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WHEN "CLASS" EXPLANATIONS DON'T CUT IT: SPECTERS OF RACE, HOUSING INSTABILITY, AND EDUCATION POLICY

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Race also matters because of persistent racial inequality in society--inequality that cannot be ignored and that has produced stark socioeconomic disparities . . . . And race matters for reasons that really are only skin deep, that cannot be discussed any other way, and that cannot be wished away. Race matters to a young man's view of society when he spends his teenage years watching others tense up as he passes, no matter the neighborhood where he grew up. Race matters to a young woman's sense of self when she states her hometown and then is pressed, "No, where are you really from?", regardless of how many generations her family has been in the country. Race matters to a young person addressed by a stranger in a foreign language, which he does not understand because only English was spoken at home. Race matters because of the slights, the snickers, the silent judgments that reinforce that most crippling of thoughts: "I do not belong here."

Supreme Court Justice Sonia Sotomayor[1]

[1] Schuette v. Coal. to Def. Affirmative Action, 572 U.S. 291, 380–81 (2014) (Sotomayor, J., dissenting).

INTRODUCTION

Housing instability[2] greatly impacts the educational engagement and life outcomes for K-20 students.[3] Recent research chronicles that approximately 3.5 million young people experienced homelessness over a twelve-month period in the U.S.[4] Of these young people, Black youth had an 83% higher risk of homelessness, reflective of racial disparities that exist in the form of "school suspensions, incarceration and foster care placement."[5] Additional research determines that the number of college students experiencing housing insecurity ranges from 11-19%,[6] while other studies have identified rates of housing instability amongst university students to be 36%, and community college students 46%.[7] As the number of college students experiencing housing insecurity continues to grow,[8] new legislation was proposed to address this growing concern in September 2017. The Higher Education Access and Success for Homeless and Foster Youth Act (HEASHFY)[9] and The Fostering

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[2] We use the term housing instability where possible to expand notions and understandings of the traditional perspective regarding homelessness (often described as persons who reside in a shelter, abandoned building, car, on the street, etc.), whereas housing instability provides a broader understanding to include temporary housing (staying with friends/relatives, couch surfing, or frequent moves). The impact of housing instability on one's physical, cognitive, and general well-being is our focal point as it shapes a student's ability to remain focused and engaged in their educational pursuits.

[3] *See generally* MARY CUNNINGHAM ET AL., RESIDENTIAL INSTABILITY AND THE MCKINNEY-VENTO HOMELESS CHILDREN AND EDUCATION PROGRAM: WHAT WE KNOW, PLUS GAPS IN RESEARCH, URB. INST. (2010), https://www.urban.org/sites/default/files/publication/28736/412115-Residential-Instability-and-the-McKinney-Vento-Homeless-Children-and-Education-Program.PDF (reviewing the "literature on how residential instability affects academic outcomes among children").

[4] M.H. MORTON ET AL., MISSED OPPORTUNITIES: YOUTH HOMELESSNESS IN AMERICA: NATIONAL ESTIMATES, CHAPIN HALL. U. CHI. 5 (2017), http://voicesofyouthcount.org/wp-content/uploads/2017/11/VoYC-National-Estimates-Brief-Chapin-Hall-2017.pdf.

[5] *Id.* at 12–13.

[6] Katharine M. Broton & Sara Goldrick-Rab, *Going Without: An Exploration of Food and Housing Insecurity Among Undergraduates*, 47 EDUC. RESEARCHER 121, 121 (2018).

[7] SARA GOLDRICK-RAB ET AL., STILL HUNGRY AND HOMELESS IN COLLEGE, WIS. HOPE LAB 3 (2018), https://hope4college.com/wp-content/uploads/2018/09/Wisconsin-HOPE-Lab-Still-Hungry-and-Homeless.pdf.

[8] *See* Caitlin Dewey, *The Hidden Crisis on College Campuses: Many Students Don't Have Enough to Eat*, WASH. POST (Apr. 3, 2018), https://www.washingtonpost.com/news/wonk/wp/2018/04/03/the-hidden-crisis-on-college-campuses-36-percent-of-students-dont-have-enough-to-eat/?utm_term=.10d4e29f5b17 ("Measuring college hunger and homelessness is difficult. Researchers depend on universities to distribute the surveys and on a self-selecting group of students to fill them out. [Sara] Goldrick-Rab says those constraints make it likely that college hunger is actually more prevalent than her data show.").

[9] Higher Education Access and Success for Homeless and Foster Youth Act, H.R. 3740, 115th Cong. (2017).

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Success in Higher Education Act (FSHEA)[10] were proposed to address students' material and educational needs.

Awareness and recognition of students' experiences with housing instability via the proposal of legislation is an appropriate and necessary response. However, similar to K-12 homeless education policy (known as the McKinney-Vento Act[11]), failure to incorporate language into the legislation accounting for the disproportionate representation of Black (and Latinx) students amongst populations of individuals experiencing housing instability will likely be limited in reach. Where policy is often constructed to address broad-based issues and concerns, race is often the category that receives the least attention (and language) in policies aimed to address systemic disparities.[12] As noted by Critical Race Theory (CRT) scholar David Gillborn, educational policy that does not explicitly address racial inequities serves to reinforce mechanisms of white supremacy functioning within schools and society.[13] This article seeks to center the racial dynamics of institutions of higher education in relation to the experiences of students of color identified as unstably housed. As such, our analysis seeks to interrogate race in regards to educational access, support and matriculation for students of color, specifically Black students in higher education. Given the continued colorblind approach inherent to the development of educational policies, it is clear that the continued and increasing disproportionality of Black students and other students of color experiencing housing instability deserves explicit attention.[14]

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[10] Fostering Success in Higher Education Act of 2017, H.R. 3742, 115th Cong. (2017).

[11] *See* McKinney-Vento Homeless Assistance Act, 42 U.S.C. §§ 11301–489 (2014).

[12] *See, e.g.*, Adia Harvey Wingfield, *The Failure of Race-Blind Economic Policy*, THE ATLANTIC (Feb. 16, 2017), https://www.theatlantic.com/business/archive/2017/02/race-economic-policy/516966/ (highlighting the danger of what can "happen when those in charge of making policy abandon identity politics and ignore entrenched inequalities based on race, gender, ethnicity, and other categories"); Keith B. Maddox & Jennifer M. Perry, *Racial Appearance Bias: Improving Evidence-Based Policies to Address Racial Disparities*, 5 POL'Y INSIGHTS FROM BEHAV. & BRAIN SCI. 57, 57–58 (2018) (noting that a "general race-based policy may fail to address nuances in the treatment and experiences of disadvantaged groups").

[13] David Gillborn, *The Policy of Inequity: Using CRT to Unmask White Supremacy in Education Policy*, *in* HANDBOOK OF CRITICAL RACE THEORY IN EDUCATION 129, 133 (Marvin Lynn & Adrienne D. Dixson eds., 2013).

[14] *See* EDUARDO BONILLA-SILVA, RACE WITHOUT RACISTS: COLOR-BLIND RACISM AND THE PERSISTENCE OF RACIAL INEQUALITY IN THE UNITED STATES 70–71 (3rd ed. 2006); Neil Gotanda, *A Critique of "Our Constitution is Color-Blind,"* *in* CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT 257–58 (Kimberlé Crenshaw et al. eds., 1995).

Operating as a policy intervention in this instance, Critical Race Theory (CRT) locates the experiences of people of color in the US and the larger world as historically relevant and valid.[15] The collection of these experiences (in conjunction with the historical record and policy formations) are key to "praxis . . . in the ongoing work of the scholar as teacher" and activist.[16] Through our policy interrogation we can acknowledge and validate the myriad of experiences and perspectives. We understand clearly that ours is not the only viewpoint, but a perspective that is often excluded. Due to these omissions, it is imperative for the critical researcher to intentionally claim space to pay explicit attention to the narratives of the marginalized.[17]

As part of a larger policy "counternarrative," our work "seek(s) to document the persistence of racism from the perspectives of those injured and victimized by its legacy."[18] By engaging in a broader counternarrative of Black students and students of color who are unstably housed, the remainder of this article is an attempt to carefully and critically engage the theoretical construct of CRT and its utility in the interrogation of two legislative bills aimed at addressing student homelessness in higher education.

We begin our contribution with a discussion of the experiences of students enduring housing instability in relation to education, material needs and emotional well-being.[19] These experiences are situated in the context of the larger social world, which includes the system, structure and function of race and class. Our account continues with an examination of education policy created to address the educational, material and social needs of students experiencing housing instability (SEHI).[20] The article concludes with suggestions for how these policies

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[15] *What is Critical Race Theory?*, UCLA SCH. PUB. AFF., https://spacrs.wordpress.com/what-is-critical-race-theory/ (last visited Mar. 6, 2019).

[16] Charles R. Lawrence, III, *The Word and the River: Pedagogy as Scholarship as Struggle*, 65 S. CAL. L. REV. 2231, 2249 (1992).

[17] *See* Aja Y. Martinez, *A Plea for Critical Race Theory Counterstory: Stock Story versus Counterstory Dialogues Concerning Alejandra's "Fit" in the Academy*, 42 COMPOSITION STUD. 33, 33 (2014) (arguing that it is "crucial to use a narrative methodology [in one's research] that counters other methods that seek to dismiss or decenter racism and those whose lives are affected by it daily").

[18] TARA J. YOSSO, CRITICAL RACE COUNTERSTORIES ALONG THE CHICANA/CHICANO EDUCATIONAL PIPELINE 10 (2005).

[19] *See infra* Parts II-IV.

[20] *See infra* Part V.

can be expanded in order to address student needs utilizing a necessary racial equity and justice-centered approach.[21]

II. Prevalence and Academic Challenges of Students Experiencing Housing Instability (SEHI)

While a vast majority of the existing research on the prevalence and academic outcomes of students experiencing housing instability focuses on K-12 education, there has been a significant increase in research on college students and homelessness.[22] Noted by The Wisconsin Hope Lab, since 2011 there have been approximately twenty studies focusing on housing insecurity and homelessness amongst college students.[23] Findings from The Wisconsin Hope Lab report, *Still Hungry and Homeless in College,* reveal that approximately 46% of community college students and 36% of university students experienced housing insecurity in the last year.[24] Data from this report also identify poorer academic outcomes, physical health and higher rates of depression and stress associated with Students Experiencing Housing Instability (SEHI).[25] Furthermore, this report identifies racial/ethnic disparities, where Black students were at greater risk for housing insecurity and homelessness, as well as students that identified as "mixed/other."[26] Universities and colleges should be aware of the impact of housing instability on the educational and life experiences of their students and

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[21] *See infra* Part VI.

[22] *See, e.g.*, Rashida Crutchfield, Serving Displaced and Food Insecure Students in the CSU, Cal. St. U. 1 (2016); Rashida M. Crutchfield & Jennifer Maguire, Researching Basic Needs in Higher Education: Qualitative and Quantitative Instruments to Explore a Holistic Understanding of Food and Housing Security 3 (2017); Sara Goldrick-Rab, Paying the Price: College Costs, Financial Aid, and the Betrayal of the American Dream (2017); J. Luke Wood et al., Struggling to Survive – Striving to Succeed: Food and Housing Insecurities in the Community College, Community C. Equity Assessment Lab 3 (2017); Rashida M. Crutchfield, *Jumping Through Hoops to Get Financial Aid for College Students Who Are Homeless: Policy Analysis of the College Cost Reduction and Access Act of 2007*, 97 Families in Soc'y: J. Contemp. Soc. Servs. 153 (2016); Ronald E. Hallett & Rashida Crutchfield, *Homelessness and Housing Insecurity in Higher Education: A Trauma-Informed Approach to Research, Policy, and Practice*, 43 ASHE Higher Educ. Rep. 7 (2017); Meghan R. Silva et al., *The Relationship Between Food Stability, and School Performance Among Collee Students in an Urban University*, 19 J. C. Student Retention: Res., Theory & Prac. 287 (2015).

[23] Goldrick-Rab et al., *supra* note 7, at 5.

[24] *Id.* at 3.

[25] *Id.* at 5.

[26] *Id.* at 20.

work to develop and/or implement policies and practices that support their matriculation and graduation.

Similar to housing instability amongst the general population, college students experience parallel manifestations of housing instability including extreme cases of homelessness (living on the streets, staying in a shelter, sleeping in a car or abandoned building), staying with family/friends/acquaintances (living "doubled-up") and/or frequently moving due to financial inability to pay rent/housing costs.[27] At the same time, while some students find stability in housing programs through their respective institutions, they are often left without stable housing during college breaks (e.g. spring break, campus holidays, summer, etc.).[28] While little research has focused on the lived experiences of college SEHI, researchers in this area note the need for "additional data to better understand the extent and nature of material hardship among college students . . . . Stereotypes of undergraduates eating ramen noodle or couch-surfing work against this."[29] Utilizing our experiences as community-based researchers, we wholeheartedly agree with the need to document student experiences in order to inform interventions that address and support their material, emotional and academic needs. For the purposes of this account, housing should also be considered a foundational need as its inclusion draws attention to systemic denial of affordable and sustainable housing. Given the plethora of research documenting the conditions of individuals, families and students experiencing poverty and homelessness, our work centers on examining policies that have been developed to safeguard the human right to housing[30] and the educational needs of students that facilitate learning. We contend that serious engagement of this issue includes an understanding and analysis grounded in an analytical paradigm that is centered in issues of race and class.

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[27] Broton & Goldrick-Rab, *supra* note 6, at 122, 127.

[28] *See* Jeremy Bauer-Wolf, *Homeless for the Holidays*, INSIDE HIGHER ED (Jan. 15, 2019), https://www.insidehighered.com/news/2019/01/15/homeless-college-students-struggle-find-lodging-food-over-winter-break.

[29] Broton & Goldrick-Rab, *supra* note 6, at 129.

[30] The right to housing is protected in several international declarations. *See, e.g.*, Universal Declaration of Human Rights, Nov. 1948, G.A. Res. 217A art. III; International Covenant on Economic, Social and Cultural Rights, Jan. 3, 1976, G.A. Res. 2200A art. XXI; Convention on the Rights of the Child, Sept. 2, 1990, G.A. Res. 44/25; International Convention on the Elimination of All Forms of Racial Discrimination, Jan. 4, 1969, G.A. Res. 2106 art. XX; Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, G.A. Res. 34/180; American Declaration of the Rights and Duties of Man art. 11 (1948).

III. RACIALIZATION OF HOMELESSNESS AND POVERTY

Matthew Desmond[31] and Thomas Shapiro[32] meticulously document the prevalence of persistent racial inequities and disparities in the U.S. contributing to poverty and housing instability amongst Black Americans. In *Evicted: Poverty and Profit in the American City*, Desmond notes the millions of people evicted yearly from their homes, exacting a heavy toll on families, communities and children.[33] He notes that "Eviction affects the old and the young, the sick and able-bodied. But for poor women of color and their children, it has become ordinary."[34] This ordinariness or common knowledge of mobility and instability being a part of women of color's (and by extension that of their children) routine experience speaks to the normalization of racial hierarchies integral to the fabric of U.S. society.[35] Our complacency of racial differentiation in society is not innocently imbued in phenotype or neutral descriptors, but is instead steeped in a legacy of white supremacy and anti-Blackness.[36] Society's belief that people of color, and in particular poor people of color, are to blame for their housing, employment or educational access and subsequent outcomes drives "common sense"[37] notions of meritocracy and worthiness, simultaneously limiting opportunities for access, mobility and housing stability.

This racial reality manifests itself in racial disparities found throughout the U.S. in education, incarceration, employment and housing.[38] These realities are empirically outlined in Shapiro's *Toxic*

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[31] MATTHEW DESMOND, EVICTED: POVERTY AND PROFIT IN THE AMERICAN CITY (2017).

[32] THOMAS M. SHAPIRO, TOXIC INEQUALITY: HOW AMERICA'S WEALTH GAP DESTROYS MOBILITY, DEEPENS THE RACIAL DIVIDE, & THREATENS OUR FUTURE (2017).

[33] DESMOND, *supra* note 31, at 295–96.

[34] *Id.* at 299.

[35] *See* THEODOREA REGINA BERRY, STATES OF GRACE: COUNTERSTORIES OF A BLACK WOMAN IN THE ACADEMY xiii (2018) (discussing the way Black women have been "socially positioned" in the world) (quoting BELL HOOKS, FEMINIST THEORY: FROM MARGIN TO CENTER 16 (2nd ed. (2000)).

[36] *See* HOOKS, *supra* note 35, at 53 ("In the United States, maintaining white supremacy has always been as great if not a greater priority than maintaining strict sex-role divisions.").

[37] *See* KEVIN K. KUMASHIRO, AGAINST COMMON SENSE: TEACHING AND LEARNING TOWARD SOCIAL JUSTICE 93–96 (2009) (noting that often we do not "challenge" the way an individual's story "can become a stereotype," despite the fact that "common sense often tells us that oppression results from misinformed views of others").

[38] *See generally* MICHELLE ALEXANDER, THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS (2010); SHAWN GINWRIGHT, HOPE AND HEALING IN URBAN EDUCATION: HOW URBAN ACTIVISTS AND TEACHERS ARE RECLAIMING MATTERS OF THE HEART (2016).

Inequality: How America's Wealth Gap Destroys Mobility, Deepens the Racial Divide, & Threatens our Future.[39] Detailing racial disparities uncovered through the Leveraging Mobility study, (a database of family interviews collected from 1998-99 and 2010-12)[40] Shapiro explains:

> Half of blacks (50 percent) raised at the bottom of the family wealth ladder remain stuck there as adults, compared with only a third (33 percent) of whites . . . . Only 23 percent of blacks raised in the middle surpass their parents' family wealth compared with over half (56 percent) of whites. African Americans tend to get blocked at the bottom, while whites at the top stay put.[41]

Shapiro finds these racial inequities are pervasive across domains of work, housing and generational (im)mobility.[42] The pervasiveness of poverty disproportionately affecting Blacks in the U.S. continues to limit upward movement on the "wealth distribution ladder," despite beliefs in education as the great equalizer and/or an ethos of hard work will lead to greater income and long-term financial stability.[43] Shapiro's work implores us to recognize the institutional and governmental policies that "indisputably bend individual life trajectories and tend to lock children into the race and class status of the families they were born into . . . ."[44] In response to this understanding, he urges us to anchor our agenda against toxic inequality (extreme wealth inequality and widening racial inequality) within the principles of "wealth building and racial justice."[45] If education is to live up to its promise of opportunity and mobility, it must be affordable and accessible to poor folks of color.

IV. CONTEXT OF HIGHER EDUCATION

One must understand the current landscape of higher education in the U.S. in order to critically and carefully examine policies aimed at increasing access, affordability and graduation for unstably housed students of color enrolled in colleges and universities. Scholar Sara

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[39] SHAPIRO, *supra* note 32.

[40] *Id.* at 44.

[41] *Id.* at 43.

[42] *Id.* at 43–45.

[43] *Id.*

[44] *Id.* at 182.

[45] SHAPIRO, *supra* note 32, at 185.

Goldrick-Rab details the evolving landscape and increasing costs of higher education in the U.S. in her award-winning book, *Paying the Price: College Costs, Financial Aid and the Betrayal of the American Dream*.[46] She and her research team spent six years surveying college students, including detailed interviews of six students followed over the six-year period of study.[47] One astounding data point includes the ways in which college costs have, and continue to soar beyond the reach of middle and low-income students and families.[48] Goldrick-Rab notes:

> America built a financial aid system with lofty ambitions and few teeth . . . . When the Pell program began, Pell Grants subsidized more than 80 percent of the cost of attending the average public university and all of the costs of attending community college . . . . Today the maximum Pell covers less than one-third of the cost of attending a public four-year college or university and barely 60 percent of the costs of attending a community college.[49]

Despite the decrease in monies to cover college costs, "economic restructuring and political decision making has rendered higher education the singular option for getting ahead in America."[50] Many low-income families experiencing extreme poverty perceive education as a means to escaping this fate for their children and grandchildren.[51] However, Goldrick-Rab's work provides a stark reality check serving as a critical backdrop to the hopes and dreams of students and families vying for an upward tick on the ladder of social mobility.

Findings from this research contend that the majority of students from low-income families must take out loans and work many hours (in low-wage jobs), while often struggling to keep up with their course work and other personal and familial responsibilities.[52] Many students go without food and adequate sleep, frequently hindering their ability to fully engage in their educational endeavors.[53] For students experiencing

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[46] GOLDRICK-RAB, *supra* note 22.

[47] *Id.* at 1, 22–33.

[48] *Id.* at 40–41 (discussing the "cost of attendance" which includes tuition and fees, books and supplies, transportation, and other living costs).

[49] *Id.* at 17.

[50] *Id.*

[51] *Id.* at 19–20.

[52] GOLDRICK-RAB, *supra* note 22, at 83–118.

[53] *Id.* at 127–28.

housing instability, if we add to their plate the reality of inconsistent housing, the barriers to completing their degree are further exacerbated. As described by the then President of Miami Dade College's Wolfson campus:

> When a student is hungry he does not feel safe, and it is hard to help him synthesize class material. We have to meet students' basic needs in order for them to fully concentrate on assimilating the information in a class in a way that they can apply it, learn and take it forward.[54]

While the intent of Goldrick-Rab's is not a specific focus on students experiencing housing instability (SEHI), her work provides us with an understanding of the landscape students must navigate in their efforts to graduate and secure a better life for themselves and their families via higher education. Her research continues to remind us of the racial/ethnic economic disparities that shape affordability and access to higher education.[55] The information provided in her account challenges us to come to grips with the fact that:

> Much of the difference has to do with racial disparities in wealth. The racial wealth gap is three times larger than the racial income gap and more unequal than ever before, and it exists among families of all income levels . . . . Moreover, during the recession, racial/ethnic minority families lost more wealth (in percentage terms) than their white counterparts.[56]

Given this reality, we must consider the larger social systems and structures in place (e.g. out-of-school factors) that influence student opportunities, including familial responsibilities, significantly impacting a student's ability to concentrate and focus on their studies.

IV. POLITICS AND POLICY

The larger social dynamics shaping opportunities for low-income/unstably housed students of color, in conjunction with the rising costs of higher education creates the need to develop policies that will address student needs from both a socioeconomic and racial standpoint.

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[54] *Id.* at 131.

[55] *See generally id.*

[56] *Id.* at 90.

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While the McKinney-Vento Act[57] has been in place to address educational access and rights for SEHI, K-12, a focus on higher education is beginning to gain traction. *The Higher Education Access and Success for Homeless and Foster Youth Act* (HEASHFY)[58] and *The Fostering Success in Higher Education Act of 2017* (FSHEA)[59] seek to increase access and support for SEHI by amending the Higher Education Act of 1965. The *HEASHFY* Act aims to:

- Streamline the application and verification process for financial aid for homeless unaccompanied youth
- Require colleges and universities designate to single points of contact to assist homeless and foster youth to access and complete higher education and connect them with resources
- Require colleges and universities develop a plan to assist homeless and foster youth to access housing resources during and between academic terms; and
- Improve support and coordination in college access programs.[60]

Similarly, the FSHEA seeks to: establish and/or expand transitions between K-12 and higher education for foster and homeless youth, including summer bridge programs, through statewide initiatives; and, develop "institutions of excellence" committed to serving foster and homeless youth from entrance to completion via robust support services and by covering the remaining cost of attendance beyond federal and state grants.[61] However, as discussed previously, a policy that primarily impacts individuals and communities of color while lacking explicit language to address racial disparities is

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[57] *See* McKinney-Vento Homeless Assistance Act, 42 U.S.C. §§ 11301–489 (2014).

[58] Higher Education Access and Success for Homeless and Foster Youth Act, H.R. 3740, 115th Cong. (2017).

[59] Fostering Success in Higher Education Act of 2017, H.R. 3742, 115th Cong. (2017).

[60] Higher Education Access and Success for Homeless and Foster Youth Act, H.R. 3740, 115th Cong. (2017); *see Higher Education Access and Success for Homeless and Foster Youth Act of 2017*, U.S. SENATORS PATTY MURRAY & ROB PORTMAN, https://www.help.senate.gov/imo/media/doc/HEASHFY%202017%20Fact%20Sheet%20FINAL.pdf (last visited Mar. 6, 2019).

[61] *New Bills Introduced in Congress Aim for Higher Education Success for Youth in Foster Care System, Experiencing Homelessness*, SCHOOLHOUSE CONNECTION (Sept. 13, 2017), https://www.schoolhouseconnection.org/new-bills-introduced-in-congress-aim-for-higher-education-success-for-youth-in-foster-care-system-experiencing-homelessness/.

limited in its reach, often reproducing racial inequities which deeply impact student's educational experiences and outcomes.[62]

Gillborn's analysis is critical to our policy observations in that "a CRT perspective on race and education views policy as at best acting to preserve the status quo and defend as normal the state of White supremacy…serving to *manage* race inequality at sustainable levels while maintaining, and even enhancing, White dominance of the system."[63] Understanding the social construction of race allows for an examination of the ways in which race (both whiteness and blackness) is continually constructed and reconstructed via education policy decisions. Gillborn further contends:

> I consider the role of education policy in the active structuring of racial inequity. Like bell hooks, my analysis centres on a conceptualisation of 'white supremacy' that goes beyond the usual narrow focus on extreme and explicitly racist organisations. Rather, this analysis focuses on a more extensive, more powerful version of white supremacy; one that is normalized and taken for granted.[64]

It is often taken for granted that people in poverty are disproportionately Black and Brown.[65] The assumption made by some is that addressing economic issues will lead to economic equity for all.[66] However, as we have seen throughout history, those who are identified and classified as white continuously benefit from programs to a larger

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[62] *See* Ann M. Aviles & Jessica A. Heybach, *Seeking Stability in Chicago: School Actions, (C)overt Forms of Racial Injustice, and the Slow Violence of Neoliberal Rationality*, 24 Educ. Pol'y Analysis Archives 18, 20 (2017); *see also* Ann Aviles de Bradley, *Homeless Educational Policy: Exploring a Racialized Discourse Through a Critical Race Theory Lens*, 50 Urb. Educ. 839, 862 (2014).

[63] Gillborn, *supra* note 13, at 138.

[64] David Gillborn, *Education Policy as an Act of White Supremacy: Whiteness, Critical Race Theory and Education Reform*, 20(4) J. Educ. Pol'y 485, 485-86.

[65] *See* Elise Gould & Jessica Schieder, *Poverty Persists 50 Years After the Poor People's Campaign: Black Poverty Rates are More Than Twice as High as White Poverty Rates*, Econ. Pol'y Inst. (May 17, 2018), https://www.epi.org/publication/poverty-persists-50-years-after-the-poor-peoples-campaign-black-poverty-rates-are-more-than-twice-as-high-as-white-poverty-rates/.

[66] *See, e.g.*, Jared Bernstein, *Improving Economic Opportunity in the United States*, Ctr. Budget & Pol'y Priorities (Apr. 5, 2017), https://www.cbpp.org/economy/improving-economic-opportunity-in-the-united-states (discussing the "extensive barriers to opportunity and mobility stemming from income inequality, discrimination, residential economic segregation, low access to educational opportunities, inadequate job opportunities, and more").

degree than folks of color.[67] As noted by Justice Ginsburg in her dissent in the affirmative action case *Fisher v UT-Austin,*[68] "I have several times explained why government actors, including state universities, need not be blind to the lingering effects of 'an overtly discriminatory past,' the legacy of 'centuries of law-sanctioned inequality.'"[69] The system and structure of white supremacy functioning in "law- sanctioned inequality"[70] must be addressed through race-conscious policy that explicitly recognizes the manifestations of race inequity.[71] Failure to incorporate race-conscious language into educational policy for SEHI will also fail in its ability to capture the structural components that perpetuate race and class inequities.

The architects and advocates of *HEASHFY* and *FSHEA* should be commended for their understanding of the limitations and barriers encountered by SEHI. While these policies recognize higher education as an ideal opportunity for "economic independence and healthier lives," they should also reflect the racial realities of this nation.[72] This would also include language that speaks to the process of racialization

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[67] *See* Tracy Jan, *The Biggest Beneficiaries of the Government Safety Net: Working-Class Whites*, WASH. POST (Feb. 16, 2017), https://www.washing-tonpost.com/news/wonk/wp/2017/02/16/the-biggest-beneficiaries-of-the-government-safety-net-working-class-whites/?utm_term=.0ef867d7c8a8.

[68] Fisher v. Univ. of Tex. at Austin, 570 U.S. 297 (2013). In 2008, a white female was denied admission to the University of Texas at Austin. *Id.* at 304, 306. She sued the university, claiming that the university's policy of considering race as a factor in the admission of students not in the top ten percent of their high school's graduating class violated the equal protections clause of the Fourteenth Amendment. *Id.* at 306. The district court granted summary judgment to the University of Texas, which argued that the consideration of race was narrowly tailored to pursue increased diversity at the school. *Id.* at 303. The Court of Appeals affirmed the decision. *Id.* The Supreme Court ruled that the Court of Appeals did not use the correct standard of scrutiny and sent the case back to the Court of Appeals to use the correct standard. *Id.* at 314–15. In *Fisher v. University of Texas at Austin,* 136 S.Ct. 2198 (2016), the Court ultimately decided that the University of Texas at Austin's consideration of race as a factor in admitting students did not violate the equal protection clause of the Fourteenth Amendment. *Id.* at 2214.

[69] Fisher v. Univ. of Tex. at Austin, 570 U.S. 297, 336 (2013) (Ginsburg, J., dissenting) (quoting Gratz v. Bollinger, 539 U.S. 244, 298 (2003) (Ginsburg, J., dissenting)).

[70] *Id.*

[71] *See* Astead W. Herndon, *2020 Democrats Embrace Race-Conscious Policies, Including Reparations*, N.Y. TIMES (Feb. 21, 2019), https://www.nytimes.com/2019/02/21/us/politics/2020-democrats-race-policy.html; Destiny Peery, *The Colorblind Ideal in a Race-Conscious Reality: The Case for a New Legal Ideal for Race Relations*, 6 NW J.L. & SOC. POL'Y 473, 492–94 (2011) (arguing that the law should be race conscious to achieve racial equality).

[72] *Take Action Now: Support Higher Ed Success for Youth in Foster Care, Experiencing Homelessness*, JUV. L. CTR. (Sept. 13, 2017), https://jlc.org/news/take-action-now-support-higher-ed-success-youth-foster-care-experiencing-homelessness.

that occurs within institutions of higher education.[73] Color-blind policy approaches are not effective.[74] Justice Sotomayor, in her dissenting opinion in *Schuette v. BAMN,*[75] explains:

> This refusal to accept the stark reality that race matters is regrettable. The way to stop discrimination on the basis of race is to speak openly and candidly on the subject of race, and to apply the Constitution with eyes open to the unfortunate effects of centuries of racial discrimination. As members of the judiciary tasked with intervening to carry out the guarantee of equal protection, we ought not sit back and wish away, rather than confront, the racial inequality that exists in our society. It is this view that works harm, by perpetuating the facile notion that what makes race matter is acknowledging the simple truth that race does matter.[76]

Justices Ginsburg and Sotomayor's recognition[77] of the necessity to center race implore us to imagine what might educational policies developed to address class *and* race include? Below we provide suggestions that would allow *HEASHFY* and *FSHEA* to be inclusive of matters of race. Similar to Justices Ginsburg and Sotomayor, our belief in the need to address race "head on" is not intended to further exacerbate

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[73] *See* CJ Libassi, *The Neglected College Race Gap: Racial Disparities Among College Completers*, CTR. AM. PROGRESS (May 23, 2018), https://www.americanprogress.org/issues/education-postsecondary/reports/2018/05/23/451186/neglected-college-race-gap-racial-disparities-among-college-completers/.

[74] *See* Joelle Emerson, *Colorblind Diversity Efforts Don't Work*, HARV. BUS. R. (Sept. 11, 2017), https://hbr.org/2017/09/colorblind-diversity-efforts-dont-work; AMY STUART WELLS, SEEING PAST THE "COLORBLIND" MYTH OF EDUCATION POLICY: ADDRESSING RACIAL AND ETHNIC INEQUALITY AND SUPPORTING CULTURALLY DIVERSE SCHOOLS, NAT'L EDUC. POL'Y CTR. 2–3 (Mar. 2014), https://nepc.colorado.edu/sites/default/files/pb-colorblind_0.pdf (suggesting that "so-called 'colorblind' accountability and school choice policies, premised on narrow definitions of school quality and absent interventions to support diversity, exacerbate racial and social class segregation and inequality").

[75] Schuette v. BAMN, 572 U.S. 291 (2014). In 2006, Michigan voters decided in favor of a proposed amendment to eliminate sex- and race-based preferences in public education, employment, and contracting. *Id.* at 298–99. A coalition of interest groups formed and sued to determine if the state constitution's prohibition of sex- and race-based preferential treatment in public university admissions violated the equal protections clause of the Fourteenth Amendment. *Id.* at 298–300. The District Court upheld the constitutional amendment, and the Court of Appeals reversed. *Id.* at 300. The Supreme Court reversed, holding that the amendment did not violate the equal protection clause of the Fourteenth Amendment. *Id.* at 314–15.

[76] *Id.* at 381 (Sotomayor, J., dissenting).

[77] *See id*; Fisher v. Univ. of Tex. at Austin, 570 U.S. 297, 336 (2013) (Ginsburg, J., dissenting).

racial tensions and inequality, but instead is grounded in historical, structural and systemic understandings of this nation's educational and housing disparities along the lines of race and class.

Returning to, and building on Shapiro's work, we highlight his following policy recommendations:

- *Strengthen Housing and Community Stability for Families*--ensuring housing stability as a centerpiece for transformative policy and end racial segregation in housing,
- *Create Quality Jobs with Higher Wages and Benefits*—the current minimum wage does not provide the financial means necessary for market rate housing (or affordable housing for that matter),
- *Provide Quality Education*--universal pre-k through higher education.[78]

Using these recommendations from Shapiro and identifying a few of our own, the next section will describe the higher education policies put forward in the newly-proposed legislation. In the same vein, we will identify gaps or missing pieces, that if added, would strengthen our ability to address housing instability and the interconnected racial inequities amongst unstably housed college students of color. Similar to the Goldrick-Rab findings, students understand higher education as a means to stability for themselves, their families and communities.[79] For these reasons we would be remiss to not work toward policies that create said opportunity for SEHI.

V. CENTRALIZING RACE IN POLICIES AND PROGRAMS

Given Justice Sotomayor's dissenting opinion in *Schuette v. BAMN*, we agree that language centering race must remain central in the development of any new policies addressing college insecurity amongst students of color, seeing that they are often disproportionately represented among SEHI. On the surface, our issue is not necessarily with the policy language of *HEASHFY* and *FSHEA*. From our perspective, it is never a bad thing to draft policy that makes it a federal offense for colleges and universities to not address the needs of students who are

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[78] SHAPIRO, *supra* note 32, at 193–208.

[79] *See* GOLDRICK-RAB, *supra* note 22, at 23–24 (stating that for low-income students, college is seen as the only path to stability and higher earnings).

unstably housed. Our analysis should not be seen as an "attack" on the policies, as there are many individuals, institutions and organizations working tirelessly to bring awareness to this issue while creating and providing necessary and appropriate supports.[80] Instead, where policy language is the entry-level component to guide implementation, we still must consider Gillborn's point that policies continue to operate as machinations of white supremacy. If we take this into account, the issues that guide our inquiry push us to reconsider policy language and the potential of such language to compel implementation and accountability. Given the policy in its current form, there are some areas that should be considered when moving colleges and universities towards implementation that advances racial justice.

If we utilize the example of *HEASHFY*, the policy aims could be expanded with language to compel accountability grounded in equity and justice. For example, one of the policy aims is for colleges and universities to designate to single points of contact to assist homeless and foster youth to access and complete higher education and connect them with resources.[81] To enhance the capacity of the policy to address its intended goals, there could be an addition to the requirement to utilize "data on the number of homeless children and youths,"[82] that includes racial/ethnic data that is instrumental in driving the development of college and university services. This would not only assist schools in being explicit about the race/ethnicity of students who are unstably housed, but it also has the potential to build in accountability measures for addressing disproportionality, making it difficult for colleges and universities to ignore the issue of race within the population of SEHI.

Additionally, another *HEASHFY* aim is to improve "support and coordination in college access programs."[83] From our perspective, this

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[80] *See*, *e.g.*, The National Association for the Education of Homeless Children and Youth, naehcy.org (a national organization dedicated to educational excellence for homeless children and youth); *see generally* Hallet & Crutchfield, *supra* note 22 (researchers who study the traumatic effects of homelessness and housing instability on students).

[81] Higher Education Access and Success for Homeless and Foster Youth Act, H.R. 3740, 115th Cong. § 5(b) (2017); *see also Take Action Now: Support Higher Ed Success for Youth in Foster Care, Experiencing Homelessness*, *supra* note 72.

[82] Higher Education Access and Success for Homeless and Foster Youth Act, H.R. 3740, 115th Cong. § 11 (2017).

[83] *Take Action Now: Support Higher Ed Success for Youth in Foster Care, Experiencing Homelessness*, *supra* note 72.

policy aim is prima facie example of loose, general language that allows colleges and universities to obfuscate the issue and implement paltry attempts to address the concern. More explicit language would require colleges and universities to streamline bureaucratic largesse by designating a central locale to address college access while also requiring colleges and universities to hold the budget for this formation to be held harmless (meaning that it is a permanent fixture in the school's budget). The idea is to keep the policy language explicit, allowing little "wiggle-room" for colleges and universities to continue to engage in the bevy of excuses as to why they persist in not addressing the concerns of students of color who are unstably housed. If implemented, this has the potential to shift the way universities think about budgets, particularly regarding disparities in salaries of administration, faculty and staff who work with populations of students that are unstably housed. Additionally, it also has the potential to bring attention to the federal Department of Education, who has oversight of student financial aid and numerous support services.[84]

For *FSHEA,* one of the policy requirements is for colleges and universities to develop "'institutions of excellence'[85] committed to serving foster and homeless youth from entrance to completion via robust support services and by covering the remaining cost of attendance beyond federal and state grants."[86] Upon viewing the language, readers might assume that this provides a strong foundation by which to address the needs of students who may be transitioning out of foster care. However, a critical lens would call to question the idea of an "institution of excellence." Where the initial language is confusing, it also appears to suggest another layer of bureaucracy. Our policy nightmare would include hundreds of colleges and universities developing "centers of excellence" that operate to the chagrin of students who remain unstably housed. Instead, policy language could mandate that colleges and universities cover the remaining costs of attendance beyond state and federal grants while also documenting the race and ethnicity of the students who find themselves housing insecure. This is especially relevant given the substantial decrease in federal funds to cover tuition costs[87] coupled with HUD's proposal to triple rents for some of the nation's poorest

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[84]   *About ED: Overview and Mission Statement*, U.S. DEP'T EDUC., https://www2.ed.gov/about/landing.jhtml?src=ln (last visited Mar. 9, 2019).

[85] Fostering Success in Higher Education Act of 2017, H.R. 3742, 115th Cong. § 792(e) (2017).

[86] *Take Action Now: Support Higher Ed Success for Youth in Foster Care, Experiencing Homelessness*, *supra* note 72.

[87] *See supra* text accompanying notes 58–61.

tenants receiving federal housing aid.[88] To combat these conditions, progressive initiatives such as Universal Basic Income being proposed in places such as California,[89] should be embraced and replicated via policy, as they recognize the history and legacy of poverty prevalent in communities of color created by exclusionary policies and practices (e.g. Redlining, hiring discrimination, school and prison nexus, etc.).

Our policy suggestion on the documentation of the race and ethnicity of the students in question is not to further ostracize them. Nor is it to create a set of brochures that reify racial stereotypes on who is unstably housed. Instead, the documentation of the race and ethnicity of the students is to have a mechanism to identify further disparities if they exist, and concretely address them if/when these same students are not receiving the support they need to matriculate towards graduation. Simultaneously, stronger policy language serves to create accountability amongst colleges and universities—institutions created within a legacy of white supremacy. With more first generation, low-income, and students of color looking to institutions of higher education as a means of opportunity to access secure employment and housing, one of the responsibilities of critical scholars should be to identify the manner in which institutions and the individuals within them are complicit in reifying exclusionary systems, practices, and dispositions. Finally, we must contend with the reality that many university/college administrators, faculty and staff do not share the experiences, perspectives, or racial/class backgrounds of SEHI. Their limited worldview often prevents them from recognizing the ways in which housing instability serves as a significant barrier for students of color working to navigate a system that was never truly intended for their access or success. The proposed policies, with expanded race-conscious language can serve as guidance, tools and accountability toward race and class equity for SEHI.

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[88] Glenn Thrush, *As Affordable Housing Crisis Grows, HUD Sits on the Sidelines*, N.Y. TIMES (July 27, 2018), https://www.nytimes.com/2018/07/27/us/politics/hud-affordable-housing-crisis.html.

[89] Edward-Isaac Dovere, *Can This Millennial Mayor Make Universal Basic Income a Reality?*, POLITICO (Apr. 24, 2018), https://www.politico.com/magazine/story/2018/04/24/michael-tubbs-stockton-california-mayor-218070; Steve Lopez, *Stockton's Young Mayor Has Bold Turnaround Plan: Basic Income and Stipends for Potential Shooters*, L.A. TIMES (May 26, 2018), https://www.latimes.com/local/california/la-me-lopez-stockton-money-05272018-story.html.

Where the policy recommendations/examples are small, they allow for the interrogation of policies beyond empty rhetoric[90] that college and university administration can easily use to delay the process of addressing students that find themselves unstably housed. At the same time, we are clear that policy language presents no panacea for addressing real-world concerns. If language can get the closest to requiring processes that allow for solutions, the chances for college completion increase significantly for SEHI.

CONCLUSION

Ultimately, our goal in expanding the proposed policies is their ability to account for the cumulative racial inequities occurring within the many facets of a student's life.[91] Such racial inequities consistently contribute to housing disparities and segregation, educational disparities and debt, and finally economic disparities.[92] While some may assert the purpose of homeless educational policy is not to address racial disparities, we strongly disagree. The continued failure in acknowledging the central role of race contributing to the widening of inequities in our society is ahistorical and irresponsible.[93] Policies that fail to incorporate structural factors related to race into their blueprint are unable to adequately address the multi-dimensionality of housing instability. We agree with the adage "Yet to know the history of our Nation is to understand its long and lamentable record of stymieing the right of racial minorities to participate in the political process."[94] Denial of one's right to education and housing is a repudiation of one's right to "life, liberty and the pursuit of happiness."[95] Expanding the scope of *HEASHFY* and *FSHEA* is an opportunity in which policy can contribute to the necessary resistance to, and slow reversal of, racial and economic injustices prevalent in society.

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[90] *E.g.* Brown v. Board of Education, 349 U.S. 301 (1955). *See* Clarence Page, *Essay: With All Deliberate Speed*, PBS NEWS HOUR (May 11, 2004), https://www.pbs.org/newshour/show/essay-with-all-deliberate-speed (discussing how the Brown decision "contained no mechanism for its own enforcement" and allowed the "states [to] drag[] their heels" to defer integrating schools).

[91] *See supra* Part VI.

[92] *See* Angela Hanks et. al., *Systematic Inequality: How America's Structural Racism Helped Create the Black-White Wealth Gap*, CTR. AM. PROGRESS (Feb. 21, 2018), https://www.americanprogress.org/issues/race/reports/2018/02/21/447051/systematic-inequality/.

[93] *Id.* ("The black-white wealth gap is a product of intentional systematic policy choices. The only way to correct this wrong is to make intentional systematic changes in response.").

[94] Schuette v. BAMN, 572 U.S. 291, 337–38 (2014) (Sotomayor, J., dissenting).

[95] THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).