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Public Health and Racial Inequality: Why the Opportunity Zone Program Fails Low-Income Communities and Costs Lives

Katie Raitz*

“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.”

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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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. 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. Low-income neighborhoods have higher COVID-19 infection and death rates than their wealthier counterparts. This disparity is not new, but it has been exacerbated by the pandemic. The data also reveal that Black and Hispanic communities have been hit the hardest, with higher infection and death rates than non-Hispanic White communities. This is not surprising, given the historical and systemic racism that has led to disparities in access to healthcare, education, and employment. The pandemic has only served to highlight these underlying issues.


infection and death rates than their more affluent counterparts. Yet these outcomes are predictable to low-income community members 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.

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).


Critically, wealth and health disparities are more likely to impact Black, Native American, and Latinx people, and these disparities are evident in the COVID-19 data. For example, Black people have lower incomes and higher poverty rates compared to other racial groups, and they have had the highest COVID-19 death rate. This death rate mirrors general public-health outcomes for
Black people, including shorter lifespans\textsuperscript{14} and almost double the infant mortality rate than the general U.S. population.\textsuperscript{15} Similarly, Native American and Latinx populations—who have lower incomes and higher poverty rates than the white population in the United States\textsuperscript{16}—are tied for the highest COVID-19 infection rate.\textsuperscript{17} To be sure, high COVID-19 infection and death rates have impacted every race of the U.S. population.\textsuperscript{18} Yet the racial composition of people who have died from COVID-19 is striking.\textsuperscript{19} After adjusting for death rates by age,\textsuperscript{20} Black, Native American, and Latinx people are at least two times more likely to die from COVID-19 than white people.\textsuperscript{21}

\begin{enumerate}
\item Elizabeth Arias & Jaquan 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)).
\item 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.
\item 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/ZZ8M-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/NM86-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/ZZX2-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).”).
\item See id.
\item 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.
\item Id.
\end{enumerate}
Disproportionately low health outcomes are linked to long-standing income disparities in the United States.\textsuperscript{22} Income inequality is a major social issue, and it is especially bad for people of color.\textsuperscript{23} Unfortunately, income inequality has gotten worse over the past decades\textsuperscript{24} despite attempts to improve it.\textsuperscript{25} The 2017 Opportunity Zone (OZ) tax program is the most recent economic-development intervention.\textsuperscript{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.\textsuperscript{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.”\textsuperscript{28} Despite the popularity of the OZ program,\textsuperscript{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”\textsuperscript{30} economic-development policies and public-health outcomes for low-income communities. In particular, this

\textsuperscript{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.”).

\textsuperscript{23.} See infra Part I.


\textsuperscript{26.} See I.R.C. §§ 1400Z-1 to -2.

\textsuperscript{27.} Id.


\textsuperscript{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
2021] PUBLIC HEALTH AND RACIAL INEQUALITY 321

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. 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 that has created extreme wealth and health inequalities between Black, Native American, and Latinx populations and their white counterparts. 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.


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-wps0076.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; kidnapped, transported, and enslaved African people; and vilified non-Anglo immigrants as threats to society.

After the Emancipation Proclamation ended the institution of slavery in 1863, there was a movement to provide formerly enslaved people land reparations. 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.” People opposed to land reparations argued newly freed Black people would use 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. EPIEMIOLOGY & CMYT. 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).


38. BARADARAN, supra note 35, at 15.

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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{42} There had been hopes during Reconstruction for a redistribution of wealth and potentially even racial equality, but when Reconstruction failed in 1877,\textsuperscript{43} no such legal or economic changes took place.\textsuperscript{44} Instead, Black codes\textsuperscript{45} stifled the free movement of Black people in the market by preventing them from working in most occupations and limiting their civic participation.\textsuperscript{46}

In the decades following the Civil War, economic policy and practices supported a racial hierarchy and employment segregation.\textsuperscript{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.\textsuperscript{48} Union policies prevented people of different racial and ethnic groups from

\begin{itemize}
\item \textsuperscript{40} BARADARAN, supra note 35, at 19–20.
\item \textsuperscript{41} Freedmen’s Bureau Acts of 1865 and 1866, supra note 39.
\item BARADARAN, supra note 35, at 16–17.
\item \textsuperscript{42} BARADARAN, supra note 35, at 16–17.
\item BARADARAN, supra note 35, at 16, 21–22.
\item \textsuperscript{44} 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).
\item 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).
\item 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.
\end{itemize}
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


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).


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.


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

Owners Loan Corporation (HOLC) mapped neighborhoods across the country to determine a home’s potential to appreciate in order to create standardized home appraisals.\textsuperscript{58} Neighborhoods were categorized largely by their racial makeup, and the least desirable neighborhoods were colored red (“redlined”).\textsuperscript{59} The HOLC created policies that discouraged lending for purchases in neighborhoods that were racially heterogenous and predominantly Black.\textsuperscript{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.\textsuperscript{61} This disparate treatment contributed to intergenerational wealth disparities between Black and white people.\textsuperscript{62}

Redlining policy also incentivized white flight and led to the formation of ghettos: desolate, poverty-stricken, urban communities.\textsuperscript{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.\textsuperscript{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.\textsuperscript{65}

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


\textsuperscript{59} Id.

\textsuperscript{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.”).

\textsuperscript{61} Nier, supra note 57, at 618–19 (“[M]ortgage lending discrimination in the form of racial redlining . . . limits minority access to homeownership.”).

\textsuperscript{62} Id.

\textsuperscript{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.”).

\textsuperscript{64} Id.

\textsuperscript{65} BARADARAN, supra note 35, at 104–05.

\textsuperscript{66} Id. at 103.

\textsuperscript{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.\textsuperscript{68} Additionally, due to mainstream banking practices, many Black people lacked access to credit for smaller purchases and ventures.\textsuperscript{69} This lack of mainstream credit created a market for predatory credit providers whose practices ultimately led to further wealth diminishment in Black households.\textsuperscript{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.\textsuperscript{71}

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


\textsuperscript{69} \textit{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. \textit{Id.} at 87.

\textsuperscript{70} Douglas S. Massey, Jacob S. Rugh, Justin P. Steil & Len Albright, \textit{Riding the Stagecoach to Hell: A Qualitative Analysis of Racial Discrimination in Mortgage Lending}, 15 \textit{CITY & CMTY.} 118, 120, 122–23 (2016); \textit{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).

\textsuperscript{71} \textit{BARADARAN}, supra note 35, at 76, 127.


\textsuperscript{74} \textit{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).
2021] PUBLIC HEALTH AND RACIAL INEQUALITY 327

notion of equality under the law. 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. 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.

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. 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, appealing to white voters and some Black activists and leaders.

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. “Black Power” had been a popular slogan among racial-justice leaders and advocates, including the revolutionary socialist organization the Black Panther Party. Black Power emphasized economic independence from white people through property, business, and institutional ownership. Black economic independence was also popular among more moderate civil-rights leaders who had become disheartened about the United States’ political will for integration. Nixon used the Black-capitalism

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.
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.
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.  

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

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. 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.

Although President Nixon "promoted Black capitalism as a major remedy for America's racial ills," the Nixon administration ultimately provided minimal assistance to Black entrepreneurs. The Black-capitalism programs included the failed Minority Enterprise Small Business Investment Company's program, 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 . . . .")
94. Weems & Randolph, supra note 31, 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,\textsuperscript{96} the Minority Bank Deposit Program,\textsuperscript{97} and affirmative-action policies initiated by the Equal Opportunity Office.\textsuperscript{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.\textsuperscript{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,\textsuperscript{100} and reparations programs.\textsuperscript{101}

Although the federal government and members of the private sector have criticized Black capitalism as a solution to racial-wealth disparities,\textsuperscript{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.\textsuperscript{103}

\textbf{C. The Enduring Legacy of Black Capitalism}

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

\begin{itemize}
\item \textsuperscript{96} Baradaran, \textit{A Bad Check}, supra note 78. This program helped minority-owned businesses to receive government contracts. \textit{Id.}
\item \textsuperscript{97} \textit{Id.} This program encouraged federal agencies to make deposits in minority banks. \textit{Id.}
\item \textsuperscript{98} \textit{Id.} Affirmative action encouraged companies to hire more Black employees. \textit{Id.}
\item \textsuperscript{99} \textit{See} Weems & Randolph, supra note 31, at 68; \textit{see also} BARADARAN, supra note 35, at 178.
\item \textsuperscript{100} AMBROSE, supra note 89, at 175.
\item \textsuperscript{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). \textit{Id.}
\item \textsuperscript{103} WEEMS & RANDOLPH, supra note 78, at 7–9; BARADARAN, supra note 35, at 220.
\item \textsuperscript{104} BARADARAN, supra note 35, at 220.
\item \textsuperscript{105} \textit{Id.}
\item \textsuperscript{106} \textit{Id.}
\end{itemize}
programs that were vitally important to Black people. 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. He called inner-city communities “enterprise zones,” reduced regulations, and provided tax cuts to lure businesses to those communities.

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 and created the Black-capitalism program called the Low-Income Housing Tax Credit (LIHTC) “partly to mitigate the impact of [the reforms] on low-income housing construction.” Although the LIHTC helped spur affordable housing development, it was insufficient to make up for the lost investment incentives. 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.

108. BARADARAN, supra note 35, at 221.
109. Id. at 222.
111. I.R.C. § 42.
113. Muresianu, supra note 110 (“On net, TRA86 favored owner-occupied housing over investment in rental housing.”).
While supporting racial-wealth-promoting laws including the Earned Income Tax Credit (EITC), 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. Clinton additionally signed another Black-capitalism program, the New Markets Tax Credit (NMTC), into law just before leaving office. 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. President George W. Bush, Jr., enacted and expanded the LIHTC and

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. RSRCH. 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.


the NMTC. 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.

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. 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. Evaluations of the EZ/EC/RC incentives determined that the programs are wasteful from a cost-per-job perspective. At best, the impacts of the NMTC are unclear, but this mediocre outcome is


127. Martin D. Abrahanel, Nancy M. Pindus, Brett Theodos, Kassie Bertumen, Rachel Brash & Zach Mcdaide, *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.\(^\text{128}\)

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\(^\text{129}\) 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.\(^\text{130}\) 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.

\textit{D. Public-Health Outcomes for Low-Income Communities}

Residence in a low-income neighborhood has negative health implications.\(^\text{131}\) Living in a low-income community means greater exposure to environmental

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\(^{129}\) 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, \textit{What Wealth Inequality in America Looks Like: Key Facts \& Figures}, FED. RSRS. BANK ST. LOUIS (Aug. 14, 2019), https://www.stlouisfed.org/open-vault/2019/august/wealth-inequality-in-america-facts-figures [https://perma.cc/3WTB-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-US7H] (Sept. 29, 2021) (“Low-income communities tend to have specific characteristics 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, \textit{Dwelling Disparities}, 113 ENV’T HEALTH PERPS. 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. Environmental burdens like air, water, and soil pollution contribute to higher rates of asthma, lead poisoning, and neurological disorders. Residents of high-poverty neighborhoods have less access to parks, safe streets, recreation opportunities, and healthy foods. 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. 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. 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. 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. Furthermore,
Black people are the most overrepresented OZ residents: they make up 23% of OZ residents but only 12% of the U.S. population.\footnote{Id.} 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.\footnote{Id.} Health outcomes are worst for Black people, who “have higher rates of diabetes, hypertension and heart disease than other groups.”\footnote{Id.} Black children have higher rates of obesity and higher instances of death rates from asthma.\footnote{Id.} Native Americans also experience lower quality health care, higher mortality rates, and higher rates of suicide, drug and alcohol abuse, depression, and sexual violence.\footnote{Id.} 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.\footnote{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.} 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
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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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, 2:57 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 jobs”).
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.
five percent of a state's OZs were allowed to be higher income\textsuperscript{153} so long as they were contiguous with a qualifying low-income census tract.\textsuperscript{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).\textsuperscript{155} The tax must be paid by December 31, 2026, or when the investment is sold, whichever is first.\textsuperscript{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.\textsuperscript{157} If the original investment is held for at least seven years, the investor can exclude fifteen percent of the original gain from taxation.\textsuperscript{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.\textsuperscript{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.”\textsuperscript{160} The law prohibits claiming the tax benefit for investments in certain “sin businesses”\textsuperscript{161} including golf courses, country clubs, casinos, liquor stores, and tanning salons.\textsuperscript{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.\textsuperscript{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

\textsuperscript{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(c).

\textsuperscript{154} Id.

\textsuperscript{155} § 1400Z-2(a)(1).

\textsuperscript{156} § 1400Z-2(b).

\textsuperscript{157} § 1400Z-2(b)(2)(B)(iii).

\textsuperscript{158} § 1400Z-2(b)(2)(B)(iv).

\textsuperscript{159} § 1400Z-2(c).

\textsuperscript{160} § 1400Z-2(d)(2)(A).


\textsuperscript{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.”).

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.

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.”).


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-7YXX]. 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 “[O]zs 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.


A tax that redistributes wealth to improve overall social welfare is generally seen as a positive program by tax law scholars, lawmakers, and businesspeople, 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. 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. Policy advocates say it will “seed new startups, accelerate business expansions, and create jobs.” The Internal Revenue Service (IRS) states that OZs “are designed to spur economic development and job creation in distressed communities.” President Trump claimed that the program has created tens of thousands of jobs. Senator Tim Scott, the policy’s main sponsor, announced that 1,500 permanent jobs will come to South Carolina through an OZ project. Yet these success stories gloss
over a fundamental issue of the program: there is no requirement that Qualified Opportunity Funds invest in projects or activities that create jobs.\textsuperscript{179}

The infusion of development money alone is insufficient to ensure that any new jobs will be created,\textsuperscript{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."\textsuperscript{181}

Within the U.S. labor market, some workers are treated as more valuable than others.\textsuperscript{182} Though the COVID-19 pandemic has generated the term “essential worker,"\textsuperscript{183} these laborers work in some of the lowest paid positions.\textsuperscript{184} Many essential workers are employed in low-wage industries such as the meatpacking,
food-service, and grocery industries. 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.” In contrast to low-wage workers, people with “good jobs” make up the primary labor market where workers are paid according to their value and promoted as that value increases. Although people in the primary and secondary labor markets live and exist alongside each other, some communities in the United States have a higher proportion of low-wage workers and relatively fewer higher earners. 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.

Unfortunately, almost half of the U.S. workforce are in low-skilled jobs in the secondary labor market, 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. Poor people are less likely to have the skills and education to qualify

185. Tomer & Kane, supra note 183.
187. See Rodrik & Sabel, supra note 181.
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 ix (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/doi/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. Many members of the working poor are thus employed in unskilled jobs. These jobs frequently pay wages that keep full-time employees below the poverty line. 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. 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. 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. Businesses that create a substantial number of medium-income jobs efficiently provide local welfare gains by enabling more people to enter the workforce with fewer job changes by people who are already employed in the

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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”).


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.


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 Felsenthal & Joseph Persky, Evaluating Local Job Creation, 73 J. Am. Plann. 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. Impact-minded OZ investors will have the greatest likelihood of enhancing local welfare by developing businesses that primarily employ mid-skilled workers.

Driving investment in a particular community without a focus on creating good jobs, particularly medium-income jobs, will have a marginal benefit at best. New investments, without an equity-focused policy guiding the application of that money, will not help create good jobs in OZs. A local economy will continue to struggle if workers do not have the opportunity to get more economic security through their employment. 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. 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.

Equitable growth ensures that all community members can participate.
in generating new jobs and businesses while sharing the economic-development benefits.\textsuperscript{210} Equitable growth requires regional planning input from city agencies, nonprofits, grassroots advocates, and the business sector.\textsuperscript{211} These various stakeholders should work together to create and implement an economic-development plan.\textsuperscript{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.\textsuperscript{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,\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{217}

\textsuperscript{210} SCHILDT, supra note 208, at 6.
\textsuperscript{211} Id. at 6–7.
\textsuperscript{212} Id.
\textsuperscript{213} See infra Section II.B.3.
\textsuperscript{214} See generally BARADARAN, supra note 35.
\textsuperscript{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).
\textsuperscript{216} See, e.g., MARLENE OROZCO & ILIANA PEREZ, STANFORD GRADUATE SCH. OF BUS., STATE OF LATINO ENTREPRENEURSHIP 19–25 (2016).
\textsuperscript{217} K. STEVEN BROWN, MARCELA MONTEZ & 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. 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. Investors seeking to maximize the OZ tax benefit look for investments that will be easily exited in ten years. This rigid exit timeline is counter to typical venture capital investment strategies that look for the right time and opportunity to sell the business. 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.” Additionally, small businesses typically do not generate the kind of growth that would attract equity investors.

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. 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. While “stacking” benefits can make projects in OZs more feasible, it concentrates government subsidies in certain communities at the expense of others. In fact, non-designated low-income locations are likely to lose out on federally subsidized investments because the OZ program lures investments elsewhere. The government has a responsibility to focus on equitable development to ensure people of all races and communities prosper.


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.


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 to high-income people who do not live in poor communities. 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. 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. While the program has already benefitted taxpayers who invest in OZ funds, 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. For example, because the NMTC is capped, eligible projects compete for limited funds. Projects are evaluated based on factors including “benefits to low-income persons and jobs directly induced by the investments.” 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 Alston, 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. ECON. COMM., 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.\textsuperscript{236} Also, unlike the NMTC, there is no requirement for OZ funds to have a mission of serving low-income communities.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{241} Therefore, dollar for dollar, the public may be spending more on OZ-supported luxury housing than on affordable housing projects.\textsuperscript{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.\textsuperscript{243} Many OZ projects are going up in communities that would

\textsuperscript{236} Id. at 12.
\textsuperscript{237} Id.
\textsuperscript{238} Theodore 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).
\textsuperscript{240} Theodore 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.
\textsuperscript{241} Theodore 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).
\textsuperscript{242} Theodore et al., supra note 209, at 31.
have developed regardless of the subsidy. One study found that four percent of qualified OZs have experienced recent socioeconomic change that indicates significant community development. 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. Yet, these gentrifying OZs are the most promising locations for return on investments. 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.

A related issue is that OZ investments only need to be held for ten years to receive the largest potential tax benefit. 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. So, despite the program’s touted ability to bring “patient

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 MEINZELL & 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/#17d95d6b1d4e [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.”).


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 Incentives, J. PAST THROUGH 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\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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


\textsuperscript{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).


\textsuperscript{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.”).

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

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


265. See, e.g., Alston, 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. These outcomes lead to improved economic well-being and physical and mental health. 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. However, there has been little evidence from prior UBI programs to demonstrate that this is true. Another critique is that people will spend their money unwisely, yet studies of programs show that people more likely use the money to pay for necessities. Studies of UBI programs have also demonstrated improved health outcomes for UBI recipients.

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. This has helped keep between two and three percent of the state’s population from slipping into poverty each year since 1990. The payments benefit children, rural residents, Alaska natives, and those subject to economic instability the most. Alaskans report that the payments improve their quality of life and provide an important source of income. Casino revenues support UBI programs in some Native American communities that have likewise created benefits including higher median


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-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).


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

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

household incomes, increased employment, and decreased poverty. 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. Reparations has been identified as a potential solution to correct the harms done by the United States to members of racial minorities. After the Civil War, the federal government set out to enact a reparations policy to correct wrongs against Black people. President Johnson abandoned the policy after President Lincoln’s assassination, and the policy has not been seriously considered since. 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. 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. 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.

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 supra notes 39 and accompanying text.
283. See supra note 39 and accompanying text.
There is also the potential to create economic-development benefits through the deployment of reparations. Reparations would help address lasting economic disparities between harmed minority groups and the white population. The marginalization and exploitation of people based on racial distinction is the foundation of the United States’ wealth, and though U.S. leaders have made efforts to apologize for the genocide of Native Americans and colonization of their land, 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. Despite these efforts, a study has not been conducted. 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. 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. Compared to a UBI program, reparations would more directly reduce the income and wealth gap between Black, Native American, and certain other groups.


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.”).


294. Jackson Lee, supra note 293.


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. 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. 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. 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. 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. 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. This response has demonstrated that the United States has the financial resources and logistical capacity to administer such a direct cash payment program.

297. Weller, supra note 289.
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. DISCUSSION 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] (“To 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, 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. 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.” 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.

At the same time, many millions of Americans were laid off during the pandemic. 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. 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 M.E. POL’Y REV. 76, 76 (2019) (“No matter how one finds 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.”).


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

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. 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. 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.