THE RACIAL RULES OF CORPORATE POWER: HOW EXTRACTIVE CORPORATE POWER HARMS BLACK AND BROWN COMMUNITIES AND HOW RACE-CONSCIOUS SOLUTIONS CAN CREATE AN INCLUSIVE ECONOMY

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INTRODUCTION

From the beginning, the US economy has been structured on rules that privilege or exploit people based on race: from the explicitly racialized rules of chattel slavery—in which black people were the enslaved capital of whites and their forced labor was used to build wealth for a white plantation-owning class and other vertically and horizontally linked white-owned industries—and inheritance laws that permitted generational wealth accumulation primarily for white men, to the implicitly racialized and gendered exclusions of the 1935 National Labor Relations Act, redlining, and more (Abernathy, Hamilton, and Margetta Morgan 2019).

While many, but not all, of the explicit racial exclusions have been excised from our law books, their legacy and more euphemized approaches to racial stratification continue to have a deep impact on who is able to meaningfully participate and profit in the current American economy and who is exploited or left behind (Bonilla-Silva 2017). These hidden rules of race (Flynn et al. 2017) undergird our economy and our society, and the racialized policy choices of the past and present continue to ensure disparities between people of color and whites.

Today's continued racial economic inequity has many drivers. This brief will explore how corporate power has contributed to and reified racial inequity in a variety of ways. While there has never been a golden era in the US in which black and brown people shared the same access to prosperity and wealth-building mechanisms as white people, the postwar decades did see rising standards of living and wages for most groups. Since the 1970s, however, these gains have stalled or been rolled back as flawed economic arguments have been used to deregulate markets, lower taxes on capital gains and top incomes, relax antitrust standards, and disempower labor unions (Stiglitz 2015). Instead of delivering the innovative, dynamic economy promised, these changes paved the way for wealth and power accumulation and increasing racial inequity such that, in 2013, the differences in wealth between white Americans and black and Latinx Americans was "at or about the highest levels observed for . . . 30 years" (Kochhar and Fry 2014). While racial wealth inequity narrowed slightly between 2013 and 2016, in 2016, the median wealth of white households was $171,000, compared to the $17,100 held by black households and $20,600 held by Latinx families (Kochhar and Cilluffo 2017). Families of color continue to be left behind in our economy, and what small economic gains were made have stalled (Stiglitz 2015).

Importantly, the flawed economic arguments used to rewrite the economy to benefit the powerful at the expense of the vulnerable were sold to the American public using strategic racism (Inwood 2015; Hamilton 2019). These changes have created an economy in which powerful corporations provide less and get more from consumers, workers, and suppliers; in other words, they extract value rather than creating it. In short, these rules were written to privilege the powerful, to support additional wealth-building for those with wealth, and to predicate this all on extracting value from the vulnerable—which creates, maintains, and worsens racial inequity.

Throughout this paper, the term “people of color” is used to describe people who have been marginalized because of their race or ethnicity. This language is inexact in that it both elides the differences between individual and community experiences and may be read as centering whiteness. Where possible, we use specific racial and ethnic identifiers to provide more context and detail of experiences. Frequently, available demographic data is limited to white, black, and Latinx populations so that the experiences of Asian and indigenous peoples are frequently uncounted and uncountable.

As will be explored in this brief, these extractive corporate practices and the hidden rules of race are compounding; the history of racism and its current manifestations in our society intersect with corporate power in ways that permit explicitly racialized extraction by private companies. Because the hidden rules of race have resulted in residential segregation, the steering of black, Latinxs, and other people of color that form marginalized groups into low-wage jobs, and a seemingly intractable racial wealth gap, the extractive practices of corporations have had a disproportionately negative impact on workers and communities of color.

The siphoning of profits to those at the top increases the wage and wealth gaps between white executives and shareholders and the workers of color on whose labor profits are made. Market concentration drives out smaller businesses, raises prices, and lowers wages, leaving vulnerable workers and communities with no option but to accept lower wages and higher prices. Importantly, these effects are frequently not accidental byproducts of an overall business model. Instead, the targeting of black and brown communities for extraction is the business model, increasing corporate profits without providing value to the community.

Because the hidden rules of race have resulted in residential segregation, the steering of black, Latinxs, and other people of color that form marginalized groups into low-wage jobs, and a seemingly intractable racial wealth gap, the extractive practices of corporations have had a disproportionately negative impact on workers and communities of color.

To solve for these racialized effects of outsized corporate power, we must work to curb corporate power in a way that explicitly centers racial equity. Failing to center race in our solutions may allow for reducing corporate power, but would not solve for racial inequity, potentially maintaining the racial wealth gap. Equally, redistributive solutions, while necessary and important, cannot alone end racial inequity if corporate power remains unchecked; powerful firms would soon extract the new value from communities of color.

Section I of this brief describes the hidden rules of race and structural racism on which our economy and society rest. Section II describes the role of corporate power in our economy, detailing how it has led to the high profits and low wages we see today. Building on this foundation, section III details how corporate power specifically harms black and brown communities through extraction and exploitation. Finally, section IV provides policy solutions that will increase racial equity while curbing corporate power.

I. THE HIDDEN RULES OF RACE AND STRUCTURAL RACISM

The hidden rules of race are those laws, policies, institutions, regulations, and normative practices that drive the unequal life chances and opportunities provided to people of color in the US. To understand racial and economic inequity in America, we must understand this web of rules and institutions that have long led to unequal outcomes, which compound generationally, resulting in the extreme inequity we see today.

The hidden rules of race create and maintain structural racism—the system in which public policies, institutional prices, cultural representations, and other norms work in overlapping and reinforcing ways to perpetuate racial inequity (Aspen Institute n.d.). The current effects of structural racism include deeply entrenched residential segregation, the channeling of black, Latinx, and other people of color that form marginalized groups into low-wage jobs and out of positions of power, and more. It is the interplay among these social structures that maintains white supremacy and the rules of the economy that permit extractive corporate behaviors targeting or specifically affecting black and brown communities. Because of the history of structural racism in the US, an economy that extracts from those without power to benefit those at the top of the economic hierarchy will necessarily have disproportionately negative impacts on black and brown communities. In addition, the impacts of structural racism—including residential and employment segregation—provide opportunity for extraction from excluded communities.

The hidden rules of race ensure that rules and institutions are rarely color-blind; even when policymakers intend to create race-neutral policies, they are refracted through historical institutions, current rules, existing disparities grounded in history, and societal norms, resulting in disparate impacts on black and brown Americans. For example, raising the minimum wage will undoubtedly benefit black Americans, who are disproportionately represented in low-wage jobs, and we must work toward ensuring a living wage for all.[1] However, raising the minimum wage alone will not change the fact that a dollar of income in black hands buys less safety, less health, less wealth, and less education than a dollar in white hands (Flynn et al. 2016). As such, our solutions must both center racial equity and rewrite the rules of the economy to ensure that we create a truly inclusive economy that works for all Americans.

II. THE ROLE OF CORPORATE POWER IN OUR ECONOMY

Over the past 40 years, changes in the rules that structure the economy have resulted in a rise in extractive corporate power that has manifested in particular ways, and with particular effects on our economy. This section describes the impact of corporate power on our economy, with a particular focus on the ways in which corporate power harms small businesses, workers, and consumers.

CORPORATE CONSOLIDATION AND MARKET POWER

As a result of a 40-year attack on antitrust policy and lack of enforcement, markets have

[1] There is debate around the effect of raising the minimum wage on job loss. A recent Congressional Budget Office (CBO) report analyzing the effect of increasing the federal minimum wage to $15 an hour estimated as many as 17 million workers would see their wages rise, and the number of people living below the poverty line would fall by 1.3 million in 2025. The CBO also estimates a two-thirds chance that raising the wage would result in job loss between zero and 3.7 million workers. However, research on the actual effects of raising wages has failed to uncover reductions in jobs. For recent research showing raising the minimum wage did not result in job loss or business closure, see the Federal Reserve Bank of New York's study on the minimum wage impacts along the New York-Pennsylvania border (Bram, Karahan, and Moore 2019). An earlier study conducted in San Francisco found that raising the minimum wage significantly increased worker pay at affected restaurants and compressed wage inequity, with no increase in business closures or employment loss (Dube, Naidu, and Reich 2007).

become increasingly concentrated. Corporations have consolidated, buying up their suppliers and other firms and shifting the balance of power so that powerful firms are no longer held in check by their competitors or suppliers. Firm consolidation also facilitates monopsony power in labor markets, thereby limiting the choices of workers and putting downward pressure on wages and other worker amenities (Naidu, Posner, and Weyl 2018). Between 1980 and 2000, mergers and acquisitions increased from less than 2,000 per year to roughly 14,000 annually (Steinbaum, Harris Bernstein, and Sturm 2018 citing Institute for Mergers, Acquisitions & Alliances n.d.). As a result of this consolidation, more than 75 percent of US industries became more concentrated between 1997 and 2012 (Grullon, Larkin, and Michaely 2019).

Instead of competing against one another by providing a better product at a lower price, powerful firms in concentrated markets use their market power to extract value from their workers, suppliers, and consumers. Market power is grounded in economic or political resources or market shares, and it affords firms the ability to skew market outcomes in their own interest, without necessarily creating social value or serving the public good. Powerful firms use market power to block new entrants to the market, to keep wages low and reduce the bargaining power of employees, to ration quality and quantity, and to increase the price of goods and services (Steinbaum, Harris Bernstein, and Sturm 2018). In short, market power allows powerful firms to extract the outsized corporate profits we see today. Powerful firms that possess market power are able to skew the market to their benefit in the following ways:

1. **Lax antitrust enforcement allows powerful companies to create barriers to entry, freezing out new businesses and potential competitors**

Powerful firms are able to leverage their market power to harm current competitors and prevent new competitors from forming. According to Steinbaum, Harris Bernstein, and Sturm (2018), these strategies can vary enormously, but popular methods include seeking aggressive patent protections, leveraging relationships with federal regulators to privilege the existing firm and block startups, and collaborating with outside businesses to squeeze out new entrants. Another way in which powerful firms prevent new entrants to the market is by engaging in predatory pricing—pricing goods or services below cost—so that new or smaller firms cannot compete. While predatory pricing is illegal under antitrust law, it is frequently effectively unenforceable under the current antitrust regime given its focus on the consumer welfare standard (Khan 2017).

In addition to blocking new competitors from entering the market, powerful firms can block companies from forming in related industries. By acquiring their suppliers—a process known as vertical integration—or engaging in exclusive dealings with a single supplier, large firms can prevent new companies from entering the supply chain. These practices were once closely regulated under competition policy but are now common (Steinbaum, Harris Bernstein, and Sturm 2018). Taken together, predatory pricing and vertical integration work to block new market entrants and allow powerful firms to dominate the market.

2. Firms use market power to keep wages low and reduce the bargaining power of employees

A hallmark of anticompetitive economies—like the one we have today—is high profits and low investments. These profits come, in part, from decreasing costs by providing low wages to workers and failing to invest in the company. Powerful firms are able to keep wages low through several methods, including extracting greater productivity from workers without commensurate pay increases; consolidating the labor market so there are fewer employers hiring workers; and fissuring the workplace. We can see the ability of powerful firms to suppress wages in the fact that worker wages have failed to keep pace with worker productivity. Between 1979 and 2018, worker productivity increased 69.6 percent, while hourly pay increased only 11.6 percent over the same period (after adjusting for inflation) (Economic Policy Institute 2019). Most of the gains from this great increase in productivity were captured by those at the top, and the very little left was distributed among workers.

Just as corporate consolidation allows powerful firms to dominate a product market as monopolies, consolidation can occur in a labor market when few firms dominate hiring (Azar, Marinescu, and Steinbaum 2017; Naidu, Posner, and Weyl 2018). Concentration in the labor market creates an imbalance in the power of employers and employees. When firms do not need to compete for workers, they are able to keep wages low. When there are fewer employers in a geographic area, workers have less power to bargain for fair wages and less economic mobility to find better jobs. Notably, labor's share of income has decreased the most in consolidated industries (Barkai n.d.), and recent research has found that higher labor market concentration is associated with significantly lower posted wages (Azar, Marinescu, and Steinbaum 2017). This suggests that corporations are paying low wages simply because their power and the lack of competition with other firms allows them to do so. In addition, as will be discussed in section III, firms further restrict employee power by requiring mandatory arbitration and non-compete agreements as a precondition for employment, and when there are fewer employers in a geographic area or industry, workers may be more susceptible to these anticompetitive requirements.

Corporate power allows firms not only to set low wages, but to change the very structure of their workplace through what is known as "fissuring." The fissured workplace is one in which employers shift jobs that were previously done by employees to instead rely on offshoring, outsourcing, and the use of contract workers and temp agencies (Weil 2014). Fissured work is characterized by low wages, limited benefits, contingent employment, weakened bargaining leverage for workers, and more (Weil 2014). Researchers found that subcontracted security guards and janitorial staff—occupations in which black and Latinx workers are disproportionately represented—suffer a wage penalty of up to 8 and 24 percent, respectively (BLS 2019; Dube and Kaplan 2010). The fissuring of the workplace has further marginalized the most vulnerable workers.

3. **Powerful corporations are able to increase the price of goods and services through markups and engage in price discrimination**

In addition to keeping wages low, firm profits are made by increasing the price of products without adding any increased value. Markups—the difference between the cost to produce a product and its price for sale—have been rising steadily over the past four decades. Recent research found that firm markups have increased from 18 percent in 1980 to 67 percent today (De Loecker and Eeckhout 2017). Consumers, then, are paying more for products without receiving additional value, and that profit is going almost exclusively to those at the top rather than being distributed to all workers.

Not only can powerful firms charge consumers more because there is less competition, they are able to extract more from consumers by engaging in price discrimination—charging different prices to different consumers (Steinbaum, Harris Bernstein, and Sturm 2018). Under many circumstances, price discrimination is completely legal. Powerful corporations, however, are able to segment markets and use price discrimination to target consumers—particularly people of color—who have fewer options, as will be discussed below.

CORPORATE FINANCIALIZATION AND SHAREHOLDER PRIMACY

Increased consolidation and market power arose in tandem with corporate financialization, and corporate financialization, like market power, has contributed to the extractive corporate practices we see today. Roosevelt Institute Fellow Lenore Palladino defines corporate financialization as the increased share of profits earned from speculative financial activity rather than from the production of goods and services, and the increasing flow of profits to shareholders (2018). According to Palladino, this shift in how corporations earn profits and how they use those profits is contributing to lower wages, fewer jobs, and the fissuring of the workplace (2018).

The rise of corporate financialization can be attributed, in part, to the advent of "shareholder primacy," a theory and guiding principle of corporate governance which holds that the sole purpose of corporate behavior is understood to be maximizing wealth for shareholders. Under shareholder primacy, corporate executives and boards of directors prioritize increasing share prices above all else (Lazonick 2014). As payouts to shareholders increase, there are fewer funds available for other uses, such as wages, research and development, or other productive uses (Palladino 2018, 2019).

There are several practices we see today that are both a cause and an effect of financialization. In particular, stock buybacks—the practice by which companies repurchase their own stocks on the open market—are a key feature of shareholder primacy and corporate financialization. Buying back the company's own stock boosts share value, not through any practical improvement in the sale of a company's goods, consumer satisfaction, or efficiency gains in the production process but simply because of a reduction in the number of shares available (Palladino 2018). Corporate executives—many of whom receive substantial compensation in the form of stocks—and short-term-oriented shareholders benefit from this practice (Palladino 2018; Jackson 2018). In fact, researchers have found that buybacks are more likely when a CEO's bonus is directly linked to earnings per share of company stock (Tung and Milani 2018 citing Almeida, Fos, and Kronlunch 2016). In addition to executives, direct shareholders who are willing and able to sell their shares at these artificially inflated prices are also able to benefit from corporate buybacks (Tung and Milani 2018). This massive spending on shareholders and CEOs leaves little for workers, further increasing wage and wealth inequity. Importantly, the economic gains that result from the practice are concentrated among corporate executives and wealthy shareholders, groups that skew white, wealthy, and male (Dettling et al. 2017).

The recently enacted Tax Cuts and Jobs Act, also known as the Trump tax law, provided another bump in buyback activity for corporations. Cutting the highest corporate tax rate from 35 percent to a flat 21 percent, the law provided a windfall for companies. Despite GOP promises that this tax cut would result in wage increases for low- and middle-income Americans, nonpartisan and official estimates anticipate that roughly three-quarters of the benefits of the corporate tax cuts will go to the owners of corporations rather than workers (Center on Budget and Policy Priorities 2017). In fact, almost immediately, corporations began using their windfall to engage in stock buybacks—delivering profits to wealthy shareholders and corporate executives while failing to raise wages (Egan 2018).[2]

Another key marker of the rise in financialization has been the rise of private equity firms. Described as the epitome of financialization, the goal of private equity firms is quite simply to maximize returns for investors (Foroohar 2016). Private equity firms recruit private pools of capital (typically from pension funds, endowments, hedge funds, sovereign wealth funds, and wealthy individuals) and use this capital, along with extensive debt financing, to take ownership and control of businesses in leveraged buyouts. Private equity firms invest

[2] See Roosevelt Institute issue brief "Hidden Rules of Race are Embedded in the New Tax Law" for a discussion of the various ways in which the Tax Cuts and Jobs Act exacerbates racial disparities (Hamilton and Linden 2018).

in private companies or purchase public companies and take them private, and the return to investors is made through the sale or initial public offering of the companies in their portfolio (Appelbaum and Batt 2012, citing Metrick and Yasuda 2010:5). The focus, then, for private equity is a short-term turnaround on investment, not a long-term investment in the growth or health of a company.

While most private equity deals do not involve bankruptcy, and private equity firms own only a fraction of retail chains, they have been behind a disproportionate number of retail bankruptcies—40 percent according to calculations by the financial news service Debtwire (Applebaum 2019). While private equity firms strip value from these retail companies, taking dividends and management fees for themselves and selling off real estate, it is the workers, suppliers, and community who are left holding the bag in a bankruptcy (Baker, Corser, and Vitulli 2019).

III. HOW EXTRACTIVE CORPORATE POWER HAS HARMED BLACK AND BROWN COMMUNITIES

The rise of corporate concentration, market power, financialization, and shareholder primacy has proven extremely lucrative for those already at the top of the economic hierarchy at the same time as it has increased stratification and has negatively affected those who lack wealth and power. Because of the hidden rules of race, black and brown communities have long been locked out of the mechanisms necessary to accumulate wealth and, thus, hold much less wealth and power than whites in our society. As such, the rise of corporate power has further entrenched the wealth and power of those at the top of our economic hierarchy and has had a detrimental impact on those at the bottom. By privileging the already wealthy and those who already own property or capital—America's upper-middle class, which is overwhelmingly white—this economy has disadvantaged everyone else—disproportionately black and brown Americans (Hohle 2015). Currently, black households make up less than 2 percent of those in the top 1 percent, while white households account for more than 96 percent of America's wealthiest people (Darity et al. 2018). Outsized corporate power works to ensure that the gains of our economy flow almost exclusively to this elite, disproportionately white group (Abernathy, Hamilton, and Margetta Morgan 2019).

Structural racism and residential segregation have locked black and brown Americans out of well-resourced communities. This segregation provides an opportunity for both exploitation and abandonment by powerful corporations. We posit that it is the compounding effect of structural racism and extractive corporate practices that have had an outsized detrimental effect on black and brown communities. Specifically, as shareholder primacy and financialization push powerful corporations to seek ever-higher profits and as their market power allows for greater extraction, they may abandon markets that do not provide a sufficiently high profit margin. When coupled with capital disinvestment in poor neighborhoods, this abandonment may leave communities of color with few options, permitting those remaining goods and services providers with an opportunity to exploit a lack of market access for these economically and politically vulnerable communities.

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CORPORATE CONSOLIDATION AND FINANCIALIZATION HAVE LED TO FEWER JOBS, LOWER WAGES, AND MORE PRECARIOUS WORK—WHICH EXACERBATE AND REINFORCE EXISTING DISPARITIES AND DISPROPORTIONATELY IMPACT BLACK AND BROWN PEOPLE

The rise of corporate consolidation has had detrimental effects on the overall economy, including fewer jobs at lower wages, more expensive goods, and less innovation. Combined with shareholder primacy and financialization, which provide the blueprint for moving corporate profits up and out of the firm, consolidation is leaving workers behind while executives and shareholders hoard all the wealth. The economic effects of market power have disproportionate consequences for workers and communities of color, exacerbating and further entrenching existing inequalities caused by racial exclusion and other forms of structural discrimination.

Market power makes it easier for companies to set lower wages and discriminate against workers

As described in the previous section, market power provides powerful companies with the ability to accrue greater profits and set lower wages while extracting more worker effort. Concentration in the labor market may also increase the ability of corporations to unlawfully and immorally discriminate in employment decisions as employees, especially those who are socially stigmatized, will have few other employment options. This ability to discriminate will have a disproportionate impact on black and brown workers.

Though the Civil Rights Act of 1964 outlaws employment discrimination based on race, ethnicity, and several other protected characteristics, black job-seekers continue to face discrimination from employers. A recent study found no change in the levels of discrimination against black job-seekers in the past 25 years, and only modest evidence of a decline in employment discrimination against Latinx job-seekers (Quillian et al. 2017). Thus, while we should expect increased compliance with federal and state civil rights laws and a marked decline in discriminatory behavior over time, data instead shows ongoing discrimination. This continued level of discrimination may, in part, result from the increasing power of corporations; despite increased knowledge of the illegality of discrimination and the rise of diversity and inclusion programming, powerful firms may retain the ability to unlawfully discriminate in their hiring choices.

When black and brown job-seekers and properly classified employees are confronted with employment discrimination, exercising their legal rights can be a timely and costly process, in which the burden of proving illegal discrimination by a powerful corporation is borne by the claimant without a guaranteed outcome. In the immediate term, most workers need a paycheck, and workers facing discrimination may seek employment elsewhere rather than, or at the same time as, they seek legal recourse. In concentrated labor markets, however, there are fewer employers to whom a worker can sell her labor. This dearth of options will harm all workers but has a distinct and disproportionate harm on workers of color, who may have few options but to accept unfair and discriminatory employment practices.[3]

Importantly, powerful firms use a variety of anticompetitive tactics to reduce workers' power, including mandatory arbitration, non-compete, and no-poach agreements. Frequently, prospective employees are required to sign mandatory arbitration and non-compete agreements as a precondition to employment. Mandatory arbitration agreements force workers to surrender their right to sue their employer in court and frequently impose requirements that the arbitrated claims must be individual and confidential, allowing powerful firms to keep misdeeds out of the media and away from other employees. For racially stigmatized workers, these arbitration agreements may allow firms to hide repeated instances of racial discrimination, preventing an employee from showing a pattern or

[3] Importantly, work by Agesa and Hamilton finds mixed evidence that domestic competition reduces race-based wage discrimination. Specifically, when wage disparity outcomes are constructed with occupational controls, the authors found less evidence of a relationship between competition and discrimination than when such controls are not included (Agesa and Hamilton 2004).

practice of such behavior. Non-compete agreements can prevent workers from being able to work in their chosen field or in a geographic area for a period of time, potentially forcing workers to accept racially discriminatory treatment or accept joblessness. No-poach agreements—by which two or more employers agree not to “steal” each other’s employees—work to keep wages low. Together, these three anticompetitive practices can limit wages and force workers to tolerate discriminatory workplaces.

The fissuring of the workplace and resulting precarious work situations specifically harm workers of color

One result of extractive corporate power is the fissuring of the workplace. Companies, particularly those in high-growth service-sector jobs, have sought to reduce the cost of labor-intensive work by contracting out more non-core jobs (Weil 2014; Forden 2019). This fissuring has had a greater impact on black and Latinx workers, who are structurally crowded into temporary and contingent[4] positions (BLS 2018). Latinx workers are overrepresented in the contingent workforce—22 percent of the contingent workforce is Latinx whereas only 16 percent of the noncontingent workforce is Latinx. Importantly, contingent workers earn an average of 77 percent of noncontingent workers’ wages. Temporary workers are also much more likely than workers in traditional arrangements to be black or Latinx, and earnings for temp workers fall far behind those of workers in traditional arrangements—averaging $521 for a temp worker compared to the $884 weekly earnings of a person with a traditional work arrangement (BLS 2018). The fissuring of the American workplace further crowds black and Latinx workers into marginalized positions that offer lower wages, less security, and fewer benefits.

In addition, fissuring may allow companies to avoid federal civil rights and Employee Retirement Income Security (ERISA) laws.[5] Specifically, Title VII of the Civil Rights Act prohibits employment discrimination based on race, ethnicity, and several other characteristics.[6] Relying on outsourced and contracted labor muddies the employee-employer relationship and makes it challenging for a worker facing discrimination to know who their true “employer” is for purposes of civil rights enforcement. Similarly, ERISA was enacted to ensure that minimum standards with regards to worker security, particularly retirement and health benefits, were equally distributed throughout the workplace, but usually applies only to employees, not contingent workers. The fissured workplace may

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[4] Contingent workers are defined as those workers who do not expect their jobs to last or who report being a temporary worker. Contingent workers do not have an explicit or implicit contract for ongoing employment. BLS, Labor Force Statistics from the Current Population Survey, https://www.bls.gov/cps/contingent-and-alternative-arrangements-faqs.htm.

[5] 29 U.S.C. § 18 et seq.

[6] 42 U.S.C. § 2000e et seq.

leave workers without retirement and health insurance benefits and unprotected from discrimination, as the discriminating party may not be considered the legal employer under federal law.

CORPORATE FINANCIALIZATION BENEFITS THOSE ALREADY AT THE TOP AND LEAVES WORKERS OF COLOR BEHIND

The markers of corporate financialization—earning increased profit from financial activities, rather than productive growth, and the increased flow of profits to shareholders—incur benefits for those at the top at the expense of investing in workers or the long-term health of the firm. This funneling up and out of profits further exacerbates racial wage and wealth inequity given the demographics of corporate executives and wealthy shareholders as compared to the general workforce.

Workers of color are overrepresented in low-wage jobs and underrepresented in high-paying sectors and executive positions, and thus do not benefit from financialization

Black and brown workers are overrepresented in low-wage jobs, including the workforces of restaurants, retail, and food-manufacturing firms, and severely underrepresented in the highest-paying sectors of technology, finance, and banking (Tung and Milani 2018; Flynn et al. 2017; Holder 2017; Hamilton, Austin, and Darity 2011). While wages for most workers have stagnated over the past four decades, barely keeping pace with inflation and failing to keep pace with productivity, those workers at the top tenth of the income distribution have seen real wage growth, and the pay of CEOs has skyrocketed (Desilver 2018). Since 1978, CEO pay has increased 1007.5 or 940.3 percent (depending on how it is measured), compared with only 11.9 percent growth in median worker compensation (Mishel and Wolfe 2019). Because of racial stratification in occupations, black and brown workers are more likely to be in occupations in which wages have stagnated, rather than in the higher-income brackets that have seen growth.

In addition to being overrepresented in low-wage jobs, black workers are overwhelmingly excluded from corporate executive positions. Black workers experience lower rates of professional advancement and, as described by a recent report, there are fewer black professionals at every level on the way to highly compensated executive levels, such that they are severely underrepresented in management and executive positions (Noel et al. 2019). The vast majority of corporate executives—73 percent—are white (S. Jones 2017). In contrast to white workers who are overrepresented in senior leadership positions by 10 percentage points, Latinx and black workers are underrepresented in executive positions by

9 and 13 percentage points, respectively (S. Jones 2017). In early 2018, there were only three black CEOs leading Fortune 500 companies, down from six in 2012 (Donnelly 2018). Given the exclusion of black and brown people from executive positions, the hoarding of profits by executives and those at the top further benefits a mostly white group, leaving less money for the wages of the more diverse workforce.

Stock buybacks benefit wealthy white shareholders

Corporate financialization not only benefits corporate executives; it is also a way of siphoning money out of firms and into the pockets of white shareholders. As both a result of the racial wealth gap and a driver of its continuation, the bulk of American stockholders are white and wealthy—while 60 percent of white households have retirement accounts or own some stocks directly, only 34 percent of black households and 30 percent of Latinx households do (Holmberg 2018). Further, fewer than 14 percent of American households own corporate stock directly, and the top 1 percent owns almost 40 percent of all stocks (Holmberg 2018; Wolff 2017).[7] Importantly, direct stock ownership—which would allow one to sell specific stocks in response to rising value—is very rare and concentrated among the (mostly white) wealthy. In contrast, the investments held by black and Latinx households tend to be held in pension or retirement plans—less speculative plans that depend on long-term investments and for which individuals are not usually able to manipulate company-specific decisions to inflate their holdings (Smith 2015; Bradford 2018; Wolff 2017; Jones, Janelle 2017; Holmberg 2018). Thus, even though these black and Latinx households may technically count as "shareholders," they are unable to quickly sell individual shares and thus cannot benefit from the artificial price inflation of buybacks (Tung and Milani 2018). When companies engage in stock buybacks, it is only those whose compensation is tied to stock prices and those able to quickly sell their holdings who are able to benefit—meaning that corporate executives and direct shareholders, the vast majority of whom are white, are able to profit.

RESIDENTIAL SEGREGATION LEAVES BLACK AND BROWN COMMUNITIES SEPARATE AND UNEQUAL, AND FACILITATES POWERFUL FIRMS' DIFFERENTIAL TREATMENT OF INDIVIDUAL CONSUMERS AND COMMUNITIES

Due to the history of enforced racial segregation in housing—including redlining, steering,

[7] Direct ownership of stock means that there is a stock certificate issued from a company with the owner's name on it. Most Americans own stock indirectly, mainly through a retirement account, mutual fund, or trust fund (Wolff 2017; Holmberg 2018).

and other legal and extralegal policies—residential segregation continues to be very high in the US. Between 2011 and 2015, "white" neighborhoods in metropolitan areas gained modest diversity, declining from 79 percent white to 72 percent white (Frey 2016). In 2010, however, half of the metropolitan black population lived in a neighborhood with only a 3.6 percent nonblack population (Firebaugh and Acciai 2016). This segregation, in part, facilitates powerful firms' differential treatment of individual consumers and communities.

Structural racism is embedded in our neighborhoods and ensures that resources are concentrated in white neighborhoods, leaving black and brown communities separate and unequal. Extreme residential segregation—along with social stigmatization, political disenfranchisement, and limited economic resources—provides corporations the structure to extract, exploit, and ignore black and brown communities. In addition, many government programs ostensibly developed to support marginalized communities have created additional opportunity for corporate extraction. For example, the opportunity zones created as part of the 2017 tax law were developed to "increase business activity and economic investment" by delaying capital gains taxes if profits were put into federally certified opportunity zones (Jacoby 2019). Further, any profit on these projects can avoid federal taxes completely. Importantly, however, Treasury guidance on implementing the program does nothing to ensure that benefits flow to community members rather than to outside investors exclusively (Ajilore 2019; Jacoby 2019). The concern that these tax incentives could end up being a "subsidy for gentrification," and provide economic benefit to corporations that displace local residents with higher-income earners and the companies that cater to them may already be coming to fruition (Looney 2018; Abello 2019). Recent reporting found that "billions of untaxed investment profits are beginning to pour into high-end apartment buildings and hotels" and other projects that fail to provide needed goods, jobs, or housing for communities that have long been excluded and exploited (Drucker and Lipton 2019).

Companies with market power exploit a lack of market access to charge consumers of color more for products

Companies with market power may segment markets, reduce output and quality, and charge higher prices in those markets, exploiting the structural absence of market access to engage in price discrimination—charging different prices to different consumers—in black and brown communities. This form of price discrimination has dire racial impacts. When a consumer has less access to sellers, they may be forced to accept higher prices and lower quality service.

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Banks, mortgage companies, and car insurance providers have all been discovered charging economically vulnerable customers more for fewer product options (Faber and Friedline 2018; Bartlett et al. 2019; Angwin et al. 2017). Perhaps the best-known example of price discrimination is the subprime loan crisis that contributed to the 2008 financial crisis. In the early 2000s, mortgage lenders specifically targeted black and Latinx households in segregated neighborhoods for subprime loans even when they qualified for prime products. Because these communities have historically been denied equal access to credit, this new availability of finance allowed previously excluded families to access home loans, potentially providing a social good. However, firms exploited the lack of access to good and fair financial services to sell a bad product. There was a 14 percentage point difference in the share of subprime loans between neighborhoods with a majority population of people of color and white neighborhoods. In more highly segregated neighborhoods, that rose an additional 3.2 percentage points (Hwang, Hankinson, and Brown 2014). Thus, while offering credit to those who may otherwise have been unable to access it is a social good, companies exploited the lack of access to earn high profits from bad products.

In addition to engaging in price discrimination for consumers who lack market access, companies may engage in direct discrimination based on race. Controlling for credit and other risk factors, black and Latinx homeowners were much more likely to receive subprime loans than their white counterparts. Importantly, these subprime loans were targeted not only at low-income black and Latinx households. Researchers found that wealthier black and Latinx families were targeted for subprime loans when they could have qualified for prime loans. In fact, black and Latinx families with incomes exceeding $200,000 per year were more likely to receive a subprime loan than white families with incomes under $30,000 a year (Faber 2013). This may indicate that mortgage companies targeted black and brown communities for exploitation.

It is not only brick-and-mortar companies that engage in price discrimination. There is some evidence that major retailers and travel sites offer different prices based on digital activity—opening the door to discrimination based on technological characteristics tied to race. In 2012, the *Wall Street Journal* reported that major companies were providing different prices to online consumers based on the physical location of the consumer. Importantly, the online customer's distance from a rival business influenced the price; if the online consumer were determined to be close to a brick-and-mortar competitor, the online price would reflect a discount, indicating that the lack of competition allowed businesses to raise their online price. The result of this competition-based pricing was that areas with higher incomes—and thus usually whiter populations—tended to see lower online prices, as their neighborhoods provide sufficient retail options to keep prices down (Valentino-DeVries, Singer-Vine, and Soltani 2012).

Capital disinvestment and abandonment by corporations seeking exorbitant profits may contribute to retail deserts

Communities of color have long been starved of resources. Over the past several decades, capital disinvestment from urban neighborhoods of color and the relocation of retail infrastructure to shopping centers near majority-white suburban neighborhoods, combined with corporate concentration, have contributed to the rise of retail deserts. As described by Roosevelt Institute Vice President of Strategy and Policy Nell Abernathy, firms with outsized corporate power do not simply want to earn some profit; they are seeking exorbitant profit (2018). When a community cannot sustain the marked-up price demanded by concentrated industries, firms may simply abandon those areas and focus on extracting profit elsewhere. For example, the heavily concentrated broadband market, which is highly dependent on public infrastructure and licensed monopolies, has left neighborhoods of color and rural areas behind, since providing services to them is less profitable than focusing on high-income white neighborhoods (Mabud and Seitz-Brown 2017). A consolidated broadband market—the result of deregulation in the 1990s—has also allowed firms to charge higher prices and provide slower speeds than other industrialized nations. This concentrated and deregulated environment has allowed internet service providers to focus digital infrastructure updates in the most profitable, high-income areas first. The persistence of racial residential segregation means that companies invest in more profitable white neighborhoods while black and brown communities are left behind, resulting in a redlining of digital access for neighborhoods of color and rural areas.

Retail deserts are more common in black neighborhoods than in white neighborhoods, and often result in a lack of grocery stores, health care providers, gas stations, pharmacies, clothing outlets, and more (Charron-Chénier, Fink, and Keister 2016, quoting Kwate et al. 2013; Meltzer and Schuetz 2012; Myers et al. 2011; Small and McDermott 2006). The impacts of these retail deserts range from a lack of fresh produce and other healthy food options to the need to rely on alternative financial services—including payday loans and other predatory schemes that exacerbate racial inequity—because of a lack of access to banking services (Elsheikh and Barhoum 2013; Ross 2018; Herdon and Paul 2018). While retail deserts are the result of several intersectional factors, including poverty and transportation access, corporate consolidation has contributed to less access to needed goods and services.

For example, across the country, banks are increasingly consolidating branches, resulting in fewer physical locations. This trend has accelerated since the 2008 financial crisis, with roughly 5,000 branches closing from 2009 to 2014 (Morgan, Pinkovskly, and Yang 2016). While branch closings are occurring nationwide, they are not distributed equally among communities. Instead, 93 percent of these closings occurred in ZIP codes with income levels below the US median (USPS 2014; Baradaran 2013). Again, as black and brown families are segregated into low-income communities, the targeted consolidation of bank branches in low-income neighborhoods is likely to have a disproportionate effect on black and brown communities.

Banking consolidation has a pernicious effect on the community as it drives unbanked and underbanked people to use alternative financial services (AFS). While AFS provide services otherwise denied to these households, they do so at a steep cost. The average payday loan charges a 400 percent annual interest rate, and many AFS lending services employ predatory structures (Baradaran 2015; USPS 2014; Herndon and Paul 2018). On average, households lacking access to traditional banking and financial services spend nearly 10 percent of their income on fees associated with financial services (USPS 2014). Black Americans are more likely to be unbanked or underbanked than any other racial or ethnic group, and this holds true across income, education, and home-ownership levels, again highlighting the compounding effects of structural racism, residential segregation, and corporate consolidation (Herndon and Paul 2018).

CASE STUDY – HOUSING

The rise of corporate landlords following the housing crash and Great Recession allows us to examine the compounding ways in which corporate power and the hidden rules of race intersect to create distinct and outsized negative impacts on communities of color.

As discussed previously, US housing policies have historically excluded black and brown Americans either explicitly or implicitly from homeownership. While the Fair Housing Act of 1968 outlawed housing market discrimination based on race, racial discrimination in the mortgage industry continued, and the enactment of several laws in the 1970s was required to promote equity in lending.[8] With a focus on increasing minority homeownership in the 1980s and 90s and deregulation that allowed the rise of variable rate interest schedules and the subprime mortgage market boom, previously underserved communities had increased access to homeownership in the 90s and 2000s—though frequently through predatory lending products. Importantly, while racial disparities in access to credit were reduced, disparities in the quality of credit grew (Sharp and Hall 2014).

When the housing market crashed, it was homeowners of color who were hit the hardest. Between 2007 and 2013, the average value of white owner-occupied homes fell by 25 percent, while those of Latinx families declined 45 percent and the value of black owner-occupied homes fell an average of 51 percent (Garriga, Ricketts, and Schlangenhauf 2017). For black homeowners, who hold more wealth in home equity—71 percent of black homeowners' wealth as compared to 51 percent of white homeowners' wealth in 2007—the greater loss in value combined with the greater percentage of total wealth held in home equity was especially devastating (Burd-Sharps and Rasch 2015; see also Tippett et al. 2014).

During the housing crash, nearly 10 million families lost their homes to foreclosure (Andres 2018), a greater share of whom were black and Latinx. Between 2007 and 2010, the height of the crash, 28.6 percent of mortgages held by black families and 31.7 percent of mortgages held by Latinx families had entered foreclosure. During this same time period, 11.3 percent of white borrowers had entered foreclosure (Garriga, Ricketts, and Schlangenhauf 2017).

Even years after the Great Recession, black families have not been able to regain the losses they suffered. By 2017, black homeownership had fallen to 43 percent, approximately the same level as before passage of the Fair Housing Act (Joint Center for Housing Studies of Harvard University 2018). Many black families—previous homeowners—have involuntarily (re)entered the rental market (McMullen 2019).

[8] See, for example, the Equal Credit Opportunity Act of 1974, the Home Mortgage Disclosure Act of 1975, and the Community Reinvestment Act of 1975.

While American families reeled from the housing crash, investors saw an opportunity to rent to a growing class of people unable to access mortgages and rushed to buy foreclosed homes. Many of these investors were Wall Street private equity firms which bought apartment buildings, single-family homes, and manufactured housing communities. In addition to buying property, these firms bought each other, creating firms with ever-larger portfolios; now, more than one-fourth of single-family rental homes are owned by institutional investors, and 200,000 families pay their rent to nine giant private equity firms (ACCE Institute, Americans for Financial Reform, and Public Advocates 2018).

As these firms go public, they join the race to ensure ever-increasing short-term financial returns to investors—and it is renters who are being squeezed. In order to increase profits and decrease costs, these corporate landlords are raising rents, charging excessive late fees, and shifting the cost of maintenance, traditionally the landlord's responsibility, back onto renters (ACCE, Americans for Financial Reform, and Public Advocates 2018).

Again, it is black and brown communities that are most impacted by the rise of the corporate landlords. As black and Latinx neighborhoods were hardest hit during the housing crash, there were more properties for institutional investors to purchase. And, as black and Latinx families are more likely to be renters than owners, these families are at greater risk of having to rent from a private equity-owned company.

Extractive corporate power unbalanced the housing market, contributing to the housing crash, and corporations continue to benefit from the devastation.

Lack of access to capital blocks entrepreneurs of color from entering the market and attempting to compete with powerful firms

While entrepreneurs of color may desire to fill the void left by disinvestment in their neighborhoods and engage in more entrepreneurial activity generally, new entrants to the market face two major roadblocks: lack of access to capital and corporate consolidation. In particular, as powerful firms buy up their suppliers in a process known as vertical integration, there are fewer opportunities for small businesses to be part of the supply chain.

Locally owned businesses can be key supports for healthy communities, and small business ownership has been a pathway to the middle class for generations (Mitchell 2017). In addition, black-owned businesses in particular were a key contributor to leadership and financial support for the civil rights movement (Ferleger and Lavallee 2018). As independent, locally owned businesses are pushed out by externally owned and managed companies, these pathways and community cornerstones are weakened.

Importantly, however, black-owned businesses have never been able to provide all needed goods and services to the community, as a chief culprit for the deficiency in black-owned businesses has been an unjust and iterative racial wealth gap. The racial wealth gap, a result of state-enacted policies and procedures, by design and implementation has left the black community vulnerable to private-sector exploitation and excluded them from amassing capital and passing it down from one generation to the next (Hamilton and Logan 2019). Those black Americans able to access capital, however, frequently used their entrepreneurship as a way to provide goods and services to—and to hire from—their community. As independent firms are being acquired or prevented from finding a foothold, they are less able to provide these pathways to their communities. Between 1997 and 2014, the per capita number of black employers declined by 12 percent (Feldman 2017). Over the past 30 years, tens of thousands of black-owned businesses have gone out of business or been acquired by larger companies. In 1985, 60 black-owned banks were providing financial services to their communities; by mid-2017, only 23 remained. Of the 50 black-owned insurance companies operating in the 1980s, just two remain in business today (Feldman 2017).

For minority entrepreneurs, the lack of access to capital can be an insurmountable barrier to entry and growth (Fairlie and Robb 2010). Not only are minority-owned businesses less likely to be approved for small business loans than white-owned firms, they are charged higher interest rates and receive lower amounts (Weitz 2018). A study on minority-owned firms produced by the Federal Reserve Banks of Cleveland and Atlanta found that black-owned businesses report more credit availability challenges or difficulty obtaining funds for expansion than all other businesses (2017). In fact, black-owned businesses report difficulty twice as often as white-owned businesses in obtaining funds for expansion even when they reported over $1 million in revenue (Federal Reserve Bank of Cleveland and Federal Reserve Bank of Atlanta 2017). Solutions that work to curb corporate power and create space for competition must address this lack of access to capital too.

THE RULES OF OUR ECONOMY AND THE HIDDEN RULES OF RACE HAVE PRIVILEGED EXTRACTIVE CORPORATE BEHAVIOR AT THE EXPENSE OF COMMUNITIES AND WORKERS OF COLOR

As noted above, these racialized impacts are not simply accidental byproducts of outsized corporate power; the rules of the economy have long been written to permit and encourage extraction of wealth, with powerful corporations targeting more vulnerable communities for extraction, exploitation, and exclusion. In order to create true equity and an economy that works for everyone, we must adopt just and moral policy solutions that recognize and rectify the current and historical impact of state-complicit racial exploitation in our society and our economy (Hamilton 2017; Hamilton and Logan, 2019; Hamilton 2019).

IV. RACE-CONSCIOUS SOLUTIONS TO REIN IN CORPORATE POWER AND REINVIGORATE PUBLIC POWER ARE NECESSARY TO ENSURE RACIAL EQUITY

The rules that structure firms and markets benefit the powerful and build upon the hidden rules of race to exacerbate racial inequity. To transform our economy into one that is economically inclusive and socially equitable, we must confront the compounding issues of corporate power and structural racism. We must rein in corporate power, build countervailing power, and deploy public power in ways that account for and work to dismantle structural racism. Our policies must be grounded in an understanding of the ways in which black and brown communities have been strategically targeted and left out, and they must provide race-conscious solutions. The interplay of structural racism and unchecked economic forces must be at the forefront of policy options, or we risk replicating and reifying past inequities.

The Roosevelt Institute has published several issue briefs and reports that provide specific policy solutions to curb corporate power and extraction. The purpose of this brief is not to restate these important and needed proposals. Rather, it is to provide a specific set of additional policies necessary to curb corporate power in ways that expressly contemplate and address the racialized harms and targeting of communities of color by powerful corporations. The policy solutions provided in this report roughly fall into four categories: reinvigorating antitrust and competition policy, reforming corporate governance, reforming civil rights laws (and other laws more generally), and reimaging public power.

Reinvigorate antitrust and competition policy

Over the past several decades, the rules governing antitrust and competition policy have been shifted in favor of consolidation and powerful companies. A new policy approach is needed to reinvigorate antitrust and competition policy, including updating merger guidelines to scrutinize for anticompetitive behavior throughout the supply chains, shifting burdens of proof, expanding per se violations of anticompetitive conduct such as mandatory arbitration and non-compete and no-poaching agreements, and more.[9] In addition, policymakers should consider the following race-conscious proposals:

[9] For more information on these and other competition policy proposals, see *Powerless: How Lax Antitrust and Concentrated Market Power Rig the Economy Against American Workers, Consumers, and Communities* and *A New Standard for Antitrust: The Effective Competition Standard*.

- **The DOJ and FTC should engage in backward-looking review of mergers and acquisitions that have had a negative impact on communities of color and should break up or restructure firms that have had a negative disparate impact**

Given the specific harms consolidation has had on communities of color, the Department of Justice (DOJ) and the Federal Trade Commission (FTC) should engage in backward-looking review of mergers and acquisitions and break up or restructure firms that have had a disparate impact on these communities.

Using the Sherman Act's prohibition on unlawful monopoly power and the exertion of market power and the Clayton Act's prohibition on mergers and acquisitions that lessen competition, the DOJ and the FTC should investigate mergers of companies that have resulted in retail deserts in communities of color or that have allowed for the exertion of market power by monopolist firms. With broader antitrust reforms proposed in the above-referenced Roosevelt materials, these reviews should also look for wage suppression or other negative effects on workers resulting from monopsonist firms exerting market power. Breaking up or restructuring firms that have had a disparate impact on communities of color could create space for other competitors.

- **The pre-merger notification process should be amended to require racial impact statements, and mergers or acquisitions that would have a disproportionately negative impact on communities of color should be blocked**

In addition to backward-looking review of mergers and acquisitions, the pre-merger notifications under Hart-Scott-Rodino should be updated to require a racial impact statement by the merging firms. The Clayton Act requires that parties to certain mergers or acquisitions notify the DOJ and FTC before finalizing the respective acquisitions, and the Hart-Scott-Rodino Act requires detailed filings with and approval from the DOJ and FTC prior to finalizing the merger or acquisition. As part of the filing process, firms seeking merger and acquisition approval should be required to submit racial impact statements with sufficient specificity to permit the agencies to determine the ramifications such mergers may have on people and communities of color, both as consumers and workers of the companies intending to merge. Mergers that would have a disproportionately negative impact on communities of color should be blocked by the DOJ or FTC.

- **Federal agencies should collaborate to ensure a robust understanding of the impact of completed and proposed mergers and acquisitions on labor market outcomes; mergers or acquisitions that have a disparate impact on labor market outcomes for workers of color should be prohibited**

When reviewing proposed or completed mergers and acquisitions, the DOJ and FTC should work collaboratively with the US Equal Employment Opportunity Commission (EEOC) to ensure a robust understanding of labor market outcomes of the merger or acquisition. When a merger or acquisition has had a disparate impact on workers of color, the firm should be broken up or restructured. Mergers or acquisitions that are determined likely to have a disparate impact on workers of color should be prohibited.

Reimagine corporate governance

Concomitant with lax antitrust enforcement, shareholder primacy as the guiding principle of corporate governance has risen over the past several decades. Holding the sole purpose of corporate behavior to be the enrichment of shareholders, shareholder primacy facilitates the extraction of profits from corporations by corporate executives and wealthy shareholders, rather than investment in productive uses. A range of policy proposals to solve for shareholder primacy have been contemplated, including requiring stakeholder participation on corporate boards and curbing or banning stock buybacks.[10] Along with these recommendations, policymakers should consider the following race-conscious proposals:

- **Corporations should be required to create employee ownership trusts that provide dividend payouts to employees and grant employees a say in corporate decisions**

Somewhat similar to minimum standard rules under the Employee Retirement Income Security Act of 1974 (ERISA) that require firms offering voluntary health insurance and retirement benefits to do so across employee classifications, companies that provide compensation to their executives in the form of stock options should be required to provide non-replacement compensation to their median-and-below workers in the form of an employee ownership trust. Creating an employee ownership trust formally recognizes employees as stakeholders who are due a share of the dividends paid out when corporate profits rise, increasing equality in who has access to wealth. Additionally, creating a trust ensures that employees have a clear role in the governance of the corporation and gives employees the ability to influence corporate decisions such as mergers and acquisitions, liquidation, election of board members, and more (Palladino 2019). Importantly, these trusts would not supplement retirement plans in which employees hold corporate stocks, if they exist, but instead provide workers with an ownership-stake in the firm while they

[10] For more information, please see *Ending Shareholder Primacy in Corporate Governance* and *21st Century Corporate Governance: New Rules for Worker Representation on Corporate Boards*.

are employees. Providing workers with shares in the company's profits may help reduce the racial wealth gap.

- **Companies should be required to adopt a stakeholder corporate governance model that reflects the demographic characteristics of all stakeholders**

To rebalance power within firms, all companies of a certain size should be required to adopt a stakeholder corporate governance model that requires workers on corporate boards (Palladino 2018, 2019). Shifting from shareholder primacy to stakeholder governance will not only increase the power of workers—allowing for a check on the power of the executives and shareholders—but will drive inclusive decision-making and ensure a more equitable distribution of corporate profits. To ensure true equity, however, the board of directors must be reflective of the socioeconomic status, race, and gender demographics of a range of the company's stakeholders. Given the exclusion of black and brown people from executive suites, this will result in more black and brown people having a direct voice in corporate governance and will increase access to wealth for black and brown workers.

To shift from the current shareholder primacy model to one of stakeholder governance, corporate governance laws must be amended. Currently, the US has a state-driven incorporation model that has driven a "race to the bottom" as states chase incorporation revenues by enacting shareholder-friendly incorporation laws. To ensure stakeholder governance, the US should establish federal chartering for large corporations and ensure that demographic representation is required on corporate boards. California recently enacted legislation requiring corporations to ensure that a specific number of board seats are held by women, dependent on the size of the corporate board.[11] While there is some anticipation that the California law may face legal challenges, there is precedent in requiring demographic representation on corporate boards. Specifically, Section 330 of the federal Public Health Services Act requires community health centers to establish governing boards with majorities of members being served by the center.[12] Using this as a model, federal law could require that boards of directors be comprised of workers, community members, consumers, and others who are impacted by corporate behaviors—and race should be an explicit demographic characterization of inclusion.

Reform civil rights and other laws

In addition to tackling competition policy and corporate governance reforms, there

[11] California's new law requires publicly held corporations that are incorporated in the state or whose principal executive offices are within the state to have a minimum number of female board members, depending on the size of the board (CA Corp. Code § 301.3).

[12] 42 U.S.C. § 254b(k)(3)(H).

are several other broad legal and policy reforms that build racial equity. These recommendations include:

- **Requiring racial impact analysis on proposed legislation to surface the hidden rules of race and promote equitable policymaking**

The hidden rules of race run deep within American policy and are not always readily apparent. In order to break the centuries-long cycle of excluding communities of color from the protections needed to engage meaningfully and on equal footing in our economy and society, we should require racial impact analysis of all new policy proposals. Racial impact analyses, also known as racial impact statements, are analogous to fiscal and environmental impact statements. They provide policymakers with an evaluation of the potential racial disparities of a proposed policy prior to adoption and implementation. Racial impact statements are currently required in four states, and seven states have introduced legislation to require their use. To date, racial impact statements have been confined to criminal justice and child welfare legislation, but their use is much broader. Racial impact analysis should be required for all policy proposals before they are adopted through rulemaking, incorporated into the administration's budget request, or are considered on the House or Senate floor. Modeled after the Congressional Budget Office's scoring, racial impact analysis could be required to include a racial equity score. By surfacing the "hidden rules," racial impact analysis has the potential to require policymakers to confront the racialized effects of policies.

- **Strengthening Title VII of the Civil Rights Act and expanding the EEOC's mandate**

Curbing corporate power will do little to ensure racial equity if black and brown people continue to face discrimination in hiring and employment decisions. We must ensure that racially stigmatized workers are protected by civil rights laws and are able to exert those legal rights. Ensuring that workers of color are fully protected by civil rights law provides countervailing power against the extractive and exploitative power of corporations, as employees facing discrimination will be able to bring the weight of the government to bear on discriminatory employers. Reforming federal civil rights laws and the agency tasked with enforcement will increase the power of workers to hold corporations accountable for racial discrimination.

Title VII of the Civil Rights Act ("the Act") prohibits discrimination on the basis of race, color, religion, sex, and national origin.[13] The Act has been interpreted to prohibit both

[13] 42 U.S.C. § 2000e et seq.

disparate treatment and disparate impact. Disparate treatment is when an employer treats an employee or prospective employee differently because of a protected characteristic and is frequently thought of as intentional discrimination. Disparate impact is when an employer's policy or practice has an unequal outcome for one of the protected characteristics, regardless of its purpose.

The US Equal Employment Opportunity Commission (EEOC) is the federal agency responsible for enforcing laws prohibiting employment discrimination, including Title VII of the Civil Rights Act. Currently, the EEOC is authorized to investigate and resolve—through conciliation or litigation—Title VII violations when a complaint is filed. Each year, the EEOC and state and local partner agencies receive hundreds of thousands of complaints and close more than 100,000 cases. Workers win by receiving money or a change in working conditions only 18 percent of the time, and racial discrimination claims have the lowest rate of success—15 percent—despite being the most commonly filed (Jameel and Yerardi 2019). Importantly, much of the proof required to support a Title VII claim is held by the employer alone, buried in personnel records. Title VII reforms to require employers to maintain data and create a presumption of guilt if such information is not produced may help workers with valid discrimination cases.

In addition to complaint-driven investigations, the EEOC should be mandated and provided a substantial increase in resources to conduct employment audits to discover—and prosecute—racial discrimination. Currently, the agency is entitled to receive EEO-1 Reports from all employers with over 100 employees. The EEO-1 Report requests data about the ethnicity, race, and gender of the employer's workforce. Building on this existing requirement, the EEOC should be authorized and funded to conduct randomized, proactive audits (tests for discrimination) of companies to detect racial discrimination. Social science literature provides information and examples on how to directly detect discrimination with experimental designed employment audits. For example, Bertrand and Mullainathan (2004) used fictitious black- and white-sounding names on similarly credentialed paired resumes to determine if employers in the test sites of Boston and Chicago engaged in racial discrimination. They found that resumes with white-sounding names received a 50 percent higher callback rate than comparably skilled resumes with black-sounding names, and that even "better" quality resumes with black-sounding names received fewer callbacks than "lower" quality resumes with white-sounding names (for a summary of the audit study technique to detect labor market discrimination, see Hamilton 2000). Similar methodologies could be randomly applied to firms, especially those receiving federal procurement. When racial discrimination is detected, the EEOC should vigorously prosecute discriminating firms.

- **Rolling back heightened pleading requirements for class action litigation which has had a chilling effect on civil rights litigation**

Class action litigation allows a group of people facing similar injury to sue the responsible party. Class actions have been among the most powerful tools to fight racial discrimination and secure civil rights for marginalized people. Class actions may be the only way to prove a pattern or practice of discrimination and are the best way to remedy widespread discrimination (Center for Justice and Democracy n.d.). The ability to bring class action lawsuits, however, has been curtailed by two recent cases—*Bell Atlantic v. Twombly* and *Ashcroft v. Iqbal*.[14] Combined, these cases changed the pleading requirements for plaintiffs, making it much more difficult to sustain litigation against a motion to dismiss. The heightened pleading requirements of *Twombly* and *Iqbal* have chilled the ability of plaintiffs to enforce their rights and bring socially beneficial litigation. In particular, when defendants have control of documents and information, plaintiffs may be unable to plead in sufficient factual detail to meet the new plausibility standard without access to discovery (Searle Civil Justice Institute 2013). Pleading reform, returning to the standard in *Conley v. Gibson* under which "a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief,"[15] would again provide plaintiffs with the ability to bring well-founded claims and access information through discovery that is otherwise unavailable.

Build Countervailing Power

Along with the above-described policies that work to rein in the power of corporations, we must build countervailing power and reimagine public power.[16] We must both permit companies to do what they do well and acknowledge that "the market" is not always the solution and that, in and of itself, it will not and cannot create racial equity and economic justice. That is, private companies can be job creators, wealth engines, and producers of goods and services, but they will not ensure universal access or equitable distribution. As such, we must use the power of the government to prevent extraction and the accumulation of market power and to directly provide essential goods and services to ensure universal access. A public option not only ensures access; it provides competition in the market, disciplining powerful corporations and acting as a cap on their ability to exploit vulnerable communities for profit extraction. In providing a public option for essential goods and services, the federal government does not displace private companies from providing

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[14] *Bell Atlantic v. Twombly*, 550 U.S. 544 (2007); *Ashcroft v. Iqbal*, 556 U.S. 662 (2009).

[15] *Conley v. Gibson*, 355 U.S. 41 (1957) at 45-46.

[16] For more information, please see *New Rules for the 21st Century: Corporate Power, Public Power, and the Future of the American Economy*.

similar goods and services but does create direct competition and, by doing so, has the ability to raise wages and quality while also lowering prices (Darity, Hamilton, and Mabud 2019).

Providing universal access to certain necessary goods and services also supports worker power, creating a countervailing force that can work to rebalance power in the economy. For example, providing a public option or a single-payer system for health care would remove leverage that companies currently wield over employees, and it would give employees additional ability to reject unsatisfactory or discriminatory employers (Darity, Hamilton, and Mabud 2019). Similarly, a federal jobs guarantee—a universal public option for employment—would directly compete with the private sector, particularly at the low end of the labor market (Darity, Hamilton, and Mabud 2019). By providing wage and benefit floors, a federal jobs guarantee would build worker bargaining power. Given that this will particularly affect the low end of the labor market, black and brown workers who have been historically and systemically excluded from the labor market and pushed into low-wage jobs would be primary beneficiaries.

Similarly, labor unions have historically stood as a bulwark against the exploitative goals of corporate executives and shareholders. From the 1930s to the present, unionized workers have consistently earned wages 10 to 20 percent higher than non-unionized workers, and they have also raised wages for non-union workers (Farber et al. 2018; Walters and Mishel 2003). Historically, many workers of color have been specifically excluded from labor protections, including the ability to unionize (Mabud and Forden 2018).[17] Despite these structural barriers, the union rates of black Americans exceeded those of white Americans in the 1970s; by 1973, unionization rates of black men exceeded those of white men, and by the late 70s, the unionization rate of black women nearly doubled the rate of white women (Spievack 2019). As such, the decades-long attack on unions has had a particularly devastating effect on black professionals.

Restoring worker power—while ensuring that people of color are not excluded—will provide a strong countervailing power against corporate extraction. To ensure that the exclusions of the past are not replicated when rebuilding worker power, labor law should be amended in the following ways: (1) to protect all workers, in all segments of the economy; (2) to make it far easier for workers to obtain workplace representation; (3) to provide for sectoral-level bargaining; and (4) to better protect workers' rights to strike, picket, and engage in other concerted action. Further, just as public companies should require stakeholder governance, unions themselves should adhere to racial inclusion in their decision-making bodies.

[17] The Fair Labor Standards Act (FLSA) of 1938 exempted certain occupations from minimum wage protections, specifically agricultural and domestic work—jobs that have historically been performed by workers of color (Mabud 2019).

CONCLUSION

About 40 years of rules written in favor of the powerful and built upon long-standing, hidden rules of race have resulted in today's high-profit, low-wage economy. As corporations consolidated and gained market power, they used this power to extract profits from the most vulnerable—specifically targeting communities of color for exploitation, extraction, and exclusion. The government has a moral responsibility to right the wrongs of the past and to live up to its mandate to promote economic inclusion and social equity. We must curb the power of corporations with policy changes that account for the hidden rules of race. It is time to rewrite the rules to finally build an equitable economy for all Americans.

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