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DAMN IT! A CONVERSATION ON BEING BLACK, FEMALE, AND MARGINALIZED DURING THE COVID-19 PANDEMIC: IS THE WORLD LISTENING?

A CONVERSATION BETWEEN BLACK FEMALE LAW PROFESSORS

We are African American women with a combined forty-four years in academia. We are professors of law and have seen firsthand how COVID-19 has ravaged African Americans across this country.¹ As we conversed with one another in the Spring of 2020 about what we were witnessing, we began to look through the spectrum of the law and discrimination, and how this novel Coronavirus is laying bare the inequities and inequalities that have been evident for hundreds of years in the Black community. We felt compelled to put pen to paper and document our conversations in an attempt to give a voice to those most negatively impacted by this deadly virus—those that have long been most underrepresented. We hope that by calling out these disparities, we somehow elevate our nation and change the course of the lives of Black women for the better.

The purpose of the paper is to examine how the law, medical institutions, and society (globally and domestically) are grappling with this pressing issue. Our article looks at how certain segments of our population receive vastly different types

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1. Adrienne Hollis, *The Crisis Within the Crisis: COVID-19 Is Ravaging African Americans*, UNION OF CONCERNED SCIENTISTS (Apr. 29, 2020, 12:21 PM), <https://blog.ucsusa.org/adrienne-hollis/the-crisis-within-the-crisis-covid-19-is-ravaging-african-americans>.

of care for medical conditions than do similarly situated people of different races, how our society is dealing with these negatives, and how these disparities have rippling effects in society and on the people mistreated. This article looks at how Black women are much less likely to be insured as a group than are White women and how that disparity has caused Black women to be more susceptible to COVID-19. This critique of this pandemic's impact on Black women examines these issues and more, from the firsthand perspective of Black women.

PART ONE:

GENDER MATTERS: A LOOK AT HOW COVID-19 HAS IMPACTED THE ECONOMIC AND EDUCATIONAL STATUS OF MARGINALIZED WOMEN AND GIRLS WORLDWIDE

Patricia A. Broussard²

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I. INTRODUCTION

Query: What secondary economic impact has COVID-19 had on the most vulnerable populations in the world?

Short answer: An economic pandemic has been visited upon women and girls, who are globally the most vulnerable population.³ This has been their plight for decades, if not centuries, and COVID-19 has threatened to divert attention and resources so desperately needed to address their vulnerability.⁴ The impact of COVID-19 is especially glaring in the areas of extreme poverty and education. In this part of our conversation, I will focus on what COVID-19 has done to negatively exacerbate the impact on women and girls in these critical areas.

A recent headline from *The Intercept* declared that the “‘Exceptionally Dire: Secondary Impacts of COVID-19 Could Increase Global Poverty and Hunger.’”⁵ This is especially daunting when one considers that the face of poverty and hunger worldwide is female.⁶ Of course, children also fit into this category, but, because more than fifty percent of the impacted children are also female, suffice it to say that what appears to be a generality is, in reality, a fact.⁷ Thus, we have what has been

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3. Kathryn Merckel, *Women and Hunger Facts*, HUNGER NOTES (Feb. 22, 2016), <https://www.worldhunger.org/women-and-hunger-facts/> (“Women and girls represent 60% of all undernourished people in the world. The United Nations (UN) estimates that 70% of the 1.3 billion people in poverty worldwide are women (IWPR). At least 120 million women in developing countries are underweight. In some regions, more women are underweight than not; for example, 60% of women are underweight in South Asia (Ransom & Elder, 2003).”).
 4. Nick Turse, “‘Exceptionally Dire’: Secondary Impacts of COVID-19 Could Increase Global Poverty and Hunger”, THE INTERCEPT (May 3, 2020, 10:00 AM), <https://theintercept.com/2020/05/03/exceptionally-dire-secondary-impacts-of-covid-19-could-increase-global-poverty-and-hunger/> (“A new analysis by researchers from King’s College London and Australian National University, under the aegis of the United Nations University World Institute for Development Economics Research, for example, warns that the economic contraction caused by Covid-19 could push an additional 500 million people – about 8 percent of the Earth’s population – into poverty, reversing 30 years of economic improvement.”).
 5. *Id.*
 6. Merckel, *supra* note 3.
 7. *Id.* (“Women and girls represent 60% of all undernourished people in the world.”).

coined as the “feminization of poverty.”⁸ Poverty, hunger, and other pervasive inequalities that dominate the lives of women around the globe have been impacted in a manner that has arguably created a pandemic of its own that could prove as deadly for them as COVID-19.⁹

Poverty and hunger are compounded by the fact that resources and attention that are needed to combat COVID-19 detract from these issues in a manner that exacerbates the looming crisis.¹⁰ This conversation will address the query, “What economic impact has COVID-19 had for the most vulnerable populations in the world,” by explicitly discussing the impact of COVID-19 on women living in poverty, as well as those on the edge of poverty, the impact on women and their quest for education, and, lastly, how the pandemic has increased the incidences of global gender violence.

II. STATUS OF WOMEN AND POVERTY PRE-COVID-19

“*Women are poorer, more hungry[,] and more discriminated against than men . . .*”¹¹

To fully grasp the impact of a pandemic upon poor, hungry, and marginalized women, one must understand the dire circumstances that existed before COVID-19. There are several factors that have converged to create a class of sub-citizens, causing Catherine A. MacKinnon to ask in one of her widely acclaimed books, “Are Women Human?”¹² Indeed, the question is not hyperbole when the

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8. Sylvia Chant, *Feminization of Poverty*, WILEY ONLINE LIBRARY (Feb. 29, 2012), <https://doi.org/10.1002/9780470670590.wbeog202> (“The coining of the term ‘feminization of poverty’ is widely attributed to Diana Pearce (1978), who, on the basis of statistical analysis for the United States between the 1950s and 1970s, reported a trend towards increased concentration of income poverty among women, and especially among Afro-American female-headed households.”).
 9. Turse, *supra* note 4.
 10. *Id.*
 11. Amanda Erickson, *Women Poorer and Hungrier than Men Across the World*, *U.N. Report Says*, WASH. POST (Feb. 14, 2018, 11:17 AM), <https://www.washingtonpost.com/news/worldviews/wp/2018/02/14/women-poorer-and-hungrier-than-men-across-the-world-u-n-report-says/>.
 12. Catherine MacKinnon, *ARE WOMEN HUMAN?: AND OTHER INTERNATIONAL DIALOGUES* (The Belknap Press of Harvard University Press 2006) (asking how, if women were regarded as human, they could be sold into slavery, silenced, worked as menials for little or no pay, impoverished economically, and oppressed in numerous other ways).

status of women presents such a dire picture. At least one of the critical factors that dictates a woman's ability to support and lift herself, and oftentimes her entire family, out of poverty is her ability to work.¹³ However, the ability to and availability of work come with unique issues for poor women.¹⁴ Several factors cause global poverty for women: lack of employment,¹⁵ underemployment,¹⁶ types of employment,¹⁷ pregnancy,¹⁸ and caretaking responsibilities,¹⁹ just to name a few.

To be clear, women work as much as men, and they often work harder than men.²⁰ However, the work they perform is not considered valuable in many countries and, because of this, their work is not calculated into the labor/workforce statistics.²¹ Therefore, "women's work" is often unacknowledged and undervalued.²² In addition, women who work are often subjected to extreme gender

13. See *Why the Majority of the World's Poor Are Women*, OXFAM INT'L, <https://www.oxfam.org/en/why-majority-worlds-poor-are-women> (last visited Feb. 19, 2021) (identifying low wages, lack of decent work, unpaid care work, and longer workdays as sources of gender inequality in work).

14. *Id.*

15. *Id.*

16. *Id.*; see also Doyle, *infra* note 31.

17. See *Why the Majority of the World's Poor are Women*, *supra* note 13.

18. See Deahl, *infra* note 46.

19. See Int'l Labour Org., *infra* note 59.

20. E.g., Elise Ackerman, *Superiority of Female Workers Confirmed: Study Finds Women Really Do Work Longer and Harder than Men*, FORBES (Feb. 24, 2013), <https://www.forbes.com/sites/eliseackerman/2013/02/24/superiority-of-female-workers-confirmed-study-finds-women-really-do-work-longer-and-harder-than-men/#59ce1a61770a>.

21. Sandra Tzvetkova & Esteban Ortiz-Ospina, *Working Women: What Determines Female Labor Force Participation?*, OUR WORLD IN DATA (Oct. 16, 2017), <https://ourworldindata.org/women-in-the-labor-force-determinants> ("This means that we can only fully analyze labor force participation if we understand time allocation more generally. In the case of female labor supply in particular, time allocation is crucially affected by the fact that women all over the world tend to spend a substantial amount of time on activities such as unpaid care work, which fall outside of the traditional economic production boundary. In other words, women often work but are not regarded as 'economically active' for the purpose of labor supply statistics.").

22. See *Coronavirus Shows Working Women Are Still Underpaid and Undervalued*, SAYS TUC, TRADES UNION CONG. (May 29, 2020),

violence by their mates.²³ This situation can and does lead to their inability to work consistently.²⁴

When women seek jobs in the traditional workforce, they have a harder time finding a job than their male counterparts.²⁵ Some of this can be traced to outdated laws that dictate the parameters of employment for women. One recent global study made the following findings:

[T]here are 104 economies with labor laws that restrict the types of jobs women can undertake, and when and where they are permitted to work. . . . The type of discrimination women face varies from state to state. In 123 countries there are no laws to stop sexual harassment in education, and 59 countries don't legislate against it in the workplace. In 18 countries husbands have the legal right to prevent their wives from working, while four countries prohibit women from registering a company.²⁶

When women do become employed, they earn eighty cents for every dollar that men make.²⁷ Even when men and women perform the same tasks, there are

<https://www.tuc.org.uk/news/coronavirus-shows-working-women-are-still-underpaid-and-undervalued-says-tuc>.

23. See Julie Goldscheid, *Gender Violence and Work: Reckoning with the Boundaries of Sex Discrimination Law*, 18 COLUM. J. GENDER & L. 61, 71 (2008).
24. *Id.* at 74.
25. *The Gender Gap in Employment: What's Holding Women Back?*, INT'L LABOUR ORG. (Dec. 2017), <https://www.ilo.org/infostories/en-GB/Stories/Employment/barriers-women>.
26. Johnny Wood, *104 Countries Have Laws that Prevent Women from Working Certain Jobs*, WORLD ECON. FORUM (Aug. 13, 2018), <https://www.weforum.org/agenda/2018/08/104-countries-have-laws-that-prevent-women-from-working-in-some-jobs/>; see also Alexander Marquardt, *Why Can't Russian Women Drive Buses?*, ABC NEWS (July 31, 2009), <https://abcnews.go.com/International/russian-women-drive-buses/story?id=8220576> (finding that, in Russia, women are not allowed to become firefighters, blacksmiths, bus drivers, train operators and ship captains, along with industrial, construction, metallurgy and mining trades).
27. Nikki Graf et al., *The Narrowing, But Persistent, Gender Gap in Pay*, PEW RESEARCH (Mar. 27, 2019), <https://www.pewresearch.org/fact-tank/2019/03/22/gender-pay-gap-facts/>.

restrictions placed on women.²⁸ For example, some Indian cities have laws that prevent women from working as late as their male counterparts.²⁹

Many women who can find jobs are underemployed.³⁰ Underemployment is not the same as unemployment, but it can have an equally devastating impact.³¹ If a woman's skills are underutilized or her work is limited to part-time, she is said to be underemployed.³² The most common cause of underemployment is lack of education, which has its own set of underlying factors that will be discussed later.³³

The type of employment women can attain also plays heavily into maintaining the status quo of poverty.³⁴ More often than not, women are relegated to domestic positions such as childcare, housekeeping, and caretaking of the elderly, ill, and infirmed.³⁵ Each and every one of these jobs has value and contributes

28. Wood, *supra* note 26.

29. *Id.*

30. See Jen Hubley Luckwaldt, *Women Are More Likely to be Underemployed than Men*, Payscale (June 29, 2016), <https://www.payscale.com/career-news/2016/06/underemployed-women> (“Women were more likely to consider themselves underemployed because they worked part-time, but wanted full-time work.”).

31. Alison Doyle, *The Difference Between Underemployment and Unemployment*, THE BALANCE CAREERS (Sept. 28, 2019), <https://www.thebalancecareers.com/underemployment-definition-and-examples-2064158> (“There is a difference between being unemployed and underemployed. Unemployed means you don't have a job, while underemployment means the job you have is inadequate. Sometimes it is used when talking about people who are working in a lower capacity than one in which they are qualified. However, most often, underemployment is connected to jobs that are lower-paid or for a limited number of hours.”).

32. *Id.*

33. See *infra* Part II.

34. See Charles Bruner et al., *Women, Work and Poverty: The 21st Century Challenge*, CHILD & FAMILY POLICY CTR. (2009), https://www.cfpciowa.org/documents/news/Women_Work_and_Poverty_931A98FCB03D.pdf.

35. Lisa Johnson Mandell, *Where Women Work: 20 Most Common Occupations*, AOL.COM (July 27, 2010), <https://www.aol.com/2010/07/27/where-women-work/>.

significantly to the economy.³⁶ Men could not work if their children were not cared for, men could not work if family members needed attending, and men in “traditional” homes would not abide by their homestead being untended.³⁷ Society does not recognize the value of these aforementioned tasks; therefore, the women carrying out these duties are not paid commiserate with their actual contribution to the society.³⁸ Here, they are fully employed, yet underpaid.³⁹ Besides, many poor women live in rural areas⁴⁰ where opportunities are fewer, and choices do not present themselves. When they do, it usually results in the underemployment discussed above.⁴¹

In the United States, both working and unemployed Black and Latina women are twice as likely as White women to be living in poverty,⁴² and elderly

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36. Eve Livingston, *Will It Take a Global Pandemic to Recognise the Value of Women's Work?*, THE HERALD (Mar. 16, 2020), <https://www.heraldsotland.com/news/18307271.eve-livingston-will-take-global-pandemic-recognise-value-womens-work/>.
 37. *Id.* (“The undervaluing of these workers has buoyed the economy, chalking up billions of pounds in savings from unpaid work and underpaid wages while they create the conditions for the rest of society to flourish.”).
 38. *Id.* (“A combination of factors have kept [women’s essential services] workforces low-paid and quiet.”).
 39. *Id.*
 40. Inter-Agency Task Force on Rural Women, *Facts & Figures: Rural Women and The Millennium Development Goals*, UN WOMEN WATCH (2012), <https://www.un.org/womenwatch/feature/ruralwomen/facts-figures.html> (“Rural women play a key role in supporting their households and communities in achieving food and nutrition security, generating income, and improving rural livelihoods and overall well-being. They contribute to agriculture and rural enterprises and fuel local and global economies. As such, they are active players in achieving the MDGs. Yet, every day, around the world, rural women and girls face persistent structural constraints that prevent them from fully enjoying their human rights and hamper their efforts to improve their lives as well as those of others around them. In this sense, they are also an important target group for the MDGs [Millennium Development Goals].”).
 41. *Id.*
 42. Michael B. Sauter, *Faces of Poverty: What Racial, Social Groups Are More Likely to Experience It?*, USA TODAY (Oct. 10, 2018), <https://www.usatoday.com/story/money/economy/2018/10/10/faces-poverty-social-racial-factors/37977173/>.

women are far more likely to be poorer than their male counterparts.⁴³ The underemployed, the elderly, and mothers raising children alone are women who skirt around the edges of poverty, susceptible to the same fate as the unemployed.⁴⁴

The last factor, which contributes immensely to global female poverty, is pregnancy.⁴⁵ Most countries have exemptions for pregnancy; therefore, women who work are paid maternity leave and given medical exemptions for becoming ill during their pregnancies.⁴⁶ The United States is a glaring exception to this practice.⁴⁷ However, the expectation that a woman will care for the newborn raises the issue of childcare, which determines when and if she can go back to work.⁴⁸ Many societies prohibit family planning, including birth control. As a result, unplanned pregnancy becomes a revolving door of poverty for many women.⁴⁹

III. STATUS OF WOMEN AND POVERTY AS A RESULT OF COVID-19

In a medical emergency, such as COVID-19, poverty is a pre-existing condition for the women who already live in poverty or on the edges thereof. Further, many other issues impact their lives that complicate both medical and economic treatment.⁵⁰ Masks and social distancing are not options for women who

43. *Women 80% More Likely to be Impoverished in Retirement*, NAT'L INST. ON RETIREMENT SECURITY (Mar. 1, 2016), <https://www.nirsonline.org/2016/03/women-80-more-likely-to-be-impoverished-in-retirement/>.

44. See Sauter, *supra* note 42.

45. See *id.*

46. Jessica Deahl, *Countries Around the World Beat the U.S. On Paid Parental Leave*, NPR (Oct. 6, 2016), <https://www.npr.org/2016/10/06/495839588/countries-around-the-world-beat-the-u-s-on-paid-parental-leave> (finding that “only a small handful” of 183 countries surveyed lack a national paid parental leave policy).

47. *Id.*

48. See Jayita Poduval & Murali Poduval, *Working Mothers: How Much Working, How Much Mothers, and Where Is the Womanhood?*, NAT'L CTR. FOR BIOTECHNOLOGY INFO, (2008), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3151456/>.

49. *Id.*

50. *Briefing Note: The Economic Impacts of COVID-19 and Gender Inequality Recommendations for Policymakers*, UNDP (2020), https://reliefweb.int/sites/reliefweb.int/files/resources/PNUD_GENERO_COVID19_ENG_FINAL_3.pdf [hereinafter *Briefing Note*].

live in crowded households without resources to protect them or their families from contamination.⁵¹

These facts present a gloomy picture of the status of women globally. However, the recognition of the global economic inequalities women face daily inspired some countries to better their economies by bettering opportunities for women.⁵² Forces, such as the internet, have served to inspire change and growth for global women's rights.⁵³ The future of global women's rights looked promising until COVID-19 happened, which not only disrupted a train that had been moving forward but literally stopped it in its tracks.

COVID-19 is deemed a pandemic for very obvious reasons: it has impacted every corner of the world and put a strain on already faltering economies.⁵⁴ Unemployed women cannot expect to find work during a pandemic.⁵⁵ The choice here is not underemployment but rather no employment at all.⁵⁶ In many places, women, who are employed, work as caretakers for the ill, many of whom are sick with COVID-19.⁵⁷ Studies show that “[t]oday, more than 75% of caregivers are women. . . . Though men also provide assistance, data shows that women spend as much as 50% more time caring for a family member than men.”⁵⁸ According to the Intergovernmental Labour Organization, “[w]omen perform 76.2% of total unpaid care work, more than three-times as much as men.” In Asian and Pacific countries,

51. *Id.*

52. Deahl, *supra* note 46.

53. Catherine Powell, *How Social Media Has Reshaped Feminism*, COUNCIL ON FOREIGN RELATIONS (June 18, 2018), <https://www.cfr.org/blog/how-social-media-has-reshaped-feminism>.

54. Turse, *supra* note 4.

55. See Titan Alon et al., *The Impacts of COVID-19 on Gender Equality*, NBER WORKING PAPER SERIES 1, 3-4 (2020), <https://www.nber.org/papers/w26947.pdf>.

56. *See id.*

57. *See Women, Caregiving, and COVID-19*, CTRS. FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/women/caregivers-covid-19/index.html> (last visited Oct. 30, 2020); *Briefing Note*, *supra* note 50.

58. Courtney Connley, *How Women Could Be Uniquely Impacted by the Coronavirus*, CNBC.COM (Mar. 18, 2020), <https://www.cnbc.com/2020/03/18/how-the-coronavirus-could-impact-women-in-health-care.html>.

that figure rises to 80%.⁵⁹ As health struggles become stretches, many people with COVID-19 will need to be cared for at home, adding to women's overall burden, as well as putting them at greater risk of becoming infected.

Thus, in addition to being underpaid and undervalued, women are now at a higher risk of contracting the disease because of the population they care for.⁶⁰ In countries that have mandated quarantines, women with domestic jobs cannot work, and those who work in health care are now at a greater risk of exposure to the virus.⁶¹ Marginalized women are placed in a "no win" situation based upon their status as poor and female.⁶²

Although these facts apply more broadly to poorer, marginalized women, whose daily existence is colored by this reality, they also apply to women in industrialized countries living on the edges of poverty.⁶³ More specifically, in the United States, COVID-19 has had a disproportionate impact on women of color.⁶⁴ In addition to living in a country with a history of disparate healthcare systems that have negatively impacted women of color, these women have underlying conditions that make them more vulnerable to the virus.⁶⁵ Social inequalities, low-wage jobs, and lack of a sufficient safety net have placed American women of color on the edges of poverty.⁶⁶ The United States has not provided these vulnerable communities with the support that one would anticipate from a dominant world power. This neglect has resulted in the disproportionate impact that renders many American women on par with the situation of their global counterparts.⁶⁷

59. *ILO Calls for Urgent Action To Prevent Looming Global Care Crisis*, INT'L LABOUR ORG. (June 28, 2018), [https://www.ilo.org/africa/media-centre/pr/WCMS_633460/lang—en/index.htm](https://www.ilo.org/africa/media-centre/pr/WCMS_633460/lang-en/index.htm).

60. Connley, *supra* note 58.

61. *See Briefing Note, supra* note 50; *see also id.*

62. Brita Fernandez Schmidt, *Marginalised Women Are Being Left Behind in the Coronavirus Pandemic*, THOMSON REUTERS FOUND. (May 7, 2020), <https://news.trust.org/item/20200507093507-16eva/>.

63. *See Briefing Note, supra* note 50.

64. Douglas Holtz-Eakin, *The Disproportionate Impact of Covid-19 on Communities of Color*, AM. ACTION F. (May 27, 2020), <https://www.americanactionforum.org/testimony/the-disproportionate-impact-of-covid-19-on-communities-of-color/>.

65. *Id.*

66. *Id.*

67. *Id.*

It goes without saying that hunger is the twin brother of poverty.⁶⁸ Thus, women are not only poorer than men—they are hungrier than men.⁶⁹ A policy brief from the United Nations Sustainable Development Group (UNSDG) states, “[i]t is essential to recognize that those people most vulnerable to food and nutrition crisis in the context of COVID-19 are those who were already exposed to critical food and dietary deprivations before the onset of the crisis.”⁷⁰ The brief further states:

We face an impending global food emergency of unknown, but likely very large proportions. The outbreak of the COVID-19 pandemic and the control and mitigation measures enforced worldwide, combined with the massive economic impacts of these necessary measures, are the proximate causes of this emergency. Conflict, natural disaster, and the arrival of pests and plagues on a transcontinental scale all preceded COVID-19 and serve as additional stresses in many contexts. But there are also deep structural problems in the way our food systems function, which we can no longer ignore.⁷¹

The looming food shortage will have a devastating effect on those women who are already underfed, malnourished, and on the brink of starvation. There are further generational implications because poor, neglected women still become pregnant, and their plight, which has been exacerbated by COVID-19, may result in untold deaths for both mothers and infants.⁷²

IV. STATUS OF WOMEN AND THE LACK OF EDUCATIONAL OPPORTUNITIES

68. See Erickson, *supra* note 11.

69. *Id.*

70. U.N. SUSTAINABLE DEVELOPMENT GROUP, *Policy Brief: The Impact of COVID-19 on Food Security and Nutrition* 8 (2020), <https://unsdg.un.org/sites/default/files/2020-06/SG-Policy-Brief-on-COVID-Impact-on-Food-Security.pdf>.

71. *Id.* at 6.

72. See Olivia Giovetti, *COVID-19, Women, and Girls: Not the Great Equalizer*, CONCERN WORLDWIDE U.S. (May 22, 2020), <https://www.concernusa.org/story/covid-19-women-girls/>.

PRE-COVID-19

Statistics and studies demonstrate that “[w]omen make up more than two-thirds of the world’s 796 million illiterate people.”⁷³ This illiteracy is directly correlated to women’s inability to attend school compared to their male counterparts.⁷⁴ Several factors contribute to why women and girls have less access to education. Poverty, gender roles, refugee status, menstruation, child marriage, and gender-based violence are vital factors that have the net effect of denying women and girls the education and tools they need to conquer devastating poverty.⁷⁵ Poverty, coupled with these factors, dictates the quality of their lives. A brief examination of these factors demonstrates the impact they each have on preventing women and girls from receiving an education that lifts them from poverty. Each factor is daunting, but when taken in their totality, they potentially create a barrier too challenging to breach.

A. Poverty

Of all of the factors listed above, poverty remains the most important one contributing to the lack of educational opportunities.⁷⁶ There are many places where the actual cost of attending school might be free, but there are other fees attached to gaining an education.⁷⁷ There may be a requirement that students wear a uniform or purchase supplies.⁷⁸ A family with limited resources may opt to educate the males in the family, surmising that the males will offer a higher return to the family on the

73. *Facts & Figures*, UN WOMEN, <https://www.unwomen.org/en/news/in-focus/commission-on-the-status-of-women-2012/facts-and-figures> (last visited Oct. 30, 2020).

74. *See id.*

75. *See generally id.* (explaining factors that contribute to the poverty of rural women).

76. *See generally* Meagan Neal, *Small Costs, Big Impact: How a \$6 Uniform Can Change a Girl’s Future*, ONE (Nov. 1, 2017), <https://www.one.org/us/blog/uniform-costs-girls-education/> (describing how poverty correlates to lack of educational opportunities in the context of school uniforms).

77. *Id.*

78. *Id.* (discussing how the cost of school uniforms serves as a barrier to girls’ education).

investment in education.⁷⁹ Additionally, transportation and remoteness play a role in denying girls an education because of the cost of just getting to the facility.⁸⁰

Education is a vaccine against poverty. The Inter-Agency Task Force on Rural Women states that “[a]n extra year of primary school increases girls’ eventual wages by 10-20 percent, encourages girls to marry later and have fewer children, and makes them less likely to experience violence.”⁸¹ Unfortunately, this education vaccine is unavailable to much of the global female population.⁸²

Poverty is directly correlated with education.⁸³ When women and girls have greater difficulty and fewer opportunities in accessing education, their status remains static with no opportunity to stop cyclical poverty, a system in which so many women exist and operate.⁸⁴ Education is key.⁸⁵ Anna Glass and Petra Szonyegi write:

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79. U.N. Human Rights Council, *Realization of the Equal Enjoyment of the Right to Education by Every Girl: Report of the United Nations High Commissioner for Human Rights*, U.N. Doc. A/HRC/35/11 ¶¶ 10, 20, (2017), https://www.westafrica.ohchr.org/IMG/pdf/reportgirlsequalrighteducation-compressed_1_.pdf.
80. *Id.* at ¶¶ 20, 25.
81. Inter-Agency Task Force on Rural Women, *supra* note 40.
82. *Girls’ Education: Gender Equality in Education Benefits Every Child*, UNICEF, <https://www.unicef.org/education/girls-education> (last visited Oct. 18, 2020) (stating that 132 million girls worldwide are not in school).
83. *Reducing Global Poverty through Universal Primary and Secondary Education*, UNESCO INST. FOR STATISTICS 9, 10-11 (2017), <http://uis.unesco.org/sites/default/files/documents/reducing-global-poverty-through-universal-primary-secondary-education.pdf>.
84. *Gender Roles Can Create Lifelong Cycle of Inequality*, SAVE THE CHILDREN (2020), <https://www.savethechildren.org/us/charity-stories/how-gender-norms-impact-boys-and-girls>.
85. Anna Glass & Petra Szonyegi, *Enhancing Gender Equality in Global Education*, ODU UNITED NATIONS SOC’Y 1, 3 (2018), <https://www.odu.edu/content/dam/odu/offices/mun/issue-brief-2019/ib-hrc-gender-equality-in-education.pdf> (quoting Melanne Verveer, Statement by Ambassador Melanne Verveer, U.S. Ambassador-at-Large for Global Women’s Issues and Representative of the United States to the UN Commission on the Status of Women, at the 55th Session of the Commission on the Status of Women, at U.N. Headquarters (Feb. 28, 2011), <https://www.un.org/womenwatch/daw/csw/csw55/statements/USA.pdf>).

Data obtained by the UN Commission on the Status of Women reports that “an extra year of primary school increases girls’ future wages by an estimated 10 to 20 percent, and an extra year of secondary school increases future wages by 15 to 25 percent.” . . . Quality education for women reduces gender inequality in every respect by increasing the representation of women in the political and economic spheres and teaching values of equality to young children.⁸⁶

Thus, it is self-evident that education is imperative for marginalized women to raise their standard of living.

Girls’ education goes beyond getting girls into school. It is also about ensuring that girls learn and feel safe while in school; have the opportunity to complete all levels of education acquiring the knowledge and skills to compete in the labor market; learn the socio-emotional and life skills necessary to navigate and adapt to a changing world; make decisions about their own lives; and contribute to their communities and the world.⁸⁷

B. *Gender Roles*

Gender roles and tradition also serve as impediments to educating women and girls.⁸⁸ “Poverty, geographical isolation, minority status, disability, early marriage and pregnancy, gender-based violence, and traditional attitudes about the status and role of women, are among the many obstacles that stand in the way of women and girls fully exercising their right to participate in, complete and benefit from education.”⁸⁹

86. *Id.*

87. *Girls’ Education*, WORLD BANK (Sept. 30, 2020), <https://www.worldbank.org/en/topic/girlseducation>.

88. *Education and Gender Equality*, UNESCO, <https://en.unesco.org/themes/education-and-gender-equality> (last visited Oct. 30, 2020).

89. *Id.*

UNESCO estimates that between 130 million girls between the age of six and seventeen are not currently attending school.⁹⁰ Gender roles and male privilege dictate that when educational opportunities are available, they go to the males in the family.⁹¹ Young girls' safety is also implicated due to long walking distances to attend school and being unaccompanied by a male family member for protection.⁹²

C. Child Marriage

Child marriages also impact a girl's ability to obtain a sustained education. Many societies encourage and endorse child marriages.⁹³ To be clear, the child involved in the situation is usually female.⁹⁴ UNICEF reported that 700 million

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90. Jim Yong Kim, *To Build a Brighter Future, Invest in Women and Girls*, WORLD BANK BLOGS (Mar. 8, 2018), <https://blogs.worldbank.org/voices/build-brighter-future-invest-women-and-girls> (“According to UNESCO estimates, 130 million girls between the age of 6 and 17 are out of school, and 15 million girls of primary-school age – half of them in sub-Saharan Africa – will never enter a classroom.”).
 91. Danielle Paquette, *Kids Around the World Are Out of School. Millions of Girls Might Not Go Back*, WASH. POST (June 13, 2020), https://www.washingtonpost.com/world/africa/coronavirus-girls-education-west-africa/2020/06/12/84a23c44-a5a8-11ea-b619-3f9133bbb482_story.html.
 92. *Girls' Education*, *supra* note 87; see also Dr. Ed Ilechukwu, *Girl Education Statistics*, GIFTED (Nov. 8, 2017), <https://giftedafricangirls.org/education-gender-statistics> (“Violence also negatively impacts access to education and a safe environment for learning. For example, in Haiti, recent research highlights that one in three Haitian women (ages 15 to 49) has experienced physical and/or sexual violence, and that of women who received money for sex before turning 18 years old, 27 percent reported schools to be the most common location for solicitation.”).
 93. Daniele Selby & Carmen Singer, *Child Marriage: What You Need to Know and How You Can Help End It*, GLOB. CITIZEN (Aug. 27, 2019), <https://www.globalcitizen.org/en/content/child-marriage-brides-india-niger-syria>; See also Ilechukwu, *supra* note 92 (“Child marriage is also a critical challenge. Child brides are much more likely to drop out of school and complete fewer years of education than their peers who marry later. This affects the education and health of their children, as well as their ability to earn a living. According to a recent report, more than 41,000 girls under the age of 18 marry every day and putting an end to the practice would increase women's expected educational attainment, and with it, their potential earnings. According to estimates, ending child marriage could generate more than \$500 billion in benefits annually each year.”).
 94. *Child Marriage*, UNICEF (Apr. 2020), <https://data.unicef.org/topic/child-protection/child-marriage/>.

women around the world were married as young girls.⁹⁵ Child marriage is usually defined as marriage under the age of eighteen.⁹⁶ However, in some countries, girls as young as seven or eight are married off to older men by their families.⁹⁷ As one study found, “[c]hild marriage effectively ends a girl’s childhood, *curtails her education*, minimizes her economic opportunities, increases her risk of domestic violence, and puts her at risk for early, frequent, and very high-risk pregnancies.”⁹⁸ This is a global problem and a pivotal disrupter to elevating the status of women and girls.⁹⁹

Child marriage occurs in every region of the world, and is practiced across cultures, religions, and ethnicities. The highest rates of child marriage by country are observed in Sub-Saharan Africa, in countries such as Niger, the Central African Republic, and Chad. However, the largest number of child brides live in South Asia where 46 percent of girls are married before the age of 18.¹⁰⁰

The preemption of a girl’s education perpetuates the cycle of poverty and vulnerability for her and, therefore, future generations.¹⁰¹ This has been the reality for millions of women and girls before there was a pandemic.

95. *Ending Child Marriage: Progress and Prospects*, UNICEF 1, 2 (2014), https://www.unicef.org/media/files/Child_Marriage_Report_7_17_LR..pdf.

96. *The Facts on Child Marriage*, INT’L WOMEN’S HEALTH COALITION, <https://iwhc.org/wp-content/uploads/2014/05/iwhc-child-marriage-facts.pdf>.

97. *Id.*

98. *Id.* (emphasis added).

99. *Id.* at 2.

100. *The Facts on Child Marriage*, *supra* note 96.

101. See Amanda L. Strayer, *Protecting Rights “In Small Places”: Why Depriving Girls of the Right to Education is Gender-Based Persecution and a Crime Against Humanity*, 50 GEO. J. INT’L L. 947, 969-72 (2019).

D. *Refugee Status*

Refugees are a stateless and vulnerable population, and women make up 80% of all refugees and displaced persons.¹⁰² Countries that have signed the 1951 Convention on the Status of Refugees¹⁰³ have an obligation to protect all refugees.¹⁰⁴ Part of the protection includes not just providing educational opportunities but providing equal protection of education for both males and females.¹⁰⁵ Notwithstanding this written agreement, UNESCO reports that “[g]irls form the majority of lower secondary school age children out of school in conflict zones. This fact has had an enormous impact on women’s and girl’s economic status.”¹⁰⁶

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102. *Women Refugees on the Front Lines of COVID-19 Response*, UN WOMEN (June 18, 2020), <https://www.unwomen.org/en/news/stories/2020/6/compilation-women-refugees-and-covid-19#:~:text=Half%20of%20the%20world's%20refugees,%2D%20and%20middle%20Dincome%20countries.>
103. *The 1951 Refugee Convention*, IMMIGRATION HISTORY, <https://immigrationhistory.org/item/the-1951-refugee-convention/> (“The 1951 Refugee Convention is the key legal document governing international standards for refugee work and is administered by the United Nations High Commission on Refugees (UNHCR), established in 1950 to handle the millions of people displaced in the aftermath of World War II. Ratified by 145 State parties, the convention defines the term ‘refugee’ and outlines the rights of the displaced, as well as the legal obligations of nations and states to protect them. The U.S. government declined to ratify this convention. The core principle is non-refoulement, which asserts that a refugee should not be returned to a country where they face serious threats to their life or freedom. This is now considered a rule of customary international law. Standards and procedures for enacting the convention were agreed to in the 1967 Protocol Relating to the Status of Refugees, which the U.S. government did ratify. UNHCR serves as the ‘guardian’ of the 1951 Convention and its 1967 Protocol and works with States to ensure that the rights of refugees are respected and protected.”).
104. Penelope Mathew, *Address – Legal Issues Concerning Interception*, 17 GEO. IMMIGR. L. J. 221, 237-38 (2003).
105. Kristine M. Fox, *Gender Persecution: Canadian Guidelines Offer A Model for Refugee Determination in the United States*, 11 ARIZ. J. INT’L & COMP. L. 117, 130-31 (1994).
106. Filippo Grandi, *Her Turn*, UNHCR, <https://www.unhcr.org/herturn/> (last visited Oct. 30, 2020).

E. Menstruation

“Menstruation is stigmatized around the world[,] and the cultural shame attached to the natural process makes girls feel too embarrassed to fully participate in society.”¹⁰⁷ Girls around the globe are missing school because of their periods. The stigma of bleeding, the lack of proper hygiene, the scarcity of supplies, and the lack of private facilities cause them to skip school on “those days.”¹⁰⁸ Many girls drop out of school once they start their periods.¹⁰⁹ To first world governments, this may appear to be a non-issue, but for millions of girls and women around the globe, the inability to manage their hygiene during their menstrual cycle curtails a girl’s education.¹¹⁰

F. Gender Violence

Gender-based violence has prevented women and girls from pursuing an education.¹¹¹ Rape, forced pregnancies, and child marriages are forms of violence that have curtailed educational opportunities for girls.¹¹² Statistics show that “approximately 15 million adolescent girls (aged 15 to 19) have experienced forced sex (forced sexual intercourse or other sexual acts) at some point in their lives.”¹¹³ These forced sexual acts lead to both the aforementioned pregnancies and

107. Leah Rodriguez, *Girls’ Education: 7 Obstacles and How to Overcome Them*, GLOB. CITIZEN (Sept. 24, 2019), <https://www.globalcitizen.org/en/content/barriers-to-girls-education-around-the-world/>.

108. See Phineas Rueckert, *Why Periods Are Keeping Girls Out of School & How You Can Help*, GLOB. CITIZEN (May 30, 2018), <https://www.globalcitizen.org/en/content/menstrual-hygiene-day-education/>.

109. *Id.*

110. See Jane Dineen, *How Good Menstrual Hygiene Keeps Girls Learning*, UNICEF USA (May 28, 2020), <https://www.unicefusa.org/stories/how-good-menstrual-hygiene-keeps-girls-learning/34632>.

111. See Selim Jahan, *Violence Against Women, A Cause and Consequence of Inequality*, UNDP (Nov. 19, 2018), <http://www.hdr.undp.org/en/content/violence-against-women-cause-and-consequence-inequality>.

112. See Lisa Avalos et al., *Ending Female Genital Mutilation & Child Marriage in Tanzania*, 38 FORDHAM INT’L L.J. 639, 645-46 (2015).

113. *Guidance on Menstrual Health and Hygiene*, UNICEF (2019), <https://www.unicef.org/wash/files/UNICEF-Guidance-menstrual-health-hygiene-2019.pdf>.

community stigma that have forced girls to either not attend school or to drop out.¹¹⁴ In some male-dominated cultures, poverty, unemployment, and frustration have led men to physically and sexually abuse women and girls whom they view as inferior and ill-suited for education.¹¹⁵

V. STATUS OF WOMEN AND THE LACK OF EDUCATIONAL OPPORTUNITIES AS A RESULT OF COVID-19

The picture painted previously does not tell the entire story. Because the facts enunciated above have echoed around the world, numerous initiatives have been proposed and enacted that seek to destroy the barriers that prevent girls and women from receiving the education they deserve.¹¹⁶ In many instances, governments and global agencies have joined forces to combat the negative forces and place women and girls on a trajectory to receive an education.¹¹⁷

One may rightfully conclude that there has been an upward trend to give women and girls real opportunities to end the cycle of poverty.¹¹⁸ In recent years, there has been a spotlight on the fact that educated, employed women make a state stronger, and that it is incumbent upon governments to support women – avoiding a larger humanitarian crisis that will impact both sexes alike.¹¹⁹ Activists have worked hard to stop child marriage.¹²⁰ Companies initiated programs to supply sanitary

114. See Elin Martínez, *Leave No Girl Behind in Africa*, HUMAN RIGHTS WATCH (June 14, 2018), <https://www.hrw.org/report/2018/06/14/leave-no-girl-behind-africa/discrimination-education-against-pregnant-girls-and#>.

115. See John Gacinya, *Gender Inequality as the Determinant of Human Trafficking in Rwanda*, SEXUALITY, GENDER & POLICY (2020), <https://onlinelibrary.wiley.com/doi/full/10.1002/sgp2.12018>.

116. See, e.g., Rodriguez, *supra* note 107; *Girls' Education*, *supra* note 87.

117. See Melissa Bellitto, *The World Bank, Capabilities, and Human Rights: A New Vision for Girls' Education Beyond 2015*, 27 FLA. J. INT'L L. 91, 92-93 (2015).

118. See Ginanne Brownell, *Girls Have Greater Access to Education Than Ever*, FOREIGN POLICY (Oct. 9, 2020), <https://foreignpolicy.com/2020/10/09/girls-women-education-equality-unesco-global-education-monitoring-report/>.

119. See *Facts and Figures: Economic Empowerment*, UN WOMEN, <https://www.unwomen.org/en/what-we-do/economic-empowerment/facts-and-figures> (last visited Oct. 30, 2020).

120. See Christie McLeod et al., *Does Climate Change Increase the Risk of Child Marriage? A Look at What We Know – And What We Don't – With Lessons from Bangladesh and Mozambique*, 38 COLUM. J. GENDER & L. 96, 109 (2019).

products to women and girls so that their monthly menstrual cycles do not disrupt their education to the extent of essentially ending it.¹²¹ Additionally, female refugees are afforded the chance to receive both a primary and high school education.¹²² It has become apparent that a further decline in the global status of women signals a decline in the well-being of the entire world.

In 2020, the world experienced a pandemic known as COVID-19 that has proven to be disastrous for marginalized women. To prevent the rampant spread of the virus, authorities have undertaken numerous health and safety precautionary measures to protect the public.¹²³ One of these measures has been to close schools world-wide.¹²⁴ Although decisions to close schools were necessary from a public health perspective, that closure has negatively and disproportionately impacted girls.¹²⁵ There are estimates that global school closures, due to COVID-19, have affected 1.5 billion students¹²⁶ and impacted up to 743 million girls.¹²⁷ A report by Refugee Intergovernmental states:

COVID-19 shutdowns will disrupt early learning, formal education and livelihoods. The lives of girls, their families and communities face extreme stress from health and economic burdens, crowding

121. See Kelly Roche, *Peel School Board Needs to Offer Menstrual Products Starting in Elementary School*, THE STAR (Aug. 3, 2020), <https://www.thestar.com/opinion/contributors/2020/08/03/peel-school-board-needs-to-offer-menstrual-products-starting-in-elementary-school.html>.

122. *Id.*

123. See generally, Filippo Grandi, *Coming Together for Refugee Education*, THE UN REFUGEE AGENCY (2020), <https://www.unhcr.org/en-us/publications/education/5f4f9a2b4/coming-together-refugee-education-education-report-2020.html>.

124. *How to Protect Yourself & Others*, CDC, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html> (last visited October 30, 2020).

125. *Education: From Disruption to Recovery*, UNESCO, <https://en.unesco.org/covid19/educationresponse> (last visited Oct. 30, 2020); Stefania Giannini & Anne-Birgitte Albrechtsen, *COVID-19 School Closures Around the World Will Hit Girls the Hardest*, UNESCO (Mar. 31, 2020), <https://en.unesco.org/news/covid-19-school-closures-around-world-will-hit-girls-hardest>.

126. Paquette, *supra* note 91.

127. *COVID-19: The Impact on Girls*, PLAN INT'L 1, 2 (2020), https://reliefweb.int/sites/reliefweb.int/files/resources/covid-19-impact_on_girls.pdf.

and isolation. Measures to curb the disease have worsened existing inequalities, forcing girls out of school and placing them at heightened risk of violence in their home. With school and university closures affecting nearly 91% of the world's student population, over 1.5 billion learners have had their education disrupted, including 743 million girls. Nor can girls equally access online learning. Boys are 1.5 times more likely to own a phone than girls in low and middle-income countries and are 1.8 times more likely to own a smartphone that can access the internet.¹²⁸

The additional financial instability of families caused by the virus has forced families to decide who should receive the educational benefits from their limited resources and, as discussed above, those families usually opt to educate their sons.¹²⁹ There are costs to be incurred even when students do not need to buy uniforms, pay school fees, or provide some form of transportation to an actual physical structure.¹³⁰ Online schooling also requires a few fundamental resources, starting with electricity which may be unavailable to millions of girls.¹³¹ As reported by Refugee Intergovernmental, online learning also requires some form of technology in order to access the information.¹³² Families who have trouble providing food for their children will have greater difficulty providing smart phones, laptops, or iPads for online learning.¹³³ The option of homeschooling is neutralized by the fact that, in most instances of extreme poverty and illiteracy, the parents and family members are not educated; therefore, no one in the household can act as the instructor to

128. *Id.*

129. UNESCO, *supra* note 88.

130. George Psacharopoulos et al., *Lost Wages: The COVID-19 Cost of School Closures*, WORLD BANK GROUP 1, 5, 9 (2020), <https://openknowledge.worldbank.org/bitstream/handle/10986/34387/Lost-Wages-The-COVID-19-Cost-of-School-Closures.pdf?sequence=1&isAllowed=y>.

131. *SDG7: Data and Projections*, INT'L ENERGY AGENCY (Oct. 2020), https://www.iea.org/reports/sdg7-data-and-projections/access-to-electricity#abstract_

132. *Unequal Access to Remote Schooling Amid COVID-19 Threatens to Deepen Global Learning Crisis*, UNICEF (June 5, 2020), <https://www.unicef.org/press-releases/unequal-access-remote-schooling-amid-covid-19-threatens-deepen-global-learning>.

133. *Id.*

provide the homeschooling.¹³⁴ Moreover, once girls attempt to do schoolwork at home, there is a potential disruption of the performance of “female” chores.¹³⁵

Girls with refugee status are even more vulnerable if that is even possible.¹³⁶ Their needs have become secondary, even tertiary, to the needs of the government which has taken them into its borders.¹³⁷ All of the negative consequences of the virus delineated above are compounded by the fact that these women and girls are homeless in the true sense of the word and are truly at the mercy of the kindness of strangers.¹³⁸ The United States has already deported thousands during the COVID-19 pandemic.¹³⁹ Many of those were children, half of which are girls.¹⁴⁰ None of these children were privy to education during their detention, and most will not have the benefits of education in the countries in which they were deposited. Not only are female children left without the prospect of an education, the act of deportation makes them potential candidates for child sex trafficking and kidnapping.¹⁴¹

In addition, COVID-19 has upended programs, plans, and initiatives that were designed to address the global lack of education for women and girls.¹⁴² The June 2020 headline of the Washington Post declared “Kids around the world are out of school. Millions of girls might not go back.”¹⁴³ The article describes the situations of girls who have fallen through the cracks when their schools closed

134. Bernard J. King, *Poverty and Literacy Development: Challenges for Global Educators* (2011), https://eprints.usq.edu.au/21478/2/King_PAMA2011_PV.pdf.

135. Paquette, *supra* note 91.

136. Grandi, *supra* note 123.

137. *See id.*

138. Qais Alemi et al., *Refugees and COVID-19: Achieving a Comprehensive Public Health Response*, WHO (Aug. 2020), <https://www.who.int/bulletin/volumes/98/8/20-271080/en/>.

139. Michelle Brane, *U.S. Deported Thousands Amid COVID-19 Outbreak. Some Prove to Be Sick*, N.Y. TIMES (Apr. 18, 2020), <https://www.nytimes.com/2020/04/18/us/deportations-coronavirus-guatemala.html>.

140. *See id.*

141. *Id.*

142. Michael Gordon Voss et al., *The Current and Potential Impact of COVID-19 on Nonprofits*, STANFORD SOCIAL INNOVATION REV. (July 15, 2020), https://ssir.org/podcasts/entry/the_current_and_potential_impact_of_covid_19_on_nonprofits#.

143. Paquette, *supra* note 91.

because of COVID-19.¹⁴⁴ Many of them have opted out of returning to school for various reasons when schools do reopen.¹⁴⁵ The virus has caused a setback to literacy and education, and women and girls have borne the brunt of this tragedy.¹⁴⁶ Moreover, although understandable, resource allocation may prove to be the factor that will cause long-term and irreparable damage to women and girls globally because it has the potential to create several more generations that continue the cycle of extreme poverty and illiteracy.¹⁴⁷

COVID-19 has also increased the incidence of gender-based violence.¹⁴⁸ Data shows that violence against women and girls has increased since the outbreak of the virus.¹⁴⁹ Quarantine and closed quarters have caused stress and tension, leading to this increase.¹⁵⁰ Girls who are in environments where there is violence against them cannot learn.¹⁵¹

144. *Id.*

145. *Id.*

146. *Id.*

147. *The Struggle For Equality - Why Girls Lose Out*, UNHCR, <https://www.unhcr.org/en-us/the-struggle-for-equality.html> (last visited Oct. 31, 2020) (“In fact, UNESCO estimates that educating mothers to lower secondary education in sub-Saharan Africa by 2030 could prevent 3.5 million child deaths between 2050 and 2060. In addition, if all girls were educated at secondary education level, it is estimated that child marriage for girls could fall by almost two-thirds, while 59 per cent fewer girls would become pregnant in sub-Saharan Africa and south and west Asia, which are among the top hosting regions for refugees. The benefits of educating girls are wide reaching. Many girls talk of the new respect they receive in their communities as a result of completing secondary school, giving them the confidence to speak out and to become leaders in their own right. Those who reach higher education, such as Esther, act as much-needed role models for succeeding generations.”).

148. Phumzile Mlambo-Ngcuka, *Violence Against Women and Girls: The Shadow Pandemic*, UN WOMEN (Apr. 6, 2020), <https://www.unwomen.org/en/news/stories/2020/4/statement-ed-phumzile-violence-against-women-during-pandemic>.

149. *Id.* (“As more countries report infection and lockdown, more domestic violence helplines and shelters across the world are reporting rising calls for help.”).

150. *Id.*

151. *Id.*

VI. FINAL THOUGHTS

This paper contains facts and figures that define the daily lives of marginalized women worldwide. It was written from the comfort of my home. I had food and fresh water available to me on a daily basis despite being quarantined. I had doctors' appointments I was able to attend and pay for. I had air conditioning during the oppressive heat, and I had technology at my disposal. I understand that I am privileged, and as such, I have a responsibility to be a voice for the voiceless and to tell the stories they cannot tell. The intent of this article is not to reduce marginalized women to statistics; rather, it is to emphasize their divine humanity.

Marginalized women and girls appear to be collateral damage to the COVID-19 pandemic. This virus has hamstrung the steady but limited strides previously made in the areas of easing poverty, increasing educational opportunities, and preventing domestic violence.¹⁵² COVID-19 has taken up all of the oxygen in the room. World economies are suffering, which has caused governments to reevaluate their budgetary priorities and reassign and realign resources away from marginalized women's critical needs to aid in combating COVID-19.¹⁵³ It is reasonable for governments to allocate resources to provide for the health and safety of their citizens. However, they must also remember that included in their citizenry is a vulnerable population needing greater protection and attention to prevent it from spiraling into a pandemic of hopelessness and death that could rival COVID-19.¹⁵⁴

Other things must be done to protect women and girls during this pandemic. The first step is an acknowledgement that this pandemic has disproportionately impacted marginalized women, coupled with the commitment that they must be protected at all costs. Secondly, and probably most importantly, women must have a seat at the table where decisions are being made about them. Too often these

152. Turse, *supra* note 4; Paquette, *supra* note 91; Mlambo-Ngcuka, *supra* note 148.

153. *Policy Brief: The Impact of COVID-19 on Women*, U.N. (Apr. 9, 2020), <https://www.un.org/sexualviolenceinconflict/wp-content/uploads/2020/06/report/policy-brief-the-impact-of-covid-19-on-women/policy-brief-the-impact-of-covid-19-on-women-en-1.pdf>

154. Elizabeth Flock, *I Was Depressed Before All of This. Now What?*, THE ATLANTIC (May 7, 2020), <https://www.theatlantic.com/health/archive/2020/05/pandemic-lockdown-depression-anxiety/611248/>.

decisions are made by male contingencies, lacking the necessary and critical input of those most impacted by the situation.¹⁵⁵

Because poverty is such an issue for marginalized women, they must be given as equal an opportunity to work as men, even in a depleted job market. Governments, which have the ability, can and should institute some sort of minimum income for all in need. In addition, food and medical care should be readily available to the most susceptible. Arguably, this requires cooperation on a global level because, in the event of a food shortage, as predicted, countries will seek to protect their own citizenry first. In the United States, social safety nets must be expanded to create a safe space for women living on the edges of poverty.

Also, schools and schooling must be made a priority for girls. Previous efforts to curtail the barriers preventing girls from receiving the education they so desperately require must continue. Governments must mitigate the effects of the virus on girls through effective planning and by financing initiatives to get them back into schools and keep them there. It is imperative that there be adequate funding both during the pandemic and for the years to come after. Governments must do more to address the issue of violence against women and girls if they are serious about educating them. Supporting these victims should be a priority.

Lastly, governments must uplift marginalized women and girls during and after COVID-19. In doing so, they are lifting up the health and well-being of their countries. They must actualize the notion that “women hold up half the sky,”¹⁵⁶ by ensuring that they survive, prosper, and receive the education they so richly deserve. In doing so, they must acknowledge the fact that *women are human*.¹⁵⁷

155. Anita Bhatia, *Women and COVID-19: Five Things Governments Can Do Right Now*, UN WOMEN (Mar. 26, 2020), <https://www.unwomen.org/en/news/stories/2020/3/news-women-and-covid-19-governments-actions-by-ded-bhatia>.

156. Nicholas Kristof & Sheryl WuDunn, *Half the Sky: Turning Oppression into Opportunity for Women Worldwide* (2009).

157. Merckel, *supra* note 3.

**PART TWO:
A TALE OF TWO PATIENTS: HOW COVID-19 HAS UNMASKED THE
INEQUALITIES EXPERIENCED BY AFRICAN AMERICAN WOMEN**

Professor Cheryl T. Page¹⁵⁸

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*Dear Sista, Never allow anyone to silence you.
 What you have to say needs to be heard loud and clear.
 It may not be popular.
 Sometimes people may totally misrepresent what you meant.
 Sometimes folks may not even want to hear what you have to say.
 Sometimes you will feel dismissed, misunderstood or disrespected.
 Your voice has the power to change the direction of a nation.
 Show up. Stand up. Speak up.
 Love,
 Your Sister¹⁵⁹*

Query: How has COVID-19 hurt African American women with respect to discrimination in health care in America?

Short Answer: COVID-19 has exacerbated health care disparities for African American women by exposing the conditions and gaps that existed previously.¹⁶⁰ Some of these are a general distrust of medical professionals given past exploitation and racist practices.¹⁶¹ Many African American females have lower and lesser access to quality health care, which worsens many health outcomes.¹⁶² Many of these women live in food deserts, which cause a poor diet and increased stress levels.¹⁶³ And they live in multi-generational homes that are more likely to be

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159. Veronica Very, *DEAR SISTA: A SACRED COLLECTION OF LOVE, LIGHT & LIBERATION LETTERS FROM MY SISTERS* (Pecan Tree Int'l ed., Wonder of Women Int'l 2019).
160. Piraye Beim, *The Disparities in Healthcare for Black Women*, ENDOMETRIOSIS FOUND. OF AM. (June 6, 2020), <https://www.endofound.org/the-disparities-in-healthcare-for-black-women>.
161. Darcel P. Scharff et al., *More than Tuskegee: Understanding Mistrust about Research Participation*, NAT'L CTR. FOR BIOTECHNOLOGY INFO. (Mar. 10, 2015), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4354806/>.
162. Beim, *supra* note 160.
163. David R. Williams, *Stress Was Already Killing Black Americans. COVID-19 Is Making It Worse*, WASH. POST (Mar. 13, 2020), <https://www.washingtonpost.com/opinions/2020/05/13/stress-was-already-killing-black-americans-covid-19-is-making-it-worse/>.

crowded and where social distancing is not feasible.¹⁶⁴ Perhaps the largest factor that leads to the disproportionate deaths of African Americans is the fact that many are “essential workers,” on the front line of this pandemic, with little to no personal protective equipment.¹⁶⁵ This essay will focus on these and other factors that cause African American women to be in a position to die in greater numbers than they represent in this country.

I. INTRODUCTION: JIM CROW RACISM TO LAISSEZ-FAIRE RACISM

In 2020, America finds itself in the throes of a crisis of racial disparities, inherent injustices and inequities, and the COVID-19 global pandemic. As we venture into the unknown arena that is the novel Coronavirus, we are seeing the devastating impact this pandemic is having on the African American community.¹⁶⁶ This essay will focus specifically on the negative impact of COVID-19 on African American females.

Two individuals who are strangers come into a hospital at the same time. One is a Caucasian female, and the other is an African American male. They both are suspected of having contracted COVID-19, and both require the same assistance. Who gets the attention and assistance first? Today, we all want to say that both patients should receive the same care and assistance at the same time. Unfortunately, that is not always the case, even in 2020.¹⁶⁷ The quality of health care today varies greatly depending on gender, race, and socioeconomic status.¹⁶⁸

164. Gene Balk, *Household Size Could Be Contributing to King County’s Racial Disparity in Coronavirus Cases*, SEATTLE TIMES (Mar. 26, 2020), <https://www.seattletimes.com/seattle-news/data/household-size-could-explain-king-countys-racial-disparity-in-coronavirus-cases/>.

165. Dion Rabouin, *Black Workers Overrepresented in Essential Work During Coronavirus Pandemic*, AXIOS.COM (June 3, 2020), <https://www.axios.com/black-workers-essential-coronavirus-c502fc2e-a4fc-4c4f-ae0c-722a50d74ecd.html>.

166. Charles Modlin, *African Americans Disproportionately Affected by COVID-19*, CLEVELAND CLINIC (May 21, 2020), <https://consultqd.clevelandclinic.org/african-americans-disproportionately-affected-by-covid-19/>.

167. Ruqaiijah Yearby, *When Is A Change Going To Come?: Separate & Unequal Treatment In Health Care Fifty Years After Title VI of the Civil Rights Act of 1964*, 67 SMU L. REV. 287, 300 (2014).

168. Khiara M. Bridges, *Implicit Bias and Racial Disparities in Health Care*, HUMAN RIGHTS MAGAZINE (Aug. 1, 2018),

Fair and equal access to quality health care service is a paramount issue throughout the United States. But, since the Civil War, access to health care has been racially discriminatory and unequal. Even after the passage of Title VI of the Civil Rights Act of 1964 and the election of the first African American president, this unequal access to health care persists.¹⁶⁹ This disparity in equal access to quality health care is even more stark as we see the gradual dismantling of the Affordable Care Act by the current administration and the unequal effects of COVID-19's devastation on the African American community.¹⁷⁰ Nowhere is that disparity more prevalent and hardest felt than on African American women.¹⁷¹

Today, we can see the lacking quality of an individual's health care service on the basis of race, ethnicity, and/or gender.¹⁷² The driving, deep-rooted causes for these disparities include health care administrators, bureaucracies, health care professionals and even patients.¹⁷³ To further understand these disparities in medical care today, we must also understand the ways in which racism has operated and continues to operate today. Racism refers to an organized system, rooted in an ideology of inferiority, that categorizes, ranks, and differentially allocates societal resources to human population groups.¹⁷⁴ Thus, in order to bridge the gap caused by health care inequalities, the difference must be recognized and addressed to bring adequate health care to all, equal human rights to all, and end racial disparities in health status. This is imperative given that negative impacts are felt most by African American women.¹⁷⁵

https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/the-state-of-healthcare-in-the-united-states/racial-disparities-in-health-care/; Ruqaiijah Yearby, *Breaking the Cycle of "Unequal Treatment" with Health Care Reform: Acknowledging & Addressing the Continuation of Racial Bias*, 44 CONN. L. REV. 1281 (2012); Vickie Lawrence MacDougall, *Medical Gender Bias and Managed Care*, 27 OKLA. CITY U. L. REV. 781 (2002).

169. Yearby, *supra* note 167.

170. Sheryl Gay Stolberg, *Trump Administration Asks Supreme Court to Strike Down Affordable Care Act*, N.Y. TIMES (June 26, 2020), <https://www.nytimes.com/2020/06/26/us/politics/obamacare-trump-administration-supreme-court.html>; Modlin, *supra* note 166.

171. Beim, *supra* note 160.

172. Yearby, *supra* note 167.

173. *Id.*

174. Eduardo Bonilla-Silva, *Rethinking Racism: Toward a Structural Interpretation*, 62 AMERICAN SOCIOLOGICAL REVIEW 465, 465-480 (1996).

175. Beim, *supra* note 160.

Recently, the current Administration failed to work diligently to solve the COVID-19 crisis because those most impacted by the virus did not vote for Donald Trump.¹⁷⁶ It is alleged that this White House made the deliberate decision to not craft a national plan to help fight the Coronavirus.¹⁷⁷ This is because this virus allegedly hurt “blue states” hardest, and it made little political sense to help those states recover from COVID-19.¹⁷⁸

II. DISEASES THAT PLAGUE PEOPLE OF COLOR

What causes African American women to be more susceptible to COVID-19? Based on widely reported studies, underlying health conditions increase African American women’s vulnerability.¹⁷⁹ Some of these conditions make it harder for African American women to effectively fight off the virus due to a weakened immune system.¹⁸⁰ A healthy immune system works as a well-built, well-equipped

176. Ashley Parker & Phillip Rucker, *One Question Still Dogs Trump: Why Not Try Harder to Solve the Coronavirus Crisis?*, WASH. POST (July 27, 2020), https://www.washingtonpost.com/politics/trump-not-solve-coronavirus-crisis/2020/07/26/7fca9a92-cdb0-11ea-91f1-28aca4d833a0_story.html (noting that not until aides presented Trump with projections that showed how the virus was hurting states with Republican voters did the administration begin to overhaul their approach to the virus).

177. Katherine Eban, *How Jared Kushner’s Secret Testing Plan “Went Poof Into Thin Air”*, VANITY FAIR (July 30, 2020), <https://www.vanityfair.com/news/2020/07/how-jared-kushners-secret-testing-plan-went-poof-into-thin-air>.

178. *Id.* It is reported that a team (led by Jared Kushner) was created, in Spring 2020, to craft a plan to help attack the coronavirus. This team met for weeks and worked overtime to create this plan. The plan was aggressive and coordinated and was said to have been able to bring the pandemic under better control in this country. The plan was never put into action and has essentially “disappeared.” This article states that the reason for the plan never being put into action was because the people that were dying in the greatest numbers, were people that did not support Donald Trump, Kushner’s father-in-law.

179. *Health Equity Considerations and Racial and Ethnic Minority Groups*, CDC <https://www.cdc.gov/coronavirus/2019-ncov/community/health-equity/race-ethnicity.html> (last visited Oct. 31, 2020).

180. Mayo Clinic Staff, *COVID 19- Who’s at Higher Risk of Serious Symptoms?*, MAYO CLINIC (Aug. 21, 2020), <https://www.mayoclinic.org/diseases-conditions/coronavirus/in-depth/coronavirus-who-is-at-risk/art-20483301>.

army.¹⁸¹ It acts as a fighting machine against any enemy trying to defeat the body.¹⁸² In people with other underlying conditions (diabetes, asthma, obesity, heart disease, hypertension, etc.), their immune system is not able to effectively and efficiently combat COVID-19. As a result, the virus overtakes the body's natural method of combatting viruses, and we see all too well what that devastation looks like.¹⁸³

Currently, there are a variety of diseases that plague African American women more than others, such as diabetes, hypertension, cancer, and strokes.¹⁸⁴ It is among these very diseases where African American women are treated differently according to race.¹⁸⁵ Although these diseases are blind to color and affect people of every race, racial bias is evident where African American patients attempt to receive care in the same hospitals as Caucasians for the same diseases; some African American women find themselves being treated differently or not being assisted at all.¹⁸⁶ For example, research shows that African American Medicare beneficiaries with diabetes receive less than the medically necessary treatment compared to Caucasians.¹⁸⁷ This fact is proven when analyzing how both groups are similarly situated in their medical diagnosis and how the groups are treated medically.¹⁸⁸

Multiple medical institutions have noted that due to the varying underlying conditions of African American women, COVID-19 is not the great equalizer many

181. *Immune System*, CLEVELAND CLINIC, <https://my.clevelandclinic.org/health/articles/21196-immune-system> (last visited Oct. 26, 2020).

182. *Id.*

183. Lena H. Sun, *Patients with Underlying Conditions Were 12 Times as Likely to Die of COVID-19 as Otherwise Healthy People, CDC Finds*, WASH. POST (June 15, 2020), <https://www.washingtonpost.com/health/2020/06/15/patients-with-underlying-conditions-were-12-times-more-likely-die-covid-19-than-otherwise-healthy-people-cdc-finds/>

184. Zahra Barnes, *8 Health Conditions that Disproportionately Affect Black Women*, SELF.COM (Mar. 30 2017), <https://www.self.com/story/black-women-health-conditions>.

185. Beim, *supra* note 160.

186. Yearby, *supra* note 167.

187. Yearby, *supra* note 167.

188. Eric C. Schneider et al., *Racial Disparities in the Quality of Care for Enrollees in Medicare Managed Care*, 287 J. AM. MED. ASS'N 1288 (2002).

initially thought that it would be.¹⁸⁹ An equalizer would affect all people equally despite their gender, finances, race or ethnicity. Evidently, COVID-19 is disproportionately affecting marginalized African Americans who are faced with daunting odds in negative health outcomes.¹⁹⁰ As a result of various health complications, African Americans are much more likely to die from COVID-19.¹⁹¹ Perhaps, the most debilitating underlying condition for African American women is racism.

III. HOW DISEASES ARE TREATED DIFFERENTLY ACCORDING TO RACE

These disparities exist and persist every single day, and the truth behind them lies within the treatment of these common conditions. When it comes to diseases like diabetes, heart disease, or even breast cancer, the lower-income communities, and specifically African American women, suffer most.¹⁹² First, patients with diabetes from low-income neighborhoods are ten times more likely to “. . . undergo limb amputation than those in affluent areas. Compared to White Americans, the rate of hospitalization for patients with diabetes is twice as high for Latinos and three times higher for African Americans.”¹⁹³

Heart disease is also being treated differently based on a patient’s race. According to the *New York Times*, twenty-five percent of African Americans struggle with elevated blood pressure, compared to the ten percent of White Americans.¹⁹⁴ However, even more disturbing is that, not only do African Americans suffer from a higher risk of hypertension in the United States, but African American patients are ten percent less likely than White Americans to be screened

189. Toyin Owoseje, *Coronavirus Is ‘the Great Equalizer,’ Madonna Tells Fans from Her Bathtub*, CNN ENTERTAINMENT (Mar. 23, 2020), <https://www.cnn.com/2020/03/23/entertainment/madonna-coronavirus-video-intl-scli/index.html> (Madonna, the singer, noted that the coronavirus “doesn’t discriminate” it did not care “how rich you are, how old you are or what amazing stories you can tell.”).

190. *Health Equity Considerations and Racial and Ethnic Minority Groups*, CDC (July 24, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/health-equity/race-ethnicity.html>.

191. Modlin, *supra* note 166.

192. Beim, *supra* note 160.

193. Nicholas Bakalar, *Disparities in Diabetes*, N.Y. TIMES (Aug. 8, 2014), <https://well.blogs.nytimes.com/2014/08/06/disparities-in-diabetes/>

194. *Id.*

for high cholesterol.¹⁹⁵ Without necessary screenings for high cholesterol, African Americans increasingly suffer from heart disease and are less likely to receive treatment and make use of preventive services as they are unaware of their underlying disease.¹⁹⁶ Thus, African American women are more likely to experience heart failure and strokes.¹⁹⁷ Today, heart disease and strokes are the principal types of cardiovascular disease (“CVD”), the leading cause of death in the United States and Canada that claims roughly one life every minute.¹⁹⁸ These underlying diseases place African American women at a greater risk of harm due to COVID-19.¹⁹⁹

This disparate treatment manifests itself in African American women being unhealthier compared to their White counterparts, and their immune systems suffering more during a global pandemic.²⁰⁰ When these underlying, chronic health conditions go unaddressed or under-addressed, African American women are left vulnerable to other health complications.²⁰¹ This is a serious matter because ninety

195. *Id.*

196. Katherine Kam, *Why Are African-Americans at Greater Risk for Heart Disease?*, WEBMD (Feb. 15, 2020), <https://www.webmd.com/heart-disease/features/why-african-americans-greater-risk-heart-disease#1>.

197. *Disease in African-American Women*, GO RED FOR WOMEN, <https://www.goredforwomen.org/en/about-heart-disease-in-women/facts/heart-disease-in-african-american-women> (last visited Oct. 31, 2020).

198. *See African Americans and Heart Disease, Stroke*, AM. HEART ASS’N (Jul. 31, 2015), <https://www.heart.org/en/health-topics/consumer-healthcare/what-is-cardiovascular-disease/african-americans-and-heart-disease-stroke>; *Heart Disease in Canada: Highlights from the Canadian Chronic Disease Surveillance System*, GOV’T OF CANADA, (Jul. 18, 2017), <https://www.canada.ca/en/public-health/services/publications/diseases-conditions/heart-disease-canada-fact-sheet.html>.

199. *COVID-19 Research on Black Women Gets Personal*, GO RED FOR WOMEN (Aug. 14, 2020), <https://www.goredforwomen.org/en/get-involved/health-equity/covid-19-research-on-black-women>.

200. *Id.*

201. *What Does the Life – and Senseless Deaths – of Black Men and Women Mean for the Health of Black Americans?*, AM. HEART ASS’N (Aug. 26, 2020), <https://newsroom.heart.org/news/what-does-the-life-and-senseless-deaths-of-black-men-and-women-mean-for-the-health-of-black-americans>.

percent of individuals hospitalized with COVID-19 had at least one underlying medical complication.²⁰²

IV. ACCESS TO QUALITY HEALTH CARE

Since the 1980's, access to quality health care for African American females has steadily declined.²⁰³ This lack of access to private and not-for-profit health care facilities – including hospitals, nursing homes, and the offices of health care practitioners – detrimentally affects the health of low-income African Americans.²⁰⁴ First, by directly limiting medical services; second, by increasing feelings of alienation; and, third, by increasing the economic burden of treating the poor in often overcrowded and underfinanced clinics, municipal hospitals, and emergency rooms.²⁰⁵

The divide only continues to grow between the races when racial biases prevent African American women from obtaining proper access to health care.²⁰⁶ This bias prevents those African American women from obtaining the same educational, employment, and housing opportunities as Caucasians, thus limiting African American women's access to necessary health care.²⁰⁷

When African American women are not able to access quality health care, it results in lower quality of health.²⁰⁸ Preventative health care is paramount to good

202. Sherita Hill Golden, *Coronavirus in African Americans and Other People of Color*, JOHNS HOPKINS MEDICINE (Apr. 20, 2020), <https://www.hopkinsmedicine.org/health/conditions-and-diseases/coronavirus/covid19-racial-disparities>.

203. Marianne Engelman Lado, *Unfinished Agenda: The Need for Civil Rights Litigation to Address Race Discrimination and Inequalities in Health Care Delivery*, 6 TEX. F. ON C.L. & C.R. 1 (2001).

204. Marianne Engelman Lado, *Breaking the Barriers of Access to Health Care*, 60 BROOK. L. REV. 250 (1994).

205. *Id.*

206. *Id.*

207. Ruqaiijah Yearby, *Sick & Tired of Being Sick & Tired: Putting an End to Separate & Unequal Health Care in the United States*, 25 JOURNAL OF LAW-MED. 3 (2015).

208. Bridges, *supra* note 168.

health.²⁰⁹ Being able to see a doctor for routine appointments is the difference between early detection of life-threatening health conditions and potential death.²¹⁰ Routine medical check-ups allow for the greater likelihood that one will receive treatment and cures, limiting the risk of negative health complications by monitoring existing conditions.²¹¹ Having access to routine, quality health care also increases lifespan and improves health.²¹² This pandemic highlights the fact that far too many African American women lack access to routine, quality health care.²¹³ That divide is found in the many health conditions African American women suffer from that have gone unchecked and undetected, amplifying and worsening the effects.²¹⁴

V. WHAT ARE THE REASONS FOR THESE DISPARITIES IN TREATMENT?

A. Segregation & Lack of Access to Health Care Due to Racist Practices

At one point in time, the United States considered the COVID-19 pandemic an emergency worthy of shutting down cities (closing down all non-essential businesses) until America found out who was dying.²¹⁵ It appears that many were

209. *Preventive Care: A National Profile on Use, Disparities, and Health Benefits*, PARTNERSHIP FOR PREVENTION 8 (2007), <https://www.rwjf.org/en/library/research/2007/08/preventive-care-national-profile-on-use.html>.

210. *Id.* at 9.

211. *Id.* at 12.

212. Sanjay Basu et al., *Association of Primary Care Physician Supply with Population Mortality in the United States, 2005-2015*, 179 JAMA INTERNAL MED. 506, 506 (2019), <https://jamanetwork.com/journals/jamainternalmedicine/fullarticle/2724393>; Jamie Ducharme, *The Four Types of Doctors Visits you Should Make for a Long, Healthy Life*, TIME (May 10, 2019), <https://time.com/5530431/preventive-care-longevity/>.

213. *Black Women Experience Pervasive Disparities in Access to Health Insurance*, NAT'L P'SHIP FOR WOMEN AND FAMILIES (2019), <https://www.nationalpartnership.org/our-work/resources/health-care/black-womens-health-insurance-coverage.pdf>.

214. Erin Clare Brown, *Black Women Have Long Faced Racism in Healthcare. COVID-19 is Only Amplifying It*, THE APPEAL (Apr. 10, 2020), <https://theappeal.org/black-women-coronavirus-healthcare/>.

215. Vanessa Williams, *Disproportionately Black Counties Account for Over Half of Coronavirus Cases in the U.S. and Nearly 60% of Deaths, Study Finds*, WASH. POST. (May 6, 2020), <https://www.washingtonpost.com/nation/2020/05/06/study-finds-that->

willing to make the social sacrifices necessary to slow and stop the spread of COVID-19. Some of those sacrifices included staying home, frequent hand washing, wearing masks, and socially distancing oneself from others when out in public. COVID-19 has brought to light the unequal terms of our racial agreement that some lives have more value than others.

Doctors take oaths to treat every one of their patients equally and fairly, yet this does not always happen.²¹⁶ Not every physician is racist. Most are probably not racist. However, they unfortunately operate in an inherently racist system. In the United States, African Americans, as well as other minority groups, now experience more illnesses, worse outcomes, and more premature deaths compared to Whites.²¹⁷ Doctors know that their own subconscious prejudices, or implicit biases, can affect their treatment of patients.²¹⁸ And poverty and chronic illness have exacerbated the problems inherent in COVID-19.²¹⁹ Prior to the pandemic, bias, discrimination, and blatant racism have deliberately overlooked the poor.²²⁰ This hurts African Americans as they are overly-represented in the number of impoverished Americans.²²¹

Today, racist practices bare actual consequences on African Americans, as well as other minorities. Minorities feel these consequences when trying to attain

disproportionately-black-counties-account-more-than-half-covid-19-cases-us-nearly-60-percent-deaths/.

216. Bridges, *supra* note 168; See, e.g. Brown, *supra* note 214 (discussing a 30-year-old social studies teacher struggling to get medical professionals to treat her COVID-19 and not asthma or panic attacks as well as describing how tennis star Serena Williams was not believed or listened to by medical staff after she informed them of a blood clot).
217. NAT'L CTR. HEALTH STAT., HEALTH, UNITED STATES, 2015: WITH SPECIAL FEATURE ON RACIAL AND ETHNIC HEALTH DISPARITIES 21, <https://www.cdc.gov/nchs/data/abus/abus15.pdf> (last visited Oct. 31, 2020).
218. Christopher J. King & Yanique Redwood, *The Health Care Institution, Population Health and Black Lives*, 108 J. NAT'L MED. ASS'N 131, 132 (2016).
219. *Chronic Disease, Poor Public Response Fuels COVID-19*, U. WASH. SCH. MEDICINE (Oct. 16, 2020), <https://newsroom.uw.edu/news/chronic-disease-poor-public-response-fuels-covid-19>.
220. *Racial Discrimination in the Context of the COVID-19 Crisis*, U.N. OFF. HIGH COMM'R HUM. RTS. 1, 2 (2020), https://www.ohchr.org/Documents/Issues/Racism/COVID-19_and_Racial_Discrimination.pdf.
221. Jamila Taylor, *Racism, Inequality, and Health Care for African Americans*, THE CENTURY FOUND. (Dec. 19, 2019), <https://tcf.org/content/report/racism-inequality-health-care-african-americans/?session=1>.

housing, employment and, more importantly, health care.²²² Due to a variety of African American stereotypes, “the majority of white persons express a strong preference for living in racially[-]segregated neighborhoods[,] and Black persons in search of housing are still systematically steered toward neighborhoods having a greater number of minorities, lower home values, and lower median income.”²²³ When African Americans are placed in segregated neighborhoods, their health care is likely subjected to the same racist practices. Statistically, impoverished neighborhoods and poorer African American communities are more likely to suffer from insufficient access to quality healthcare resources and services.²²⁴

There are multiple examples of African American women, young and old, being denied or given poorer quality health care. A tragic example is the case of Kimora “Kimmie” Lynum, a 9-year-old child who contracted COVID-19.²²⁵ Her mother took her to the hospital for a high fever. But the hospital sent her home where she later died,²²⁶ despite her clear need for medical attention.²²⁷ Would this young, African American female have had better medical care and attention if she were White? We do not have to look very far to see that the answer is, probably, yes.

The Centers for Disease Control (CDC) has recommended that people should socially distance themselves from one another²²⁸ in an effort to curtail the spread of COVID-19.²²⁹ Many African Americans live in multi-generational

222. *Id.*

223. *See, e.g.,* Esther Havekes et al., *Realizing Racial and Ethnic Neighborhood Preferences? Exploring the Mismatches Between What People Want, Where They Search, and Where They Live*, 35 *POPULATION RES. & POL’Y*, 101, 120 (2016); Reynolds Farley et al., *Stereotypes and Segregation: Neighborhoods in the Detroit Area*, 100 *AM. J. SOC.* 750, 750 (1994).

224. *See generally,* Taylor, *supra* note 221 (connecting race, social factors, and health care access to explain the disparity in treatment between white and African American patients).

225. Denise Royal & Rosa Flores, *9-Year-Old Who Died of Coronavirus Had No Underlying Health Issues, Family Says*, *WINK* (July 25, 2020), <https://www.winknews.com/2020/07/25/a-9-year-old-who-died-of-coronavirus-had-no-known-underlying-health-issues-family-says/>.

226. *Id.*

227. *Id.*

228. *Social Distancing*, CDC (July 15, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/social-distancing.html>.

229. *Id.*

housing where it is not always feasible to remain socially distant from one another.²³⁰

It may be impossible to isolate oneself in a room or part of a dwelling when a person shares a room or living space.²³¹ How do you maintain social distance when you share a kitchen, bedroom, or bathroom with multiple people? This is much easier when a home has multiple bathrooms and bedrooms, but many people do not live in spaces where they have these options available to them.²³² It is understandable that these guidelines are not always feasible for people in multi-generational or cramped housing conditions.

B. *Distrust by People of Color in Medical Professionals*

Within the African American community, there is much distrust towards medical professionals due to past unfair and deceptive inconsistencies in health care among the races.²³³ A report by the Institute of Medicine states that “some minority patients do not trust health care professionals and therefore may put off seeing a

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230. D’Vera Cohn & Jeffrey S. Passel, *A Record 64 Million Americans Live in Multigenerational Households*, PEW RES. CENT. (Apr. 5, 2018), <https://www.pewresearch.org/fact-tank/2018/04/05/a-record-64-million-americans-live-in-multigenerational-households/> (quoting chart headline showing whites are less likely to live in multigenerational households throughout years 2009 and 2016); Cara Anthony, *How Multigenerational Families Manage ‘Social Distancing’ Under One Roof*, NAT’L PUB. RADIO (Apr. 5, 2020), <https://www.npr.org/sections/health-shots/2020/04/05/826485036/how-multigenerational-families-manage-social-distancing-under-one-roof> (discussing the potential dangers and challenges of having young asymptomatic children around older generations that live within the same house).
231. Sophia Tareen, *Coronavirus Complicates Safety for Families Living Together*, ASSOCIATED PRESS (May 12, 2020), <https://apnews.com/article/8512463a90d314ca730bb246eddd8e8d>.
232. Conor Dougherty, *12 People in a 3-Bedroom House, Then the Virus Entered the Equation*, N.Y. TIMES (Aug. 2, 2020), <https://www.nytimes.com/2020/08/01/business/economy/housing-overcrowding-coronavirus.html>.
233. Darcell P. Scharff et al., *More than Tuskegee: Understanding Mistrust about Research Participation*, 21 J. HEALTH CARE FOR THE POOR AND UNDERSERVED 879 (2010).

doctor until their illness is too far along to be effectively treated.”²³⁴ Additionally, “some minority patients are more likely to reject or refuse their doctor’s recommendations for treatment.”²³⁵

A study by the *The Journal of General Internal Medicine* found that trust is determined by the interpersonal and technical competence of physicians.²³⁶ “Contributing factors to distrust in physicians include a lack of interpersonal and technical competence, perceived quest for profit and expectations of racism and experimentation during routine provision of health care.”²³⁷ Specifically, distrust “inhibits care-seeking, can result in a change in physician and may lead to non-adherence.”²³⁸ One source of distrust is a history of American medical professionals experimenting on people of color.²³⁹ Three significant instances of experimentation on people of color are the Tuskegee Syphilis Experiment,²⁴⁰ the use of cells from Ms. Henrietta Lacks,²⁴¹ and the work of American surgeon J. Marion Sims.²⁴² These types of instances have engendered a level of animosity, distrust, and distancing from African Americans towards the medical industry.²⁴³

This distrust has caused African American females to be at greater risk for having underlying health conditions that have gone untreated as a result of not seeing a physician regularly for preventative measures and maintaining a good level

234. *What Healthcare Consumers Need to Know About Racial and Ethnic Disparities in Healthcare*, INSTITUTE OF MEDICINE (Mar. 2002), https://www.nap.edu/resource/12875/disparities_patient.pdf.

235. *Id.* at 2.

236. Elizabeth A. Jacobs et al., *Understanding African Americans’ Views of the Trustworthiness of Physicians*, 21 J. GEN. INTERNAL MED. 642, 642 (June 2006).

237. *Id.*

238. *Id.*

239. Scharff et al., *supra* note 233.

240. *Id.*

241. Faroque A. Khan, *The Immortal Life of Henrietta Lacks*, 43 J. ISLAMIC MED. ASS’N NORTH AM. 93 (2011).

242. Sarah Zhang, *The Surgeon Who Experimented on Slaves*, THE ATLANTIC (Apr. 18, 2018), <https://www.theatlantic.com/health/archive/2018/04/j-marion-sims/558248/>.

243. Scharff et al., *supra* note 233.

of health.²⁴⁴ These risk factors make African Americans much more vulnerable and susceptible to COVID-19.²⁴⁵

1. Tuskegee Syphilis Experiment

One source of distrust by people of color in medical professionals is the Tuskegee Experiment.²⁴⁶ In 1932, the United States public health care service launched the Tuskegee Syphilis Experiment, in which practitioners promised free medical care to hundreds of African Americans and desperately poor sharecroppers in Macon County, Alabama.²⁴⁷ This so-called study was designed to document the progression of untreated syphilis in African American men.²⁴⁸ The scientists attempted to chart the progression of the disease by gathering a group of infected African American males and withholding treatment from them.²⁴⁹ Throughout the experiment, the test subjects were never told that they in fact had been recruited for a syphilis study, but rather, that they were being treated for “bad blood.”²⁵⁰ Furthermore, by the 1940s, penicillin was the recommended treatment for syphilis, but this treatment was withheld from the test subjects despite the fact that the study continued until 1972.²⁵¹ The monitoring of those infected men continued, causing suffering and, for many, death; by the end of the study in 1972, only seventy four test subjects survived.²⁵² As a result of the experiment, twenty eight of the 400 subjects died of syphilis, while another 100 died from related complications, and

244. Yasmin Anwar, *Why Middle-class Black Women Dread the Doctor's Office*, BERKELEY NEWS (Jan. 18, 2019), <https://news.berkeley.edu/2019/01/18/invisiblevisits/>.

245. Stephanie Soucheray, *US Blacks 3 Times More Likely than Whites to Get COVID-19*, CIDRAP (Aug. 14, 2020), <https://www.cidrap.umn.edu/news-perspective/2020/08/us-blacks-3-times-more-likely-whites-get-covid-19>.

246. Scharff et al., *supra* note 233.

247. Elizabeth Nix, *Tuskegee Experiment: The Infamous Syphilis Study*, HISTORY.COM (May 16, 2017), www.history.com/news/the-infamous-40-year-tuskegee-study.

248. *Id.*

249. *Id.*

250. *Id.*

251. *Id.*

252. *Id.*

over forty of the test subjects' wives were infected, causing 19 of their children to be born with congenital syphilis.²⁵³

2. Henrietta Lacks

In 1951, Henrietta Lacks was taken to Baltimore's main hospital to see a gynecologist. It was determined that Henrietta possessed a small tumor, which was biopsied and found to be cancerous.²⁵⁴ Dr. Gey, who was handling the sample tissue of Henrietta's tumor, insisted on his assistant mixing in a few drops of chicken blood.²⁵⁵ The taking of Henrietta's cell was without her explicit, informed consent.²⁵⁶ By adding chicken blood, it was Dr. Gey's hope to successfully sustain the growth of human cells outside of the body in order to expose the unknown cause of cancer cells; while in the test tubes and once exposed, the cells could be altered and corrected.²⁵⁷ Dr. Gey's dreams were fulfilled when Henrietta Lacks's cells began to grow at an incredibly fast rate in his laboratory.²⁵⁸ Henrietta's cultured cells were growing at a rapid rate as each cell was dividing every twenty hours.²⁵⁹ Henrietta Lacks's remaining internal tumors did not respond well to treatment, and she passed away on October 4, 1951.²⁶⁰ The same evening that Henrietta died, Dr. Gey appeared on a television science program to display his breakthrough using her cells.²⁶¹ During the show, Dr. Gey instructed his assistant to obtain more of the rare cells from Henrietta's deceased body.²⁶² Dr. Gey did not disclose to Henrietta's family that he obtained the cancer cells from her body without permission, and he feared that he may be sued.²⁶³ Thus, Dr. Gey created a code-name for Henrietta's

253. *Id.*

254. Brendan P. Lucey et al., *Henrietta Lacks, HeLa Cells, and Cell Culture Contamination*, 133(9) ARCHIVES OF PATHOLOGY & LABORATORY MED. 1463 (Sept. 2009).

255. *Id.*

256. *Id.*

257. *Id.*

258. *Id.*

259. *Id.*

260. *Id.*

261. *Id.*

262. *Id.*

263. *Id.*

cells, called “Hela.” Dr. Gey lied and told the scientific community that the cells were obtained from a deceased woman named “Helen Lane.”²⁶⁴ Millions of Henrietta’s cells were used for a variety of demands. Cells were sent into space in order to find out what would happen to human cells in space; cosmetic companies purchased millions of cells to test for possible side effects of new cosmetic products; the military placed the human cells next to atomic tests in order to see the effects of radiation on human tissues; the “Hela” cells were even used to eradicate Polio.²⁶⁵

A biologist by the name of Dr. Stanley Gartler examined many of the major cell lines and found that the cell lines secreted the same form of enzymes, which was a type only found in African Americans.²⁶⁶ However, the problem was that all the cell lines he looked at, had come from Whites.²⁶⁷ Many other biologists disbelieved Gartler’s claim, but those who developed cell lines from their own blood only had one other explanation, which was that the cells of the individuals came from that of an African American parent/lineage.²⁶⁸ Thus, no one understood how it was that Henrietta Lacks’s cells contaminated the other cell lines.²⁶⁹

Henrietta Lacks’s family soon became aware of the use of Henrietta’s cells when scientists attempted to contact the family in order to gain a better understanding of Henrietta Lacks’s and her family’s medical history.²⁷⁰ The Lacks family soon became confused and frustrated after discovering that Henrietta’s cells were harvested, grown, and sold to companies all over the world to a variety of companies. The Lacks endeavored to sue these companies or to at least obtain some type of recognition for Henrietta Lacks and her contribution to the medical field.²⁷¹

Finally, Henrietta Lacks received her recognition on October 11, 1996, when Atlanta declared the official “Henrietta Lacks Day” that serves to commemorate her donations’ impact in advancing the scientific and medical efforts

264. *Id.*

265. *Id.*

266. *Id.* at 1465.

267. *Id.*

268. *Id.*

269. *Id.*

270. Sharon Miyagawa, *Henrietta Lacks (1920-1951)*, MD. STATE ARCHIVES (Jun. 27, 2014), <https://msa.maryland.gov/megafile/msa/speccol/sc3500/sc3520/016800/016887/html/16887bio.html>.

271. *Id.*

for cancer, polio, and many other diseases.²⁷² Even though multiple individuals and corporations have benefitted financially, to the present day, her family has never received any financial compensation for the products and services that were a direct result of the samples taken from Henrietta Lacks.²⁷³

VI. HOW INCOME AND EDUCATIONAL ATTAINMENT AFFECTS HEALTH OUTCOMES

There is no doubt that income and educational attainment affect adequate health care outcomes.²⁷⁴ According to the National Center for Chronic Disease Prevention and Health Promotion, educational attainment and family or household income are two indicators used to assess the influence of socio-economic circumstances on health.²⁷⁵

When it comes to socio-economic status, one of the most prevalent components is education, as it plays a major role in the types of occupational and earning opportunities available.²⁷⁶ Not only does it play a role in occupational and earning opportunities, but it also provides knowledge and life skills that allow better educated persons to gain more ready access to information and resources to promote health.²⁷⁷

Unequal access to quality education can lead to lower rates of high school graduation and cause hurdles to college entry. This in turn affects future job possibilities, meaning lower wages and less stable jobs.²⁷⁸ When a person has limited employment opportunities, this makes it more difficult to leave jobs that place them at great risk of exposure to COVID-19. These people usually are not able

272. REBECCA SKOOT, *THE IMMORTAL LIFE OF HENRIETTA LACKS* at 219 (Crown Publishers 2010).

273. Bo Emerson, *Henrietta Lacks and Her Family Honored at Morehouse*, *THE ATLANTA J.-CONST.* (Sept. 10, 2018), <https://www.ajc.com/news/local/henrietta-lacks-and-her-family-honored-morehouse/COWf6gYnVJsRGfimSd2BIK/>.

274. N. Krieger et al., *Measuring Social Class in US Public Health Research: Concepts, Methodologies, and Guidelines*, 18 *ANN. REV. PUBLIC HEALTH* 341, 344-63 (1997).

275. *Id.*

276. Catherine E. Ross & Chia-ling Wu, *The Links Between Education and Health*, 60 *AM. SOC. REV.* 719, 720-22 (1995).

277. *Id.* at 721.

278. *INST. OF MED. AND NAT'L RES. COUNCIL, INVESTING IN THE HEALTH AND WELL-BEING OF YOUNG ADULTS* 123 (Richard J. Bonnie et al., 2015).

to miss work, and if they do, they are not going to be paid.²⁷⁹ Due to the need to make money, many people will still go to work even when they have COVID-19 or its symptoms.²⁸⁰

Another significant component of socio-economic status is income. Income affects health outcomes by being the difference in having the means to pay for quality health care or not.²⁸¹ Additionally, increased incomes can help pay for healthier and more nutritious foods, schooling, and much more.²⁸²

Frequently, how we see the ramifications of income and educational attainment is in employment opportunities.²⁸³ African American women are disproportionately represented as “essential workers.”²⁸⁴ These positions usually encompass healthcare facility employees, factory workers, grocery store workers, postal workers, and public transportation workers.²⁸⁵ These workers are at a greater risk of being exposed to COVID-19 because of their close contact with the general public and other workers, inability to work remotely, lack of paid sick days, and no financial safety net to pay bills.²⁸⁶ These essential workers are “essential” to keeping our neighborhoods, communities, states, and nation operating.²⁸⁷ This employment is also “essential” to the employee if they want to keep a roof over their heads and

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

280. *Id.*

281. Malerie Lazar & Lisa Davenport, *Barriers to Health Care Access for Low-Income Families: A Review of Literature*, 35 J. OF CMTY. HEALTH NURSING 28, 28 (2018).

282. Simone A. French et al., *Nutrition Quality of Food Purchases Varies by Household Income: the SHOPPER Study*, 19 BMC PUBLIC HEALTH 231, 1 (2019).

283. INST. OF MED. AND NAT’L RES. COUNCIL, *supra* note 278.

284. Hayley Brown et al., *Mothers in Frontline Industries Deserve Better*, CTR. FOR ECON. AND POL’Y RES. (May 8, 2020), <https://cepr.net/mothers-in-frontline-industries-deserve-better/>.

285. Gould & Wilson, *supra* note 279, at 4.

286. *Id.*

287. Brown et al., *supra* note 284.

food on the table.²⁸⁸ Many workers are forced to work, even when they have contracted or have symptoms of COVID-19.²⁸⁹

A. Insurance

For years, African American women have typically experienced a disproportionate decline in health coverage in comparison to their Caucasian counterparts.²⁹⁰ African American women are often placed in a “vulnerable group” due to being uninsured and likely to suffer from a higher risk of illness than whites.²⁹¹

Blacks are consequently over-represented among those who are simultaneously in poor health and uninsured or publicly insured and are less likely to have health insurance as a result of their socio-economic positions.²⁹² They are more likely to have poor paying jobs that frequently offer no health benefits and are less likely to be able to afford quality, private coverage.²⁹³

Overall, lack of income and education gives rise to poor health care and a decrease in access to adequate healthcare coverage.²⁹⁴

288. Gould & Wilson, *supra* note 279, at 5-7.

289. Elizabeth Schulze, *As Unemployment Surges, Essential Workers Fear Calling Out Sick Could Cost Them Their Jobs*, CNBC (May 8, 2020, 3:01 PM), <https://www.cnbc.com/2020/05/08/unemployment-is-surging-and-essential-workers-fear-calling-out-sick.html>.

290. Samantha Artiga et al., *Changes in Health Coverage by Race and Ethnicity Since the ACA, 2010-2018*, HENRY J. KAISER FAM. FOUND. (Oct. 16, 2020, 2:18 PM), <https://www.kff.org/racial-equity-and-health-policy/issue-brief/changes-in-health-coverage-by-race-and-ethnicity-since-the-aca-2010-2018/>.

291. James B. Kirby & Toshiko Kaneda, *Unhealthy and Uninsured: Exploring Racial Differences in Health and Health Insurance Coverage Using a Life Table Approach*, 47(4) DEMOGRAPHY 1035-51 (Nov. 2010).

292. *Id.*

293. *Id.*

294. *Why Education Matters to Health: Exploring the Causes*, CTR. ON SOC’Y AND HEALTH (Feb. 15, 2015), <https://societyhealth.vcu.edu/work/the-projects/why-education-matters-to-health-exploring-the-causes.html>.

B. Preventive Care

Income and educational attainment also affect the health outcomes of a patient with regards to preventive care. There is strong evidence of health care disparities between minorities and White Americans during the current pandemic, and due to these disparities, minorities (specifically African Americans) are less likely than Whites to receive many needed services, such as routine preventive care as well as basic health care for detection of COVID-19.²⁹⁵ One African American female was clearly showing signs and symptoms of the novel Coronavirus, and she was denied treatment and sent home.²⁹⁶ She said that she felt ashamed as the doctors did not take her symptoms seriously.²⁹⁷ “Even when you are sick they don’t even believe you,” explained one African American female.²⁹⁸ Dr. Shelia Young notes that receiving urgent care is crucial as this condition can cause a person suffering from COVID-19 to suffer heart attacks, as well as other organ failure issues.²⁹⁹ She notes that if a patient is turned away from one hospital, they should go to another and another until they are properly admitted and treated.³⁰⁰

With poor education and less of a knowledge base, there is a continued distrust of physicians.³⁰¹ Lack of education, lack of access to quality health care, blatant racism from medical professionals, and a lack of trust create a “perfect

295. Miriam Hernandez, *African American Survivors of COVID-19 Talk about Bias, Solutions*, ABC 7 NEWS (May 27, 2020), <https://abc7.com/covid-19-coronavirus-african-americans-and-black/6213444/> (illustrating multiple stories of African American women in Los Angeles, California being refused basic treatment even though they were clearly exhibiting signs of COVID-19).

296. *Id.*

297. *Id.* (quoting from news video clip).

298. *Id.* The woman was sent home with serious symptoms and could have died. Many in her position have died. A group has been formed, called *Black Women Rally for Action*. The group focuses on efforts to bring awareness to the plight of African American women fighting COVID-19 and their experiences.

299. *Id.* Dr. Young notes that African American women not being heard is affecting their health care because their voices are not being heard and taken seriously.

300. *Id.*

301. Austin Frakt, *Bad Medicine: The Harm That Comes from Racism*, N.Y. TIMES (last updated Jul. 8, 2020), <https://www.nytimes.com/2020/01/13/upshot/bad-medicine-the-harm-that-comes-from-racism.html>.

storm.”³⁰² The combination of these factors can lead to “less doctor and patient interaction, poor clinical relationships that exhibit less continuity, reduced adherence to recommendations, worse self-reported health, and a reduced utilization of health care services.”³⁰³ Furthermore, with lower education levels, health outcomes are likely to worsen as many African Americans have been shown to favor conspiracy theories that affect the use of preventive services.³⁰⁴ For example, conspiracy theories flourish in preventive services that require some type of injection (such as the potential COVID-19 vaccine) in the African American community due to negative historical events, such as the Tuskegee Syphilis Experiment.³⁰⁵

These problems are manifesting as we enter a phase in this COVID-19 environment where vaccines are being developed.³⁰⁶ Many in the African American community are hesitant to agree to take a vaccine for fear of being exploited and deliberately injected with the virus.³⁰⁷

C. *The Uncertainties of COVID-19 Vaccinations*

The Black community’s distrust in the medical field runs wide and deep. More specifically, “[t]he black community’s distrust of the vaccine and the nation’s medical establishment is rooted in a long record of mistreatment.”³⁰⁸ This ongoing mistreatment has left the Black community less inclined to take any approved

302. *Id.*

303. David Mechanic & Mark Schlesinger, *The Impact of Managed Care on Patients’ Trust in Medical Care and Their Physicians*, 275 JAMA 1693-97 (1996).

304. Allyssa L. Harries, *Conspiracy Theories in African American Culture: A Concept Analysis*, 13(1) J. OF THEORY CONSTRUCTION & TESTING 16-9 (2009).

305. Olivia Goldhill, *American Healthcare’s Racist History Helped Fuel a Fear of Vaccines*, QUARTZ NEWS (July 30, 2020), <https://qz.com/1886133/us-healthcares-racist-history-helped-fuel-a-fear-of-vaccines/>.

306. Jeff Craven, *COVID-19 Vaccine Tracker*, REG. AFF. PROF. SOC’Y (Oct. 15, 2020), <https://www.raps.org/news-and-articles/news-articles/2020/3/covid-19-vaccine-tracker>.

307. Rueben C. Warren et al., *Trustworthiness Before Trust—Covid-19 Vaccine Trials and the Black Community*, THE NEW ENGLAND J. OF MED. (Oct. 16, 2020), <https://www.nejm.org/doi/full/10.1056/NEJMp2030033>.

308. Zoe Christen Jones, *Why Some Black Americans are Skeptical of a COVID-19 Vaccine*, CBS NEWS (Dec. 12, 2020), <https://www.msn.com/en-us/news/us/why-some-black-americans-are-skeptical-of-a-covid-19-vaccine/ar-BB1bRrR4>.

vaccines from healthcare providers, fearing the outcome. “[S]tudies show Black Americans still face implicit racial bias and discrimination among health care providers.”³⁰⁹ In underserved communities, Black individuals are less likely to have access to dedicated primary care doctors, a lack of health care that is directly linked to higher cases of chronic, unmanaged diseases.”³¹⁰ From the lack of access to primary care to the lack of care given to those of color, the inability of Blacks to have access at all results in Blacks being more susceptible to COVID-19. There is major disconnection, and such experiences explain why Black Americans are receiving COVID-19 vaccinations at dramatically lower rates than White Americans during the first weeks of the chaotic rollout.³¹¹

“In the most dramatic case, 1.2% of White Pennsylvanians had been vaccinated as of Jan. 14, compared with 0.3% of Black Pennsylvanians.”³¹² A vast majority of vaccines have gone to healthcare workers and staffers on the front lines of the pandemic.³¹³ However, “[i]f the rollout was reaching people of all races equally, the shares of people vaccinated whose race is known should loosely align with the demographics of health care workers.”³¹⁴ In every state, Blacks are being vaccinated at significantly lower rates than other races.³¹⁵ Black nurses are even concerned that COVID-19 vaccinations could damage their fertility.³¹⁶ Getting the Black community on one accord with getting vaccinated will be challenging despite the recent studies on the vaccination’s benefits, and the only way to significantly see an increase is by putting a focus on gaining Blacks’ trust in the medical establishment.

VII. FOOD DESERTS, STRESS LEVELS, PHYSICAL ACTIVITY, AND HEALTH

309. *Id.*

310. *Id.*

311. Hannah Recht & Lauren Weber, *Black Americans Are Getting Vaccinated at Lower Rates Than White Americans*, KAISER HEALTH NEWS (Jan. 1, 2021), <https://khn.org/news/article/black-americans-are-getting-vaccinated-at-lower-rates-than-white-americans/>.

312. *Id.*

313. *Id.*

314. *Id.*

315. *Id.*

316. *Id.*

OUTCOMES

A. Food Deserts

A food desert is a community that has little to no access to a variety of healthy, nutritious food.³¹⁷ These neighborhoods have an overabundance of fast food restaurants and other unhealthy food options.³¹⁸ Many of these areas only have small bodegas, or food stands, that have limited amounts of produce that is quite often over-priced.³¹⁹ This causes residents to have unaffordable and unhealthy options to choose from.³²⁰ When fast food, high fatty foods, high sodium, and processed foods are overly consumed that leads to a plethora of health complications.³²¹ That in turns leads to a lower quality of health and greater risk of developing conditions which lead to obesity, cancer, high blood pressure, diabetes, heart disease, and other comorbidities.³²² Many African Americans live in urban areas where supermarkets and large grocery stores are not nearby.³²³ Almost 20 million people live in low-income neighborhoods where grocery stores are more than a mile away.³²⁴ This makes shopping for healthier options more difficult, if not impossible.³²⁵ This type

317. ERS Directive 140, *Characteristics and Influential Factors of Food Deserts* (U.S.D.A. 2012).

318. NEW YORK LAW SCHOOL RACIAL JUSTICE PROJECT, *UNSHARED BOUNTY: HOW STRUCTURAL RACISM CONTRIBUTES TO THE CREATION AND PERSISTENCE OF FOOD DESERTS 3* (2012) (ebook).

319. *Id.*

320. *Id.*

321. Joel Fuhrman, *The Hidden Dangers of Fast and Processed Food*, 12(5) *AM. J. OF LIFESTYLE MED.* 375-81 (Sept.-Oct. 2018).

322. *Id.*

323. NEW YORK LAW SCHOOL RACIAL JUSTICE PROJECT, *supra* note 318; *See also* Angela Hillmers et al., *Neighborhood Disparities in Access to Healthy Foods and Their Effects on Environmental Justice*, 102(9) *AM. J. OF PUB. HEALTH* 1644-54 (Sept. 2012).

324. Nina E. Banks, *The Food Injustices of COVID-19 on Black Communities*, *WOMEN'S INSTITUTE FOR SCIENCE, EQUITY AND RACE* (Oct. 18, 2020), <https://wiserpolicy.org/the-food-injustices-of-covid-19-on-black-communities/>.

325. NEW YORK LAW SCHOOL RACIAL JUSTICE PROJECT, *supra* note 318.

of food deprivation places residents in these types of communities in danger of the most critical COVID-19 outcomes.³²⁶

These types of food inequalities fall disproportionately on the shoulders of women, who many times are mainly responsible for feeding the entire household.³²⁷ Low wage earning African American women face the harshest challenges in this COVID-19 environment.³²⁸ The hassles it could conceivably take to get healthy food options could be enormous.³²⁹ Perhaps, this includes reliance on some form of public transportation, carrying multiple bags, and having small kids in tow, all of which entail a great deal of effort, time, and energy. All is happening during the challenges of social distancing and the restrictions of COVID-19.³³⁰

B. *Stress Levels and Greater Physical Activity*

Pre-COVID-19, African American women were disproportionately impacted by high levels of stress.³³¹ COVID-19 only worked to magnify and highlight those stress levels.³³² African American women have had the stressors of low wage employment, living in sub-standard housing that was barely affordable, communities filled with far too much violence, and pollutants that cause health complications.³³³ Some stress is normal and should be expected, but when stress is

326. Martha L. Huizar et al., *The Global Food Syndemic: The Impact of Food Insecurity, Malnutrition and Obesity on the Healthspan and of the COVID-19 Pandemic* (Jul. 10, 2020), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7347484/>.

327. ERS 270, *Household Food Security in the United States in 2018* (U.S.D.A. 2018).

328. *Id.*

329. ERS 269, *Food Security and Food Purchase Quality Among Low-Income Households: Findings From the National Household Food Acquisition and Purchase Survey* (U.S.D.A. 2019).

330. Many forms of public transportation and grocery stores have limited hours during this pandemic.

331. Brea L. Perry et al., *Racial and Gender Discrimination in the Stress Process: Implications for African American Women's Health and Well-Being*, 56 *SOCIOL. PERSPEC.* 25-48 (2013).

332. David R. Williams, *Stress Was Already Killing Black Americans. Covid-19 is Making It Worse*, *WASH. POST* (May 13, 2020), <https://www.washingtonpost.com/opinions/2020/05/13/stress-was-already-killing-black-americans-covid-19-is-making-it-worse/>.

333. *See generally* Perry et. al, *supra* note 331, at 25.

persistent, unrelenting, and daily, it can cause the strongest person to be crippled under its weight.³³⁴ These many factors, on their own, are extremely distressing and difficult to deal with daily but imagine adding the incredible burden and pressure of COVID-19 to that mix.³³⁵ When stress goes unmanaged and untreated, it materializes as health complications: heart disease, high blood pressure, cancers, strokes, and even suicide, to name a few.³³⁶ Racism causes African Americans to be under greater stress when compared to White people.³³⁷ This stress can even show up as premature aging, meaning a person can age faster biologically (on a cellular level) than is expected.³³⁸ Stress even interrupts the benefits of sleep in African Americans.³³⁹ All of this, again, places African American women at a great risk of being negatively impacted by COVID-19.

VIII. SOLUTIONS

A. *Increasing the Knowledge Base*

The first step to correcting what seems like an unbreakable cycle is to bring awareness to the problem of disparate health care for African American females. Many studies have revealed that a large percentage of the population is completely unaware that minorities receive a lower quality of care than Whites.³⁴⁰ With greater awareness comes more concern with the issue at hand and how to solve it.

The second step to correcting the problem is developing a variety of plans to involve politicians at the state and federal level to assist with health policies and

334. Brandi Jackson & Aderonke B. Pederson, *Facing Both Covid-19 and Racism, Black Women are Carrying a Particularly Heavy Burden*, WASH. POST (Sept. 4, 2020) <https://www.washingtonpost.com/opinions/2020/09/04/facing-both-covid-19-racism-black-women-are-carrying-particularly-heavy-burden/>.

335. Habib Yaribeygi et al., *The Impact of Stress on the Body: A Review*, 16 EXCLIJ. 1057, 1063 (2017).

336. *Id.*

337. Williams, *supra* note 332.

338. *Id.* (studies show that the relentless onslaught of racism and discrimination causes higher levels of stress hormones, hypertension, greater inflammation, and even higher levels of obesity).

339. *Id.*

340. RODOLFO A. BULATAO & NORMAN B. ANDERSON, UNDERSTANDING RACIAL AND ETHNIC DIFFERENCES IN HEALTH IN LATE LIFE 102 (2004).

even with the standardized training of medical and health care providers. For example, expanding translation services in geographical locations where patients speak languages other than English.

The third step is fixing and re-establishing a positive relationship between patients and medical professionals. For years, African Americans, as well as many other minorities, have developed a distrust for medical professionals due to unfair, racist practices of White medical professionals experimenting on and taking advantage of people of color.³⁴¹ The rehabilitation of a doctor-patient relationship will not mend itself overnight. However, starting somewhere is an absolute must. One way to possibly bridge this relationship is by ensuring that every patient has a specific healthcare provider to see when they need care. Working with a specific healthcare provider can function to overcome existing cultural barriers and potentially begin to pave the way to not only a functioning doctor-patient relationship but a longlasting, trusting one.

Finally, education is imperative in increasing the knowledge base and reaching a solution to this issue. Education plays a role in health care on both ends, the physician and the patient. Educational training for physicians can prove to be beneficial if they aim to educate medical professionals on how cultural and social factors influence health care.³⁴² Furthermore, training might assist medical professionals in elaborating on how they should properly interact with a wide range of patients.³⁴³ When it comes to patients, education is crucial in making decisions regarding their health. Patients can make these worthwhile decisions by educating themselves using a variety of resources, such as pamphlets, books, journals, and the internet. By understanding and knowing what to expect, patients can actively participate in their own healthcare treatment and be engaged when meeting with healthcare professionals.

B. *Expanding Coverage and Promoting Fair Access to Quality Health Care*

Health coverage should be a right and every American citizen should be able to have access to health care when it is necessary. On March 23, 2010, former President Barack Obama signed the Affordable Care Act (also known as Obamacare) and set into place an effort that will help ensure Americans, regardless

341. *Id.*

342. Elizabeth A. Jacobs et al., *Teaching Physicians-in-training to Address Racial Disparities in Health: a Hospital-Community Partnership*, PUBL. HEALTH REP. 350, 352 (2003).

343. *Id.* at 353.

of age, gender, race, or pre-existing conditions, have access to secure, stable, affordable health insurance.³⁴⁴

The Act assists in broadening insurance eligibility under Medicaid to include those individuals with incomes below the federal poverty line, which includes single adults without children who were not previously eligible for Medicaid.³⁴⁵ This group is seriously vulnerable to COVID-19, for all the reasons previously explained.

Employers, faith-based and community organizations, healthcare systems and providers, policymakers, and public healthcare systems must work together to promote fair and equitable access to quality health care for all. It goes without saying that in order to cease the spread of COVID-19, all must have the ability to manage and maintain their physical and mental health. This includes easily accessible and speedy testing, simple access to information, free testing, and access to mental health care. These programs must be modeled after the needs of African American communities.

Sadly, this historic legislation has slowly been eroded and attacked directly by the subsequent Trump administration. The current administration has shown a callous, cruel disregard for African American communities hardest hit by COVID-19.³⁴⁶ When history reviews the annals of Donald Trump's handling of the novel Coronavirus by dismantling and attacking the Affordable Care Act in the midst of a global pandemic, it will be viewed as one of his most racially divisive acts. This administration has historically and utterly failed communities most in need of help and attention.³⁴⁷ This dereliction of duties has harmed African American women in ways that were predictable in light of the vast inequities already in place pre-COVID-19.³⁴⁸

344. Patient Protection and Affordable Care Act, Pub. L. No. 111-148 (2020).

345. See Aparna Soni, Michael Hendryx, & Kosali Simon, *Medicaid Expansion Under the Affordable Care Act and Insurance Coverage in Rural and Urban Areas*, 33 J. RURAL HEALTH 217, 217 (2017).

346. See Jonathan Metzl, *Trump's Pandemic Attack on the Affordable Care Act*, U.S. NEWS & WORLD REP. (July 9, 2020), <https://www.usnews.com/news/healthiest-communities/articles/2020-07-09/trumps-pandemic-attack-on-obamacare-threatens-to-widen-racial-health-divide>.

347. See *id.*

348. See Treva Lindsey, *Why COVID-19 is Hitting Black Women So Hard*, WOMEN'S MEDIA CTR. (Apr. 17, 2020), <https://womensmediacenter.com/news-features/why-covid-19-is-hitting-black-women-so-hard>.

C. *Focusing Research Questions on Minority Health Issues and Allowing POC to be More Involved and “Heard” in Their Health Care*

By allowing minorities, specifically people of color, to voice their concerns and opinions in their health care, it provides for a stronger foundation for health care treatment and access in the future. Empowering people of color to voice their concerns can assist in reducing health disparities within their very own communities.

We must also address the stressors that are prevalent in the African American community that place them at greater risk in global pandemics. Churches might be able to host mental health professionals and other advocacy groups. Other ways to address these issues include raising the minimum wage to a living wage, decreasing and eliminating the wage gap, making equal work for equal pay the law of the land, and creating greater educational opportunities for communities of color.

IX. CONCLUSION

As we have seen all too clearly, COVID-19 has shown itself to not be an equalizer but a magnifier. It has worked to expose all of the inequities that have been plaguing African Americans for decades and laid bare all that is unjust in America. Thankfully, the CDC has made it clear that “[r]educing racial disparities in healthcare requires national leadership to engage a diverse array of stakeholders; facilitate coordination and alignment among federal departments, agencies, offices, and nonfederal partners; champion the implementation of effective policies and programs; and ensure accountability.”³⁴⁹ The studies and findings above can help motivate increased efforts to intervene at the state, tribal, and local levels to best address health disparities and inequalities.

As we strive to better understand current racial disparities in health care, we become more aware of the racism that has operated and continues to operate today. By attempting to attack prejudice, stereotypes, and negative stigmas of minority groups, we can help to establish trust within the medical community and the profession as a whole.

As a civilized society, we must recognize the need and benefit of living in a society where all citizens have access to fair, equal and equitable, quality health care. We must work to ensure that the most vulnerable and marginalized in our

349. Centers for Disease Control and Prevention, *Conclusion and Future Directions: CDC Health Disparities and Inequalities Report – United States, 2013*, 62 MORBIDITY & MORTALITY WKLY. REP. 184, 184 (Supp. 3 2013).

society are taken care of medically. So that when those two racially different people enter the emergency room with COVID-19, we as a country should be able to recognize that both deserve the same level of treatment, regardless of racial status, ethnicity, or education level. How we treat certain segments of our national community is indicative of our moral character as a country.

PART THREE:

THE IMPACT OF COVID-19 ON BLACK WOMEN ESSENTIAL WORKERS

Angela Downes³⁵⁰

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I. INTRODUCTION

Query: What do we tell our young daughters about their place in the world as employees and workers during this time of COVID-19 as we watch them grow to be

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Black women? Why hasn't there been a greater evolution of Black women and their role as essential workers in American society? COVID-19 has shined a spotlight on the historical struggles of Black women as essential workers. Time continues to move, but the narrative has not.

Mine is a privileged existence. My family and I have the luxury to shelter in place. Once the country shut down and businesses began to shutter, I seamlessly began to teach law school classes online, my husband was able to stay home while a strategy was developed and implemented at the company where he works, and my child attended online classes. We had groceries and other essentials delivered and went for daily walks in our neighborhood—closely monitoring the news distressed by the rising number of deaths. My hardship centered on managing the number of Zoom calls that my husband, daughter, and I had each day. I know that mine is not the typical situation for so many Black women in America.

II. HISTORICAL CONTEXT: FOUR COWRIE SHELLS

Since 1619 when the first Black woman arrived on the shores of the United States, we toiled, building this country first in back-breaking hard labor as slaves, and now as essential workers in low wage jobs.³⁵¹ The burdens and hardships continue for Black women essential workers.

Angela was one of the first named slaves in Jamestown, Virginia.³⁵² She was one of the first enslaved people from Angola to reach America, enduring the terror of the middle passage to find herself toiling, day and night, in a new place, alone and without language or connection to everything she had ever known.

She and other enslaved persons tended to vegetable gardens and raised pigs, cattle, and fowl.³⁵³ Africans were treasured commodities because of their skills as craftsmen and their ability to farm, weave, and work – all skills that would prove invaluable to sustain the young country. The captors knew the women who came from Angola had such skills.³⁵⁴

351. See Nichelle Smith, *She Was Captured, Enslaved and She Survived. Meet Angela, the First Named African Woman in Jamestown*, USA TODAY (Oct. 21, 2019), <https://www.usatoday.com/in-depth/news/nation/2019/10/16/slaverys-history-angela-first-recorded-african-woman-jamestown/3895860002>; see also Lindsey, *supra* note 348.

352. Smith, *supra* note 351.

353. *Id.*

354. *Id.*

Angela was one of 350 enslaved Angolans aboard the San Juan Bautista ship on its journey from Luanada to Veracruz, Mexico, in mid-1619.³⁵⁵ The months-long journey was long, hard, and brutal as the captives sat in the cargo hold, chained together, and surrounded by the stench of filth, rotting flesh, and death.³⁵⁶ Only 207 survived.³⁵⁷

The San Juan Bautista was captured by two private vessels, the White Lion and the Treasurer, who split the healthiest fifty-five or sixty between them to sell.³⁵⁸ Twenty or so of those stolen slaves landed in Jamestown in 1619.³⁵⁹ Angela was among them.³⁶⁰

Angela is listed in the colony muster in 1625, six years after her arrival.³⁶¹ Her survival is remarkable given the hardships of brutal winters, attacks by the Native Americans, and disease.³⁶² After 1625, Angela disappears from official records.³⁶³ Whether she ever married or had children is unknown.³⁶⁴ She may have been sold away from Jamestown or she may have died.³⁶⁵

With Angela and other enslaved Africans, we see the first iteration of Black women as essential workers in the economy who are devalued in the larger society. Black women occupy a complex, paradoxical relationship with America: we are at once marginalized and ostracized, yet our very being has been exploited to help create and maintain White supremacy.³⁶⁶ When warring Africans and European traders kidnapped and sold thousands of West Africans into slavery, captive Black women and children accounted for the majority of those transported to the Americas

355. *Id.*

356. *Id.*

357. *Id.*

358. *Id.*

359. *Id.*

360. *Id.*

361. *Id.*

362. *Id.*

363. *Id.*

364. *Id.*

365. *Id.*

366. See generally DAINA RAMEY BERRY & KALI NICOLE GROSS, *A BLACK WOMEN'S HISTORY OF THE UNITED STATES* (Beacon Press 2020).

during the entirety of the transatlantic slave trade.³⁶⁷ Black women performed back breaking work that no one else would do. Enslaved women took care of and reared White children and worked the land while still caring for their own families.³⁶⁸ Do we expect too much from Black women? Since the inception of this country, we have worked and the role of Black women as essential workers has become clearly defined.

In June 2019, at a dig site in Jamestown, Virginia, archeologists and historians made an amazing discovery of four cowrie shells thought to belong to Angela.³⁶⁹ Cowrie shells were used as currency in African and revered as symbols of fertility.³⁷⁰ With origins in the Indian Ocean, the dime-sized oval shells are ivory and smooth with an opening down the center with jagged teeth.³⁷¹ This discovery highlights the strength and perseverance of Angela. It is amazing to think of her holding on to this significant piece of her heritage with everything she endured. The sufferings of Angela and other enslaved women did not end with when they were freed, but continued after emancipation, through Jim Crow and now in the world navigating COVID-19. Enslavement became systemized into the laws of American society. Research shows that stress, economic disadvantage, and economic deprivation not only affect the people experiencing it but is passed on from one generation to another.³⁷²

367. See generally JENNIFER L MORGAN, *LABORING WOMEN: REPRODUCTION AND GENDER IN NEW WORLD SLAVERY* (Univ. Pa. Press 2004); see also JACQUELINE JONES, *LABOR OF LOVE, LABOR OF SORROW* (Basic Books 2d ed. 2010).

368. See Emily West & Erin Shearer, *Fertility Control, Shared Nurturing, and Dual Exploitation: The Lives of Enslaved Mothers in the Antebellum United States*, 27 *WOMEN'S HISTORY REV.* 1006, 1014 (2018).

369. *June 2019*, JAMESTOWN REDISCOVERY (June 2019), <https://historicjamestowne.org/june-2019/>.

370. *Cowrie Shell*, THOMAS JEFFERSON ENCYCLOPEDIA, https://www.monticello.org/site/research-and-collections/cowrie-shell__ (last visited Nov. 1, 2020).

371. *Id.*

372. Liz Szabo & Hannah Rech, *The Other COVID-19 Risk Factors: How Race, Income, ZIP Code Can Influence Life and Death*, USA TODAY (Apr. 25, 2020, 2:29 PM), <https://www.usatoday.com/story/news/health/2020/04/22/how-coronavirus-impacts-certain-races-income-brackets-neighborhoods/3004136001/>.

III. BLACK WOMEN AS ESSENTIAL WORKERS

Nursing home workers, sanitation workers, bus drivers, food service, grocery and delivery workers are the workers keeping Americans fed, ensuring that we have the goods and services that we need. These workers are overwhelmingly Black and are dying at higher rates than other races from COVID-19.³⁷³ Millions of essential jobs are low-paid employees where leave or remote work is not an option.³⁷⁴ The higher representation of Black workers and other workers of color in these essential roles is a contributing factor to the number of Coronavirus deaths in many cities.³⁷⁵ Essential workers do not have the luxury of sheltering at home.³⁷⁶ They must either go to work or lose their jobs.³⁷⁷ These workers face a dilemma of feeding their families or preserving their health. In less than six months, COVID-19 has radically upended the lives and livelihoods of millions of workers and their families.³⁷⁸

More than 42 million workers have filed for unemployment insurance, and economists have estimated that 100,000 small business have permanently closed. But while the pain has been widespread, it has not been equally shared: workers of color and immigrant workers, especially women, are being hardest hit by loss of jobs and income and are disproportionately employed in the lowest-wage, essential jobs that place them at risk of contracting the virus.³⁷⁹

373. Emily Stewart, *Essential Workers Are Taking Care of America. Are We Taking Care of Them?*, VOX (Apr. 23, 2020, 10:30 AM), <https://www.vox.com/covid-19-coronavirus-explainers/2020/4/23/21228971/essential-workers-stories-coronavirus-hazard-pay-stimulus-covid-19>.

374. *Id.*

375. *Id.*

376. *Id.*

377. *Id.*

378. Abbie Langston & Sarah Treuhaft, *Race, Risk, and Workforce Equity in the Coronavirus Economy*, POLICYLINK, <https://www.policylink.org/our-work/economy/national-equity-atlas/COVID-workforce> (last visited Nov. 1, 2020).

379. *Id.*

For essential workers, in particular Black females, working remotely is not an available option.³⁸⁰ They continue to work, provide services and put themselves in harm's way because they have no choice. COVID-19 is a "toxic mix of racial, financial, and demographic disadvantage that is proving to be deadly."³⁸¹ Federal health officials have known for over a decade which communities are most vulnerable and likely to suffer disproportionate harm during a disease outbreak or other major disaster.³⁸² In 2011, the Center for Disease Control created the Social Vulnerability Index.³⁸³ The index rates the nation's counties on factors of poverty, housing, and access to transportation and how these factors predict the ability to prepare, cope, and recover from disasters.³⁸⁴ Black women made up fifty three percent of the Black labor force in 2018 and, since 1970, women have made up an increasing share of Black labor force.³⁸⁵ There were 10.7 million Black women in the labor force in 2018.³⁸⁶ By contrast, women overall accounted for approximately forty seven percent of the labor force in 2018.³⁸⁷

Black women grapple with negative stereotypes that affect how they are treated at work. Early state data showing high rates of COVID-19 infection and mortality among Black Americans only amplifies the importance of examining the different biases that may play a role in the spread, treatment, and containment strategy for the disease.³⁸⁸ We must also recognize that there is inadequate support

380. *Id.*

381. Szabo & Rech, *supra* note 372.

382. *Id.*

383. *Id.*

384. *Id.*

385. U.S. DEP'T OF LABOR, *Black Women Made Up 53 percent of the Black Labor Force in 2018*, THE ECONOMICS DAILY (Feb. 26, 2019), <http://www.bls.gov/opub/ted/2019/black-women-made-up-53-percent-of-the-black-labor-force-in-2018.htm>.

386. *Id.*

387. *Id.*

388. Jocelyn Frye, *On the Frontlines at Work and at Home: the Disproportionate Economic Effects of the Coronavirus Pandemic on Women of Color*, CTR. FOR AM. PROGRESS (Apr. 23, 2020, 9:00 AM), <https://www.americanprogress.org/issues/women/reports/2020/04/23/483846/frontlines-work-home/>.

for essential workers who provide critical care and services.³⁸⁹ These include nursing home assistants, home health aides, and grocery workers.³⁹⁰ Black women disproportionately work in many of these roles and there is an unspoken expectation that they will care for others without an examination of the care they need for themselves and their families and the obstacles they encounter.³⁹¹

Longstanding and structural inequities generally fueled by racism, sexism, ethnic stereotypes, and other forms of bias have created an uneven landscape that makes it difficult for people of color to secure jobs and opportunities for advancement. There are deep-rooted cultural attitudes and stereotypes about women of color who are often devalued and their needs deprioritized, leaving them without helpful support mechanisms. These dynamics are crucial in shaping the experiences and impact of the COVID-19 crisis.³⁹² The workers caring for the country are putting their lives in jeopardy and many are dying. Essential workers are taking risks that were not initially part of the job. It is not just their health in peril, but those of their families and others they encounter. For essential workers, outside of hospitals, the frontline experience may be less dire, but it is still stressful, risky, and confusing. Millions of low-wage workers have suddenly been deemed essential.³⁹³ They are terrified about their health, access to health care, and testing. They are also in very fragile financial positions.³⁹⁴ If both partners are essential workers, the risk is magnified.³⁹⁵ If there are children, there is the added complexity of childcare. Initially, daycare centers and other childcare providers closed, leaving families to scramble to balance work and family commitments.³⁹⁶ While some providers have

389. *Id.*

390. *Id.*

391. *Id.*

392. *Id.*

393. Stewart, *supra* note 373.

394. *Id.*

395. *Id.*

396. Megan Leonhardt, 'You're so Stressed You Can't Sleep at Night': Parents and Child-care Providers are Still Struggling as the Pandemic Drags On, CNBC (Oct. 13, 2020, 9:31 AM), <https://www.cnbc.com/2020/10/13/families-and-child-care-providers-still-struggling-during-pandemic.html>.

reopened, the risk to children and those providing the care is great.³⁹⁷ The Centers for Disease Control has provided some guidance, but as the information about who is at risk increases, parents are less likely to put their children in danger.³⁹⁸ A recent article found that more than 300 children in Texas daycares have caught COVID-19 and the numbers are rising.³⁹⁹ If both parents are essential, there are additional challenges that arise. Navigating working and keeping themselves and their family safe can be a deadly task.

A. Hazard Pay

As a response to the pandemic, many companies and employers offer hazard pay to essential workers.⁴⁰⁰ Workers must balance if the calculation of extra money is worth the risk. What is the benefit as businesses reduce their hours and eventually begin to shut down because of reduced income? But while essential workers wonder if hazard pay is worth the risk, they must continue to work because they have no other recourse. Many workers believe that the businesses do not care about workers but are only concerned about making themselves money.

The first months of the Coronavirus pandemic have revealed a fundamental mismatch between the necessity of the “essential” occupations and the job quality they provide for working people.⁴⁰¹ Essential workers are putting their health on the line to keep the economy afloat . . . [and] are often paid low wages, exposed to unsafe working conditions, denied basic benefits, and locked out of

397. Erika Edwards, *Kids at Day Care Spread COVID-19 to Parents and Teachers*, *CDC Says*, NBC NEWS (Sept. 11, 2020, 2:02 PM), <https://www.nbcnews.com/health/health-news/kids-day-care-spread-covid-19-parents-teachers-cdc-says-n1239887>.

398. *Guidance for Child Care Programs that Remain Open*, CTRS. FOR DISEASE CONTROL AND PREVENTION (July 23, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/guidance-for-childcare.html>.

399. Reese Oxner, *More than 300 Children in Texas Day Cares have Caught COVID-19, and the Numbers are Rising*, THE TEX. TRIB. (July 1, 2020, 5:00 PM), <https://www.texastribune.org/2020/07/01/texas-day-care-coronavirus-cases-rising/>.

400. Nathaniel Meyersohn, *Retailers are Canceling Coronavirus Hazard Pay. That's a Mistake*, CNN (July 20, 2020, 4:14 PM), <https://www.cnn.com/2020/07/20/business/hazard-pay-essential-workers-coronavirus/index.html>.

401. Langston & Treuhaft, *supra* note 378.

high-quality career paths . . .⁴⁰² Some large employers . . . introduced hazard pay polices that temporarily raised wages of essential workers by \$2 per hour, but have now rescinded those pay increases as shelter-in-place orders are lifted.⁴⁰³

At the moment the country is embracing essential workers and holding them out as the unsung heroes of the pandemic but, if and when this ends, will this recognition continue, or will they go back into the shadows?

Black women are the foundation of essential workers. They are integral to the economic stability of their families. Any cessation of their earnings would be disastrous. Black women play a vital role in the family structure and are the primary wage earners.⁴⁰⁴ A Center for American Progress survey found that 67.5 percent of Black women are primary sole breadwinners.⁴⁰⁵ Black women constituted 41.2 percent of households.⁴⁰⁶ Not only do Black women face issues of job disparities and family support obligations but they continue to face systems that undermine their economic stability and exacerbate pay inequalities. The economic reality of Black women is bleak. They consistently earn sixty two cents for every dollar in relationship to White men.⁴⁰⁷ Research also finds that Black women and Black families are less likely to have wealth and savings.⁴⁰⁸ Studies show that for every \$100 a White family has in wealth and assets, Black families have \$5.04.⁴⁰⁹ Combined assets for single Black women is \$200 in comparison to \$15,640 for

402. *Id.*

403. *Id.*

404. Sarah Jane Glynn, *Breadwinning Mothers Continue to Be the U.S. Norm*, CTR. FOR AM. PROGRESS (May 10, 2019, 5:17 PM), <https://www.americanprogress.org/issues/women/reports/2019/05/10/469739/breadwinning-mothers-continue-u-s-norm/>.

405. Frye, *supra* note 388.

406. *Id.*

407. *Id.*

408. *Id.*

409. Chandra Thomas Whitfield, *Black Women's Livelihoods Will Be Yet Another Coronavirus Casualty*, IN THESE TIMES (Apr. 12, 2020), <http://inthesetimes.com/article/22460/coronavirus-especially-threatens-black-womens-livelihoods>.

white women and \$28,900 for white men.⁴¹⁰ These statistics show that Black women do not have the wealth necessary to stay afloat and provide for their families if their earnings are reduced or stopped because of job loss.

B. *Jobs and Impact of Job Loss*

Women of color disproportionality work in industries experiencing significant job loss.⁴¹¹ They have less mobility in jobs and wages, as well as longer spells of unemployment.⁴¹² According to a report released by the Bureau of Labor Statistics, Black and Hispanic workers were disproportionately impacted by 700,000 layoffs in March 2020.⁴¹³ While women were hit hard, Black women are succumbing to a crisis from which they are unlikely to recover.

C. *Childcare Issues*

Childcare burdens fall on women during the pandemic.⁴¹⁴ Women are spending more time on childcare while balancing work and parenting responsibilities. For those who depend on an extended network of family and friends, they now have no access to those support systems.⁴¹⁵ There is uncertainty as to if and when schools will open. With no clear direction from policymakers, children and their parents hang in the balance, not knowing if schools will enact staggered enrollment or a hybrid model where students have a combination of in-

410. Frye, *supra* note 388.

411. Lucy Erickson, *The Disproportionate Impact of COVID-19 on Women of Color*, SOC'Y FOR WOMEN'S HEALTH RES. (Apr. 30, 2020), <https://swhr.org/the-disproportionate-impact-of-covid-19-on-women-of-color/#:~:text=Women%20of%20color%20are%20also%20overrepresented%20in%20some,to%20COVID-19%2C%20such%20as%20child%20care%20and%20hospitality>.

412. Jocelyn Frye, *Racism and Sexism Combine to Shortchange Working Black Women*, CTR. FOR AM. PROGRESS (Aug. 22, 2019, 12:01 AM), <https://www.americanprogress.org/issues/women/news/2019/08/22/473775/racism-sexism-combine-shortchange-working-black-women/>; *see also* Frye, *supra* note 388.

413. Whitfield, *supra* note 409.

414. Jenesse Miller, *COVID-19 Has Hit Women Hard, Especially Working Mothers*, U.S.C. NEWS (Jun. 18, 2020), <https://news.usc.edu/171617/covid-19-women-job-losses-childcare-mental-health-usc-study/>.

415. *Id.*

person and online classes.⁴¹⁶ For essential workers, this indecision adds another layer of stress. Although there have been small rebounds to the economy, a critical outcome of COVID-19 is significant job loss.⁴¹⁷ These job losses are more significant for Black women and lead to a lack of significant job opportunities.⁴¹⁸ Black women are generally underrepresented in many higher wage occupations that require less physical proximity and are therefore more likely to recover more quickly than non-essential jobs with higher COVID-19 risk.⁴¹⁹ Many high quality jobs that are suitable for socially distanced or remote-working arrangements are still in demand.⁴²⁰ As these jobs come back, often Black women lack the training and entry points for these positions.⁴²¹

D. Race and Privilege

Black women essential workers also navigate issues of race and privilege. Throughout history, and even now, these challenges are incorporated as part of the response to the pandemic as it relates to access to testing and availability to resources for assistance.⁴²² No one can live up to the standards set by racist

416. Robert Pondiscio, *A Million Little Pieces: Uncertainty Surrounds the Reopening of Schools in the Fall*, CITY J. (Summer 2020), <https://www.city-journal.org/covid-19-uncertainty-of-reopening-schools>.

417. Jeanna Smialek et al., *Workers Face Permanent Job Losses as the Virus Persists*, N.Y. TIMES (Oct. 3, 2020), <https://www.nytimes.com/2020/10/03/business/economy/coronavirus-permanent-job-losses.html>.

418. MICHELLE HOLDER, THE EARLY IMPACT OF COVID-19 ON JOB LOSSES AMONG BLACK WOMEN IN THE UNITED STATES (Levy Econ. Inst. of Bard C., Working Paper No. 963, 2020).

419. Sarah Treuhaft et al., *Race, Risk, and Workforce Equity in the Coronavirus Economy*, NAT'S EQUITY ATLAS, www.policylink.org/our-work/economy/national-equity-atlas/COVID-workforce.

420. *Id.*

421. *Id.*

422. Several recent studies and news articles reported that although many schools provided computers for students to take home, many students did not have internet access. Also, those applying for unemployment were unable to contact the agency for several weeks in order to file the claim. Jennifer Liu, *Unemployed Workers Turn to Each Other for Help Getting Through Complex, Crashed Filing Systems*, CNBC (Apr. 17, 2020),

stereotypes – stereotypes that position Black women as so strong they don't need help, protection, care or concern.⁴²³ Black women often find themselves in survival mode without the constructs and protection of systems to ensure that they are treated fairly or that their messages are not appropriated.

Issues of race and privilege surfaced during the Portland, Oregon protests and the emergence of the Wall of Moms (WOM).⁴²⁴ The group formed in early July to counteract the federal government's deployment of federal troops to arrest and question demonstrators, often taking them away in unmarked vehicles.⁴²⁵ There are now chapters in Chicago, New York, Philadelphia, St. Louis, and Washington D.C.⁴²⁶ The group identified the death of George Floyd, who died in police custody and called out for his mother in his final breaths, as the catalyst that called them to action.⁴²⁷ In Portland, the group sang the chorus "hands up, don't shoot" at the County Justice Center.⁴²⁸ They are an overnight and international sensation but have received criticism from racial justice activists who note that the only reason the Wall of Moms are receiving attention is because the majority of the participants are

<https://www.cnn.com/2020/04/17/unemployed-workers-turn-to-each-other-for-help-filing-for-benefits.html>; Emily A. Voges et al., *53% of Americans Say the Internet Has Been Essential During the COVID-19 Outbreak*, PEW RES. CTR. (Apr. 30, 2020), <https://www.pewresearch.org/internet/2020/04/30/53-of-americans-say-the-internet-has-been-essential-during-the-COVID-19-outbreak/>; Pia Ceres, *A COVID Slide Could Widen the Digital Divide for Students*, WIRED (Aug. 7, 2020), www.wired.com/story/schools-digital-divide-remote-learning/; Maeve Reston, *Pandemic Underscores Digital Divide Facing Students and Educators*, CNN (Apr. 9, 2020), www.cnn.com/2020/04/09/politics/digital-divide-education-coronavirus/index.html.

423. MIKKI KENDALL, HOOD FEMINISM: NOTES FROM THE WOMEN THAT A MOVEMENT FORGOT xiv (2020).
424. Robin Givhan, *The Black Lives Matter Movement Hits a Different Kind of Wall*, WASH. POST MAG. (Aug. 6, 2020), <https://www.washingtonpost.com/magazine/2020/08/06/portland-protests-wall-of-moms-black-lives-matter-movement/?arc404=true>.
425. Dani Blum, *'The Moms Are Here': 'Wall of Moms' Groups Mobilize*, N.Y. TIMES (July 27, 2020), <https://www.nytimes.com/2020/07/27/parenting/wall-of-moms-protests.html>.
426. *Id.*
427. *Id.*
428. Marissa J. Lang, *'What Choice Do We Have?': Portland's 'Wall of Moms' Faces Off With Federal Officers at Tense Protests*, WASH. POST (July 22, 2020), <https://www.washingtonpost.com/nation/2020/07/22/portland-moms-protests/>.

White.⁴²⁹ Black women also contend that there have always been Black mothers and organizations demonstrating to protect children and their communities.⁴³⁰ There have also been claims of White saviorism as the group who initially rallied around Black Lives Matter began to shift away from the focus of protecting Black protestors.⁴³¹

Moreover, Black women who agreed to partner with the Wall of Moms after they were told that Black voices, stories, and leadership would be amplified began to step away when leaders in WOM changed strategies, filed for nonprofit status, and made other business decisions without the black leaders they claim to support.⁴³² Black women are not only ignored in social justice movements, if they are included they often find themselves marginalized.⁴³³ The sacrifice of Black women's bodies and lives is so normalized that it does not move the masses.⁴³⁴ The reality is that as Black women work tirelessly to spearhead grassroots efforts against institutional

429. *Id.*

430. *Id.*

431. Ester Wang, 'Our Pain is Not An Asset': Inside the Breakdown of the Wall of Moms, JEZEBEL (Aug. 3, 2020), <https://jezebel.com/our-pain-is-not-an-asset-inside-the-breakdown-of-the-w-1844556866>.

432. *Id.*

433. Examples include: The Women's March, Black women's marginalization in the Civil Rights movement, and the #Metoo movement. See, e.g., Julia Craven, *The Decade of Black Women in Protest: Throughout History, Their Activism Was Marginalized While Men Stood in the Spotlight. Not Anymore*. SLATE (Dec. 18, 2019), www.slate.com/news-and-politics/2019/12/decade-black-women-protest.html; Elaina Colussi, *How the Women's March Excludes Women of Color*, DAILY EMERALD (Jan. 26, 2018), https://www.dailyemerald.com/opinion/columns/colussi-how-the-womens-march-excludes-women-of-color/article_4f72c64a-1ff8-5173-b826-a3201c66769f.html; Sherri Williams, *Historic Exclusion From Feminist Spaces Leaves Black Women Skeptical of March*, NBC NEWS (Jan. 21, 2017), www.nbcnews.com/news/nbcblk/decades-exclusion-leave-black-women-skeptical-womens-march-n710216.

434. See Sofiya Ballin, *I Didn't Know Oluwatoyin Salau, but I See Her in the Black Women I Know: The Abuse Black Women Face is so Invisible and Normalized*, THE LILY (June 23, 2020), <https://www.thelily.com/i-didnt-know-oluwatoyin-salau-but-i-see-her-in-the-black-women-i-know/>.

injustices, their fight is not considered as important as when White mothers show up.⁴³⁵

IV. DOMESTIC VIOLENCE

Many Black women not only face the challenge of COVID-19 but also increased instances of domestic violence.⁴³⁶ Shelters and service providers report an increase in abuse cases.⁴³⁷ The pandemic has created another crisis for victims of domestic violence who must shelter-in-place with their abusers.⁴³⁸ Victims face more issues around safety, health, and confidentiality. The additional financial stress can create an impossibly dangerous environment for the victim where there are no resources or opportunity to leave the abusive situation.⁴³⁹ With many victims losing their jobs or unable to find work, financial stress may be exacerbated during COVID-19.⁴⁴⁰ Many victims will be dependent on the abusive partner for housing and support.⁴⁴¹ Fear is another tactic that perpetrators use to manipulate victims. Some examples of how fear may be used are “by preventing survivors from seeking medical care or COVID-19 testing, instilling fear in victims by preventing them

435. Kelly Glass, *The ‘Wall of Moms’ is Not the Story. Black Moms Have Been in this Fight for Years*, THE LILY (July 25, 2020), <https://www.thelily.com/the-wall-of-moms-is-not-the-story-black-moms-have-been-in-this-fight-for-years/>.

436. *Intimate Partner Violence Fact Sheet*, OFFICE FOR VICTIMS OF CRIME (2018) (last visited Nov. 3, 2020), https://ovc.ojp.gov/sites/g/files/xyckuh226/files/ncvrw2018/info_flyers/fact_sheets/2018NCVRW_IPV_508_QC.pdf.

437. Andrew M. Campbell, *An Increasing Risk of Family Violence During the COVID-19 Pandemic: Strengthening Community Collaborations to Save Lives*, FORENSIC SCI. INT’L: REP. 3, 4 (2020), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7152912/pdf/main.pdf>.

438. Megan L. Evans et al., *A Pandemic Within a Pandemic—Intimate Partner Violence During COVID-19*, NEW ENGLAND J. MED. 1, 3 (Sept. 16, 2020) <https://www.nejm.org/doi/pdf/10.1056/NEJMp2024046?articleTools=true>.

439. *Id.*

440. *Survivors of Domestic and Sexual Violence are at Heightened Risk Now, and Will Remain So Long After the Current Crisis*, NAT’L TASK FORCE TO END SEXUAL & DOMESTIC VIOLENCE (Apr. 16, 2020), <http://www.4vawa.org/ntf-action-alerts-and-news/2020/4/16/survivors-of-domestic-and-sexual-violence-are-at-heightened-risk-now-and-will-remain-so-long-after-the-current-crisis#> [hereinafter *NTF*].

441. *Id.*

from leaving home, and exposing members of the household to Coronavirus.”⁴⁴² In the above situations, there is increased isolation. Victims do not have the support systems or the ability to escape to defuse a dangerous situation.⁴⁴³ They can no longer seek protection or escape to elderly parents or a relative with children for fear that they might expose family members to Coronavirus.⁴⁴⁴ Survivors also may not have the opportunity to call shelters for help.⁴⁴⁵

As distancing measures are mandated and people stay home, the risk for violence increases. Family members now spend more time in close contact.⁴⁴⁶ Perpetrators of abuse may take advantage of COVID-19 restrictions to exercise power and control over their partners and further reduce access to services, help, and psychological support from formal and informal networks.⁴⁴⁷ Abusers may exert control by restricting access to necessary items like soap and sanitizer, or by spreading misinformation about the disease and stigmatizing their partners.⁴⁴⁸ Further access to reproductive health services may be restricted.⁴⁴⁹ Research indicates “an increase in reports of domestic violence routinely follows any large-scale disaster.”⁴⁵⁰

Culturally, Black women face an additional hurdle. Although they may be in a life threatening situation, with the current spotlight on the incidents of police brutality and systemic racism, they may feel an increased pressure to tolerate abuse and violence for fear of another Black man added to the list of those who have died in police custody. Studies show “Black women experience intimate partner violence at a rate 35% higher than that of [W]hite females, and about 2.5 times the rate of

442. *Id.*

443. Evans, et al., *supra* note 438.

444. Jeremy Schneider, *I'm Afraid to Visit my Parents During Coronavirus, Just when I Need Them the Most*, NJ.COM (Mar. 22, 2020), <https://www.nj.com/coronavirus/2020/03/im-afraid-to-visit-my-parents-during-coronavirus-just-when-i-need-them-the-most.html>.

445. Evans, et al., *supra* note 438, at 2.

446. *COVID-19 and Violence Against Women: What the Health Sector/System Can Do*, WORLD HEALTH ORG. 1, 3 (Apr. 7, 2020), <https://apps.who.int/iris/bitstream/handle/10665/331699/WHO-SRH-20.04-eng.pdf?sequence=1&isAllowed=y>.

447. *Id.*

448. *Id.*

449. *Id.*

450. NTF, *supra* note 440.

women of other races.”⁴⁵¹ These factors lead to underreporting of domestic violence instances and failure to seek help services.⁴⁵² Historical systems of racism, as well as the perceptions and myths that portray Black women as strong and domineering, further add to the complexities that Black victims face.⁴⁵³ Meaning that there is often a perception Black women cannot be victims of domestic violence.

A. *Domestic Violence and Guns*

There has been an increase in gun sales during COVID-19.⁴⁵⁴ Guns are used to control, promote fear, and intimidate victims of domestic violence.⁴⁵⁵ For victims of domestic violence this is particularly troubling. Firearms are the leading cause of death for victims and, combined with the stressors of finances, children, and being held in close quarters with the potential for sickness, these dangers are magnified.⁴⁵⁶ According to a National Violence Against Women survey, Black women experience

451. *Facts & Stats Collection*, WOMEN OF COLOR NETWORK 2, 8 (2006), http://www.ctcadv.org/files/4013/8385/8238/WOC_domestic-violence1.pdf [hereinafter *Facts & Stats*].

452. *Id.* at 1.

453. *Id.* at 2 (“As a result of historical and present-day racism, Black women may be less likely to report her abuser or seek help because of discrimination, Black men’s vulnerability to police brutality and negative stereotyping. Non-arrests of suspected abusers of Black women and fear that police will exercise an abuse of power have contributed to Black women’s reluctance to involve law enforcement. Stereotypes amplify the complexities Black women encounter when trying to seek help services. Myths that Black women are ‘domineering figures that require control’ or that Black women are “exceptionally strong under stress and are resilient” increase their vulnerability and discourage some from speaking out about abuse. Culturally and historically, Black women have been looked to as protectors of their family and community.”)

454. Aaron Smith, *Coronavirus Continues to Fuel Surge in Gun Sales*, FORBES (Aug. 3, 2020), <https://www.forbes.com/sites/aaronsmith/2020/08/03/coronavirus-continues-to-fuel-surge-in-gun-sales/#65ca569869e0>.

455. Julie Bancroft et al., *Guns and Violence Against Women: America’s Uniquely Lethal Intimate Partner Violence Problem*, EVERYTOWN RES. & POL. (Oct. 17, 2019), <https://everytownresearch.org/report/guns-and-violence-against-women-americas-uniquely-lethal-intimate-partner-violence-problem/>.

456. *Id.*

higher rates of intimate partner homicide when compared to White victims.⁴⁵⁷ When guns are in the home, they are the leading method of death for victims of domestic violence.⁴⁵⁸

B. *Domestic Policy*

For Black women facing domestic violence during the pandemic, we must improve enforcement of protective orders, allocate additional resources, and include evidence-based measures to address violence against women and girls in COVID-19 national response plans. Doing so will ensure that there is a culturally responsive plan for Black victims of domestic violence. We must also strengthen services for women who experience violence. These include building capacity of key services to prevent impunity and improve quality of response. We must put women at the center of policy change, solutions, and recovery. We must also perform research and examination of the data to understand the impact and inform the response. Most importantly, we must ensure that the voices and the definitive struggles of Black women are included and part of the message.⁴⁵⁹

V. WHAT CAN WE DO?

The current situation surrounding COVID-19 continues to steadily deteriorate.⁴⁶⁰ With the lack of a comprehensive coordinated federal response, individual states and cities scramble to ensure that the health and safety of their

457. *Facts & Stats*, *supra* note 451. For a powerful essay on gun violence: see MIKKI KENDALL, *HOOD FEMINISM: NOTES FROM THE WOMEN THAT A MOVEMENT FORGOT* 16 (Viking 2020).

458. Bancroft et al., *supra* note 455.

459. See Phumzile Mlambo-Ngcuka, *Violence Against Women and Girls: the Shadow Pandemic*, UN WOMEN: IN FOCUS (Apr. 6, 2020), <https://www.unwomen.org/en/news/stories/2020/4/statement-ed-phumzile-violence-against-women-during-pandemic>; see also Lucy Erickson, *The Disproportionate Impact of Covid-19 on Women of Color*, SOC'Y FOR WOMEN'S HEALTH RES.: BLOG (Apr. 30, 2020), <https://swhr.org/the-disproportionate-impact-of-covid-19-on-women-of-color/>.

460. See Christina Maxouris & Jason Hanna, 'A Harrowing Time.' *Ten States Reported Their Highest Number of New Coronavirus Cases on Friday*, CNN (Oct. 17, 2020, 2:34 PM), <https://www.cnn.com/2020/10/17/health/us-coronavirus-saturday/index.html>.

communities while navigating an uncertain economy.⁴⁶¹ In order to safeguard our communities, and especially Black women essential workers, we must work on promoting the following policies:

Provide necessary supports for essential workers. These include personal protective equipment, childcare, and housing stipends for emergency funds.

Expand caregiving protections. Parents that are considered essential must have options to ensure that their children are safely cared for while they work.

Increase economic security for all families. More than 36 million U.S. workers have been dislocated from employment since mid-March.⁴⁶² The federal Coronavirus Aid Relief and Economic Security (CARES) Act temporarily expanded unemployment insurance eligibility to include gig workers, part-time workers, and self-employed individuals, while adding up to 13 weeks of eligibility beyond state-level duration limits.⁴⁶³ Yet many low-wage service workers, disproportionately people of color, may still be ineligible for benefits and eligibility because they do not meet the minimum income threshold.⁴⁶⁴

Bolster other income supports in the form of childcare, food, and housing subsidies to ensure that all facilities and households can meet their basic needs.⁴⁶⁵

Provide wider access to employment and training programs for those who may now be unemployed to get them reintegrated into the economy.

Other efforts should include a centralized response to the pandemic that includes a public health infrastructure designed to provide testing and health care for those impacted and suffering from the virus. This plan should not be based on competition, but on stopping the spread of the virus. Whether it is drive-thru testing or some other mechanism, the plan should also include a robust testing infrastructure for all. In order to properly study the ramifications of the pandemic there must be

461. See Sheryl Gay Stolberg et al., *With the Federal Health Megaphone Silent, States Struggle With a Shifting Pandemic*, N. Y. TIMES (Jun. 17, 2020), <https://www.nytimes.com/2020/06/17/us/politics/coronavirus-pandemic-federal-response.html?auth=login-google>; see also Alex Fitzpatrick, *Why the U.S. is Losing the War on Covid-19*, TIME (Aug. 13, 2020, 11:19 AM) <https://time.com/5879086/us-covid-19/>.

462. Langston & Treuhaft, *supra* note 378.

463. Thomas M. McInerney & Andrew M. Massara, *The CARES Act and Its Impact on Independent Contractors and Gig Workers* (Apr. 6, 2020), <https://www.natlawreview.com/article/cares-act-and-its-impact-independent-contractors-and-gig-workers>.

464. Langston & Treuhaft, *supra* note 378.

465. *Id.*

standardized data collection in order to study trends and work toward an antidote for the virus. Several congressional Democrats introduced the Federal Reserve Racial and Economic Equity Act.⁴⁶⁶ The bill would update the Federal Reserve's official mandate to require the Reserve to work to reduce racial and income inequality in the U.S.⁴⁶⁷ This third directive would require that the Reserve consider racial inequity in employment, income and access to credit when developing monetary policy and when regulating and supervising banks.⁴⁶⁸ The passage of this bill would help to ensure an equitable recovery for those who have been disproportionately affected by the Coronavirus.

VI. CONCLUSION

The long-term effects of COVID-19 will not be known for years. It is a catastrophe of our own making. For Black women essential workers concerned with survival while still supporting their families, we must implement measures on all levels that ensure a rapid recovery while addressing systems of privilege and longstanding disparities. We are a nation of compassion, empathy, and grace, traits that should be incorporated in our response to the pandemic. Years from now, when archeologist explore and study the Black women of today, what will represent the cownie shells? Angela had four cownie shells – what will be the symbols that the archeologists of the future will find for the current essential Black women workers?

In spite of concerted efforts at achieving racial equality and eliminating the chasms that exist for African American women, the subordinate position of African American females persist.⁴⁶⁹ As we, African American female law professors, witnessed COVID-19's unprecedented rampage on the African American community, we felt compelled to speak up about these tragic circumstances. It is our desire to be the voice for the millions of women of color, domestically and globally, who have no voice in this conversation.

We hope that we have addressed issues and concerns that are pertinent to all women but especially women most negatively impacted by COVID-19. African

466. Hannah Lang, *Democrat's Bill Would Require Fed to Focus on Income, Racial Inequality*, AM. BANKER (Aug. 5, 2020, 12:59 PM), <https://www.americanbanker.com/news/democrats-bill-would-require-fed-to-focus-on-income-racial-inequality>.

467. *Id.*

468. *Id.*

469. Frye, *supra* note 388.

American women are strong, resilient, and determined women who have struggled for centuries to lead healthy, whole, and financially secure lives. This is due, in large part, to the persistent effects of outright racism, which impacts all African Americans no matter what their socioeconomic status. While much of what has been discussed paints a grim picture, if our nation (and global community) makes real commitments to eradicating systemic racism, discrimination and inequities, significant gains can be made for those most negatively impacted. Equal pay for equal work, equitable economic opportunities, true educational advances, and equal access to quality health care must all be part and parcel of that effort.

We hope to chip away at multiple disparities facing Black women and bend the arc of justice towards those most marginalized, mistreated, and maligned. Fair and equitable policies are informed by all of America's citizens and all citizens in our global community. We eagerly await the day when our nation takes to heart the intrinsic value of all people by ensuring that we all can live a life that is free from the burdens and weight of discrimination and pervasive injustices.