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Social Distancing as a Privilege: Assessing the Impact of Structural Disparities on the COVID-19 Crisis in the Black Community

Olympia Duhart

Nova Southeastern University - Shepard Broad College of Law, olympia@nova.edu

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**SOCIAL DISTANCING AS A PRIVILEGE:
ASSESSING THE IMPACT OF STRUCTURAL
DISPARITIES ON THE COVID-19 CRISIS IN THE
BLACK COMMUNITY**

Olympia Duhart*

ABSTRACT

There is a harsh reality for people living with the COVID-19 restrictions in the same city. Though the virus has been called an equal opportunity threat, the truth is that it has had a deadly, disproportionate impact on Black and Brown people. The COVID-19 pandemic has crushed communities of color. Among Black Americans, who make up around 13% of the U.S. population, the COVID-19 infection and death rate are disproportionately high.

To curb the spread of this infectious disease, the CDC has advanced simple advice: apply social distancing guidelines. Social distancing (physical distancing) requires people to keep at least six feet from other people who are not in the same household. Though social distancing is an effective tool to help curb the spread of COVID-19, this simple mitigation strategy is not available to everyone. What is worse, the availability of social distancing measures at home or work often falls along racial lines. Structural racism has even impacted the ability of Black people to implement this simple mitigation strategy.

The COVID-19 pandemic has laid bare in several significant ways the structural inequities that grip Black Americans, even exacerbating the impact of a global pandemic. An expansive array of short-term and long-term proposals have been explored to address

* Professor of Law, Associate Dean of Faculty Development, and Director of Legal Research & Writing, Nova Southeastern University Shepard Broad College of Law; J.D., Nova Southeastern University; B.A., University of Miami. I am indebted to my research assistants Michelle Adams, Erica Jimenez, and Michele Basile for their valuable contributions. Thanks to Mitch Silverman and Emily Mayers-Twist for their assistance, and to Catharine Arcabascio, Brooks Holland, and Hugh Mundy for early readings. I appreciate the work of the *Georgia State University Law Review* and its commitment to racial equality.

the disparate impact of COVID-19 on the Black community. This Article proposes the inclusion of mandatory racial equity impact assessments into the COVID-19 response efforts. Recent federal action is one important step toward explicitly assessing race equity goals in response efforts, but mandatory assessments focused on racial equity are needed in the planning stage to minimize unintended racialized outcomes.

Anti-racist solutions must be embraced to close the gap in these structural inequities that leave Black Americans more exposed to COVID-19. To ensure that social distancing and other mitigation strategies are equally available, both federal and state governments should be required to assess the racial equity implications for COVID-19 response efforts. Lawmakers must continue to expand the reach of COVID-19 relief efforts to explicitly acknowledge race and minimize unintended, racialized, negative outcomes. A consistent, deliberate acknowledgement of race in crafting response measures is needed to create equitable, sustainable corrections.

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INTRODUCTION

Not everything that is faced can be changed, but nothing
can be changed until it is faced.

James Baldwin¹

Sara works as a graphic designer for an ad agency and lives in a small condo on South Beach, just a fifteen-minute drive across the causeway from her job in downtown Miami. When the COVID-19 quarantine went in place, she bought a headset online and started working remotely. At the peak of the pandemic, she relied on a steady stream of Uber Eats deliveries for meals and grocery drop-offs from Instacart. She survived her first virtual doctor's visit with Teledoc to renew a prescription. It was strange to "FaceTime" with a doctor, but at least her insurance covered it. To help pass the time, Sara watched almost everything imaginable on Netflix. Because Sara lived alone, it was challenging to isolate herself from her friends and family, but she did her best to honor the social distancing guidelines promoted to guard against infection. As a young, healthy white woman, she was not in a special risk population. Her work in downtown Miami left her feeling especially vulnerable to infection because she was so close to the epicenter. When the infection rates started to decline, her office cautiously re-opened, and she was expected to come to the office for one day a week. To prepare herself to reconnect with the world, she ordered more masks and extra hand sanitizer from Amazon and followed the return-to-work protocols. On her first day in the office, she went straight to her own office, wiped down the door handle with a Lysol wipe, and closed the door behind her. She put in her day alone and untouched, and only opened the door to her windowless office to go to the bathroom and leave at the end of the day. Sara had picked up a chicken wrap in the

1. This quote has been widely attributed to the author James Baldwin. See *I AM NOT YOUR NEGRO* (Velvet Film 2017).

drive-through on her way in, so she ate lunch quietly at her desk as she listened to music. Navigating a new world in the middle of a global pandemic was hectic, but Sara was taking every precaution she could to stay healthy. She hoped she did not get infected.

Shonda works as a cashier at a Miami grocery store. She lives in Liberty City, a low-income neighborhood nine miles away from South Beach. When the quarantine for COVID-19 started, Shonda worried that she would lose her job and that she did not want to fall behind on her rent. With no paid sick leave, she could not afford to get sick. But she was told that she would still be expected to come in to make sure the grocery stores could serve customers and fulfill the barrage of Instacart orders coming in. She was nervous, but she was as careful as she could be at work. As a Black woman in her mid-fifties with diabetes, she stressed about her risk of complications from COVID-19. She never failed to wear a mask at work. But on her two bus rides to work—even with her mask—she felt worried because there was only so much that could be done to keep a healthy distance from the other passengers. Her work at the grocery store was even more stressful. Customers did not seem to take the mask precautions seriously, and the break room had only one table for lunch. At work, the shifts were staggered, but she wondered how often the tiny breakroom was cleaned. For lunch, she resolved to eat as fast as she could while sitting in the common area. In the apartment she shared with her adult son, her son's wife, and their daughter, it was an even bigger challenge to keep herself isolated. It was a two-bedroom apartment, but the months on end with no real outlet were difficult. She hated to admit it, but she was worried about being around her daughter-in-law, who worked as a childcare assistant at the local YMCA. As the city slowly started to reopen, her anxieties turned to her son, who was a waiter at a restaurant in Wynwood. With everyone going out around so many people, Shonda worried that it was a matter of time before someone got sick. No one in the home had health insurance, and no one had paid leave. Navigating a new world in the middle of a global pandemic was

hectic, but Shonda was taking every precaution she could to stay healthy. She hoped that she would not get infected.

The story of Sara and Shonda, although imagined,² reflects a very real and harsh reality for people living with the COVID-19 quarantine in the same city. The spread of the contagious novel coronavirus brought the economy to a halt and caused widespread death and disease. As of February 12, 2021, there were more than 27 million COVID-19 cases in the United States.³ At that time, the Centers for Disease Control and Prevention (CDC) reported a death toll of 470,110.⁴ The data, however shocking, does not fully relay the scope of the suffering. Even “survivors” are plagued with long-term disabilities. Mental health challenges have jumped from an average of one in ten pre-pandemic to four in ten.⁵ Many individuals were sidelined with long hospitalizations from COVID-19, which can kill the individual and also debilitate family members of the individual who struggled with loss and heartache. The unemployment rate in January 2021 was 6.3%, which translated to 10.1 million Americans being out of work.⁶ The reach of the pandemic has covered the globe and impacted every single demographic.⁷ Though the virus has been

2. I chose to employ a narrative technique in an effort to humanize the disparate outcomes that “neutral” policies can have on people in different communities. The narrative technique has also been recognized for its persuasive value; indeed, narrative is often considered more compelling than raw statistics. See Terence Flynn, *How Narratives Can Reduce Resistance and Change Attitudes: Insights from Behavioral Science Can Enhance Public Relations Research and Practice*, 2 RSCH. J. INST. FOR PUB. RELS. 1, 10 (2015); see also Olympia Duhart & Steven I. Friedland, *Advancing Technology and the Changing Conception of Human Rights*, 55 GONZ. J. INT’L L. 331, 344–45 (2020). The narrative technique also reflects a community narrative technique employed in some racial equity impact assessments—a solution advanced in this Article. See *infra* Section II.B.

3. Trends in Number of COVID-19 Cases and Deaths in the US Reported to CDC, by State/Territory of *CDC COVID Data Tracker*, CTRS. FOR DISEASE CONTROL & PREVENTION, https://covid.cdc.gov/covid-data-tracker/?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fcases-updates%2Fcases-in-us.html#trends_dailytrendscases [<https://perma.cc/S7S2-NB9C>].

4. *Id.*

5. Nirmita Panchal et al., *The Implications of COVID-19 for Mental Health and Substance Use*, KFF (Feb. 10, 2021), <https://www.kff.org/coronavirus-covid-19/issue-brief/the-implications-of-covid-19-for-mental-health-and-substance-use/> [<https://perma.cc/9SDZ-LVCQ>].

6. News Release, Bureau of Lab. Stats., U.S. Dep’t of Lab., *The Employment Situation – February 2021* (Feb. 5, 2021), <https://www.bls.gov/news.release/pdf/empstat.pdf> [<https://perma.cc/ZZE4-FGJU>].

7. The coronavirus has infected world leaders, celebrities, and members of the Royal Family. See, e.g., Mark Landler & Livia Albeck-Ripka, *Prince William Had Covid-19 in April but Kept It a Secret*,

called an equal opportunity threat, the truth is that it has had a deadly, disproportionate impact on Black and Brown people. The COVID-19 pandemic has crushed communities of color.⁸

Among Black Americans, who make up around 13% of the U.S. population,⁹ the COVID-19 infection and death rate are disproportionately high. The share of Black Americans who have died from COVID-19 nationally is almost double their share of the U.S. population.¹⁰ In major cities, for instance, Black people represent more than 70% of all COVID-19 cases.¹¹ At one point in April 2020, 100% of the COVID-19 cases in St. Louis, Missouri, were Black people.¹² Black Americans are dying at 1.7 times the rate of white people from COVID-19.¹³

To curb the spread of this infectious disease, the CDC has advanced simple advice: *apply social distancing guidelines*.¹⁴ Social distancing (physical distancing) requires people to keep at least six feet from other people who are not in the same household.¹⁵ It seems to be a simple start to containing the spread, but the implementation

N.Y. TIMES, <https://www.nytimes.com/2020/11/01/world/prince-william-had-covid-19-in-april-but-kept-it-a-secret.html> [https://perma.cc/ZU87-3QCT] (Mar. 11, 2021).

8. Jill Cowan & Matthew Block, *In Los Angeles, The Virus Is Pummeling Those Who Can Least Afford to Fall Ill*, N.Y. TIMES (Jan. 29, 2021), <https://www.nytimes.com/interactive/2021/01/29/us/los-angeles-county-covid-rates.html> [https://perma.cc/F42R-VZDA].

9. Kristen Bialik, *5 Facts About Black Americans*, PEW RSCH. CTR.: FACTTANK (Feb. 22, 2018), <https://www.pewresearch.org/fact-tank/2018/02/22/5-facts-about-blacks-in-the-u-s/> [https://perma.cc/3RP2-HJTY].

10. Elise Gould & Valerie Wilson, *Black Workers Face Two of the Most Lethal Preexisting Conditions for Coronavirus—Racism and Economic Inequality*, ECON. POL'Y INST. (June 1, 2020), <https://www.epi.org/publication/black-workers-covid/> [https://perma.cc/2X9N-B2TH].

11. Rashawn Ray, *How to Reduce the Racial Gap in COVID-19 Deaths*, BROOKINGS: FIXGOV (Apr. 10, 2020), <https://www.brookings.edu/blog/fixgov/2020/04/10/how-to-reduce-the-racial-gap-in-covid-19-deaths/> [https://perma.cc/U25G-DBYV].

12. Aris Folley, *St. Louis Health Director: 'All 12 COVID-19 Deaths' in St. Louis Have Been Black*, THE HILL (Apr. 9, 2020, 3:35 PM), <https://thehill.com/policy/healthcare/492062-st-louis-health-director-says-all-12-covid-19-deaths-in-the-city-of-st> [https://perma.cc/4RFT-TZR9].

13. Patrice Peck, *The Virus Is Showing Black People What They Knew All Along*, THE ATLANTIC (Dec. 22, 2020), <https://www.theatlantic.com/health/archive/2020/12/pandemic-black-death-toll-racism/617460/> [https://perma.cc/43K5-7JPJ].

14. *Social Distancing*, CTRS. FOR DISEASE CONTROL & PREVENTION (Nov. 17, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/social-distancing.html> [https://perma.cc/R2YV-5LJF].

15. *Id.*

is much more complex—especially for communities of color. The ability to impose physical distance between yourself and people at work can be elusive—or downright impossible—when there are demands and limitations that contravene the distance recommendation.

For a frontline worker—such as a bus driver, grocery store cashier, or waiter—social distancing is not possible at work. One report indicated that “only 9.2 percent of workers in the lowest quartile of the wage distribution can telework, compared with 61.5 percent of workers in the highest quartile.”¹⁶ For those in public housing or cramped living quarters, social distancing is also problematic at home. Like so many other proposals, social distancing is a privilege. A greater percentage of white people and wealthier people are able to transition their lives and livelihoods to the virtual space, but poor people and many people of color must often navigate the pandemic in less forgiving real-time.

While many Black people share common COVID-19 experiences with other people of color and even poor white people, this Article details the experiences of Black people. The double threat of preexisting comorbidities in the Black community and the long history of targeted discrimination aimed at Black people in the United States compelled me to focus my research on the Black community.¹⁷ Black Americans are already at increased risk of COVID-19 complications because of the prevalence of chronic illnesses, including diabetes, hypertension, and obesity.¹⁸ Cultural

16. Charles M. Blow, Opinion, *Social Distancing Is a Privilege*, N.Y. TIMES (Apr. 5, 2020), <https://www.nytimes.com/2020/04/05/opinion/coronavirus-social-distancing.html> [<https://perma.cc/B8CZ-VHB5>].

17. Leana S. Wen & Nakisa B. Sadeghi, *Addressing Racial Disparities in the COVID-19 Pandemic: Immediate and Long-Term Policy Solutions*, HEALTH AFFS.: BLOG (July 20, 2020), <https://www.healthaffairs.org/doi/10.1377/hblog20200716.620294/full/> [<https://perma.cc/668E-WR4M>]. See generally JOE R. FEAGIN & KIMBERLEY DUCEY, RACIST AMERICA: ROOTS, CURRENT REALITIES, AND FUTURE REPARATIONS (4th ed. 2018).

18. Tabia Henry Akintobi et al., *Community Engagement of African Americans in the Era of COVID-19: Considerations, Challenges, Implications, and Recommendations for Public Health*, 17 PREVENTING CHRONIC DISEASE: PUB. HEALTH RSCH. PRAC. & POL'Y, Aug. 13, 2020, at 1, 3, https://www.cdc.gov/pcd/issues/2020/20_0255.htm [<https://perma.cc/QSG4-GEYM>].

competence failures among many medical professionals also means that Black people are more likely to experience poor medical care and worse health outcomes than their white counterparts.¹⁹ In addition, long-standing systemic healthcare disparities also heighten the risk for Black people. Specifically, comorbidities are accelerated by two contributors to poor health outcomes in the Black community: under-insurance and health care deserts.²⁰ And, of course, the long legacy of slavery left Black Americans especially vulnerable to the negative social determinants of health—including underemployment, poverty, and racism.²¹ Black people are also disproportionately represented in prisons and homeless shelters,²² where they are unable to socially distance.²³

Despite the numerous factors that contribute to the discriminatory practices impacting health equity for Black Americans, the challenges and proposed solutions explored *infra* are often applicable to other communities of color. As the research reveals, Latinos and Native Americans are also harmed by the failure to recognize the racial and ethnic disparities that pervade American life.²⁴ Poor white

19. Olympia Duhart, *Why More Hospitals Should Prioritize Cultural Competency*, HARV. BUS. REV.: DIVERSITY (May 26, 2017), <https://hbr.org/2017/05/why-more-hospitals-should-prioritize-cultural-competency> [https://perma.cc/ALC6-ESV5].

20. Compared to whites, Black people are almost twice as likely to be uninsured. *Profile: Black/African Americans*, U.S. DEP'T HEALTH & HUM. SERVS. OFF. MINORITY HEALTH, <https://minorityhealth.hhs.gov/omh/browse.aspx?lvl=3&lvlid=61> [https://perma.cc/L6FP-7NDK] (Aug. 22, 2019, 2:44 PM). In 2017, the rate of uninsured non-Hispanic Blacks was 9.9%; for non-Hispanic whites, the rate was 5.9%. *Id.* Even when residents in communities of color have insurance, minority communities are also harmed by hospital closures and relocations. Brietta R. Clark, *Hospital Flight from Minority Communities: How Our Existing Civil Rights Framework Fosters Racial Inequality in Healthcare*, 9 DEPAUL J. HEALTH CARE L. 1023, 1024 (2005).

21. See Allan S. Noonan et al., *Improving the Health of African Americans in the USA: An Overdue Opportunity for Social Justice*, 37 PUB. HEALTH REVS., Oct. 3, 2016, at 1, 3, <https://publichealthreviews.biomedcentral.com/track/pdf/10.1186/s40985-016-0025-4.pdf> [https://perma.cc/LPW2-D3UA].

22. One in three Black boys born today can expect to be sentenced to prison. *Criminal Justice Fact Sheet*, NAACP, <https://www.naacp.org/criminal-justice-fact-sheet/> [https://perma.cc/ADQ5-AWXR]. Among Latino boys, the figure is one in six; among white boys the figure is one in seventeen. *Id.*

23. Emma Grey Ellis, *COVID-19 Is Killing Black People Unequally—Don't Be Surprised*, WIRED (May 2, 7:00 AM), <https://www.wired.com/story/covid-19-coronavirus-racial-disparities/> [https://perma.cc/BW3R-9MXG].

24. For much of the data cited throughout this Article, researchers used either “Latino/Latina,” “Latinx,” or “Hispanic.” Throughout this Article, I use the term “Latino”—a term I understand is an

communities also encounter some of the same aggravating health inequities. Though this Article focuses on Black people, it in no way diminishes the challenges or needs of other similarly situated people. It does, however, reflect my abiding interest in confronting anti-Black racism.²⁵

The COVID-19 pandemic has laid bare in several significant ways the structural inequities that grip Black Americans, even exacerbating the impact of a global pandemic. This Article specifically addresses what social distancing guidelines ignore: the economic and healthcare disparities that make Black Americans more likely to die first and most from COVID-19.²⁶ This Article then explores possible solutions—especially those that would reach Black communities. An expansive array of short-term and long-term proposals have been explored to address the disparate impact of COVID-19 on the Black community.²⁷ This Article then proposes the inclusion of mandatory racial equity impact assessments into the COVID-19 response efforts.²⁸ Recent federal action is one important step toward explicitly assessing race equity goals in response efforts, but mandatory assessments focused on racial equity are needed in the planning stage to minimize unintended racialized outcomes. Anti-racist solutions must be embraced to close the gap in these structural inequities that leave Black Americans more exposed to COVID-19.

“imperfect categorization” for many people from different countries and cultures. *See What’s the Difference Between Hispanic and Latino?*, BRITANNICA, <https://www.britannica.com/story/whats-the-difference-between-hispanic-and-latino> [<https://perma.cc/7RHS-25CX>]; *see also* Samantha Vincenty, *The Difference Between the Terms Latino and Hispanic, and How They Overlap*, OPRAH MAG. (Aug. 4, 2020), <https://www.oprahmag.com/life/a33395013/latino-vs-hispanic-meaning/> [<https://perma.cc/6HVT-6J9D>] (featuring an interview with Professor Laura E. Gómez on the complexities of the designations “Latino” and “Hispanic”). Though I use Latino for consistency, I acknowledge that the best practice is to specifically identify the country of origins when known.

25. Though this Article focuses on the disparate impact of COVID-19 in the Black community, many of the proposed corrections for the Black community would also be effective in addressing the challenges in other minoritized populations.

26. Monica Webb Hooper et al., *COVID-19 and Racial/Ethnic Disparities*, 323 JAMA NETWORK 2466, 2466 (2020), <https://jamanetwork.com/journals/jama/fullarticle/2766098> [<https://perma.cc/8FEG-VY83>].

27. *See infra* Section II.A.

28. *See infra* Section II.B.

I. SOCIAL DISTANCING IS NOT AVAILABLE TO THOSE WHO NEED IT
MOST

On its website, the CDC announces: “Limiting close face-to-face contact with others is the best way to reduce the spread of coronavirus disease 2019 (COVID-19).”²⁹ Health experts tout this mitigation as one critical tool to reduce the spread of COVID-19, which is transmitted from an infected person through droplets spread by coughing, sneezing, talking, or singing.³⁰ The CDC provides very clear guidance on the benefit of social distancing. The relevant part of its website reads:

Recent studies indicate that people who are infected but do not have symptoms likely also play a role in the spread of COVID-19. Since people can spread the virus before they know they are sick, it is important to stay at least 6 feet away from others when possible, even if you—or they—do not have any symptoms. Social distancing is especially important for people who are at higher risk for severe illness from COVID-19.³¹

Racial and ethnic minorities are among the people identified as being at higher risk for severe illness from COVID-19.³² As discussed *supra*, COVID-19 has disproportionately impacted Black communities. Latino and (where data exists)³³ Native American

29. *Social Distancing*, *supra* note 14.

30. *Public Health Guidance for Potential COVID-19 Exposure Associated with Travel*, CTFS. FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/coronavirus/2019-ncov/php/risk-assessment.html> [<https://perma.cc/6954-7Q9H>] (June 9, 2021).

31. *Social Distancing*, *supra* note 14.

32. *Health Equity Considerations and Racial and Ethnic Minority Groups*, CTFS. FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/coronavirus/2019-ncov/community/health-equity/race-ethnicity.html> [<https://perma.cc/ZB57-F922>] (Feb. 21, 2021).

33. The numbers do not tell the whole story; the racial disparity data is incomplete. See Spencer Overton, *Opinion: The CDC Must End Its Silence on the Racial Impact of COVID-19*, WASH. POST (Apr. 7, 2020, 4:54 PM), https://www.washingtonpost.com/opinions/the-cdc-must-end-its-silence-on-the-racial-impact-of-covid-19/2020/04/07/6d686450-7906-11ea-9bee-c5bf9d2e3288_story.html [<https://perma.cc/J2GW-EPHH>].

communities have also suffered a disproportionate impact of COVID-19-related outcomes.³⁴ Asian Americans and Pacific-Islanders are subjected to both increased risk due to societal factors as well as the added threat of racist, anti-Asian rhetoric and bigotry.³⁵

Black and Latino Americans are dying of COVID-19 at a higher rate than white Americans.³⁶ Black Americans are overrepresented in COVID-19 hospitalizations relative to other racial groups;³⁷ specifically, Black people make up one-third of COVID-19-related hospitalizations.³⁸ In December 2020, a “grim pandemic milestone” was met when the number of Black Americans to die from COVID-19 hit 50,000.³⁹ The number represented 15.6% of all of the 319,000 deaths at the time.⁴⁰ With the disproportionate threat of COVID-19 in the Black community, the social distance mitigation strategy could be a life-saving tool. Unfortunately, many Black people cannot follow this “simple” advice.

34. POLICYLINK, COVID-19 & RACE: PRINCIPLES FOR A COMMON-SENSE, STREET-SMART RECOVERY: COMPLETE SET 2 (2020), https://www.policylink.org/sites/default/files/Covid-19-race-Compilation_final.pdf [<https://perma.cc/8DSL-C684>] (“In New Mexico alone, Native Americans account for 25 percent of confirmed COVID-19 cases.”); Hooper et al., *supra* note 26.

35. See generally FELICIA FEIRAN CHEN ET AL., ASIAN AM. BAR ASS’N N.Y., A RISING TIDE OF HATE AND VIOLENCE AGAINST ASIAN AMERICANS IN NEW YORK DURING COVID-19: IMPACT, CAUSES, SOLUTIONS (2021), https://cdn.ymaws.com/www.aabany.org/resource/resmgr/press_releases/2021/A_Rising_Tide_of_Hate_and_Vi.pdf [<https://perma.cc/RF6G-BTDC>] (addressing the rapid rise of anti-Asian American violence); Frank Wu, *Coronavirus Is Not a “Chinese Virus,”* DIVERSE: ISSUES HIGHER EDUC. (Mar. 25, 2020), <https://diverseeducation.com/article/170580/> [<https://perma.cc/2XGA-7SAR>].

36. Scott Neuman, *COVID-19 Death Rate for Black Americans Twice That for Whites, New Report Says*, NPR (Aug. 13, 2020), <https://www.npr.org/sections/coronavirus-live-updates/2020/08/13/902261618/covid-19-death-rate-for-black-americans-twice-that-for-whites-new-report-says> [<https://perma.cc/ME5T-2XQB>].

37. U.S. DEP’T HEALTH & HUM. SERVS., HHS INITIATIVES TO ADDRESS THE DISPARATE IMPACT OF COVID-19 ON AFRICAN AMERICANS AND OTHER RACIAL AND ETHNIC MINORITIES 2 (2020), <https://www.hhs.gov/sites/default/files/hhs-fact-sheet-addressing-disparities-in-covid-19-impact-on-minorities.pdf> [<https://perma.cc/V3W9-U3YJ>].

38. POLICYLINK, *supra* note 34.

39. Peck, *supra* note 13.

40. *Id.*

A. *Why Race Complicates Simple Advice*

Though social and economic inequities have accelerated the threat of COVID-19 in the Black community,⁴¹ one of the primary strategies for mitigating the threat—social distancing—also highlights the persistent racial divide in the United States. Something as simple as keeping six feet away from others—at home, at work, while traveling—is truly a privilege that many Black people cannot afford. Experts initially pointed to underlying health conditions as a primary aggravator of COVID-19 among communities of color but are now also pointing to poverty and housing/work patterns as large contributors to the disparities.⁴² Indeed, the combination can be lethal.

In examining the structural conditions that contribute to the COVID-19 infection and death disparities among Black Americans, some clear patterns emerge. First, underserved communities are subject to housing and transportation deficiencies.⁴³ Next, there is a much higher representation of people of color among “essential,” low-wage workers.⁴⁴ Between the economic disparities and the discriminatory healthcare practices, Black people are left more exposed to COVID-19 and are offered fewer resources to deal with it.

The economic challenges that hurt the Black community in the pre-pandemic world can often kill them when coupled with a deadly virus. The living and working conditions many Black Americans must survive in “normal” times increase the exposure risk during a pandemic. “People cannot enact self-quarantine protocols in crowded

41. Vanessa Williams, *Residential Segregation Plays a Role in Coronavirus Disparities*, *Study Finds*, WASH. POST (Aug. 17, 2020, 5:20 PM), <https://www.washingtonpost.com/nation/2020/08/17/residential-segregation-plays-role-covid-19-disparities-study-finds/> [https://perma.cc/YVV9-JNQ3].

42. *Id.*

43. See Monica Anderson, *Who Relies on Public Transit in the U.S.*, PEW RSCH. CTR.: FACTTANK (Apr. 7, 2016), <https://www.pewresearch.org/fact-tank/2016/04/07/who-relies-on-public-transit-in-the-u-s/> [https://perma.cc/VEX7-RH3B].

44. Ray, *supra* note 11.

or dangerous settings, which creates more ideal conditions for transmission than might otherwise exist.”⁴⁵

1. *Economic Disparities*

In the United States, the net worth of a typical white family is nearly ten times the net worth of a typical Black family.⁴⁶ As a group, Black Americans continue to have lower incomes than white Americans.⁴⁷ Income disparities create other social ills that make life difficult. These poverty-fueled challenges range from food scarcity, dense housing, lack of health care insurance, limited education, and transportation constraints. “Wealth—the measure of an individual’s or family’s net worth—provides all sorts of opportunities for American families.”⁴⁸ The harsh corollary to this truth is that poverty can strip American families of these same opportunities.

Even prior to the emergence of the pandemic in March 2020, the wealth gap separating Black and white Americans was striking. Among the disparities, Black Americans own one-tenth the wealth of white Americans;⁴⁹ Black Americans have much less access to emergency savings;⁵⁰ and Black Americans are also less likely to be homeowners.⁵¹ Though any of these wealth disparities can be

45. Stefanie DeLuca et al., *The Unequal Cost of Social Distancing*, JOHNS HOPKINS U. & MED., <https://coronavirus.jhu.edu/from-our-experts/the-unequal-cost-of-social-distancing> [<https://perma.cc/2VQB-U7W9>].

46. Kriston McIntosh et al., *Examining the Black-White Wealth Gap*, BROOKINGS: UP FRONT (Feb. 27, 2020), <https://www.brookings.edu/blog/up-front/2020/02/27/examining-the-black-white-wealth-gap/> [<https://perma.cc/P2F4-M8P4>]. “Gaps in wealth between Black and white households reveal the effects of accumulated inequality and discrimination, as well as differences in power and opportunity that can be traced back to this nation’s inception.” *Id.*

47. NANETTE GOODMAN ET AL., NAT’L DISABILITY INST., FINANCIAL INEQUALITY: DISABILITY, RACE AND POVERTY IN AMERICA 6 (2019), <https://www.nationaldisabilityinstitute.org/wp-content/uploads/2019/02/disability-race-poverty-in-america.pdf> [<https://perma.cc/WN5T-NYXT>].

48. ANGELA HANKS ET AL., CTR. FOR AMER. PROGRESS, SYSTEMATIC INEQUALITY: HOW AMERICA’S STRUCTURAL RACISM HELPED CREATE THE BLACK-WHITE WEALTH GAP 1 (2018), https://cdn.americanprogress.org/content/uploads/2018/02/20131806/RacialWealthGap-report.pdf?_ga=2.249513474.488250614.1628360406-1006303499.1628360406 [<https://perma.cc/PZG4-XTQE>].

49. *Id.* at 2.

50. *Id.*

51. *Id.* at 1.

difficult to manage alone, the combination of all three creates persistent challenges. They leave many Black Americans especially vulnerable to emergency disruptions—without a savings account or sufficient resources, a pay interruption can trigger a rapid decline in stability. The COVID-19 pandemic stopped several key social programs (such as senior centers and school programs) that were “community lifelines.”⁵² Facing the crushing economic impact of the pandemic, for many Black people a difficult situation became worse.

2. *Multigenerational Housing*

One of the first ways economic insecurity aggravates pandemic-related challenges is through housing limitations. Because Black Americans lag behind their white counterparts in homeownership, many Black people live in rentals or multigenerational households.⁵³ Multigenerational housing is defined as “including two or more adult generations, or including grandparents and grandchildren younger than 25” in a single household.⁵⁴ While the rate of multigenerational households has increased across all groups over the past several years, the rates of multigenerational households are still more pronounced among Black people and other families from communities of color.⁵⁵ Specifically, a 2018 Pew Research Center report found that 26% of Black Americans, 27% percent of Latinos, and 29% of Asian-Americans live in multigenerational housing.⁵⁶ Only 16% of white Americans live in a multigenerational home.⁵⁷

52. Wen & Sadeghi, *supra* note 17; see also Emily A. Benfer et al., *Health Justice Strategies to Combat the Pandemic: Eliminating Discrimination, Poverty, and Health Disparities During and After Covid-19*, 19 YALE J. HEALTH POL’Y L. & ETHICS 122, 147–77 (2020) (examining housing as a social determinant of health, and the impact on COVID-19).

53. D’vera Cohn & Jeffrey S. Passel, *A Record 64 Million Americans Live in Multigenerational Households*, PEW RSCH. CTR. (Apr. 5, 2018), <https://www.pewresearch.org/fact-tank/2018/04/05/a-record-64-million-americans-live-in-multi-generational-households/> [https://perma.cc/6NXX-2P77].

54. *Id.*

55. *Id.* Critically important but beyond the scope of this Article is the value of close-knit families for the mental health of close-knit communities of color, who often rely on family members (not formal networks) to serve as a support system. Cowan & Block, *supra* note 8.

56. Cohn & Passel, *supra* note 53. Not surprisingly, foreign-born Americans are more likely to live

The housing patterns are correlated to infection risk. The relationship between “social disadvantage” and infection risk has been documented.⁵⁸ The term “social disadvantage” refers to limitations related to “employment and commuting patterns, population density, food access, and personal finances and access to healthcare.”⁵⁹ People facing social disadvantages in these critical areas are at a higher risk for COVID-19 infection.⁶⁰ One researcher studying increased mortality rates among Black and Brown Chicagoans said that “[b]arriers to social distancing really jumped out as a major driver of mortality, likely through increased risk of infection.”⁶¹

Housing patterns can have multiple impacts on infection risk. When people from different generations share the same home, the exposure risk to elderly members of the household is increased. Further, exposure risk is expanded in smaller rental quarters. Housing density among communities further aggravates the exposure risk. Even internet access—another privilege of wealth—impacts infection risk. Housing with limited internet access drives infection risk because people who need to use the internet in such neighborhoods must venture out into the community to access the internet;⁶² people who leave the house are exposed to more people and therefore are predisposed to a greater risk of infection.⁶³

in multigenerational housing. *Id.*

57. *Id.*

58. Daniel Carrión et al., *Assessing Capacity to Social Distance and Neighborhood-Level Health Disparities During the COVID-19 Pandemic 1* (June 13, 2020) (unpublished manuscript), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7302284/> [<https://perma.cc/5XEV-F2VZ>].

59. *Id.* at 2.

60. *Id.* at 4.

61. Kelly Bauer, *Social Distancing Is a Privilege – And More Black and Latino Chicagoans Died Because They Couldn't, Study Says*, BLOCK CLUB CHI.: CITYWIDE (Dec. 3, 2020, 3:03 PM) (quoting research assistant professor Molly Scannell Bryan), <https://blockclubchicago.org/2020/12/03/social-distancing-is-a-privilege-and-more-black-and-latino-chicagoans-died-because-they-couldnt-study-says/> [<https://perma.cc/3ZP5-ZZQL>].

62. *Id.*

63. *Id.*

3. *Transportation Limitations*

Transportation challenges, specifically reliance on public transportation, also increase the risk of COVID-19 exposure.⁶⁴ Data demonstrates that Black and Latino people are more likely to rely on public transportation than white people.⁶⁵ In urban areas, 34% of Black people use public transportation.⁶⁶ Latino people also reported a high rate of use at 27%, but only 14% of white people reported taking public transportation on a regular basis.⁶⁷

The regular use of buses, trains, and subways is more common in Black and Brown communities for several reasons. Researchers say the following factors contribute to the high incidence of public transportation use among communities of color: housing patterns (where communities of color are more likely to live in large metropolitan areas); reduced access to private vehicles because of ownership and insurance costs; and the likelihood that Black and Latino people live too far from their jobs to walk to work.⁶⁸

The longer commute times of low-income, inner-city residents also render many residents “transit captives”⁶⁹ who are unable to access both jobs and social networks with higher earning potential. Mobility restrictions, therefore, can have multiple negative impacts on wealth.⁷⁰ Although public transportation may be safer than previously thought,⁷¹ reliance on public transportation still creates

64. See Pranav Baskar, *Coronavirus FAQ: Is It Safe to Get on the Bus (or Subway)?*, NPR: GOATS & SODA (Aug. 28, 2020, 5:04 PM), <https://www.npr.org/sections/goatsandsoda/2020/08/28/907106441/coronavirus-faq-is-it-safe-to-get-on-the-bus-or-subway> [https://perma.cc/5JTZ-YBWA] (ranking the exposure risk for people who rely on various modes of public transportation).

65. Anderson, *supra* note 43.

66. Baskar, *supra* note 64. Researchers found few racial differences in public transportation use among nonurban residents. *Id.*

67. *Id.*

68. *Id.*

69. Michael B. Teitz & Karen Chapple, *The Causes of Inner-City Poverty: Eight Hypotheses in Search of Reality*, 3 CITYSCAPE 33, 49 (1998).

70. *Id.*

71. Aria Bendex, *Public Transport May Not Bring a High Risk of Coronavirus Transmission, Research Suggests — Depending on Which Precautions You Take*, INSIDER (Aug. 7, 2020, 4:14 PM), <https://www.businessinsider.com/subways-buses-public-transit-low-risk-coronavirus-transmission-2020-8> [https://perma.cc/R5CZ-EEJC] (addressing the steps that can be used to mitigate the exposure risk on public transportation).

two immediate challenges for riders. First, it increases exposure to other people crammed into a densely populated bus or train.⁷² Next, it makes it more difficult for riders to stock up on food or supplies and thereby minimize their trips to stores.⁷³

Furthermore, lack of private transportation also limits access to drive-through testing sites. People without vehicles have not been able to take full advantage of the mobile testing sites offered in many communities.⁷⁴ Those without a car have limited—and expensive—alternatives for accessing drive-through testing sites; using Uber or Lyft to go to a testing site is expensive and increases the risk of exposure.⁷⁵ In addition, early walk-up sites in several cities were established in communities, but most were few and far between.⁷⁶ And they were hardly accessible to the most vulnerable communities.⁷⁷ For instance, five months into the pandemic, the city of Atlanta had only a single walk-in testing site available for the community.⁷⁸ The limited availability of walk-in sites in other major cities was just as challenging.⁷⁹ As one editorial in the *Los Angeles Times* stated in July 2020:

72. Rachel Schraer, *Coronavirus: What's the Risk on Transport?*, BBC NEWS: HEALTH (Sept. 7, 2020), <https://www.bbc.com/news/health-51736185> [<https://perma.cc/VMN8-C9MA>]. The matter is further complicated by the fact that unmasked riders are largely unregulated by bus drivers or train conductors focused on safety. An incredibly tragic incident occurred in the summer of 2020 when Jason Hargrove, a Black bus driver and father of six in Detroit, posted a video expressing his frustration over unmasked bus riders who coughed near him and did not cover their mouths. Greg Jaffe & Annie Gowen, *The High Price of Keeping Detroit Moving*, WASH. POST (Apr. 13, 2020), <https://www.washingtonpost.com/graphics/2020/national/detroit-coronavirus/> [<https://perma.cc/RE7R-EJFX>]. Sadly, Mr. Hargrove contracted coronavirus soon after the incident and died of COVID-19 a few weeks later. *Id.*

73. Wei Li, *Racial Disparities in COVID-19*, HARV. U.: SCI. NEWS (Oct. 24, 2020), <https://sitn.hms.harvard.edu/flash/2020/racial-disparities-in-covid-19/> [<https://perma.cc/W34X-7F8Z>].

74. See Aaron Leibowitz, *It's Still Hard to Get Tested Without a Car. Here's Who That Hurts Most in Miami-Dade*, MIAMI HERALD, <https://www.miamiherald.com/news/coronavirus/article242372946.html> (Apr. 29, 2020, 7:19 PM).

75. Evelyn Blumenberg & Madeline Brozen, *Op-Ed: You Shouldn't Need a Car to Get Tested for COVID-19*, L.A. TIMES (July 7, 2020, 3:00 AM), <https://www.latimes.com/opinion/story/2020-07-07/op-ed-drive-through-walk-up-covid-19-coronavirus-testing-sites> [<https://perma.cc/9FJF-KJMY>].

76. *Id.*

77. *Id.*

78. *Id.*

79. *Id.*

If you live in a household without a car in Los Angeles County, you are much more likely to be poor, 65 or older, Black, a recent immigrant, living with a disability or uninsured. These same households also face higher risks of contracting COVID-19, so making sure they have access to testing is paramount.⁸⁰

Transportation challenges make it difficult for people to adhere to social distancing guidelines to mitigate the threat of COVID-19.

4. “Essential” Workers

As difficult as housing and transportation challenges are, the risks rise exponentially for many people of color in the work sphere. Although the term “essential workers” suggests a noble, lofty position, the reality is that those deemed “essential workers” are more accurately described as “frontline” workers who face heightened risk of COVID-19 exposure. Approximately 55 million workers are in frontline industries currently deemed essential.⁸¹

The term “frontline workers” describes workers in twelve industries who are engaged in work on the frontline of the pandemic response.⁸² These workers include the following:

- Grocery store workers,
- Drugstore workers,
- Public transportation workers,
- Health care workers,⁸³

80. *Id.*

81. Celine McNicholas & Margaret Poydock, *Who Are Essential Workers?: A Comprehensive Look at Their Wages, Demographics, and Unionization Rates*, ECON. POL’Y INST.: WORKING ECON. BLOG (May 19, 2020, 11:25 AM), <https://www.epi.org/blog/who-are-essential-workers-a-comprehensive-look-at-their-wages-demographics-and-unionization-rates/> [<https://perma.cc/3Y7U-RDCG>].

82. *Id.*

83. Lisa Riordan Seville, *These Are the Most Dangerous Jobs You Can Have in the Age of Coronavirus*, NBC NEWS, <https://www.nbcnews.com/health/health-news/these-are-most-dangerous-jobs-you-can-have-age-coronavirus-n1201496> [<https://perma.cc/BWA7-9LQM>] (May 8, 2020, 7:34 PM) (stating that healthcare workers include doctors and nurses, as well as low-paid nursing home workers “who often lack sick leave and health insurance”).

- Postal workers,
- Cleaning service workers, and
- Childcare workers.⁸⁴

Here, again, Black people are at increased risk.⁸⁵ Specifically, Black people are disproportionately represented in frontline industries.⁸⁶ About 17% of America’s frontline workforce is Black.⁸⁷ Latino people, who make up 18.4% of the population,⁸⁸ are also disproportionately represented among frontline workers; 21% of all frontline workers in the United States are Latino.⁸⁹ In addition, Black and Latino workers in frontline industries are also “heavily clustered in low-wage occupations.”⁹⁰ Many frontline positions, especially those in food processing, are also filled by immigrants.⁹¹ Among the frontline workers, Black workers are especially clustered among positions as public transit workers (26%), childcare workers (19%), and postal or delivery workers (18%).⁹²

The inability to work remotely increases the COVID-19 exposure risk to the worker and everyone in the worker’s immediate household.⁹³ The heightened exposure to colleagues and customers also makes it more likely that the worker must tap into sick days—either paid or unpaid. For many workers, it can also lead to job loss.⁹⁴

84. Gould & Wilson, *supra* note 10.

85. *Id.*

86. Irina Ivanova, *As States Reopen, Black Workers Are at Greater Risk for COVID-19*, CBS NEWS (June 16, 2020, 5:23 PM), <https://www.cbsnews.com/news/black-workers-lives-essential-frontline-jobs-risk-coronavirus-reopening/> [<https://perma.cc/XTW2-GNY8>].

87. *Id.*

88. *Hispanics in the US Fast Facts*, CNN, <https://www.cnn.com/2013/09/20/us/hispanics-in-the-u-s/index.html> [<https://perma.cc/T89K-G9N6>] (Feb. 24, 2021, 3:06 PM).

89. McNicholas & Poydock, *supra* note 81.

90. Lily Casura et al., *Frontline Workers in the U.S.: Race, Ethnicity, and Gender*, N-IUSSP (Sept. 7, 2020), <https://www.niussp.org/article/frontline-workers-in-the-u-s-race-ethnicity/> [<https://perma.cc/A6VE-NDUC>].

91. Ruben J. Garcia, *The Human Right to Workplace Safety in a Pandemic*, 64 WASH. U. J.L. & POL’Y 113, 115 (2021).

92. Ivanova, *supra* note 86.

93. Gould & Wilson, *supra* note 10.

94. *Id.*

For those of us fortunate enough to work remotely, these workers were indeed essential because they facilitated grocery deliveries, prescription drug fulfillment, mail deliveries, and other important services in communities with a high capacity for consumption.⁹⁵ But for the workers in these industries, the jobs carry incredible “invisible” risks. Not only must this work be performed in person, but it also requires repeated exposure to customers and co-workers, some of whom are uncooperative about observing masking and social distancing guidelines when interacting with the workers.⁹⁶

Among the 300,000 transit workers nationally,⁹⁷ the risk of COVID-19 exposure to recalcitrant bus passengers, for instance, has been so high that advocacy groups and unions have organized to protect workers.⁹⁸ Just one month into the pandemic, nearly 100 transit workers died from COVID-19.⁹⁹ By early fall, almost one-quarter of New York transit workers reported having had COVID-19.¹⁰⁰ Of those workers who reported having had COVID-19, 90% said they feared getting infected at work.¹⁰¹ Factors that increased the risk of infection for transit workers included the constant exposure to the public and the lack of space in crew rooms.¹⁰² Workers also cited lack of personal protection equipment (PPE) and lack of sick leave as contributors to the risk.¹⁰³ Like many

95. See Cowan & Block, *supra* note 8 (addressing the Latino and African American workers in service positions that serve more affluent neighborhoods).

96. See Jaffe & Gowen, *supra* note 72 (detailing a bus driver’s frustration when a passenger did not cover her mouth when she coughed near him).

97. McNicholas & Poydock, *supra* note 81.

98. Justin George & Greg Jaffe, *Transit Workers Are Paying a Heavy Price During the Pandemic*, WASH. POST (May 17, 2020, 7:47 PM), https://www.washingtonpost.com/local/trafficandcommuting/transit-workers-are-paying-heavy-price-in-the-coronavirus-pandemic/2020/05/17/d7251b18-8edc-11ea-a9c0-73b93422d691_story.html [https://perma.cc/YG8Y-2C5S].

99. Lois Beckett, *Revealed: Nearly 100 US Transit Workers Have Died of Covid-19 Amid Lack of Basic Protections*, THE GUARDIAN (Apr. 20, 2020, 6:00 PM), <https://www.theguardian.com/world/2020/apr/20/us-bus-drivers-lack-life-saving-basic-protections-transit-worker-deaths-coronavirus> [https://perma.cc/YG94-L3SC].

100. News Release, N.Y.U., *Nearly a Quarter of New York City Transit Workers Report Having Had COVID-19* (Oct. 20, 2020), <https://www.nyu.edu/about/news-publications/news/2020/october/transit-workers-covid-pilot-study.html> [https://perma.cc/DWS3-XGXG].

101. *Id.*

102. *Id.*

103. Beckett, *supra* note 99.

other people working frontline jobs with little job security or paid sick leave, several transit workers were forced to choose between keeping their jobs or continuing to work in unsafe conditions.¹⁰⁴

While the science is clear about the value of social distancing,¹⁰⁵ this “simple” remedy is not readily available to many people. Further, the social distancing advice exposes the structural disparities in wealth, housing, transportation, employment, and health care access that have harmed communities of color for centuries.¹⁰⁶ Furthermore, the concentration of housing and transportation challenges in the inner cities are the result of a long, historical process of segregating poor and minority communities in the United States.¹⁰⁷ People of color, especially Black people, are at greater risk of COVID-19 infection and death because of the structural inequities that operate to limit immediate mitigation opportunities and long-term opportunities.

104. *Id.* Bus drivers also reported challenges related to the high number of people experiencing homelessness who started riding the bus for temporary shelter. Trevor Hughes, *Poor, Essential and on the Bus: Coronavirus Is Putting Public Transportation Riders at Risk*, USA TODAY: NATION, <https://www.usatoday.com/story/news/nation/2020/04/14/public-transportation-users-risk-coronavirus-spreads-across-us/2979779001/> [<https://perma.cc/KL8T-MLRC>] (Apr. 15, 2020, 2:01 PM). That increase was attributed to the suspension of bus fares in many cities and occupancy limitations in homeless shelters. *Id.*

105. This Article is in no way meant to question the efficacy of social distancing measures when available and applied. New studies and lessons from our past experiences demonstrate that social distancing is an appropriate, effective way to curb the spread of the airborne COVID-19 threat. Chanjuan Sun & Zhiqiang Zhai, *The Efficacy of Social Distance and Ventilation Effectiveness in Preventing COVID-19 Transmission*, 62 SUSTAINABLE CITIES & SOC’Y, Nov. 2020, at 1, 1, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7357531/pdf/main.pdf> [<https://perma.cc/C625-4UDG>]. “Social distancing avoids the direct contacts among people and also reduces the potential cross-transmission of virus-carrying droplets from human respiration—two primary mechanisms for respiratory infection.” *Id.*; see also Katie Pearce, *What Is Social Distancing and How Can It Slow the Spread of COVID-19?*, JOHNS HOPKINS U.: HUB (Mar. 13, 2020), <https://hub.jhu.edu/2020/03/13/what-is-social-distancing/> [<https://perma.cc/XX92-W2JP>]; Michael J. Coren, *This Chart of the 1918 Spanish Flu Shows Why Social Distancing Works*, QUARTZ (Mar. 11, 2020), <https://qz.com/1816060/a-chart-of-the-1918-spanish-flu-shows-why-social-distancing-works/> [<https://perma.cc/43K5-GK74>].

106. To some extent, these disparities are also evidence of the voter suppression that impacts minority communities. Though more tangential, the dilution of voting rights in communities of color can impact the policies and practices implemented that impact these other social and political outcomes.

107. Teitz & Chapple, *supra* note 69.

II. POSSIBLE CORRECTIONS

Given the alarming death and disease rate in the Black community, policymakers are challenged to think expansively about how to address the disparities that have emerged during the COVID-19 pandemic. Corrections must explore the most effective and sustainable ways to help communities most severely threatened by the virus. And rather than ignore the racial inequities that disproportionately impact the Black community, the government should explicitly address race in its mitigation strategies. The current responses represent a patchwork of proposals that are primarily reactive to the racial inequities highlighted by the virus. To advance antiracist solutions, a deliberate, explicit assessment of racial equity is needed in relief measures prior to implementation.

A. *A Patchwork of Proposals*

Already, well-intentioned stakeholders have responded with various legislation and practices intended to address the COVID-19-related racial disparities.¹⁰⁸ Indeed, lawmakers, advocates, and academics have advanced numerous proposals—some familiar and some novel—to curb the disparate, deadly impact of COVID-19 in communities of color.¹⁰⁹ Lawmakers at the federal, state, and local level have enacted legislation and guidelines to respond to COVID-19.¹¹⁰ Other laws that were already on the books took on new saliency in light of the pandemic. The social distancing guidelines are just one of many recommendations made to address

108. Many thanks to the great public service offered by the UCLA Hugh & Hazel Darling Law Library for creating and maintaining an excellent database on the legal responses to the coronavirus. *See Legal Responses to Coronavirus (COVID-19)*, UCLA HUGH & HAZEL DARLING L. LIBR. [hereinafter *Legal Responses to Coronavirus*], <https://libguides.law.ucla.edu/coronavirus> [<https://perma.cc/GU7N-WA4P>]. Professor Vernellia R. Randall should also be recognized for her ongoing dedication to creating a platform for legal academics to explore antiracist solutions. Her site provides an important repository of articles examining the coronavirus and racism. *See Vernellia R. Randall, Coronavirus (Covid-19) and Racism, RACE RACISM & L.*, <https://lawschoolmoodle.org/racism.org/covid-19/covid-19-articles> [<https://perma.cc/2DRZ-LE4C>].

109. *See generally Legal Responses to Coronavirus, supra* note 108.

110. *Id.*

COVID-19.¹¹¹ Among the new mitigation strategies and responses, some are short-term, and others offer a path to long-term change.

These proposals run a broad range; they include short-term solutions with immediate impact and long-term structural corrections that will not show gains for several decades. Most, unsurprisingly, are rooted in a way to address the wealth inequities that cripple Black Americans. Social distancing, in several ways, is a luxury unavailable to working poor people. A non-exhaustive list of some of the solutions implemented and explored includes:

Short-term proposals:

- Temporary housing for quarantine,¹¹²
- Hazard pay for frontline workers,¹¹³
- Community-based outreach,¹¹⁴
- Walk-up testing sites,¹¹⁵
- Mobile health units to serve health deserts,¹¹⁶
- Federal aid that goes directly to frontline workers,¹¹⁷

111. *See id.*

112. News Release, S.F. Off. of the Mayor, Temporary Housing, Including RVs, Will Provide Quarantine Locations for Individuals Who Have Been Exposed to COVID-19 and Cannot Self-Isolate (Mar. 10, 2020), <https://sfmayor.org/article/city-provide-temporary-housing-people-needing-quarantine-due-possible-coronavirus-exposure> [<https://perma.cc/5S7E-JYWU>].

113. David Gutman, *Seattle City Council Approves \$4 Per Hour Mandatory Pay Boost for Grocery Workers During COVID-19 Pandemic*, SEATTLE TIMES, <https://www.seattletimes.com/seattle-news/politics/seattle-city-council-approves-4-per-hour-mandatory-pay-boost-for-grocery-workers-during-covid-19-pandemic/> [<https://perma.cc/VY27-EPQ3>] (Jan. 26, 2021, 12:52 AM).

114. Douglas Hanks et al., *Churches, Sororities, Group Texts: How Jackson Mended Its Black Vaccination Rate*, MIAMI HERALD, <https://www.miamiherald.com/news/coronavirus/article249036490.html> (Feb. 8, 2021, 10:07 AM).

115. *See generally* FLA. DIV. OF EMERGENCY MGMT., FLA. OFF. OF THE GOV., WALK-UP TESTING FOR COVID-19 AT A STATE-SUPPORTED SITE (2020), <https://www.floridadisaster.org/globalassets/covid19/walk-in-test-sites/cbts-faqs-walk-up---final.pdf> [<https://perma.cc/8KNV-BJ3C>].

116. *See generally* Sharon Attipoe-Dorcoo et al., *Mobile Health Clinic Model in the COVID-19 Pandemic: Lessons Learned and Opportunities for Policy Changes and Innovation*, 73 INT'L J. EQUITY HEALTH, May 19, 2020, at 1, <https://equityhealthj.biomedcentral.com/articles/10.1186/s12939-020-01175-7> [<https://perma.cc/ZHH9-CHF4>].

117. *See generally* U.S. DEP'T HEALTH & HUM. SERVS., *supra* note 37.

- Prioritized testing and screening for frontline workers,¹¹⁸
- Testing blitzes in underserved neighborhoods,¹¹⁹ and
- Expanded eligibility for in-home testing.¹²⁰

Long-term proposals:

- Universal healthcare,¹²¹
- Mandatory paid sick leave,¹²²
- An increased livable wage,¹²³
- Unemployment insurance,¹²⁴
- Improved internet (Wi-Fi) in communities,¹²⁵
- Expanded workforce training,¹²⁶
- Unionization,¹²⁷

118. Testing and screening expansion has been widely recognized as a clear path to successfully combating the spread of COVID-19. This effort would include asymptomatic frontline workers. *Why COVID-19 Testing Is the Key to Getting Back to Normal*, U.S. DEP'T HEALTH & HUM. SERVS.: NAT'L INST. ON AGING (Sept. 4, 2020), <https://www.nia.nih.gov/news/why-covid-19-testing-key-getting-back-normal> [https://perma.cc/NKX8-D3HG].

119. Sean McMinn et al., *In Large Texas Cities, Access to Coronavirus Testing May Depend on Where You Live*, NPR (May 27, 2020, 5:00 AM), <https://www.npr.org/sections/health-shots/2020/05/27/862215848/across-texas-black-and-hispanic-neighborhoods-have-fewer-coronavirus-testing-sit> [https://perma.cc/A3TW-XUFD].

120. See generally Amy McDermott, *Researchers Race to Develop in-Home Testing for COVID-19, a Potential Game Changer*, 117 PROC. NAT'L ACAD. SCIENS. 25956 (Oct. 20, 2020), <https://www.pnas.org/content/117/42/25956> [https://perma.cc/9DA5-AYCN].

121. See generally Jaime S. King, *Covid-19 and the Need for Health Care Reform*, 382 NEW ENG. J. MED. 1 (2020), <https://www.nejm.org/doi/full/10.1056/NEJMp2000821> [https://perma.cc/5L95-4D36].

122. *Black Los Angeles Demands in Light of COVID-19 and Rates of Black Death*, BLACK LIVES MATTER L.A. (Apr. 16, 2020), <https://www.blmla.org/newsfeed/2020/4/16/black-los-angeles-demands-in-light-of-covid-19-and-rates-of-black-death> [https://perma.cc/W5SX-Y4PT].

123. *Id.*

124. POLICYLINK, *supra* note 34, at 6.

125. Ade Kearns & Elise Whitley, *Associations of Internet Access with Social Integration, Wellbeing and Physical Activity Among Adults in Deprived Communities: Evidence from a Household Survey*, 19 BMC PUB. HEALTH, July 2, 2019, at 3 <https://bmcpubhealth.biomedcentral.com/track/pdf/10.1186/s12889-019-7199-x.pdf> [https://perma.cc/22SX-4T2L].

126. Algernon Austin, *A Jobs-Centered Approach to African American Community Development*, ECON. POL'Y INST. (Dec. 14, 2011), <https://www.epi.org/publication/bp328-african-american-unemployment/> [https://perma.cc/8334-A6NA].

127. Celine McNicholas et al., *Why Unions Are Good for Workers—Especially in a Crisis Like COVID-19*, ECON. POL'Y INST. (Aug. 25, 2020), <https://www.epi.org/publication/why-unions-are-good-for-workers-especially-in-a-crisis-like-covid-19-12-policies-that-would-boost-worker-rights-safety-and>

- The use of human rights law to protect those exposed to ultra-hazardous work,¹²⁸
- Strengthening the Affordable Care Act,¹²⁹
- Strengthening the social services net,¹³⁰
- Improved data collection for high-risk groups,¹³¹
- Reaffirmation of privacy safeguards to guarantee nondisclosure to U.S. Immigrations and Customs Enforcement,¹³² and
- The case for reparations.¹³³

This list is creative and commendable. But while this list represents important responses to these COVID-19 disparities, there are limitations. Community organizers or state and local governments advanced most of these solutions. Local officials and organizers worked hard to fill the void left by the federal government, but it meant that best practices were not being expanded, and mistakes were being repeated.

Still, the urgency of the once-in-a-generation deadly virus and the need to step into a federal void explains a largely reactive response. By all accounts, the Trump Administration failed to advance an effective national pandemic response strategy.¹³⁴ Though everyone

wages/ [https://perma.cc/GV34-689X].

128. See generally Garcia, *supra* note 91.

129. See Dayna Bowen Matthew, *Structural Inequality: The Real COVID-19 Threat to America's Health and How Strengthening the Affordable Care Act Can Help*, 108 GEO. L.J. 1679, 1715 (2020).

130. POLICYLINK, *supra* note 34.

131. PRESIDENT JOSEPH R. BIDEN, JR., NATIONAL STRATEGY FOR THE COVID-19 RESPONSE AND PANDEMIC PREPAREDNESS: JANUARY 2021, at 146–47 (2021), <https://www.whitehouse.gov/wp-content/uploads/2021/01/National-Strategy-for-the-COVID-19-Response-and-Pandemic-Preparedness.pdf> [https://perma.cc/W7C5-6857].

132. *Id.* at 96.

133. See generally RASHAWN RAY & ANDRE PERRY, BROOKINGS, WHY WE NEED REPARATIONS FOR BLACK AMERICANS (2020), https://www.brookings.edu/wp-content/uploads/2020/04/BigIdeas_Ray_Perry_Reparations-1.pdf [https://perma.cc/QY3U-K6ZC]; see also Kaimipono David Wenger, *1200 Dollars and a Mule: COVID-19, the Cares Act, and Reparations for Slavery*, 68 UCLA L. REV. 204, 215–16 (2020).

134. Wajahat Ali, *This Is What Happens When the Federal Government Abandons You*, THE ATLANTIC (Apr. 5, 2020), <https://www.theatlantic.com/ideas/archive/2020/04/how-do-you-win-war-when-your-government-abandons-you/609457/> [https://perma.cc/5ZME-4H7L].

suffered, vulnerable communities were harmed more acutely. Thinly-resourced communities—often Black and Brown communities—could not marshal the reserves to sustain themselves when confronted by the government void. The real-time impact of the wealth disparities between the typical Black family and white family contributed to the loss of necessary safety nets in Black communities. “Wealth is a safety net that keeps a life from being derailed by temporary setback and the loss of income.”¹³⁵

Frontline workers were particularly exposed, as most lack the resources (financial and bargaining power) to handle the pandemic challenges. Professor Ruben Garcia, an expert in labor law, has noted that the “line between essential and dangerous work” was a “thin one” even before the pandemic.¹³⁶ He stressed that the workers in these positions are already on the “margins of society” with limited options.¹³⁷

B. The Necessity of Racial Equity Impact Assessments

The ongoing challenges presented by the pandemic and the need to prepare for future emergencies require a better approach. Although there has been increased attention to the disparate impact in underrepresented communities—a distinction that is frankly hard to ignore because of the alarming statistics—there has been a failure to proactively and uniformly consider racial inequality when developing and implementing policies. Even neutral practices, policies, and procedures can produce disparate outcomes.¹³⁸

135. *Advocacy Memo – Race and Homelessness*, ST. ANTHONY’S FOUND., <https://www.stanthonysf.org/advocacy-memo-race-and-homelessness/> [https://perma.cc/26AD-JH2V]. Forty-six million Americans went through their emergency savings during the pandemic. Renee Morad, *46 Million Americans Wiped Out Their Emergency Savings During the Pandemic – How to Turn It All Around in 2021*, KNOW YOUR VALUE (Jan. 13, 2021, 9:39 AM), <https://www.nbcnews.com/know-your-value/feature/46-million-americans-wiped-out-their-emergency-savings-during-pandemic-ncna1254073> [https://perma.cc/6WJZ-634T].

136. Garcia, *supra* note 91, at 118.

137. *Id.* Professor Garcia offers a comprehensive analysis of possible avenues to address the workplace safety, in which he examines federal law, state law, and international law solutions to address what he characterizes as a human rights issue. *See generally id.*

138. William Kennedy et al., *Putting Race Back on the Table: Racial Impact Strategies*, 47

To create a more effective framework for sustainable solutions, federal and local governments must evaluate policies through a racial equity impact lens. Acknowledging that people are differently situated is a foundation for crafting policies that advance equity in different communities.¹³⁹ “A racial impact assessment can help reveal the situatedness of different communities and help in identifying targeted strategies which could be used to alleviate the disparities.”¹⁴⁰ Importantly, an assessment of racial equity impact can help minimize racial outcomes and diminish the negative impact of structural inequities in underrepresented communities. The federal response to the COVID-19 pandemic under the Trump Administration did not consider these strategies.

The comprehensive Coronavirus Aid, Relief, and Economic Security (CARES) Act—signed into law March 27, 2020—provided \$2.2 trillion in federal stimulus relief.¹⁴¹ It included an initial \$1,200 direct stimulus payment for many Americans.¹⁴² The CARES Act also included distributions to fund various COVID-19 relief measures throughout the country.¹⁴³ State, local, and tribal governments used the money for services, including rental assistance, the purchase of PPE, unemployment benefits, small business relief, tourism ads, homeless assistance, and improved Wi-Fi for public schools,¹⁴⁴ among other things.¹⁴⁵ Yet the mega-legislation did not offer any explicit charge to consider racial equity in the distributions.

Progressive advocacy groups have called for implementing race-conscious policies to respond to persistent structural

CLEARINGHOUSE REV. J. POVERTY L. & POL’Y 154, 156 (2013).

139. *Id.*

140. *Id.*

141. Coronavirus Aid, Relief, and Economic Security Act, 15 U.S.C. §§ 9001–9080.

142. *Id.*; see also *The CARES Act Provides Assistance to Workers and Their Families*, U.S. DEP’T TREASURY, <https://home.treasury.gov/policy-issues/cares/assistance-for-american-workers-and-families> [<https://perma.cc/U3DR-HKV3>].

143. *State Actions on Coronavirus Relief Fund*, NAT’L CONF. STATE LEGIS., app.powerbi.com/view?r=eyJrIjoiMTcyNGQ5ZmUtNTY3Mi00YjViLTgyNjMtZjk1NzVkYTUyZGUzIiwidCI6IjM4MmZiOGIwLTRkYzMtNDEwNy04MGJkLTM1OTViMjQzMmZhZSIsImMiOjZ9&pageName=ReportSection.

144. See *State Actions on Coronavirus Relief Fund*, *supra* note 143.

145. *The CARES Act Provides Assistance to Workers and Their Families*, *supra* note 142.

inequities.¹⁴⁶ “Eliminating inequities will also require thoroughly analyzing proposed and existing policies to root out bias and promote equity.”¹⁴⁷ Modeled on environmental impact statements that evaluate the impact of proposed policies in an effort to inform the work of policymakers,¹⁴⁸ the implementation of racial equity impact assessments illuminates whether proposed changes would ameliorate or exacerbate race-based inequities.¹⁴⁹ For instance, a handful of states have adopted racial impact statements to evaluate the potential racialized impact of criminal sentencing guidelines and to help craft policies that minimize unforeseen racial disparities and ramifications.¹⁵⁰ The work of dismantling racist frameworks and deep-rooted structural inequity will not be immediate, but understanding the impact of practices must be the first step. Furthermore, evaluating the potential disparities of proposed policies prior to implementation will minimize unintended, disparate outcomes.

The Biden Administration has explicitly identified the racial equity concerns as a priority in its COVID-19 response. Vice President Kamala Harris proposed a COVID-19 Racial and Ethnic Disparities Task Force to provide recommendations in the public health and economic response.¹⁵¹ Further, Executive Order 13985, issued on President Joe Biden’s first day in office, is a historic order with a wide-sweeping call to advance racial equity throughout the federal

146. POLICYLINK, *supra* note 34, at 4.

147. *Id.*

148. Kennedy et al., *supra* note 138, at 157; *see also* Tiffany Middleton, *What Is an Environmental Impact Statement?*, A.B.A. (March 2, 2021), https://www.americanbar.org/groups/public_education/publications/teaching-legal-docs/teaching-legal-docs--what-is-an-environmental-impact-statement-/ [https://perma.cc/LGY5-BK6L].

149. POLICYLINK, *supra* note 34, at 4.

150. *See Racial Impact Statements*, THE SENT’G PROJECT (Feb. 24, 2021), <https://www.sentencingproject.org/publications/racial-impact-statements/> [https://perma.cc/YY76-3BCF]. Iowa, Connecticut, Florida, Oregon, and New Jersey have authorized the use of impact statements in criminal justice policies. *Id.*

151. Tal Axelrod, *Harris Pushes for Task for Addressing Racial Disparities in Coronavirus Pandemic*, THE HILL (Apr. 30, 2020, 2:16 PM), <https://thehill.com/homenews/senate/495494-harris-pushes-for-creation-of-task-force-addressing-racial-disparities-in> [https://perma.cc/6QGA-T66W].

government.¹⁵² The Order, entitled Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, calls for executive departments and agencies to advance the “whole-of-government equity agenda” through assessing policies and procedures.¹⁵³ These policies and procedures will be evaluated to determine whether they “perpetuate systemic barriers to opportunities and benefits for people of color and other underserved groups.”¹⁵⁴

The equity goal was concretized through the creation of the COVID-19 Health Equity Task Force.¹⁵⁵ President Biden’s Executive Order 13995 is aimed at addressing the “disproportionate and severe impact of [COVID-19] on communities of color and other underserved populations.”¹⁵⁶ The Order establishes a Task Force within the Department of Health and Human Services.¹⁵⁷

Taken together, the two executive orders signal a federal rejection of the dangerous color-blind approach to government. President Biden was plain in his recognition of the heightened threat for Black and Latino Americans: “Black and Latino Americans are dying of COVID-19 at rates nearly three times that of white Americans. And it’s not white Americans’ fault, but it’s just a fact.”¹⁵⁸

Executive Order 13995 on Ensuring an Equitable Pandemic Response and Recovery advances racial equity impact assessment principles. It calls for specific recommendations for “mitigating . . . health inequities.”¹⁵⁹ It also charges the Task Force with making recommendations on “how agencies and State, local, Tribal, and territorial officials can best allocate COVID-19 resources,

152. Exec. Order No. 13985, 86 Fed. Reg. 7009 (Jan. 20, 2021).

153. *Id.*

154. *Id.*

155. *President Biden Announces Members of the Biden-Harris Administration COVID-19 Health Equity Task Force*, WHITE HOUSE (Feb. 10, 2021), <https://www.whitehouse.gov/briefing-room/press-briefings/2021/02/10/president-biden-announces-members-of-the-biden-harris-administration-covid-19-health-equity-task-force/> [<https://perma.cc/CZ25-WY52>].

156. Exec. Order No. 13995, 86 Fed. Reg. 7193 (Jan. 21, 2021).

157. *Id.*

158. *Remarks by President Biden at Signing of an Executive Order on Racial Equality*, WHITE HOUSE (Jan. 26, 2021), <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/01/26/remarks-by-president-biden-at-signing-of-an-executive-order-on-racial-equity/> [<https://perma.cc/SL25-NAQP>].

159. Exec. Order No. 13995, *supra* note 156, at 7194.

in light of disproportionately high rates of COVID-19 infection, hospitalization, and mortality in certain communities and disparities in COVID-19 outcomes by race, ethnicity, and other factors to the extent permitted by law.”¹⁶⁰ The Task Force will impact data collection, resource allocation, culturally aligned outreach, and funding recommendations to advance equity among federal agencies.¹⁶¹

This conscious consideration of race and ethnicity in the COVID-19 response can be transformative in the implementation of both immediate and long-term mitigation strategies. Significantly, these new changes display the best practices of racial equity impact assessments by offering both review and advanced evaluation of response efforts.¹⁶² Nevertheless, the unrelenting impact of COVID-19 in the Black community and other communities of color demands more.

Lawmakers must expand national efforts to conduct racial equity impact assessments with local and state governments. Policy makers should meet with local stakeholders, identify and document racial inequities, consider adverse impacts, advance equitable impacts, examine alternatives/improvements, and identify progress benchmarks on the local level.¹⁶³ Because the harms and challenges created by COVID-19 are so local in nature—consider the housing obstacles in an urban area versus the transportation challenges in a poor, rural community—local level governments are in a better position to conduct these assessments.

In every aspect of the COVID-19 response, an assessment of racial equity impact must be prioritized to address the disparities.¹⁶⁴ To meet this objective, future federal aid packages could include a mandate for states to conduct their own racial equity impact

160. *Id.*

161. *Id.*

162. *Id.* at 7195.

163. RACE FORWARD, RACIAL EQUITY IMPACT ASSESSMENT 2 (2009), https://www.raceforward.org/sites/default/files/RacialJusticeImpactAssessment_v5.pdf [<https://perma.cc/8VQV-KFL4>].

164. POLICYLINK, *supra* note 34, at 4.

assessments as a condition to receive funding. This requirement would reflect other federal spending schemes that impose conditions on the receipt of federal funding.¹⁶⁵ The federal government could induce state cooperation by tying additional COVID-19 funding to the completion of required racial equity impact assessments for local initiatives.¹⁶⁶ The Family Educational Rights and Privacy Act (FERPA), for example, is one such scheme.¹⁶⁷ In FERPA, Congress used its spending power to condition receipt of federal funding on adherence to the student recovery privacy requirements outlined in the statute.¹⁶⁸ Likewise, Congress could induce states to conduct their own racial equity impact assessments on COVID-19. The expansion of statewide racial equity impact assessments is needed to properly evaluate the effectiveness of local and state COVID-19 interventions and to mitigate adverse, racialized consequences.¹⁶⁹

The explicit, mandatory use of racial equity impact assessments can be an effective tool to dismantle structural racism. First, the often-invisible impact of race would be repositioned to actual space that properly reflects the lived reality of millions of vulnerable people. It would also elevate the consideration of race from a recommendation to a requirement. Next, it would address the practice of undertheorizing racism “as a clinically relevant cause of poor health.”¹⁷⁰ It would also move the government examination of racial impact from the *reporting* stage to the *planning* stage;¹⁷¹ specifically,

165. See, e.g., 20 U.S.C. § 1232g. The Family Education and Privacy Rights Act has been described as legislation that takes a “carrot-and-stick” approach to getting schools to comply with its student privacy guidelines. *Frazier v. Fairhaven Sch. Comm.*, 276 F.3d 52, 68 (1st Cir. 2002). In *Frazier*, the court described the carrot as federal funding and the stick as the termination of funding for schools that violate the student record privacy laws enumerated in the statute. *Id.*

166. See Mark Seidenfeld, *The Bounds of Congress’s Spending Power*, 61 ARIZ. L. REV. 1, 25 (2019) (noting that courts have accepted the use of the spending power to induce states to cooperate with federal objectives).

167. § 1232g.

168. *Id.*

169. See Hooper et al., *supra* note 26.

170. Rhea W. Boyd et al., *On Racism: A New Standard for Publishing on Racial Health Inequities*, HEALTH AFFS. (July 2, 2020), <https://www.healthaffairs.org/doi/10.1377/hblog20200630.939347/full> [<https://perma.cc/A8HL-YW5P>].

171. See *Health Profiles by Population*, U.S. DEP’T HEALTH & HUM. SERVS. OFF. MINORITY HEALTH, <https://minorityhealth.hhs.gov/omh/browse.aspx?lvl=1&lvlid=4> [<https://perma.cc/D7LA->

it would allow the government to anticipate and minimize inequities rather than perpetuate or merely record them.¹⁷² It would also track federal spending by race; the goal would be to use resources to advance racial equity. Finally, a uniform expansion of racial equity impact assessments to the local level would better reflect racial equity impact goals of engaging stakeholders to develop sustainable,¹⁷³ effective solutions that are situated in community needs.¹⁷⁴ All of these steps are needed to dismantle structural, systemic racism.

As the disproportionate number of COVID-19 deaths and infections in the Black community demonstrates, the government often fails to consider racial impact until it is too late. A mandatory racial equity impact assessment approach to COVID-19 and other future emergencies would create a necessary framework for policy changes that offer both short-term and long-term solutions to pandemics in a way that promotes equity across all communities, including communities of color.

CONCLUSION

The experiences of the fictional Sara and Shonda, two women navigating the pandemic on different sides of town, should not present such a stark contrast. Both women should have access to

KM7UJ (July 20, 2020, 4:28 PM) (compiling a database of quantitative information related to minority health).

172. Though the Paycheck Protection Program and Health Care Enhancement Act addressed COVID-19 racial disparities, it did not go far enough. Paycheck Protection Program and Health Care Enhancement Act, Pub. L. No. 116-139, 134 Stat. 620 (2020). The law mandates that the U.S. Department of Health and Human Resources report COVID-19 testing, hospitalization, and mortality data by race/ethnicity and develop a “strategic testing plan” to address disparities. *Id.* But the Act offers no guidance on how to improve data collection, nor does it provide funding to respond to the disparities. Marisa K. Dowling & Robin L. Kelly, *Policy Solutions for Reversing the Color-Blind Public Health Response to COVID-19 in the US*, 324 JAMA 229, 229 (2020).

173. “As we exit from the pandemic, creating the conditions for a healthy and equitable recovery will require us to deploy social policies that shape the upstream social determinants of health.” Julia Lynch, *Health Equity: Social Policy and Promoting Recovery from COVID-19*, 45 J. HEALTH POL. POL’Y & L. 983, 986 (2020).

174. Kennedy et al., *supra* note 138, at 160.

mitigation strategies that will minimize the risk of COVID-19 infection. Social distancing measures should not be an available remedy for Sara yet be beyond Shonda's grasp. Response measures informed by a deliberate consideration of the racial equity impact on all communities will help correct these persistent disparities for real people struggling through the COVID-19 pandemic in different communities, regardless of race or ethnicity.

Though social distancing is an effective tool to help curb the spread of COVID-19, this simple mitigation strategy is not available to everyone. What is worse, the availability of social distancing measures at home or work often falls along racial lines. Structural racism has even impacted the ability of Black people to implement this simple mitigation strategy.

Lawmakers must continue to expand the reach of COVID-19 relief efforts to explicitly acknowledge race and minimize unintended, racialized, negative outcomes. Prior to the pandemic, structural racism operated in many complex, consistent ways to harm Black communities. Since the dawn of COVID-19, these injustices represent additional barriers to equity. For many, they also mean the difference between life and death. We cannot afford to allow social distancing to be just another "privilege" unavailable to many Black people, people of color, and poor white people. To ensure that social distancing and other mitigation strategies are equally available, both federal and state governments should be required to assess the racial equity implications for COVID-19 response efforts. A consistent, deliberate acknowledgement of race in crafting response measures is needed to create equitable, sustainable corrections.