measure the "local welfare gain" created by an economic-development project or program).

area.[202] Impact-minded OZ investors will have the greatest likelihood of enhancing local welfare by developing businesses that primarily employ mid-skilled workers.[203]

Driving investment in a particular community without a focus on creating good jobs, particularly medium-income jobs, will have a marginal benefit at best.[204] New investments, without an equity-focused policy guiding the application of that money, will not help create good jobs in OZs.[205] A local economy will continue to struggle if workers do not have the opportunity to get more economic security through their employment.[206] Unfortunately, the OZ program's lack of focus on creating substantial numbers of good jobs for moderately skilled workers means that the program will fail to kick-start local economies.

2. Fails to Address the Legacy of Inequitable Growth and Access to Capital

Although OZ proponents argue that this program will help communities become more financially vibrant, the program does nothing to address the history of inequitable growth and access to capital that has hampered the economic mobility of Black, Native American, and Latinx people in the United States.[207] As Part I described, the United States built the wealth of white people at the expense of and through the marginalization of people of color for centuries. Policies focused on equitable growth are necessary to ensure that subsidies actually help low-income people.[208] Equitable growth[209] ensures that all community members can participate

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202. *See* PERSKY ET AL., *supra* note 198, at 95–102 (comparing "trickle-down" impact efficiency of two hypothetical firms: one creates manufacturing (primarily level three and four) jobs and the other creates firm that creates management consultancy (level one) jobs and finding that the consulting firm produced "skimpy welfare gains" for the hypothetical center city residents and less trickle-down impacts than the manufacturing firm).

203. *See id.* at 8–9 (noting that even the manufacturing firm that created a substantial number of mid-skilled jobs only had a modest trickle-down impact on the rest of the local economy).

204. *See* SAMANTHA JACOBY, CTR. ON BUDGET & POL'Y PRIORITIES, POTENTIAL FLAWS OF OPPORTUNITY ZONES LOOM, AS DO RISKS OF LARGE-SCALE TAX AVOIDANCE 4–5 (2019), https://www.cbpp.org/sites/default/files/atoms/files/1-11-19tax.pdf [https://perma.cc/8YW9-3VGQ]; *see also* PERSKY ET AL., *supra* note 198, at 6 ("The traditional approach to project evaluation, impact analysis, usually counts jobs or payrolls without seriously considering the economic welfare they generate.").

205. *See* JACOBY, *supra* note 204, at 5; Tatiana Kimbo & Richard Phillips, *How Opportunity Zones Benefit Investors and Promote Displacement*, INST. ON TAX'N & ECON. POL'Y (Aug. 10, 2018), https://itep.org/how-opportunity-zones-benefit-investors-and-promote-displacement/ [https://perma.cc/3PEL-8RMF].

206. *See* JACOBY, *supra* note 204, at 4.

207. NANCY O. ANDREWS, RACE, GENDER, AND EQUITY IN COMMUNITY DEVELOPMENT 12 (2019) ("Economics alone cannot alleviate poverty, unless it is bent in the direction of fairness and justice. Economic opportunity alone will fall short of creating fairness unless fairness is an explicit component in the first place. . . . Without a broader aperture to our vision, without a more inclusive theory of change that goes beyond economics and trickle-down assumptions, we will not achieve our mission.").

208. CHRIS SCHILDT, KEY STRATEGIES TO ADVANCE EQUITABLE GROWTH IN REGIONS 6 (2015).

209. Others have articulated this notion as "equitable development." *See* BRETT THEODOS, ERIC HANGEN, JORGE GONZÁLEZ & BRADY MEIXELL, URB. INST., AN EARLY ASSESSMENT OF

in generating new jobs and businesses while sharing the economic-development benefits.[210] Equitable growth requires regional planning input from city agencies, nonprofits, grassroots advocates, and the business sector.[211] These various stakeholders should work together to create and implement an economic-development plan.[212]

Yet the OZ program failed to engage most of these key players in its design. While governors selected the OZs for each state, the program creates no development strategy and instead leaves individual OZ funds with the decisions about where and how to invest. Investors who are primarily focused on the profitability of their OZ projects will not likely focus on equitable growth.[213] Like its Black-capitalism policy predecessors that also relied on businesses to make altruistic or profit-driven investments as a means of reducing segregation and racialized poverty,[214] the OZ program will fail because it relies on the private sector to correct centuries of disinvestment, neglect, and active marginalization of communities of color.

The legacy of racist economic policies continues to impact low-income communities, despite legal protections against race discrimination. People of color in low-income communities often face multilayered discrimination when attempting to obtain loans for businesses: geographic discrimination on the basis of the enduring legacy of redlining and individual-based discrimination on the basis of their race.[215] The lack of access to bank loans causes Black and Latinx small-business owners to have less capital on hand when they begin their businesses, which makes them more vulnerable to market unpredictability.[216] Additionally, this unequal access to capital also makes ownership of smaller firms most feasible for Black and Latinx people and reduces the wealth-building potential of business ownership.[217]

OPPORTUNITY ZONES FOR EQUITABLE DEVELOPMENT PROJECTS: NINE OBSERVATIONS ON THE USE OF THE INCENTIVE TO DATE, at v (2020), https://www.urban.org/sites/default/files/publication/102348/early-assessment-of-opportunity-zones-for-equitable-development-projects.pdf [https://perma.cc/RM8T-VMDQ] (describing equitable development as "blend[ing] economic development and community development goals, and [seeking] to engage residents and local leaders in decisionmaking [sic] about development in their communities").

210. SCHILDT, *supra* note 208, at 6.

211. *Id.* at 6–7.

212. *Id.*

213. *See infra* Section II.B.3.

214. *See generally* BARADARAN, *supra* note 35.

215. Daniel Immergluck, *Intrametropolitan Patterns of Small-Business Lending: What Do the New Community Reinvestment Act Data Reveal?* 34 URB. AFFS. REV. 787, 787 (2013) ("Discrimination and redlining in business lending have been cited as contributing to economic decline in lower-income neighborhoods."); *see also* Mehrsa Baradaran, *How the Poor Got Cut Out of Banking*, 62 EMORY L.J. 483, 494 (2013) (discussing the role of discrimination and redlining in limiting poor people's access to banks).

216. *See, e.g.*, MARLENE OROZCO & ILIANA PEREZ, STANFORD GRADUATE SCH. OF BUS., STATE OF LATINO ENTREPRENEURSHIP 19–25 (2018).

217. K. STEVEN BROWN, MARCELA MONTES & HANNAH HASSANI, URB. INST., STATE AND LOCAL APPROACHES TO THE CHICAGO REGION'S RACIAL AND ETHNIC WEALTH INEQUITY 4

While OZ proponents said local entrepreneurs in OZs would benefit from increased access to capital, this has not born out.[218] Studies on program investments so far reveal that investors are less inclined to invest in operating businesses because they are generally less profitable than other investments and the maximum tax benefit is achieved after ten years in the investment.[219] Investors seeking to maximize the OZ tax benefit look for investments that will be easily exited in ten years.[220] This rigid exit timeline is counter to typical venture capital investment strategies that look for the right time and opportunity to sell the business.[221] Furthermore, the transaction costs make it difficult to invest in start-up and small businesses. As one investor put it, "How can we figure out a way where you get your equity back whether it's through equity repurchase [or] bringing in other partners to the deal. That's not an easy thing to solve for."[222] Additionally, small businesses typically do not generate the kind of growth that would attract equity investors.[223]

Relatedly, the OZ program also has the impact of siphoning federal resources from low-income census tracts that were not designated as OZs. The federal government suggests that potential investors "stack" the benefits of several federal tax incentives to make a project in an OZ more profitable than in another area.[224] To that end, members of Congress encourage governors to consider the availability and location of other economic-development activities as they considered which census tracts to nominate as OZs.[225] While "stacking" benefits can make projects in OZs more feasible, it concentrates government subsidies in certain communities at the expense of others.[226] In fact, non-designated low-income locations are likely to lose out on federally subsidized investments because the OZ program lures investments elsewhere.[227] The government has a responsibility to focus on equitable development to ensure people of all races and communities prosper.

(2019), https://www.urban.org/sites/default/files/publication/101423/state_and_local_approaches_to_the_chicago_regions_racial_and_ethnic_wealth_inequity_1.pdf [https://perma.cc/4JG5-VQYM].

218. THEODOS ET AL., *supra* note 209, at vi ("[T]he most egregious failing of OZs to date is that very little investment is going to small businesses, the exact group of investees that proponents had held out as standing the most to benefit.").

219. *Id.* at 26 (quoting an interviewee stating, "The more socially impactful the project, the more the need for subsidy [beyond OZ incentives]").

220. *Id.* at 22.

221. *Id.*

222. *Id.* at 23.

223. *Id.* at 22.

224. *See* LOWRY & MARPLES, *supra* note 162, at 11.

225. H.R. Rep. No. 115-466, at 538 (2017) (Conf. Rep.). The guidance encourages governors to consider whether the locations are targets of other economic development incentives from state, local, or private sources, as well as whether areas have "demonstrated success" with place-based development programs including "promise zones, the new markets tax credit, empowerment zones, and renewal communities." *Id.*

226. Ofer Eldar & Chelsea Garber, Does Government Play Favorites? Evidence from Opportunity Zones 10 (Oct. 3, 2019) (unpublished manuscript) (on file with author).

227. *See* Kaye & Smith Nightingale, *Introduction and Overview* to THE LOW-WAGE LABOR MARKET: CHALLENGES AND OPPORTUNITIES FOR ECONOMIC SELF-SUFFICIENCY, *supra* note 126,

3. Investor Windfalls

The OZ program paradoxically seeks to make low-income communities wealthier by making payments[228] to high-income people who do not live in poor communities.[229] Specifically, the program uses a public subsidy (in the form of a tax benefit) to incentivize businesses and real estate investments in communities where such investments would not otherwise be made.[230] Only people who have existing unrealized capital gains are able to participate in the program, so the tax benefits will be claimed by people who already have greater capital assets.[231] While the program has already benefitted taxpayers who invest in OZ funds,[232] it is unclear whether investor behavior is modified in a way that contributes to the program's development goals.

The OZ program has fewer statutory or regulatory mechanisms that promote community development than previous place-based iterations of Black-capitalism policy.[233] For example, because the NMTC is capped, eligible projects compete for limited funds.[234] Projects are evaluated based on factors including "benefits to low-income persons and jobs directly induced by the investments."[235] In comparison, there is no cap on available OZ tax benefits, so they will accrue to any eligible investment fund, regardless of the type of projects or potential

at 7 ("Tax credits paid to employers developing in economically distressed areas . . . [have the primary effect of] relocat[ing] economic activity from near the zone to within it . . . ." (emphasis omitted)); *see also* Alstott, *supra* note 195, at 1028.

228. *See* 2 U.S.C. § 622(3) (defining "tax expenditures," for purposes of the Federal Government's budgetary process, as "those revenue losses attributable to provisions of the . . . tax laws which allow a special exclusion, exemption, or deduction from gross income or which provide a special credit, a preferential rate of tax, or a deferral of tax liability"); Arizona Christian Sch. Tuition Org. v. Winn, 563 U.S. 125, 148 (2011) (Kagan, J., dissenting) ("Cash grants and targeted tax breaks are means of accomplishing the same government objective—to provide financial support to select individuals or organizations.").

229. JACOBY, *supra* note 203.

230. STAFF OF J. COMM. ON TAXATION, 115TH CONG., GENERAL EXPLANATION OF PUBLIC LAW 115-97 (Comm. Print 2018); *see also The Promise of Opportunity Zones: Hearing Before the J. Econ. Comm.*, *supra* note 28 (statement of Rep. Erik Paulson, Chairman, J. Econ. Comm.) (quoting John Lettieri, President of the Economic Innovation Group, saying, "[OZs] will bring 'the best possible mix of investments in new and expanding businesses, infrastructure and energy projects, commercial real estate, affordable housing and more.' Opportunity Zones also hold the promise of local knowledge and engagement. They are chosen by governors, who know their communities well, and not by Federal planners with a formula-based spreadsheet").

231. Rebecca Lester, Cody Evans & Hanna Tian, *Opportunity Zones: An Analysis of the Policy's Implications*, 90 STATE TAX NOTES 221, 228 (2018).

232. Taxpayers immediately benefit by deferring taxes on capital gains when those gains are invested in Qualified Opportunity Funds. This is the first tax benefit provided by the program, and the most easily measurable at this stage in the program's life. As of March 5, 2020, a total of 233 Qualified Opportunity Funds have registered with the I.R.S., which will invest an anticipated $48.1 billion in OZs. *Opportunity Zone Fund Directory*, NAT'L COUNCIL OF STATE HOUS. AGENCIES, https://www.ncsha.org/resource/opportunity-zone-fund-directory/ [https://perma.cc/B9WC-6J9D] (July 28, 2021).

233. *See* LOWRY & MARPLES, *supra* note 163, at 11–12.

234. *Id.* at 11.

235. *Id.*

socioeconomic impact the OZ fund has.[236] Also, unlike the NMTC, there is no requirement for OZ funds to have a mission of serving low-income communities.[237]

Without social impact or job creation requirements to anchor OZ investments in the policy's community-development goals, many OZ investors are primarily motivated by maximizing profits on their investments.[238] Based on projections and the available data about the types of investments generated by OZ funds, investments into operating businesses, affordable housing, and infrastructure development are less appealing investment options than other types of real estate development.[239]

The lack of regulatory requirements allows investors to focus solely on return on investment rather than on community development. Furthermore, the benefit is structured to provide the largest financial benefits to the projects with the highest returns.[240] Early reporting on the program's impacts show that significant OZ funding is going to non-affordable real estate development instead of to impact investors supporting projects with social missions.[241] Therefore, dollar for dollar, the public may be spending more on OZ-supported luxury housing than on affordable housing projects.[242]

Furthermore, despite the OZ's goal of supporting impoverished communities, OZ funds are more likely to pay for housing projects in gentrifying neighborhoods and college towns.[243] Many OZ projects are going up in communities that would

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236. *Id.* at 12.

237. *Id.*

238. THEODOS ET AL., *supra* note 209, at 19 ("When we've talked to Opportunity Zone investors before about the transactions they want, the yields are something we can't produce in affordable housing, and the amount of developer fee they want for us is too small. Their expectations are not realistic. You need to be an impact investor. A typical LIHTC investor gets maybe a 6 percent IRR. These folks were asking for double digits. There's no way to squeeze that out of a LIHTC deal."). An interviewee in the health field similarly shared, "I hear at conferences from investors about their return expectations of 7 to 10 percent [pre-tax]. We can't generate that kind of return." *Id.* (alteration in original).

239. Michael Novogradac, *Novogradac Opportunity Funds List Surpasses $10 Billion in Investment*, NOVOGRADAC (Apr. 29, 2020, 12:00 AM), https://www.novoco.com/notes-from-novogradac/novogradac-opportunity-funds-list-surpasses-10-billion-investment [https://perma.cc/DCS3-B4ZC] (reporting $7.38 billion in residential and $6.12 billion in commercial real estate investments and only $354.55 million in operating businesses and $307.12 million in renewables).

240. THEODOS ET AL., *supra* note 209, at 31. Since the tax benefit allows investors to not pay taxes on capital gains from OZ projects if they are held in Qualified OZ funds for ten years or more, investors have a financial incentive to maximize the capital gains flowing from each project. *See FAQ*, *supra* note 176. Since most community-impact projects do not have high return on investment compared to other types of development, the tax incentive structure undercuts the program's economic-impact goals.

241. THEODOS ET AL., *supra* note 209, at 31; *see* Drucker & Lipton, *supra* note 124 (noting that in one congressional district containing OZs, the only OZ funded real estate project is for college students, not poor community members).

242. THEODOS ET AL., *supra* note 209, at 31.

243. JOELLE SOSTHEIM & JORDAN BECK, A WINDOW OF OPPORTUNITY: AN OVERVIEW AND ANALYSIS OF OPPORTUNITY ZONES 9 (2019) ("[W]e expect to see more commercial real estate

have developed regardless of the subsidy.[244] One study found that four percent of qualified OZs have experienced recent socioeconomic change that indicates significant community development.[245] The designation of already developing census tracts as OZs is most prevalent in popular coastal cities that are already experiencing some of the worst gentrification in the country.[246] One study noted that OZs located in walkable urban places could be at risk of "unmanaged gentrification and displacement."[247] Yet, these gentrifying OZs are the most promising locations for return on investments.[248] The OZ program could potentially exacerbate gentrification trends in these communities because places with increased investment risk are becoming too expensive for longtime residents and businesses.[249]

A related issue is that OZ investments only need to be held for ten years to receive the largest potential tax benefit.[250] In fact, OZ investors will want to stay invested for ten years to maximize the benefit and then exit the investment as soon as possible after that.[251] So, despite the program's touted ability to bring "patient

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investors concentrate capital in up-and-coming census tracts such as downtown areas, suburbs, or college towns.").

244. Drucker & Lipton, *supra* note 124. There are far fewer economic-development benefits that arise from subsidizing projects that would have been created regardless of the benefit. *See* PERSKY ET AL., *supra* note 198, at 12; Quinton, *supra* note 172.

245. *See* BRETT THEODOS, BRADY MEIXELL & CARL HEDMAN, URB. INST., DID STATES MAXIMIZE THEIR OPPORTUNITY ZONE SELECTIONS? 6–7 (2018), https://www.urban.org/sites/default/files/publication/98445/did_states_maximize_their_opportunity_zone_selections_1.pdf [https://perma.cc/75FU-LSCK] (noting that nationally, 3.7% of designated OZs have experienced socioeconomic change indicative of gentrification before the OZ legislation. Sixteen states have disproportionately higher percentages of OZs that are gentrifying, with New York having the highest at thirteen percent); *see also* Kathryn Tokle, *Opportunity Zones' Biggest Myths*, FORBES (May 29, 2019, 10:11 AM), https://www.forbes.com/sites/sorensonimpact/2019/05/29/opportunity-zones-biggest-myths/#17d95cdb1d4e [https://perma.cc/WUX3-7FXQ] (implying that the low- and middle-income residents in the four percent gentrifying OZs are at risk of displacement).

246. THEODOS ET AL., *supra* note 245, at 6 ("Washington, DC . . . has a much higher share of tracts that have undergone such changes, at 32 percent. . . . [This rate is similar to] cities such as New York City at 21 percent, Oakland at 37 percent, and Seattle at 40 percent.").

247. *See* CHRISTOPHER A. COES & TRACY HADDEN LOH, NATIONAL OPPORTUNITY ZONES RANKING REPORT 13 (2018), https://smartgrowthamerica.org/app/uploads/2018/12/LOCUS_opportunity-zones-FINAL.pdf [https://perma.cc/6X6K-97TW].

248. *Id.* at 9 (ranking OZs in New York as the best market for all product types, including office, multifamily housing, and retail rental spaces).

249. *See* BEN BARTLETT, CREATION OF A MUNICIPAL QUALIFIED OPPORTUNITY FUND TO INVEST IN BERKELEY'S QUALIFIED OPPORTUNITY ZONES 2 (2019) ("[T]here is a risk that housing prices will rise, driving out the existing low-income residents and people of color in Berkeley. Furthermore, locally-owned small businesses could face increased competition from large franchises and may also be unable to meet rising rental costs from the developing Qualified Opportunity Zones.").

250. I.R.C. § 1400Z-2; *see also* Harold R. Berk, *Suggested Statutory Changes to Opportunity Zone Incentive*, J. PASSTHROUGH ENTITIES, Nov.–Dec. 2019, at 67, 68 ("The largest potential OZ tax benefit is the provision allowing a complete exclusion of gain taxation on any appreciated value on sale of the OZ investment if it is held for at least 10 years.").

251. THEODOS ET AL., *supra* note 209, at 22.

capital"[252] to communities, most OZ investors will be involved in communities for only ten years. Proponents of this flexibility argue it is necessary to maximize program participation.[253] Yet, it is unclear that maximizing investments without social-impact goals will improve OZ residents' lives.

While the general lack of investment oversight and restrictions at the federal level creates incentives to develop projects more focused on profit than community development, the upside is that the policy gives state and local leaders the reigns for designating OZs and regulating OZ projects. City leaders asked their governors to designate OZs that aligned with the cities' long-term planning goals.[254] This is one of the policy's upsides: local governments can ensure the OZ-funded projects in their jurisdictions meet criteria and serve the needs of the local populations.[255] In fact, the U.S. Department of Housing and Urban Development recommends jurisdiction-specific policies to enable communities to ensure that local OZs see beneficial, equitable development.[256] The federal government's support for local control over OZs gives decision makers freedom to use the program to shape community development as best they see fit. While this regulatory tool is limited to OZs where local leaders affirmatively act, it is nonetheless beneficial that the federal government allows local jurisdictions to define which OZ developments they will authorize.

If the program's objective is purely to maximize investments into OZs, this program's lax restrictions will enable it to work effectively. However, if the objective of the program is to raise social welfare in OZ communities or provide more job opportunities in those communities, the program as structured will not be effective

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252. ECON. INNOVATION GRP., OPPORTUNITY ZONES: A NEW INCENTIVE FOR INVESTING IN LOW-INCOME COMMUNITIES, https://eig.org/wp-content/uploads/2019/10/Opportunity-Zones-Fact-Sheet.pdf [https://perma.cc/8WMP-2V77].

253. *See, e.g.*, Investing in Qualified Opportunity Funds, 85 Fed. Reg. 1866, 1916 (Jan. 13, 2020) (reasoning that "a bright-line standard would be inappropriately restrictive because the determination of whether such land would qualify as qualified OZ business property would require consideration of all relevant facts and circumstances" in describing why "substantial development" was not defined as it related to vacant land purchases for qualified OZ fund investments).

254. *See, e.g.*, Solomon Greene, Brady Meixell & Ruth Gourevitch, *Opportunity Zoning: An Inside Look at How Three Cities Are Aligning a New Tax Incentive with Land-Use Plans to Revitalize Neighborhoods*, URB. INST. (July 25, 2019), https://www.urban.org/features/opportunity-zoning [https://perma.cc/873P-CB35] (describing how Fresno, California, Cleaveland, Ohio, and Washington, DC incorporated land use planning at the local level into the requests for certain census tracts to become OZs).

255. *See id.* ("[Washington, DC] is contributing public land and financing in these areas, which can help ensure that new projects will provide job opportunities for local residents and businesses through DC's first source hiring and small business contracting requirements.").

256. U.S. DEP'T OF HOUSING & URB. DEV., OPPORTUNITY ZONES TOOLKIT VOLUME 1: A ROADMAP TO PLANNING FOR ECONOMIC DEVELOPMENT WITHIN OPPORTUNITY ZONES 2 (2019), https://opportunityzones.hud.gov/sites/opportunityzones.hud.gov/files/documents/Opportunity_Zones_Toolkit_Roadmap_FINAL_Edited_092319.pdf [https://perma.cc/KW6C-KGDM] (encouraging communities to adopt "policies and incentives that promote inclusive and equitable economic growth for existing residents and businesses, expand access to opportunity, mitigate displacement risks and incentivize investments focused on social benefits").

even if it results in added investment. Ultimately, because of the program's design flaws, the primary beneficiaries of this policy will be wealthy investors.[257]

III. SUBSTANTIVE, NOT SYMBOLIC, SOLUTIONS

While public-private partnerships are appealing to voters across the political spectrum, the federal government's latest version of Black capitalism is not likely to render results substantially different from its predecessors. Much like Nixon effectively co-opted the Black power rhetoric to appeal to frustrated Black community members and white middle-class voters,[258] the OZ program seeks to reassure low-income people of color that poverty relief, affordable housing, and community well-being are on the way, while not offending the sensibilities of middle-class voters who are against welfare and government handouts. Yet the federal government created the economic disparities between Black, Native American, and Latinx people and their white counterparts, so it is critical that the federal government takes direct steps to correct these disparities. This is especially true during the COVID-19 pandemic, when people's jobs and economic privileges are intimately tied with their ability to protect themselves and their families from COVID-19 exposure.[259]

In order to effectively respond to the dire and growing need to address racial wealth disparities, the federal government should raise incomes instead of trying to align the motivations of private investors with community-development goals. Community-development efforts should examine the ripple effects of reducing poverty and increasing the spending power of low-income community members through labor-focused—as opposed to investor-focused—expenditures. The federal government already has a strong track record of alleviating poverty through the labor-focused tax expenditure called the EITC.[260] This program has proven more effective at raising incomes and alleviating poverty than the NMTC, its Black-capitalism contemporary.[261] Building on the successes of the EITC, two other

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257. I.R.C. § 1400Z-2; *see also* Drucker & Lipton, *supra* note 124.

258. *See supra* Section I.B.

259. Richard V. Reeves & Jonathan Rothwell, *Class and COVID: How the Less Affluent Face Double Risks*, BROOKINGS (Mar. 27, 2020), https://www.brookings.edu/blog/up-front/2020/03/27/class-and-covid-how-the-less-affluent-face-double-risks/ [https://perma.cc/A2AN-QS2V] ("There are wide gaps by income class in both the risk posed by the virus, because of existing health conditions, and in levels of response to the risk of infection.").

260. *See* Barnow, *supra* note 126, at 113 (noting that the EITC program "plays a significant role in reducing poverty").

261. *See id.* at 33 ("An employee-based wage subsidy—such as the Earned Income Tax Credit—is generally considered a more effective way to subsidize work."). The NMTC program reduced the number of people in poverty in an area by one for every $23,500 in subsidies, whereas the EITC raised one person out of poverty for every $12,400 spent. Freedman, *supra* note 25, at 1009. This cost comparison is only valid if people are actually raised out of poverty by the NMTC—if any of the poverty reduction in the NMTC communities can be attributed to people in poverty moving out of the designated NMTC areas, the cost of poverty reduction per person would be significantly higher. *Id.* Nonetheless, even at the lowest possible estimate, the cost of poverty reduction using the NMTC is almost double the cost of EITC.

policies have the potential to substantively address the need for government intervention in wealth inequality: universal basic income and reparations. This Part details the structure of each and then describes the potential economic and health benefits of adopting these policies.

A. Universal Basic Income

Universal basic income (UBI) is the concept of paying everyone in a community a set sum of money at intervals, with no requirements for how the money is spent.[262] Philosophers and economists from across the political spectrum have proposed UBI as a way to address poverty, joblessness, and economic inequality.[263] A UBI program would also support economic development because higher incomes will increase economic activity.[264]

UBI is an effective economic-development tool because it directly alleviates poverty. UBI recipients, especially those who are low-income, benefit from the payments.[265] In several studies, people with UBI were more likely to finish school and attend training programs.[266] People have used UBI payments to dig themselves out of debt, pay for basic needs, and improve their employability.[267] Populations receiving UBI have experienced increased birth weight attributable to improved

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262. Philippe Van Parijs, *The Universal Basic Income: Why Utopian Thinking Matters, and How Sociologists Can Contribute to It*, 41 POL. & SOC'Y 171, 174 (2013).

263. *See* MELISSA S. KEARNEY & MAGNE MOGSTAD, UNIVERSAL BASIC INCOME (UBI) AS A POLICY RESPONSE TO CURRENT CHALLENGES 2 (2019), https://www.brookings.edu/wp-content/uploads/2019/08/UBI-ESG-Memo-082319.pdf [https://perma.cc/66RE-NZC8] (noting that various elements of UBI proposals appeal to both conservative and liberal political thinkers). Conservatives such as Milton Friedman and Charles Murray and progressives like Elizabeth Warren and Andrew Yang support UBI policies. *Id.*; Amy Castro Baker & Stacia Martin-West, *Can Universal Basic Income Work?*, KNOWLEDGE@WHARTON (Jan. 17, 2020), https://knowledge.wharton.upenn.edu/article/universal-basic-income/ [https://perma.cc/4E83-FHG4]; *see also* JULIANA BIDADANURE, SEAN KLINE, CAMILLE MOORE, BROOKS RAINWATER & CATHERINE THOMAS, NAT'L LEAGUE OF CITIES & STANFORD BASIC INCOME LAB, BASIC INCOME IN CITIES: A GUIDE TO CITY EXPERIMENTS AND PILOT PROJECTS 3 (2018), https://basicincome.stanford.edu/uploads/BasicIncomeInCities_Report.pdf [https://perma.cc/J5VB-LCKP] (noting Thomas Paine's advocacy for a universal income in the 1700s).

264. MICHALIS NIKIFOROS, MARSHALL STEINBAUM & GENNARO ZEZZA, ROOSEVELT INST., MODELING THE MACROECONOMIC EFFECTS OF A UNIVERSAL BASIC INCOME 3 (2017), https://rooseveltinstitute.org/wp-content/uploads/2020/07/RI-Macroeconomic-Effects-of-UBI-201708.pdf [https://perma.cc/232W-95K2] (finding that the gross domestic product would increase with the implementation of UBI at various payment amounts); BIDADANURE ET AL., *supra* note 263, at 4 (explaining Milton Friedman's theory that reducing poverty through UBI could support consumerism).

265. *See, e.g.*, Alstott, *supra* note 196, at 971 (arguing for a program of "unconditional cash grants" that would enable poorer people to "structure their working lives to meet personal and family needs, to seek more education, or even choose where to live").

266. Evelyn L. Forget, *Reconsidering a Guaranteed Annual Income: Lessons from MINCOME*, PUB. SECTOR DIG., Fall 2015, at 18, 23 ("During [a UBI experiment], grade 12 enrollment in [the target city] soared to the extent that in 1976 grade 12 enrollment exceeded 100%; previous dropouts were returning to high school to graduate."); BIDADANURE ET AL., *supra* note 263, at 8.

267. BIDADANURE ET AL., *supra* note 263, at 8.

maternal nutrition.[268] These outcomes lead to improved economic well-being and physical and mental health.[269] Increases in individual health can have ripple effects that improve the well-being of whole neighborhoods.

Opponents of UBI argue that the payments will reduce people's incentive to work, thereby depriving the market of workers.[270] However, there has been little evidence from prior UBI programs to demonstrate that this is true.[271] Another critique is that people will spend their money unwisely,[272] yet studies of programs show that people more likely use the money to pay for necessities.[273] Studies of UBI programs have also demonstrated improved health outcomes for UBI recipients.[274]

The ongoing UBI programs in the United States have created substantial benefits for recipients. In Alaska, the Permanent Fund Dividend grants each Alaskan resident a share of the state's mineral revenues.[275] This has helped keep between two and three percent of the state's population from slipping into poverty each year since 1990.[276] The payments benefit children, rural residents, Alaska natives, and those subject to economic instability the most.[277] Alaskans report that the payments improve their quality of life and provide an important source of income.[278] Casino revenues support UBI programs in some Native American communities[279] that have likewise created benefits including higher median

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268. Barbara H. Kehrer & Charles M. Wolin, *Impact of Income Maintenance on Low Birth Weight: Evidence from the Gary Experiment*, 14 J. HUM. RES. 434, 434 (1979) (reporting results from the 1970s Gary Income Maintenance Experiment).

269. David Calnitsky, *"More Normal Than Welfare": The Mincome Experiment, Stigma, and Community Experience*, 53 CANADIAN REV. SOCIO. 26 (2016); *see also* Forget, *supra* note 266, at 22.

270. Dylan Matthews, *The 2 Most Popular Critiques of Basic Income Are Both Wrong*, VOX (July 20, 2017, 8:30 AM), https://www.vox.com/policy-and-politics/2017/7/20/15821560/basic-income-critiques-cost-work-negative-income-tax [https://perma.cc/GY47-5MGD].

271. Clifton B. Parker, *Stanford Scholar Explores Pros, Cons of 'Basic Income,'* STANFORD NEWS (Aug. 8, 2018), https://news.stanford.edu/2018/08/08/stanford-scholar-explores-pros-cons-basic-income/ [https://perma.cc/N9VG-C7NE] (noting benefits of UBI, including that it can "underwrite market participation," as opposed to welfare programs that only assist people who do not have jobs, thus creating perverse incentives for people to refrain from working so they can obtain the assistance).

272. BIDADANURE ET AL., *supra* note 263, at 8.

273. *Id.*

274. Evelyn L. Forget, *New Questions, New Data, Old Interventions: The Health Effects of a Guaranteed Annual Income*, 57 PREVENTATIVE MED. 925, 925 (2013) (finding that families who participated in a guaranteed annual income program in Manitoba were less likely to be hospitalized and visited their doctors less for mental health issues).

275. *About Us*, ALASKA DEP'T OF REVENUE PERMANENT FUND DIVIDEND DIV., https://pfd.alaska.gov/Division-Info/About-Us [https://perma.cc/S85A-CAXE] (last visited Oct. 22, 2021).

276. MATTHEW BERMAN & RANDOM REAMEY, INST. OF SOC. & ECON. RSCH, PERMANENT FUND DIVIDENDS AND POVERTY IN ALASKA (2016), https://iseralaska.org/static/legacy_publication_links/2016_12-PFDandPoverty.pdf [https://perma.cc/2ZAM-FGNW].

277. BIDADANURE ET AL., *supra* note 263, at 11.

278. *Id.* (reporting views of eighty percent of one thousand Alaskan voters surveyed).

279. Aaron Diaz, The Impact of Indian Gaming on Educational Attainment, Poverty Among Native American Tribes 18 (July 2009) (M.A. thesis, University of New Mexico), https://digitalrepository.unm.edu/cgi/viewcontent.cgi?article=1010&context=soc_etds [https://perma.cc/3ZX3-JTTW].

household incomes, increased employment, and decreased poverty.[280] The positive outcomes of these relatively small UBI programs suggest that the United States would benefit from additional pilot programs to more thoroughly investigate potential individual and community-wide benefits of UBI on the larger population.

B. Reparations

Reparations is the concept of paying for wrongs to apologize for, atone for, and correct past harms.[281] Reparations has been identified as a potential solution to correct the harms done by the United States to members of racial minorities.[282] After the Civil War, the federal government set out to enact a reparations policy to correct wrongs against Black people.[283] President Johnson abandoned the policy after President Lincoln's assassination, and the policy has not been seriously considered since.[284] Contemporary federal courts have held that the issue of reparations to descendants of formerly enslaved people are political questions constitutionally committed to the legislative and executive branches of the United States.[285] Despite the federal courts' unwillingness to decide on legal claims to reparations, the federal government has used reparations to apologize for the internment of Japanese and Aleut U.S. citizens in World War II.[286] This precedent can be a framework for future government action to provide reparations to other harmed communities. Given the United States' history of genocide, internment, colonization, violence, exploitation, and economic deprivation, it would be valuable for the federal government to enact legislation to apologize for and correct the harms it has done to various groups throughout the country's history.[287]

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280. *Id.* at v–vi.

281. *See, e.g.*, Ediberto Roman, *Reparations and the Colonial Dilemma: The Insurmountable Hurdles and Yet Transformative Benefits*, 13 BERKELEY LA RAZA L.J. 369, 369 (2002) ("[I]t is a request of the dominant culture to atone for past wrongs, primarily through monetary relief.").

282. *See*, *e.g.*, Civil Liberties Act of 1988, 50 U.S.C. § 1989a(a) (awarding reparations to individuals of Japanese ancestry who were interned during World War II); Cato v. United States, 70 F.3d 1103, 1110 (9th Cir. 1995) (seeking reparations as damages in complaint against the United States due to enslavement of African people and subsequent discrimination against them and for acknowledgement of continued discrimination and apology for wrongdoing); *In re* African-Am. Slave Descendants Litig., 304 F. Supp. 2d 1027 (N.D. Ill. 2004) (seeking monetary and injunctive relief against corporations for present and past wrongs in connection with the institution of slavery); *see also* Eric Y. Yamamoto, *Racial Reparations: Japanese American Redress and African American Claims*, 19 B.C. THIRD WORLD L.J. 477, 481 n.16 (1998) (discussing a case brought by Native Hawaiian plaintiffs "concerning claims against the United States for the overthrow of the Hawaiian government in 1893, and the redress of breaches of the ceded lands trust committed by the United States and the State of Hawai'i" (quoting Kealoha v. Hee, Civ. No. 94-0118-01 (1st Cir. 1994)).

283. *See supra* note 39 and accompanying text.

284. *See supra* notes 41–42 and accompanying text.

285. *See* In re *African-Am. Slave Descendants Litig.*, 304 F. Supp. 2d at 1075.

286. Restitution for World War II Internment of Japanese-Americans and Aleuts, 50 U.S.C.A. § 4215 (West 2021).

287. In re *African-Am. Slave Descendants Litig.*, 304 F. Supp. 2d at 1055 (citing *In re* Nazi Era Cases Against German Defendants Litig., 129 F. Supp. 2d 370, 378 (D.N.J. 2001)).

There is also the potential to create economic-development benefits through the deployment of reparations.[288] Reparations would help address lasting economic disparities between harmed minority groups and the white population.[289] The marginalization and exploitation of people based on racial distinction is the foundation of the United States' wealth,[290] and though U.S. leaders have made efforts to apologize for the genocide of Native Americans and colonization of their land[291] and the enslavement of African Americans,[292] they have failed to correct the legacy of economic and health deprivation that these policies created. The adoption of a reparations program would help correct this harm by paying people who continue to be negatively impacted by the legacies of those policies.

For nearly thirty years, Representative John Conyers has introduced legislation to study and develop a reparations policy for Black people in the United States.[293] Despite these efforts, a study has not been conducted.[294] Without such a study, only general economic impact assumptions can be made. It is likely that reparations programs structured similar to UBI programs would yield similar positive effects on individual recipients.[295] A reparations program, as opposed to a race-neutral economic support program, would directly confront the history of violence and economic repression that created the wealth gap, rather than avoiding that history.[296] Compared to a UBI program, reparations would more directly reduce the income and wealth gap between Black, Native American, and certain other groups

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288. Ta-Nehisi Coates, *The Case for Reparations*, ATLANTIC (June 2014), https://www.theatlantic.com/magazine/archive/2014/06/the-case-for-reparations/361631/ [https://perma.cc/9T33-JXD6]; Cyndi Suarez*, How Black Reparations Differs from a New Economic Rights Project*, NONPROFIT Q. (Apr. 16, 2019), https://nonprofitquarterly.org/how-black-reparations-differs-from-a-new-economic-rights-project/ [https://perma.cc/N73K-M96J].

289. Christian Weller, *Only Large Policy Interventions Such as Reparations Can Shrink the Racial Wealth Gap*, FORBES (Mar. 21, 2019, 6:00 AM), https://www.forbes.com/sites/christianweller/2019/03/21/only-large-policy-interventions-such-as-reparations-can-shrink-the-racial-wealth-gap/?sh=1e1668991721 [https://perma.cc/4LK9-CGR3].

290. Suarez, *supra* note 288 (noting that U.S. policies and practices that have stripped Black Americans of capital have made white Americans richer "leading to the extreme income inequality we have today"); Coates, *supra* note 288 ("America was built on the preferential treatment of white people—395 years of it.").

291. Department of Defense Appropriations Act of 2010, Pub. L. No. 111-118, 123 Stat. 3409 (2009).

292. S. Con. Res. 26, 111th Cong. (2009).

293. *See, e.g.*, H.R. 40, 116th Cong. (2019); *see also* Sheila Jackson Lee, *H.R. 40 Is Not a Symbolic Act. It's a Path to Restorative Justice*, ACLU (May 22, 2020), https://www.aclu.org/news/racial-justice/h-r-40-is-not-a-symbolic-act-its-a-path-to-restorative-justice/ [https://perma.cc/QX5W-JKNH].

294. Jackson Lee, *supra* note 293.

295. Michael Maiello, *Why Reparations for Slavery Could Help Boost the Economy*, REUTERS (June 4, 2014, 2:31 PM), https://www.reuters.com/article/idUS79547637320140604 [https://perma.cc/2FBX-YRWB].

296. Coates, *supra* note 288 (arguing that race-neutral public policy of race "ignores the fact that closing the 'achievement gap' will do nothing to close the 'injury gap,'" in which Black people continue to experience discrimination that makes it harder for them to get jobs, regardless of educational background).

of color and the rest of the general population.[297] It would also send a symbolic message of healing and deeper atonement, which likely could have positive mental- and physical-health effects for recipients of the reparations and the symbolic message they send.[298] On the other hand, a reparations program would be harder to administer correctly because officials would be required to sort the population and only provide reparations to certain people.[299] Another issue with race-based reparations is the fact that there are millions of poor white people and people of color who would not be eligible for reparations payments but who nonetheless could benefit from increased incomes.

Ultimately, the economic and health benefits of a reparations program are unclear but are likely to be positive from a community healing and restorative justice standpoint.[300] While this program might be politically difficult to pass into law because of the enduring legacy of racism in the United States, it is nonetheless worthwhile to pursue as a solution to the racially based income and health disparities in the United States.

Direct cash payments, either universally distributed or race-based as redress for past wrongs, could have large benefits for the U.S. economy, especially in the realm of poverty reduction. Passing such policies into law could be challenging given the enduring legacy of the bootstraps mythology and racism in the United States. Yet, the COVID-19 pandemic has demonstrated that the United States has the capacity to efficiently distribute large sums of money to individuals in this country.[301] The federal government's issuance of unconditional, universal stimulus checks to Americans in a time of economic hardship has raised new interest in UBI and reparations policies.[302] This response has demonstrated that the United States has the financial resources[303] and logistical capacity to administer such a direct cash

297. Weller, *supra* note 289.

298. Raymond A. Winbush, *Reparations for Africans: A Brief Overview of Their History*, COMMUNIQUE (SPECIAL SECTION REPARATIONS: REPAIRING THE PSYCHOLOGICAL HARM?), January 2005, at iv, vii.

299. *See, e.g.*, David Frum, *The Impossibility of Reparations*, ATLANTIC (June 3, 2014), https://www.theatlantic.com/business/archive/2014/06/the-impossibility-of-reparations/372041/ [https://perma.cc/LH48-2QPF] (noting potential challenges with administering a reparations program including identifying eligible recipients, bitterness that could arise between recipients and others, and the potential that the program's legitimacy could fade).

300. Winbush, *supra* note 298.

301. *See* Kaimipono David Wenger, *1200 Dollars and a Mule: COVID-19, the CARES Act, and Reparations for Slavery*, 68 UCLA L. REV. DISCOURSE 204, 204 (2020).

302. *Id.* ("[G]overnment responses to the crisis demonstrate the ability to distribute money to large swaths of Americans. [It is] clearer than ever the moral necessity to provide reparations today."); Andrew F. Johnson & Katherine J. Roberto, *The COVID-19 Pandemic: Time for a Universal Basic Income?*, 40 PUB. ADMIN. & DEV. 232, 233 (2014).

303. *See, e.g.*, Elizaveta Fouksman, *Why Universal Basic Income Costs Far Less than You Think*, CONVERSATION (Aug. 14, 2018, 7:23 AM), https://theconversation.com/why-universal-basic-income-costs-far-less-than-you-think-101134 [https://perma.cc/VQV4-NWC4] ("[T]o fund a UBI of US$12,000 per adult and US$6,000 per child every year (while keeping all other spending the same) the US would have to raise an additional US$539 billion a year – less than 3% of its GDP."). *But see, e.g.*, Dave Canarie, *Not Ready for Prime Time: A Response to "Universal Basic Income: Policy Options at*

payment program; now the question is whether leaders will drive public sentiment toward accepting a policy that substantively helps raise low-income individuals out of poverty.

CONCLUSION

The United States is in the midst of an economic and public-health catastrophe. Yet, the COVID-19 pandemic has had vastly different impacts on Americans based on their race and wealth. Billionaires have grown richer during the pandemic,[304] and millions of people are able to avoid exposure to COVID-19 by working from home and rearranging their lives to stay out of public.[305] On the other hand, many of the people least equipped to deal with severe illness because of their limited financial resources and access to health care are exposed to the virus in jobs referred to as "essential."[306] Though the work they do is considered essential, people in these positions are treated as expendable: if one cashier gets sick from COVID-19 exposure, another cashier will be able to fill her place to keep the business running.[307]

At the same time, many millions of Americans were laid off during the pandemic.[308] Lower-income Americans were less likely than their middle- and upper-income counterparts to be reemployed after losing employment since the COVID-19 pandemic began.[309] Many people who lost employment during the pandemic do not have a safety net to fall back on to ensure that their needs are

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National, State, and Local Levels," 28 ME. POL'Y REV. 76, 76 (2019) ("No matter how one funds it—whether from general revenues, a tax increase, or a combination of the two—the program still costs $3.415 trillion."); Pavlina R. Tcherneva, *The High Costs of UBI Are Not Financial: They Are Real*, 45 E. ECON. J. 327, 328 (2019) ("[S]pending on UBI could be as high as 20–35% of GDP annually.").

304. Aimee Picchi, *U.S. Billionaires Gained Almost $1 Trillion in Wealth During the Pandemic*, CBS NEWS (Oct. 20, 2020, 1:18 PM), https://www.cbsnews.com/news/billionaires-pandemic-1-trillion-wealth-gain/ [https://perma.cc/5LME-KKW2].

305. Elise Gould & Heidi Shierholz, *Not Everybody Can Work from Home*, ECON. POL'Y INST. (Mar. 19, 2020, 1:15 PM), https://www.epi.org/blog/black-and-hispanic-workers-are-much-less-likely-to-be-able-to-work-from-home/ [https://perma.cc/3USU-YWFZ] (finding that Black and Latinx workers are less likely to be able to work from home).

306. Henry J. Aaron, *The Social Safety Net: The Gaps that COVID-19 Spotlights*, BROOKINGS (June 23, 2020), https://www.brookings.edu/blog/up-front/2020/06/23/the-social-safety-net-the-gaps-that-covid-19-spotlights/ [https://perma.cc/FZ75-E7KF].

307. Catherine Powell, *The Color and Gender of COVID: Essential Workers, Not Disposable People*, THINK GLOBAL HEALTH (June 4, 2020), https://www.thinkglobalhealth.org/article/color-and-gender-covid-essential-workers-not-disposable-people [https://perma.cc/CG3E-WXRX].

308. Mathieu Despard, Michal Grinstein-Weiss, Yung Chun & Stephen Roll, *COVID-19 Job and Income Loss Leading to More Hunger and Financial Hardship*, BROOKINGS (July 13, 2020), https://www.brookings.edu/blog/up-front/2020/07/13/covid-19-job-and-income-loss-leading-to-more-hunger-and-financial-hardship/ [https://perma.cc/7PV8-AD25] (reporting that COVID-19 unemployment rates topped those of the Great Depression at more than 40 million unemployment benefit claims filed).

309. Kim Parker, Rachel Minkin & Jesse Bennett, *Economic Fallout from COVID-19 Continues to Hit Lower-Income Americans the Hardest*, PEW RSCH. CTR. (Sept. 24, 2020), https://www.pewresearch.org/social-trends/2020/09/24/economic-fallout-from-covid-19-continues-to-hit-lower-income-americans-the-hardest/ [https://perma.cc/7RVW-JS6V].

met.[310] This means that people are forced to forgo necessities, dip into retirement savings, rely on friends and family, and potentially accumulate more debt.[311] Black and Latinx Americans are most likely to experience these financial strains.[312]

Although the loss from this crisis seems like an anomaly, it merely sheds light on the chasmic disparities between low-income community members of color and their wealthier white counterparts.[313] One necessary component for pandemic planning is ensuring a greater economic safety net so that people do not have to choose between losing income and risking their lives.[314] The federal government has a duty to increase the economic safety net because it created conditions that have enabled billionaires to massively profit while costing low-income people and small-business owners their lives and their fortunes.

The new administration has an opportunity to provide bold leadership to address economic inequality and racial disparities. The new administration should ignore the false promises of Black-capitalism policy. The evidence is clear that such policies are a poor use of taxpayer money because they deliver little, if any, community-development results while costing millions. Further, the new administration should wind down the OZ program as soon as legally possible and enact laws that make direct payments to the community members who need it most. The physical safety and health of all Americans requires the federal government's leadership to address the race-based economic disparities that plague this country.

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310. Coates, *supra* note 288 ("Effectively, the black family in America is working without a safety net. When financial calamity strikes—a medical emergency, divorce, job loss—the fall is precipitous.").

311. Parker et al., *supra* note 309.

312. *Id.*

313. Wenger, *supra* note 301, at 204 ("[T]he COVID-19 crisis highlights the medical vulnerability of the Black community, illustrating the very real physical harm caused by slavery and racism in the United States.").

314. Aaron, *supra* note 306.