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Unequal Access to Higher Education: Student Loan Debt Disproportionately Impacts Minority Students.

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UNEQUAL ACCESS TO HIGHER EDUCATION: STUDENT LOAN DEBT DISPROPORTIONATELY IMPACTS MINORITY STUDENTS

ELISA REYES HINOJOSA*

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*St. Mary's University School of Law, J.D., December 2022. Texas A&M University – Kingsville, B.A., 1997. Education is meant to be the great equalizer, not the path to devastating debt. I write this piece to highlight the extraordinary obstacles minority students have historically faced, currently face, and will continue to face in their quest for higher education. So long as educational access and resources remain unequally distributed, minority students will disproportionately carry student debt. I write this comment with the hope that one day students striving to achieve higher education degrees can do so without burdening their financial futures. I dedicate this piece to my parents for affording me the educational and social opportunities they were denied. Additionally, I dedicate this piece to my children – Ezekiel Hinojosa, M.D., and Mia Hinojosa – for their continuous inspiration. Lastly, I dedicate this piece to my husband – Juan Hinojosa, Ed.D., a life-long public-school educator. I thank him for his educational insight and for his unconditional love and support during the endless days and nights I spent dedicated to this comment.

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INTRODUCTION

“Higher education should open doors to new opportunities, not close them through crushing debt and a low-quality degree.”

—Vanita Gupta¹

1. *Civil Rights Groups: For-Profit Colleges Exploit Black and Latino Students*, THE LEADERSHIP CONF. ON CIV & HUM. RTS. (Oct. 17, 2019), <https://civilrights.org/2019/10/17/civil-rights-groups-for-profit-colleges-exploit-black-and-latino-students/> [https://perma.cc/JS59-ZPMF].

The United States is facing an unprecedented student debt crisis.² Over forty-four million student borrowers have amassed approximately \$1.6 trillion in debt.³ However, not all student debt is created equal.⁴ When pursuing higher education, African American and Hispanic students face obstacles, such as historical exclusion, substandard K-12 educational preparation, and limited financial resources at disproportionate levels.⁵ Consequently, student debt creates long-lasting, crippling effects amongst our nation's minority students at higher rates than their non-minority counterparts.⁶

The battle for equitable educational opportunities in America has undergone many phases.⁷ Historically, K-12 and higher education institutions have legally, systemically, and socially excluded people of color from receiving an adequate education.⁸ It is only in the last few decades that minority groups have been given the opportunity to attend

2. See Abigail Johnson Hess, *How Student Debt Became a \$1.6 Trillion Crisis*, CNBC (June 12, 2020, 11:33 AM), <https://www.cnbc.com/2020/06/12/how-student-debt-became-a-1point6-trillion-crisis.html> [<https://perma.cc/65YZ-YPXB>] (describing how student debt and the costs of attending college have significantly increased since 2008).

3. See *id.*

4. See Elissa Nadworny, *These Are the People Struggling the Most to Pay Back Student Loans*, NPR (July 9, 2019, 10:51 AM), <https://www.npr.org/2019/07/09/738985632/these-are-the-people-struggling-the-most-to-pay-back-student-loans> [<https://perma.cc/G5FS-CQ4T>] (analyzing the different types of borrowers dealing with student debt challenges).

5. See Sandy Baum, *Student Debt: The Unique Circumstances of African American Students*, in LORELLE ESPINOSA ET AL., RACE AND ETHNICITY IN HIGHER EDUCATION: A STATUS REPORT 203, 206–07 (Am. Council on Educ., 2019), <https://www.equityinhighered.org/resources/report-downloads/race-and-ethnicity-in-higher-education-a-status-report/> (discussing factors that have led to higher student debt amongst minority students).

6. See *id.* (recognizing that the limited financial and educational resources, the type institution applied for, and timing of when obtaining a degree are likely to impact a student's debt).

7. See Albert H. Kauffman, *Education and Minorities in the Modern Era: Working Civil Rights into Practice, Policy and Procedure*, 12 SCHOLAR: ST. MARY'S L. REV. ON RACE & SOC. JUST. 347, 348 (2010) (“Different education civil rights have, in general, gone through four phases: (1) identification and recognition of the right; (2) strong enforcement of the right in the courts and legislation, as well as administrative enforcement; (3) developed opposition to the right and litigation, legislation, and administrative inattention or opposition to dilute or ignore the right; and (4) changes in power and enforcement of the right depending on the approach of the courts and administrative agencies”).

8. See generally *id.*

higher education institutions.⁹ Yet, while many point to the increasing number of minority students attending colleges and universities as progress, the battle for equal access is ongoing, with student debt looming as one of the most crucial limitations.¹⁰

This comment examines the ongoing effects of the nation's discriminatory education policies and the resulting impact on higher education access.¹¹ Part II provides historical context, explaining case law, legislation, and the evolution of public policy regarding K-12 and higher education.¹² Parts III and IV describe how the current state of education policy and legislation fails to effectively address existing disparities of education access.¹³ Part V examines the current trajectory of student borrowing, its disproportional effect on minority students, and the potential effects of no action.¹⁴ Lastly, part VI explores possible solutions, such as public policy changes and proposed legislation aimed at combating the student debt crisis.¹⁵

9. See *Laws that Changed Diversity in Higher Education*, BESTCOLLEGES (Nov. 18, 2021), <https://www.bestcolleges.com/blog/diversity-laws-higher-education/> [https://perma.cc/VTG9-TENN] (highlighting collegiate institutions were exclusively White and male during the 1800s. As of 2019, people of color “earned 38% of all bachelor’s degrees granted” and woman “earned 57% of bachelor’s degrees” granted).

10. See JENNIFER LEE, GA. BUDGET AND POL’Y INST., HOW STUDENT DEBT WORSENS RACIAL INEQUALITY 1–2, 5, 8 (2020), <https://gbpi.org/how-student-debt-worsens-racial-inequality/> [https://perma.cc/5K3B-BRCG] (contending that student debt is detrimental to the economic health of all students, yet it disproportionately impacts minorities. Since there are existing racial wealth gap disparities between groups, the addition of student debt further hinders minorities by “continuing a cycle of lower wealth and assets.”).

11. See *supra* Intro (discussing the challenges faced in the fight for equal access to education).

12. See *infra* Part II (portraying the history of education policies and discussing their impact on equal access to education).

13. See *infra* Part III (dissecting education legislation and highlighting its deficiencies); see also *infra* Part IV (exploring the practical implications of education legislation).

14. See *infra* Part V (providing statistics relating to the student debt assumed by minorities the impact of that debt).

15. See *infra* Part VI (exploring income-driven repayment plans, the public service loan forgiveness program, and various other remedial measures).

I. EVOLUTION OF EDUCATIONAL RIGHTS IN THE UNITED STATES

American society has long placed great importance on education.¹⁶ Moreover, evidence suggests that increased levels of education improve societal outcomes, such as accommodating higher salaries, increasing social mobility, and improving participation in society.¹⁷ However, neither the U.S. Constitution nor the U.S. Supreme Court have recognized education as a guaranteed fundamental right.¹⁸ Consequently, this paradoxical view of education has resulted in an ongoing struggle for equitable educational opportunities and related benefits.¹⁹

A. *Education is Not a Fundamental Right*

Fundamental rights are explicitly enumerated in the Constitution or rights the Supreme Court has deemed implicitly expressed, and therefore privy to the highest protection of the law.²⁰ The U.S. Constitution unfortunately fails to mention education; thus, we must look to state constitutions and corresponding judicial interpretations to identify educational rights and protections.²¹ Despite its numerous opportunities

16. See *Plyler v. Doe*, 457 U.S. 202, 221 (1982) (“American people have always regarded education and [the] acquisition of knowledge as matters of supreme importance.” (*quoting Meyer v. Nebraska*, 262 U.S. 390, 400 (1923))).

17. See Jennifer Ma et al., *Education Pays 2019 The Benefits of Higher Education for Individuals and Society*, COLL. BD., <https://research.collegeboard.org/pdf/education-pays-2019-full-report.pdf> (2019) (“Individuals with higher levels of education earn more, pay more taxes, and are more likely than others to be employed.”).

18. See *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. *1, *2 (1973) (holding “Texas school-financing system [did not] impermissibly interfere with the exercise of a ‘fundamental’ right or liberty. Though education is one of the most important services performed by the State, it is not within the limited category of rights recognized by this Court guaranteed by the Constitution”).

19. See generally Dalié Jiménez & Jonathan D. Glater, *Student Debt is a Civil Rights Issue: The Case for Debt Relief and Higher Education Reform*, 55 HARV. C.R.-C.L.L. REV. 131, 161 (2020) (asserting that members of minority groups have been legally excluded from educational opportunities and remain “under the burden of [that] inequity”).

20. See *Rodriguez*, 411 U.S. at *41–42 (explaining what makes a right a ‘fundamental’ one is being able to find that right written into the Constitution or recognized by the Court has implicitly protected by the Constitution.” The Court does not ‘pick out particular human activities, characterize them as ‘fundamental,’ and give them added protection . . .’ To the contrary, the Court simply recognizes, as it must, an established constitutional right, and gives to that right no less protection than the Constitution itself demands.”).

21. Trish Brennan-Gac, *Educational Rights in the States*, 40 HUM. RTS. 12, 12 (2014) (“[O]ur federal Constitution does not provide the right to an education at all . . . We must look to the states to determine which rights, if any, we have to an education . . . As a result, American

to do so, the Supreme Court has never held education to be a fundamental right.²² Regardless, landmark cases have shaped and directed the current state of our education system.²³

1. *Brown v. Board of Education* (1954)

Brown v. Board of Education was a significant turning point for equitable education access for persons of color.²⁴ Prior to *Brown*, *Plessy v. Ferguson* established the doctrine of “separate but equal.”²⁵ The separate but equal doctrine—created by the Court in *Plessy*—declared separate but equal accommodations and establishments for White and non-white citizens constitutionally valid.²⁶ Moreover, *Plessy* strengthened institutionalized racial segregation and “cited the establishment of segregated schools by state legislatures as a legitimate exercise of their police powers.”²⁷ This decision led to legal segregation and blatant inadequate education for persons of color across the country

education has developed into a hodge-podge quilt of different rights, access, and quality standards that depend entirely upon where children live”).

22. See generally Charles Ogletree & Kimberly Robinson, *Inequitable Schools Demand a Federal Remedy*, EDUC. NEXT, <https://www.educationnext.org/inequitable-schools-demand-federal-remedy-forum-san-antonio-rodriguez/> [<https://perma.cc/TNX9-4WMX>] (last updated Feb. 22, 2017) (surveying the precedent established by the Supreme Court in the area of educational rights—declaring previous decisions to be “fundamentally wrong” and going so far as to “proclaim[] that educational ‘opportunity . . . is a right which must be made available to all on equal terms,[]’” but failing to establish a fundamental right protected by the U.S. Constitution).

23. See Jackson A. Thomas, *11 Landmark SCOTUS Cases that Changed American Education (Gallery)*, ABA J., <https://www.abajournal.com/news/article/11-landmark-supreme-court-cases-that-changed-american-education-gallery> [<https://perma.cc/3WJ3-PCRN>] (Sept. 5, 2019, 1:00 PM) (listing cases that have provided educational protections, limitations, and affected the educational experience).

24. See generally *Brown v. Board of Educ.*, 347 U.S. 483 (1954); see also *Brown v. Board: When the Supreme Court Ruled Against Segregation*, NAT’L CONST. CTR., <https://constitutioncenter.org/blog/on-this-day-the-supreme-court-rules-against-segregation> [<https://perma.cc/8YS3-4PJQ>] (May 17, 2022) (“The decision of *Brown v. Board of Education of Topeka* on May 17, 1954 is perhaps the most famous of all Supreme Court cases, as it started the process of ending segregation”).

25. See generally *Plessy v. Ferguson*, 163 U.S. 537 (1896) (holding state laws segregating people based on race to not be inherently discriminatory, so long as the laws are passed in good faith and reasonable).

26. See *id.* at 538–43.

27. See Pamela W. Carter & Phoebe A. Roaf, *A Historic Overview of Brown v. Board of Education*, 51 LA B. J. 410, 411 (April/May 2004) (asserting legally sanctioned segregation further empowered states in dismissing educational rights of minorities).

for decades.²⁸ In adhering to *Plessy*, states lawfully denied African American, Latino, and other minority student groups equal access to education programs and facilities.²⁹

Half a century later, the Supreme Court examined the constitutionality of the “separate but equal” doctrine in *Brown*.³⁰ Chief Justice Earl Warren delivered the decision:

We come then to the question presented: Does segregation of children in public schools solely on the basis of race, even though the physical facilities and other “tangible” factors may be equal, deprive the children of the minority group of equal educational opportunities? We believe that it does. We conclude that in the field of public education the doctrine of “separate but equal” has no place. Separate educational facilities are inherently unequal. Therefore, we hold that the plaintiffs and others similarly situated for whom the actions have been brought are, by reason of the segregation complained of, deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment.³¹

Overturing *Plessy* marked the Court’s first significant acknowledgment that segregation has no place in public education.³² Moreover, the *Brown* ruling marked a turning point towards a long, ongoing struggle to attain access to equitable education.³³

2. San Antonio Independent School District v. Rodriguez

While *Brown* brought an end to state sanctioned racial segregation, notably, it did not declare education as a fundamental right.³⁴ *Brown*

28. See *Brown v. Board: When the Supreme Court Ruled Against Segregation*, *supra* note 24 (recognizing the Supreme Court’s decision in *Plessy* helped institutionalize segregated public institutions, including public schools).

29. See *id.*

30. See *Brown*, 347 U.S. at 495 (examining claims of racial discrimination from five combined cases), *overruling Plessy*, 163 U.S. at 549.

31. Carter & Roaf, *supra* note 27 (quoting Chief Justice Warren’s decision in *Brown*, 347 U.S. at 493–95).

32. See *Brown*, 347 U.S. at 495 (concluding that in the realm of education, separate but equal facilities were inherently unequal and therefore unconstitutional), *overruling Plessy* 163 U.S. at 537.

33. See Thomas, *supra* note 23 (demonstrating how *Brown* was a key case in the movement towards equal education).

34. Cf. *Brown*, 347 U.S. at 495 (opining segregation was unconstitutional yet failing to integrate schools or provide affirmative relief).

declared education “must be made available to all on equal terms”—regardless of race—but left the power to state and local governments.³⁵ *Brown* lacked an enforcement mechanism, which resulted in continued discrimination and inequitable access.³⁶

Less than twenty years later, *San Antonio Independent School District v. Rodriguez* challenged the constitutionality of school finance plans.³⁷ In *Rodriguez*, the Court contemplated whether the Texas school finance system should be strictly scrutinized because education is a protected fundamental right and wealth is a suspect class.³⁸ *Rodriguez* highlighted the relationship between economic disparities and unequal access to educational facilities and resources.³⁹ More specifically, concerns regarding minority students receiving less funding per student, being educated in substandard school buildings, failing to receive comparable resources, and lacking the same number of certified teachers were brought to the bench.⁴⁰

In *Rodriguez*, the district court held education to be a fundamental right and wealth a suspect class; therefore, the state’s finance plan had to survive strict scrutiny.⁴¹ Conversely, in a 5–4 decision, the Supreme Court rejected the assertion that education is a constitutionally protected fundamental right.⁴² This allowed the Court to apply a lower level of scrutiny, which led to its holding—the state’s finance system is constitutional.⁴³ The Court opined, regardless of its decision, education

35. See *id.* at 493.

36. See John Rosales, *Fulfilling the Promise of Brown v. Board: From School and Housing Policies to the Courts*, NAT’L EDUC. ASSN., (May 10, 2019), <https://www.nea.org/advocating-for-change/new-from-nea/fulfilling-promise-brown-v-board-school-and-housing-policies> [<https://perma.cc/H2UW-FMGU>] (citing specific examples of local government resistance to *Brown*’s implications).

37. See *Rodriguez*, 411 U.S. at 4-5 (examining complaints brought forth by Mexican Americans that public schools in Texas were funded unequally).

38. See generally *id.*

39. See *id.* at 7-17.

40. See Camille Walsh, *Erasing Race, Dismissing Class: San Antonio Independent School District v. Rodriguez*, 21 BERKELEY LA RAZA L. J. 133, 143 (2011) (describing the complaints brought to light in *Rodriguez* against San Antonio and Texas).

41. See *Rodriguez*, 411 U.S. at *1 (reviewing the procedural history of the case).

42. See *id.* at 56–59.

43. See *id.* at 18–27 (“We must decide, first, whether the Texas system of financing public education operates to the disadvantage of some suspect class or impinges upon a fundamental right explicitly or implicitly protected by the Constitution, thereby requiring strict judicial scrutiny. If so, the judgement of the District Court should be affirmed. If not, the Texas scheme must still be

was of “grave” significance to individuals and society.⁴⁴ However, placing importance on education while denying the upmost constitutional protection perpetuated inconsistent and inequitable education offerings, leaving minority students at the mercy of state and local governments that had already proven an inability to provide equal education.⁴⁵ Ultimately, the Court in *Rodriguez* failed to utilize its constitutional power, shifting responsibility to lawmakers.⁴⁶

B. Legislative History

Despite *Brown’s* ruling and the importance placed on education time after time, the Court has determined the Constitution neither explicitly nor implicitly guarantees educational rights.⁴⁷ Thus, forcing public-school children in the United States to look elsewhere for equitable education protection.⁴⁸ In response, the federal government passed several pieces of legislation to rectify educational disparities the courts have failed to resolve.⁴⁹

1. Elementary and Secondary Education Act

In 1965, President Lyndon B. Johnson signed the Elementary and Secondary Education Act (ESEA) as part of his War on Poverty

examined to determine whether it rationally furthers some legitimate, articulated state purpose and therefore does not constitute an invidious discrimination in violation of the Equal Protection Clause of the Fourteenth Amendment”).

44. See *id.* at 30 (clarifying the importance of education despite its ruling).

45. See *id.* at 70-133 (dissenting opinion asserting undeniable disparities in the funding system are violations of Equal Protection Clause).

46. See *id.* at 50 (suggesting school finance changes should come from legislative action, not the Courts).

47. *Eg.*, Ogletree & Robinson, *supra* note 22 (discussing how key and authoritative Supreme Court cases have consistently held that education is not a fundamental right).

48. See Lee A. Peifer et al., *Federal Courts Can’t Solve Our Education Ills*, EDUC. NEXT, (Feb. 22, 2017), <https://www.educationnext.org/federal-courts-cant-solve-our-education-ills-forum-san-antonio-rodriguez/> [<https://perma.cc/7487-AXJ9>] (asserting no Constitutional protections exists when pursuing education rights).

49. See *The ABC’s of ESEA, ESSA, and No Child Left Behind*, ED POST, (Jan. 14, 2015), <https://educationpost.org/the-abcs-of-esea-essa-and-no-child-left-behind/> [<https://perma.cc/CK3X-D2Y4>] (describing the basic information included in education acts and the impact on schools).

Initiative.⁵⁰ The ESEA was the federal government's first significant nationwide attempt to legislate education.⁵¹ The primary goal of ESEA was to facilitate equitable educational opportunities to all students by focusing primarily on providing resources to the most vulnerable student populations.⁵² The authorization of federal fund distributions to school programs—which may not otherwise exist—was made possible through ESEA expanding the federal government's involvement in public education.⁵³ In addition, the ESEA incentivized states to close achievement gaps between low-income students and middle to upper middle-class students by tying federal funds to accountability programs.⁵⁴

Since its enactment in 1965, various administrations have reauthorized ESEA numerous times.⁵⁵ However, the central component has remained unchanged: to support educational equity by providing federal funding to schools to serve low-income, underserved communities.⁵⁶ The new provisions from each reauthorization were a result of a shift in focus, accountability, and outcome goals.⁵⁷ Consequently, the ESEA is often

50. See Esea Network, *About ESEA*, <https://www.eseanetwork.org/about/esea> [<https://perma.cc/ND7N-P5CP>] (Oct. 4, 2021) (introducing an overview of the Elementary and Secondary Education Act).

51. See Julia Hanna, *The Elementary and Secondary Education Act: 40 Years Later*, HARV. GRADUATE SCH. OF EDUC. (Aug. 18, 2005) <https://www.gse.harvard.edu/news/05/08/elementary-and-secondary-education-act-40-years-later> [<https://perma.cc/GRP6-F3BG>] (discussing the evolution of the ESEA since its inception).

52. See Catherine A. Paul, *Elementary and Secondary Education Act of 1965*, VCU SOC. WELFARE HIST. PROJECT, <https://socialwelfare.library.vcu.edu/programs/education/elementary-and-secondary-education-act-of-1965/> [<https://perma.cc/F2DG-9QPR>] (last modified Jan. 5, 2022) (discussing the Johnson administration's desire to increase educational opportunities through policy programs).

53. See generally HUNT INST., *The Update: ESEA Reauthorization Student Succeeds Act*, http://www.huntinstitute.org/wpcontent/uploads/2016/01/Update_ESEAREauthorization_Final_ForWeb.pdf (Jan. 14, 2016) (outlining programs aimed at curbing disadvantages historically faced by minority and low-income students).

54. See Paul, *supra* note 52 (explaining the federal government's attempt to create state and local liability with national mandates).

55. See *id.*

56. See *The ABC's of ESEA, ESSA, and No Child Left Behind*, *supra* note 49 (asserting that the goal of the ESEA has remained unchanged).

57. See generally *Elementary and Secondary Education Act*, EDUC. L., <https://education.laws.com/elementary-and-secondary-education-act> [<https://perma.cc/QM57-6Z53>] (last modified Dec. 23, 2019) (summarizing the general changes made to the ESEA in its reauthorizations).

seen as a “living, breathing” policy evolving to provide effective means to bridge the educational gaps.⁵⁸

2. Every Student Succeeds Act

The latest iteration of the ESEA is the Every Student Succeeds Act (ESSA).⁵⁹ The ESSA, which was reauthorized in 2015 under the Obama Administration, places a higher emphasis on student achievement in preparation for college and careers in post-secondary schools.⁶⁰ “The ESSA [] shifted a great deal of education[al] authority from the federal government back to states and local education agencies.”⁶¹ Unfortunately, the implementation of the ESSA has been met with criticism due to its failure to provide the federal oversight needed to ensure prioritization of student equity.⁶²

In its attempt to provide flexibility and opportunity for educational innovation to the states, the ESSA allows states to move away from previously established accountability measures.⁶³ Thus, while the ESSA highlights educational “equity” as a crucial component of the policy, the implementation of policies geared towards achieving equity now vary from state to state.⁶⁴ Critics fear the federal allowances to the states to loosen subgroup achievement tracking will conceal the continuing

58. See Hanna, *supra* note 51 (illustrating the changing nature of education policy, “taking shape” over the years).

59. See *Every Student Succeeds Act (ESSA)*, U.S. DEP’T OF EDUC., <https://www.ed.gov/essa?src=rn> [<https://perma.cc/PC4T-8X55>] (last updated Sept. 29, 2022) (describing the ESSA as a “bipartisan measure [that] reauthorizes the 50-year-old Elementary and Secondary Education Act (ESEA), the nation’s national education law and longstanding commitment to equal opportunity for all students”).

60. See *id.*

61. Laurie A. Sharp, *ESEA Reauthorization: An Overview of the Every Student Succeeds Act*, 4 TEX. J. OF LITERACY EDUC. 9, 9 (2016).

62. See Denise Forte, *Under ESSA, Achieving Equity in Education Is Still Challenging*, THE CENTURY FOUND. (July 23, 2018), <https://tcf.org/content/commentary/essa-achieving-equity-education-still-challenging/?session=1> [<https://perma.cc/PV3Z-FC28>] (questioning states’ motivation and requirement to comply with the federal law due to their ability to submit waivers, thus avoiding federal regulations).

63. See Lance D. Fusarelli & Jennifer B. Ayscue, *Is ESSA a Retreat from Equity?*, KAPPAN (Sept. 23, 2019), https://kappanonline.org/essa_retreat-from-equity-fusarelli-ayscue/ [<https://perma.cc/4AZ4-UBVT>] (comparing accountability measures required by the ESSA and its predecessor, the No Child Left Behind Act (NCLB)).

64. See *id.*

growth of educational disparities.⁶⁵ Moreover, ESSA allows states to apply for and receive waivers that place the power of equity implementation measures firmly in the hands of states.⁶⁶

II. CURRENT EDUCATIONAL CONDITIONS

Despite favorable court decisions and expansive legislative mandates, educational equity concerns remain at the forefront.⁶⁷ Research has shown that current laws and policies have produced varied results in equitable educational finance and educational outcomes in public schools.⁶⁸ Nevertheless, experts have confirmed students from disadvantaged backgrounds “require more resources” to get up to par with their non-disadvantaged peers, though the concrete figure of “more” is disputed.⁶⁹

A. *K – 12 Educational Finance*

The ESEA legislation has undoubtedly increased overall federal funding for schools in need of additional assistance.⁷⁰ However, the public school system relies on federal, state, and local funding to operate effectively.⁷¹ Multiple sources of funding within the education system leads to financial disparities among public schools.⁷² On average, the federal government makes up 8.1% of a school’s total operating revenue, leaving the rest of a school’s revenue to be made up by state and local

65. *See id.*

66. *See* Forte, *supra* note 62 (discussing the ability of states to apply for waivers that allow states to enact their own monitoring system and propose strategies that do not include prioritization of equity, as required by federal law).

67. *See generally* Kimberly Jenkins Robinson, *Restructuring the Elementary and Secondary Education Act’s Approach to Equity*, 103 MINN. L. REV. 915, 918-19 (2018) (discussing the congressional emphasis on education equity).

68. *See* David Gamson et al., *The Elementary and Secondary Education Act at Fifty: Aspirations, Effects, and Limitations*, 1 THE RUSSELL SAGE FOUND. J. OF THE SOC. SCI. 1, 20–21 (Dec. 2015) (analyzing the ESEA’s achievement of its goals).

69. *See* Robinson, *supra* note 67 (collecting writings and research from various sources).

70. *See* Gamson et al., *supra* note 68 (detailing the increase of federal spending on schools).

71. *See* U.S. DEP’T OF EDUC., NCES 2021-009, DIGEST OF EDUCATION STATISTICS 2019 194–95 tbl. 235.10 (2021) [hereinafter DIGEST OF EDUCATION STATISTICS 2019] (reporting different revenue sources that fund public elementary and secondary education schools from 1919 to 2017).

72. Robinson, *supra* note 67 (highlighting how the use of various sources of funds, primarily local funds, cause disparities among public schools).

funds.⁷³ This revenue structure has resulted in high-poverty districts, which serve mostly students of color, receiving approximately \$1,600 less per student than the national average.⁷⁴ Moreover, the average predominantly “nonwhite” school district receives \$2,226 less per student than the average predominately “White” school.⁷⁵ These numbers are troubling considering 40% of students of color attend predominately minority schools.⁷⁶ Thus, the current funding system inherently discriminates against low-income and minority students.⁷⁷

B. K – 12 Educational Opportunities

Funding disparities have serious, well-documented consequences on student achievement and educational outcomes.⁷⁸ Insufficient funds impact a school’s ability to provide highly qualified teachers, appropriate class sizes, robust curriculum, instructional resources, safe facilities, and adequate educational opportunities.⁷⁹ While critics argue educational outcomes are not solely tied to school funding, the aforementioned combination of factors directly correlate with student achievement

73. See DIGEST OF EDUCATION STATISTICS 2019, *supra* note 71 (demonstrating how much federal funding attributed to public education in 2016-2017).

74. See Clare Lombardo, *Why White School Districts Have So Much More Money*, NPR (Feb. 26, 2019, 2:00 PM), <https://www.npr.org/2019/02/26/696794821/why-white-school-districts-have-so-much-more-money> [<https://perma.cc/AU77-ZFYK>] (highlighting the financial disparity between school districts composed of mostly White students and school districts composed of mostly students of color).

75. See *id.*

76. Cf. ERICA FRANKENBERG ET AL., HARMING OUR COMMON FUTURE: AMERICA’S SEGREGATED SCHOOLS 65 YEARS AFTER BROWN 25 (2009), <https://www.civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/harming-our-common-future-americas-segregated-schools-65-years-after-brown/Brown-65-050919v4-final.pdf> [<https://perma.cc/R3PN-7GKY>] (highlighting the number of Black students that attend predominately “nonwhite” schools in various regions of the country. The report acknowledges that as more people of color attend schools, many school populations still remain predominately “nonwhite” but with a more diverse racial composition.).

77. See generally Linda Darling-Hammond, *Inequality in Teaching and Schooling: How Opportunity Is Rationed to Students of Color in America*, in INST. OF MED., THE RIGHT THING TO DO, THE SMART THING TO DO: ENHANCING DIVERSITY IN THE HEALTH PROFESSIONS: SUMMARY OF THE SYMPOSIUM ON DIVERSITY IN HEALTH PROFESSIONS IN HONOR OF HERBERT W. NICKENS, M.D. 208, 208–10 (National Academies Press 2001) (examining the unequal educational funding structures in the United States and the increasingly tragic impact on low-income and minority populations).

78. See *id.*

79. See *id.* at 208–09.

levels.⁸⁰ Subsequently, Black and Latino students' reading and math achievement scores have lagged behind White students with minimal movement towards closing the achievement gaps.⁸¹ On reading achievement tests, White students outscored Black students in fourth grade by twenty-six points in 2017; in eighth grade by twenty-five points in 2017; and in twelfth grade by thirty points in 2015.⁸² Additionally, on reading achievement tests, White students outscored Hispanic students in fourth grade by twenty-three points in 2017; in eighth grade by nineteen points in 2017; and in twelfth grade by twenty points in 2015.⁸³ On math achievement tests, White students outscored Black students in fourth grade by twenty-five points in 2017; by thirty-two points in eighth grade in 2017; and by thirty points in twelfth grade in 2015.⁸⁴ Following the obvious pattern, White students' math achievement scores were nineteen points higher than Hispanic students in fourth grade in 2017; twenty-four points higher in eighth grade in 2017; and twenty-two points higher in twelfth grade in 2015.⁸⁵

C. College Readiness Disparities

Underfunded schools, teacher quality, and lack of access to college preparatory programs contribute to disparities in "college readiness" among public school students.⁸⁶ Schools that serve predominately

80. See *id.* at 212.

81. See generally NAT'L CTR. FOR EDUC. STAT., NCES 2019-038, STATUS AND TRENDS IN THE EDUCATION OF RACIAL AND ETHNIC GROUPS 2018 68–78 (2019), <https://nces.ed.gov/pubs2019/2019038.pdf> [<https://perma.cc/DM7W-TFJ4>] (reporting educational trends and statistics in the United States).

82. See *id.* at 67–71.

83. See *id.*

84. See *id.* at 74–77.

85. See *id.*

86. See Patricia Gandara, *Lost Opportunities: The Difficult Journey to Higher Education for Underrepresented Minority Students*, in INST. OF MED., THE RIGHT THING TO DO, THE SMART THING TO DO: ENHANCING DIVERSITY IN THE HEALTH PROFESSIONS: SUMMARY OF THE SYMPOSIUM ON DIVERSITY IN HEALTH PROFESSIONS IN HONOR OF HERBERT W. NICKENS, M.D. 234, 245, 248–50 (Nat'l Academies Press, 2001) (“[U]nderrepresented minorities attend and graduate from schools that provide a less enriched education than those attended by Whites and Asians, all diplomas and degrees are not equal. The particular high school that a student attends can also have a significant impact on his or her academic achievement. Schools in more affluent neighborhoods have been shown to provide more rigorous college preparatory and honors courses than schools in lower-income communities that largely serve populations of underrepresented students.”).

minority students are less likely to have access to college readiness courses compared to schools that serve predominately White students.⁸⁷ National, state, and local educational entities define college readiness.⁸⁸ Despite states having their own variations of “college readiness,” a general definition is “the level of preparation a student needs in order to enroll and succeed—without remediation—in a credit-bearing general education course at a postsecondary institution that offers a baccalaureate degree or transfer to a baccalaureate program⁸⁹ Moreover, experts agree that college readiness is not only limited to student academic preparation, it also includes understanding the college structure, college culture, and how to access support in that environment.⁹⁰

Teacher quality is critical to college readiness.⁹¹ Characteristics of qualified teachers include a bachelor’s degree, classroom experience,

87. See U.S. DEP’T OF EDUC. OFF. FOR C.R., ISSUE BRIEF NO 3, CIVIL RIGHTS DATA COLLECTION: DATA SNAPSHOT: COLLEGE AND CAREER READINESS 7–8 (2014) <https://cdn.uncf.org/wp-content/uploads/PDFs/CRDC-College-and-Career-Readiness-Snapshot-2.pdf> (considering Algebra I, Biology, Geometry, Algebra II, Chemistry, Physics, and Calculus as college readiness courses. In 2011, 78% and 83% of predominately White schools offered Chemistry and Algebra II, respectively, to their students. In comparison, only 66% and 74% of schools made up of predominately Black and Latino students offered Chemistry and Algebra II, respectively, to their students).

88. See NAT’L FORUM ON EDUC. STATS., U.S. DEP’T OF EDUC., NFES 2015-157, FORUM GUIDE TO COLLEGE AND CAREER READY DATA I, app. B (2015), <https://nces.ed.gov/pubs2015/2015157.pdf> (confirming that state and local education agencies are tasked with preparing students to be college and career ready, so most states tend to develop their own definition of college and career readiness).

89. See DAVID T. CONLEY, EDUC. POL’Y IMPROVEMENT CTR., TOWARD A MORE COMPREHENSIVE CONCEPTION OF COLLEGE READINESS 5–6 (2007), <https://docs.gatesfoundation.org/documents/collegereadinesspaper.pdf> (“The college-ready student envisioned by this definition is able to understand what is expected in a college course, can cope with the content knowledge that is presented, and can take away from the course the key intellectual lessons and dispositions the course was designed to convey and develop. In addition, the student is prepared to get the most out of the college experience by understanding the culture and structure of postsecondary education and the ways of knowing and intellectual norms of this academic and social environment The student has both the mindset and disposition necessary to enable this to happen.”).

90. See generally RHONDA TSOI-A-FATT BRYANT, CTR. FOR L. & SOC. POL’Y, COLLEGE PREPARATION FOR AFRICAN AMERICAN STUDENTS: GAPS IN THE HIGH SCHOOL EDUCATIONAL EXPERIENCE 8–9 (2015) (discussing the need to go above academic preparation for college readiness).

91. E.g., Dan Goldhaber, *In Schools, Teacher Quality Matters Most*, EDUC. NEXT, Spring 2016, at 56, 61 (demonstrating that quality teachers not only allow for students to excel in primary education, but quality teachers also increase the likelihood future educational success in secondary education for students).

content knowledge, and, the ability to build positive relationships with students.⁹² Students taught by qualified teachers are “more likely to graduate from high school, go to college, be employed, and earn higher wages.”⁹³ However, Black and Latino students remain twice as likely to be assigned less experienced teachers compared to their nonminority counterparts—adversely affecting the instruction quality minority students receive along with their achievement levels.⁹⁴

Moreover, research shows students in underfunded schools lack access to college preparatory curriculum and instructional resources.⁹⁵ Throughout middle school and high school, Black and Latino students are less likely to have access to rigorous college preparatory courses, such as dual credit and advanced placement courses.⁹⁶ Furthermore, in schools with accessible college preparatory classes, Black and Latino students are vastly underrepresented.⁹⁷ While Black and Latino students represent thirty-eight percent of students in schools offering college preparatory and advanced courses, only thirty-two percent of these students enroll in them.⁹⁸ Even more alarming, twenty-five to thirty percent of schools with the highest percentage of Black and Latino students do not offer typical core math and science courses.⁹⁹

92. *E.g.*, TSOI-A-FATT BRYANT, *supra* note 90 at 8–9 (emphasizing that the quality of an educator impacts how successful a student will be in the future. Schools that have a low number of experienced educators cause plenty of students to be unprepared for college).

93. *See* Goldhaber, *supra* note 91 (stating the replacement of a low-quality teacher with a higher quality teacher will significantly increase the lifetime income of an entire classroom of students, about twenty-eight students, by more than \$250,000).

94. *See* Kimberly Jenkins Robinson, *Fisher's Cautionary Tale and the Urgent Need for Equal Access to an Excellent Education*, 130 HARV. L. REV. 185, 206–07 (2016) (illustrating the lack of sufficient teacher quality in minority schools through various measure of qualifications, such as “certification, subject-matter background, pedagogical training, selectivity of college attended, test scores, [and] experience”).

95. *Cf. id.* at 207–08 (2016) (asserting minority students lack access to college readiness courses, such as “challenging academic classes, rigorous curricula, and courses that prepare students for college.” Schools that educate predominately minority students receive approximately \$2,000 less per student compared to schools that educate predominately White students. The lack of funding negatively impacts minority students from having access to important higher education resources).

96. *See id.* at 207.

97. *See* U.S. DEP'T OF EDUC. OFF. FOR C.R., ISSUE BRIEF NO 3, *supra* note 87 (emphasizing that 60% of White students passed algebra I, while 29% of Latino and Black students passed).

98. *See id.* at 2.

99. *See id.* at 1.

In addition to academic preparation, college readiness includes navigating the path to and through college.¹⁰⁰ Students of color are more likely to attend schools in high poverty learning environments.¹⁰¹ Historically, schools in high poverty learning environments deal with challenges that include lack of high-quality teachers, larger class sizes, insufficient resources, and parental disengagement.¹⁰² Additionally, community challenges in high poverty areas directly impact school priorities and educational outcomes.¹⁰³ High crime, inadequate access to healthcare, and unstable home environments negatively impact student achievement.¹⁰⁴ Additional support for college readiness is not prioritized because underfunded schools have often exhausted their resources, providing the minimum education required by law.¹⁰⁵ Without guidance, students are left to navigate the complexity of college applications, college admissions, college financing, and college success alone.¹⁰⁶

100. *See generally* TSOI-A-FATT BRYANT, *supra* note 90 at 3 (listing factors outside of academic requirements that lead to college readiness, such as how to obtain financial aid, how to register for classes, how to interact with others in the collegiate environment, and how to properly study when taking multiple advanced college courses).

101. *School Poverty: All Youth Should Attend Economically Diverse, Well-Resourced Schools*, NAT'L EQUITY ATLAS, (Oct. 4, 2021) https://nationalequityatlas.org/indicators/School_poverty#/ [<https://perma.cc/F99A-FYE2>] (providing data that illustrates the disparity in learning environments for minority children in comparison to White students).

102. *See* Robinson, *supra* note 94 at 207 (“These disparities in opportunity will lead many white and affluent students to higher-order thinking skills while many poor and minority students are left to basic, rote thinking[,] and test preparation”).

103. *See id.* at 209.

104. *See id.*

105. *See id.* at 228–29 (contending minority serving schools lack adequate funding. Local or state governments are either unwilling or unable to provide more funding to create additional resources for minority serving schools in which they can compete successfully with predominately White serving schools.).

106. *See generally* TSOI-A-FATT BRYANT, *supra* note 90 at 11–13 (arguing that effective academic counseling is needed in order for students to have the proper information and resources to enroll in secondary institutions. Students are often unaware of the necessary courses to take in order to prepare for college, so teaching and encouraging students to take required and recommended classes is necessary for their educational success. In addition, students need counselors that are supportive of their aspirations or that believe they can attend college. If not, students are less likely to reach out to their counselors about college readiness).

1. Cost of Remediation

Students deemed unprepared for college-level classes must take remedial classes before enrolling in regular university and college classes.¹⁰⁷ Approximately twenty-five percent of college freshmen must enroll in at least one remedial course.¹⁰⁸ This “need” for remediation costs students billions of dollars of tuition for classes that generally do not count as “credit” courses towards a degree.¹⁰⁹ In fact, the average remediation required two classes per student and cost the students between \$750 to \$12,000.¹¹⁰ Additionally, remedial courses can add an extra year to the time spent obtaining a degree.¹¹¹ A disproportionate number of minority and low-income students are required to take remedial classes at significantly higher rates than White, Asian, middle-class, and upper-class students.¹¹²

D. Higher Education Policy Does Not Address Minority Students’ Disproportionate Educational Challenges

Inequitable funding, inadequate preparation challenges, and historical exclusion has impacted minority students’ ability to access and pay for higher education.¹¹³ However, neither the court(s) nor Congress has provided students with protections that address these obstacles.¹¹⁴

107. See *Remedial College Classes Are Costing Students Billions*, YAHOO! NEWS (Apr. 9, 2016), <https://news.yahoo.com/remedial-college-classes-costing-students-billions-151713187.html> [<https://perma.cc/D4GM-KMAW>] (explaining how students attending underperforming schools are sometimes required to take uncredited remediation classes before taking college classes that are credited to their degree).

108. See *id.*

109. See *id.*

110. See *id.*

111. See *id.*

112. See Timothy Pratt, *The Open Access Dilemma: How Can Community Colleges Better Serve Underprepared Students?*, EDUC. NEXT, Fall 2017, at 34, 37 (identifying that over 70% to 80% of Latinos and Black students take remedial courses, while only 60% to 70% of White and Asian students take remedial courses).

113. See *Laws that Changed Diversity in Higher Education*, *supra* note 9 (reporting that in the 1940s, White men were “four times as likely than people of color to hold a bachelor’s degree”).

114. See Robinson, *supra* note 94 at 232–34 (suggesting that the Court or legislation should “recognize and enforce a federal right to education” by passing federal protection, as opposed to relying on state education clauses that vary in protection “or lack thereof”).

1. Historical Exclusion

Until the 1960s, statutory laws and public policy prohibited postsecondary education for persons of color.¹¹⁵ Much like in K-12 education, overturning the “separate but equal” doctrine did little to advance equal postsecondary education access for minority students.¹¹⁶ In 1964, Title VI of the Civil Rights Act forbade the exclusion of participation, denial of benefits, and/or the discrimination of persons on the basis of “race, color, or national origin” for any programs that received federal financial assistance.¹¹⁷ In essence, Title VI’s “any program” language banned racial discrimination for any university or college receiving federal funding.¹¹⁸ Yet, segregated and discriminatory educational practices blatantly continued throughout the 1960s, until court cases in the 1970s mandated states to desegregate their educational institutions.

2. Higher Education Act

In 1965, the federal government passed the Higher Education Act (HEA) to strengthen educational resources and provide financial support to postsecondary institutions and students.¹¹⁹ This legislation represents the government’s initial acknowledgment that higher education institutions and students seeking college degrees need federal support.¹²⁰ The HEA focuses on creating education access for all students through eight different titles : 1) General Provisions; 2) Teacher Quality Enhancements; 3) Strengthening Institutions; 4) Student Assistance; 5) Developing Institutions; 6) International Education Programs; 7)

115. See U.S. DEP’T OF EDUC.: OFF. FOR C.R., *HISTORICALLY BLACK COLLEGES AND UNIVERSITIES AND HIGHER EDUCATION DESEGREGATION 2* (1991) (describing that while there were “universities” or “institutions” for Black students, they primarily focused on instructing individuals who had no previous education with primary and secondary educational subjects, differing from actual collegiate institutions that taught postsecondary courses).

116. See *id.* at 4-5.

117. Civil Rights Act of 1964, Pub. L. No. 88-352, § 601, 78 Stat. 241, 252 (codified at 42 U.S.C § 2000d).

118. See *id.* (implying that “any program” includes universities or colleges that receive federal funding because the definition does not provide limits for what “any program” means, thus creating an inclusive definition of all programs that receive any kind of federal funding).

119. Higher Education Act of 1965, Pub. L. No. 89-329, 79 Stat. 1219 (1965) (codified as amended as 20 U.S.C.S. §§ 1001-1161aa-1).

120. See *id.* at 1219.

Graduate and Postsecondary Improvement Programs; and 8) Additional Programs.¹²¹ The HEA made college more accessible for minority students through race and income.¹²² Key provisions include the creation of Pell Grants and the current Federal Student Aid Program, which provides many minority students with the funds needed to pay for college.¹²³ Notably, the HEA established the Federal Family Education Loan Program, “which now comprises Federal Stafford Loans, Federal PLUS Loans, and Federal Consolidated Loans.”¹²⁴

Like the ESEA, the HEA is active legislation that has been reauthorized numerous times by having its language, programs, and policies amended to address the changing needs of postsecondary education.¹²⁵ The Higher Education Opportunity Act of 2008 is the latest reauthorization of the HEA.¹²⁶ Significant changes include provisions that address college affordability and transparency lists, accountability vis-à-vis accreditation standards, and campus climate issues.¹²⁷ Since the

121. JOSELYNN H. FOUNTAIN, *THE HIGHER EDUCATION ACT (HEA): A PRIMER 1* (2021), <https://sgp.fas.org/crs/misc/R43351.pdf> (highlighting the various amended versions of the HEA and listing how the HEA is generally organized).

122. See Higher Education Act of 1965, Pub. L. No. 89-329, § 401 79 Stat. 1219, 1232 (1965) (codified as amended as 20 U.S.C.S. §§ 1001-1161aa-1) (authorizing “educational opportunity grants” to be provided to students with financial need in order to receive a postsecondary education, in which they would not originally receive due to lack of financial means).

123. See *Laws that Changed Diversity in Higher Education*, *supra* note 9 (commending the 1972 revision of the HEA, which established the Federal Pell Grant program. This program is considered the “cornerstone of African American higher education,” since it made college more accessible to Black students.).

124. 20 U.S.C.S. §§ 1071, 1078-2, 1078-3 (amending Higher Education Act of 1965, Pub. L. No. 89-329, 79 Stat. 1219) (codifying various federal loan programs to assist students to attend postsecondary educational institutions).

125. See *Higher Education Act*, AM. ASS’N OF COLLEGIATE REGISTRARS AND ADMISSIONS OFFICER, <https://www.aacrao.org/advocacy/issues/higher-education-act> [<https://perma.cc/AV4Z-5QFB>] (stating that HEA is generally scheduled for reauthorization every five years “to encourage growth and change”).

126. See generally FOUNTAIN, *supra* note 121 (“The HEA was first enacted in 1965 and has since been amended and extended numerous times, and it has been comprehensively reauthorized eight times. The most recent comprehensive reauthorization of the HEA occurred in 2008 under the Higher Education Opportunity Act.”).

127. See AM. COUNCIL ON EDUC., *ACE ANALYSIS OF HIGHER EDUCATION ACT REAUTHORIZATION 2–3, 5* (2008) <https://www.acenet.edu/Documents/ACE-Analysis-of-2008-Higher-Education-Act-Reauthorization.pdf> (summarizing the 2008 reauthorization by describing selected key provisions only. Amendments to HEA included provisions that focus on college costs and student financial aid due to the rising cost of college education).

College Cost Reduction and Access Act of 2007 addressed college affordability concerns, the 2008 authorization did not delve into federal loan and grant program changes.¹²⁸ The College Cost Reduction and Access Act aims to make college more affordable for low-income students by increasing Pell Grants.¹²⁹

III. HIGHER EDUCATION REPRESENTATION POST HIGHER EDUCATION ACT

In recent years there has been a significant shift in the labor markets—traditional and emerging fields requiring a college education or specialized degree.¹³⁰ Accordingly, the United States has become more educated, which is evident by the increased share of people with a higher-education degree over the past two decades.¹³¹ Yet despite this overall increase, educational attainment gaps amongst racial and ethnic groups persist.¹³²

Black and Latino representation continues to trail behind White representation in overall college admissions, enrollment, and graduation.¹³³ In *Fisher v. University of Texas* the Court held a student's racial background can be considered when determining college admission, so long as it is not the sole factor.¹³⁴ In arriving at its holding, the Supreme Court duly considered the educational importance of a

128. *See id.* at 1.

129. *See* Office of the Press Secretary *Fact Sheet: College Cost Reduction and Access Act of 2007*, THE WHITE HOUSE: PRESIDENT GEORGE W. BUSH (Sept. 27, 2007), <https://georgewbush-whitehouse.archives.gov/news/releases/2007/09/20070927-1.html> [<https://perma.cc/5XAV-6UXV>] (describing the Bush's administration's specific changes to higher-education funding, which was implemented prior to reauthorization).

130. *See* Kyaw Khine, *A Greater Number of Jobs Require More Education, Leaving Middle-Skill Workers with Fewer Opportunities*, STAT CHAT (May 10, 2019), <https://statchatva.org/2019/05/10/a-greater-number-of-jobs-require-more-education-leaving-middle-skill-workers-with-fewer-opportunities/> [<https://perma.cc/T3A3-5JAE>] (examining the need for post-secondary education, skills, or certificates to accommodate economic mobility).

131. *See id.*

132. *See* TOMAS MONARREZ & KELIA WASHINGTON, URBAN INST., RACIAL AND ETHNIC REPRESENTATION IN POSTSECONDARY EDUCATION 14–17 (2020), https://www.urban.org/sites/default/files/publication/102375/racial-and-ethnic-representation-in-postsecondary-education_1.pdf [<https://perma.cc/DLM3-PTJM>] (analyzing education outcomes and their relatedness to success, primarily focusing on racially comparative data).

133. *See id.* at 14–23.

134. *See* *Fisher v. University of Texas*, 579 U.S. 365, 375 (2016) (comparing racial consideration in college admission to student rankings and determining both as factors).

diverse student body.¹³⁵ However, this recognition did not result in a mandate that higher education institutions consider race, they are simply allowed to set their own admission standards—that may or may not include race and ethnicity—as long as those standards reside within constitutional parameters.¹³⁶ Consequently, private and public universities use a myriad of factors and standards to determine student admission.¹³⁷ In effect, the standards used in higher-education admissions have created a mystifying college admission process, resulting in minimal gains for minority students at this country's most sought-after higher education institutions.¹³⁸

A. *Higher Education Institutions*

Not all university or college degrees are equal.¹³⁹ The type of university or college a student attends has a major impact on income, upward mobility, and student debt.¹⁴⁰ Colleges may be categorized as for-profit, non-profit, public, or private institutions.¹⁴¹ However, there are no bright-line definitions for other categories, such as highly

135. *See id.* at 376–77.

136. *See id.* at 388.

137. *See generally* Julie J. Park et al., *What Makes a Fair College Admissions Process*, JSTOR DAILY (Mar. 27, 2019), <https://daily.jstor.org/what-makes-a-fair-college-admissions-process/> [<https://perma.cc/879W-CYMJ>] (acknowledging the difficulties students face when applying for college due to a lack of transparency in the admissions process).

138. *See id.*

139. *See generally* Rajashri Chakrabarti and Michelle Jiang, *Education's Role in Earnings, Employment, and Economic Mobility*, FED. RES. BANK OF N.Y. (Sept. 5, 2018), <https://libertystreeteconomics.newyorkfed.org/2018/09/educations-role-in-earnings-employment-and-economic-mobility/> [<https://perma.cc/SR57-WTTM>] (highlighting that individuals who attend non-profit four-year universities are likely to earn more than the individuals who attend for-profit colleges. Additionally, individuals who attend selective universities are likely to earn more than those individuals who attend nonselective universities).

140. *See id.*

141. *See* Belana Beeck, *What's the Difference Between Public, Private, Nonprofit, and For-Profit Colleges and Universities?*, CHAPMAN UNIV. (Nov. 11, 2021), <https://news.chapman.edu/2021/11/11/whats-the-difference-between-public-private-nonprofit-and-for-profit-colleges-and-universities/> [<https://perma.cc/MT79-GKGZ>] (describing the differences between universities and colleges. Public universities generally receive public funding from the state and federal government, and private universities are funded through private donations and investments. These institutions tend to utilize tuition money for revenue, as opposed to investing it into classroom and campus experience. Nonprofit colleges reinvest the funds back into the institution to ensure students have an insightful educational experience and gain practical experience.).

selective, selective, and non-selective college but there are a widely accepted range of definitions.¹⁴² Highly selective colleges admit approximately 15% or less of their applicants, selective colleges admit approximately 15% or less of their applicants, and non-selective colleges accept at least 80% of their applicants.¹⁴³ These distinctions impact student education and corresponding debt.¹⁴⁴

There are racial and ethnic representation differences across public, private, non-profit, and for-profit universities and colleges.¹⁴⁵ Unfortunately, these differences disproportionately and negatively impact Black and Latino students.¹⁴⁶ At selective public and private institutions, White students make up sixty-four percent of the student population while only accounting for fifty-four percent of the total college-age population.¹⁴⁷ Conversely, minorities are underrepresented because

142. See Lisa Rielage *What Are Selective Colleges?*, ADMISSIONS DECRYPTED (Jan. 20, 2021), <https://admissionsdecrypted.com/2021/01/20/what-does-college-selectivity-mean/> [<https://perma.cc/5EFZ-L29P>] (defining various levels of selectiveness by universities and colleges. There is no “industry standard” for how each category is defined, but they all have generally similar definitions from institution to institution. “Selectivity is a shorthand way to discuss colleges in terms of their admissions rate. Admissions rate is the ratio of students who apply to a college compared to students who were admitted (usually reported as a percentage.)”).

143. See WILLIAM R. DOYLE, THE NAT’L CTR. FOR PUB. POL’Y AND HIGHER EDUC., OPEN ACCESS COLLEGES RESPONSIBLE FOR GREATEST GAINS IN GRADUATION RATES 1 (2010), <https://files.eric.ed.gov/fulltext/ED508992.pdf> (highlighting non-selective universities as institutions that do not deny most of their applicants); see also *id.* (showcasing highly selective universities are institutions that tend to reject a majority of their applicants, whereas selective universities are more accepting of applicants).

144. See generally LEADERSHIP CONF. CIVIL AND HUMAN RTS. ET AL., GAINFUL EMPLOYMENT: CIVIL RIGHTS PERSPECTIVE 5–8, 9 (2019), <http://civilrightsdocs.info/pdf/education/Gainful-Employment-Brief-Final.pdf> [<https://perma.cc/K6N9-EBPZ>] (highlighting that for-profit educational institutions negatively impact their students because they are less likely to graduate, they are likely to default on their loans, they are likely to pay more in tuition, they are likely to have more debt and take on higher interest rates, and earn lower wages as compared to attending a public or private, non-profit college).

145. See generally MONARREZ & WASHINGTON, *supra* note 132 at 14–17 (demonstrating the racial and ethnic demographics for different types of universities and colleges. Black students are overrepresented at for-profit universities, whereas other racial and ethnic groups are more likely to attend public or private nonprofit institutions.).

146. See generally *id.*

147. ANTHONY P. CARNEVALE ET AL., OUR SEPARATE & UNEQUAL PUBLIC COLLEGES: HOW PUBLIC COLLEGES REINFORCE WHITE RACIAL PRIVILEGE AND MARGINALIZE BLACK AND LATINO STUDENTS 1 (Georgetown Univ. Ctr. on Educ. and Workforce 2018), https://1gyhoq479ufd3yna29x7ubjn-wpengine.netdna-ssl.com/wp-content/uploads/SAUStates_FR.pdf [<https://perma.cc/XKH8-BF7L>].

Latino students make up twelve percent of enrollment, yet account for twenty-one percent of the college population, likewise, Black students make up seven percent of enrollment yet account for fifteen percent of the college population.¹⁴⁸ This problematic pattern has continued for decades, resulting in minority over-representation at non-selective, open-access colleges.¹⁴⁹

Black and Latino students are also overly represented at for-profit colleges, making up an estimated fifty-one percent of the student population, while only accounting for thirty-four percent of the total college population.¹⁵⁰ Critics contend that for-profit institutions deliberately target and exploit students of color for financial gain.¹⁵¹ For-profit schools disproportionately set up in predominately Black and Latino communities and engage in predatory practices, such as racially targeted recruiting and false advertising.¹⁵² Students enrolled in for-profit institutions face obstacles such as lower-graduation rates, significantly higher cost of attendance, and more student debt than students attending non-profit colleges.¹⁵³ Additionally, empirical evidence portrays the discrepancy between the six-year graduation rate for non-profit and for-profit students: 1) African American student graduation rates at public universities were at 42%, 45% at non-profit private universities, and a mere 14% at for-profit universities; 2) Latino student graduation rates at public universities were at 55%, 57% at non-profit private universities, and only 28% at for profit universities.¹⁵⁴

148. *Id.* at 16–17.

149. *See id.* at 5 (reasoning the widening deficit has led to economic and social impacts on Black and Latino students).

150. *See id.* at 4.

151. *See* GAINFUL EMPLOYMENT: CIVIL RIGHTS PERSPECTIVE, *supra* note 144 at 4 (warning of potential adverse outcomes for students attending for-profit colleges).

152. *See* Ayellet Sheffrey, *For-Profit Schools Target Minority Communities That Typically Owe More Student Debt*, BUS. INSIDER (Aug. 24, 2021, 3:09 PM), <https://www.businessinsider.com/for-profit-schools-target-minority-communities-student-borrower-protection-center-2021-8> [<https://perma.cc/D73X-CAED>] (reporting key findings regarding unethical practices employed by for-private institutions).

153. *See generally* GAINFUL EMPLOYMENT: CIVIL RIGHTS PERSPECTIVE, *supra* note 144 at 44 (contending students enrolled in for-profit institutions will experience worse outcomes compared to those enrolled in public and private non-profit institutions).

154. *See* Michael T. Nietzel, *A New Report Reveals the False Promises of For-Profit Colleges*, FORBES (Mar. 8, 2021, 12:32 PM), <https://www.forbes.com/sites/michaeltmietzel/2021/03/08/a-new-report-reveals-the-false->

Generally, for-profit institutions lack comparable funding and the necessary oversight to provide quality instruction and academic support to their students.¹⁵⁵

Students attending highly selective non-profit universities have distinct economic advantages over students attending less selective or for-profit institutions.¹⁵⁶ Attendees graduating from highly selective or selective colleges earn 20% higher earnings than those of non-selective colleges.¹⁵⁷ Additionally, graduating attendees from non-profit institutions earn 18% more than for-profit institution graduates.¹⁵⁸ The earning discrepancies created by the difference in institution types impact students' economic mobility.¹⁵⁹

B. Wealth Disparities

Attaining a college education generally leads to long-term economic benefits.¹⁶⁰ However, it is important to consider how factors such as race, family income, and intergenerational wealth disparities significantly impact students' ability to fund their education.¹⁶¹ As a result, the higher education system puts vulnerable populations at risk for having unsurmountable amounts of lifelong debt.¹⁶²

promises-of-for-profit-colleges/?sh=7a6714d835fc [https://perma.cc/H2JJ-Q8GD] (citing statistics of students who completed a degree or certificate based upon their background).

155. See CARNEVALE ET AL., *supra* note 147 (explaining substantial components contributing to minority students continued lack of access to quality college education).

156. See generally Chakrabarti & Jiang, *supra* note 139 (acknowledging long-term benefits are not provided cohesively amongst all universities).

157. See generally *id.* (demonstrating the economic benefits enjoyed by students based on college selection).

158. See generally *id.* (providing statistics to support the need for college selection awareness).

159. See *id.*

160. See Christopher R. Tamborini et al., *Education and Lifetime Earnings in the United States*, 52 DEMOGRAPHY 1383, 1396 (2015) (illustrating the connection between lifetime earnings and educational attainment).

161. See SUZANNE KAHN ET AL., HOW STUDENT DEBT AND THE RACIAL WEALTH GAP REINFORCE EACH OTHER, at 15 (Century Found., 2019), <https://tcf.org/content/report/bridging-progressive-policy-debates-student-debt-racial-wealth-gap-reinforce/> [https://perma.cc/56UB-US2A] (exploring the factors that minority students face when selecting colleges).

162. See generally Ben Miller, *Who are Student Loan Defaulters?*, CTR. FOR AM. PROGRESS (Dec. 14, 2017), <https://www.americanprogress.org/issues/education-postsecondary/reports/2017/12/14/444011/student-loan-defaulters/> [https://perma.cc/2K8E-6N47]

1. Racial Wealth Disparities

Significant and blatant wealth disparities exist amongst different ethnic and racial groups some which can be attributed in part to stark differences in intergenerational transmission of wealth, familial support, homeownership opportunities, participation in retirement plans, and access to emergency savings.¹⁶³ However, to fully appreciate the stark and undeniable wealth disparities one must look at the raw numbers: White families' median wealth is \$188,200, while their mean wealth is \$983,400; in contrast, Hispanic families' median wealth is \$36,100, while their mean wealth is \$165,500; and Black families' median wealth is \$24,100, while their mean wealth is \$142,500.¹⁶⁴ This data evidences the significant wealth inequality across populations.¹⁶⁵

2. Intergenerational Wealth Disparities

These racial wealth gaps are a result of historic systemic, economic, and educational forms of exclusion and discrimination.¹⁶⁶ Less intergenerational and/or family wealth leads to more debt and worse outcomes for students of color as compared to their White counterparts.¹⁶⁷ Parents with existing or significant family wealth tend to pay for all, or at least part, of their children's college education.¹⁶⁸ Thus, White students are twice as likely to receive parental financial

(illustrating how several Pell Grant recipients and Black and Hispanic populations are most likely to default on their student loans).

163. See generally Neil Bhutta et al., *Disparities in Wealth by Race and Ethnicity in the 2019 Survey of Consumer Finances*, FEDS NOTES (Sept. 28, 2020), <https://doi.org/10.17016/2380-7172.2797> [<https://perma.cc/A69Y-4WSB>] (examining the data from the 2019 survey and providing context from the disproportionate findings).

164. See *id.*

165. See KAHN ET AL., *supra* note 161 (discussing the numerous factors that have created historical and current wealth disparities).

166. See generally *id.* at 27 (contending issues are neither simple nor individual, but rather an on-going nationwide problem).

167. See *id.* at 4.

168. See Bethany Romano, *Racial Wealth Gap Continues to Grow Between Black and White Families, Regardless of College Attainment*, HELLER SCH. FOR SOC. POL'Y AND MGMT. (July 16, 2018), <https://heller.brandeis.edu/news/items/releases/2018/meschede-taylor-college-attainment-racial-wealth-gap.html> [<https://perma.cc/3XFP-DQVQ>] (acknowledging wealth as a significant factor that leads to higher debt for minority students and students from low-income backgrounds).

support for college than are Black students.¹⁶⁹ Even more strikingly is the amount contributed: White families averaged a \$73,500 contribution to their student's college costs; while Black families averaged only \$16,000.¹⁷⁰ Additionally, large financial transfers or inheritances between generations contribute to more overall wealth and less long-term debt.¹⁷¹ Black families are five times less likely to receive a large financial transfer and when they do, the amount is markedly less than that of White families.¹⁷² These embedded wealth disparities continue to advance inequitable access to higher education access and increase student debt for students of color.¹⁷³

IV. STUDENT ABILITY TO FUND HIGHER EDUCATION

“Education should be a right, not a privilege. We need a revolution in the way that the United States funds higher education.”¹⁷⁴ Established factors such as unequal and inadequate K-12 education, higher education institution selection obstacles, and an inability to fund college without student loans has resulted in minority students carrying a disproportional amount of student debt compared to White students.¹⁷⁵

169. See Tatjana Meschede et al., “Family Achievements?”: *How a College Degree Accumulates Wealth for Whites and Not for Blacks*, FED. RSRV. BANK ST. LOUIS REV., 1Q 2017, at 130, <https://heller.brandeis.edu/iere/pdfs/racial-wealth-equity/racial-wealth-gap/family-achievements.pdf> (addressing racial financial discrepancies between White students and Black students).

170. See *id.* at 131.

171. See *Black Wealth Transfer and Confronting the Racial Wealth Gap*, BLOOMBERG, <https://www.bloomberg.com/company/stories/black-wealth-transfer-and-confronting-the-racial-wealth-gap/> [<https://perma.cc/F59V-PH8J>] (asserting that students that receive financial gifts do not accumulate debt at the same rates as those that do not).

172. See *id.*

173. See generally, KAHN ET AL., *supra* note 161 at 5 (claiming there is a connection between student debt for students of color and the lack of financial support).

174. Press Release, Bernie Sanders, Bernie Sanders, U.S. Senator from Vt., *Sanders Calls for Student Loan Reforms, Affordable Tuition*, (Mar. 27, 2015), <https://www.sanders.senate.gov/press-releases/sanders-calls-for-student-loan-reforms-affordable-tuition/> [<https://perma.cc/Y2D3-PD3E>].

175. See GAINFUL EMPLOYMENT: CIVIL RIGHTS PERSPECTIVE, *supra* note 144 at 9 (asserting that minority students face obstacles their White counterparts do not).

A. Resulting Student Debt

Over 90% of African American students, 72% of Latino students, 66% of White students, and 51% percent of Asian students leave college with student loan debt.¹⁷⁶ White students make up the majority of college students, yet Black and Latino students carry more individual debt.¹⁷⁷ In fact, in addition to status quo discrepancies, there are also disturbing student loan data trends and patterns that increasingly affect students of color.¹⁷⁸

“Debt is a tool that borrowers of color must rely upon more often compared to [W]hite students, potentially putting them at greater financial risk.”¹⁷⁹ A lack of parental wealth and an inability to self-finance their own higher education drives students of color towards student loans. Furthermore, these students carry significantly higher amounts of student debt, regardless of whether they have graduated or not.¹⁸⁰ On average, Black graduates owe \$52,726 in student debt, approximately \$25,000 more than White students.¹⁸¹ Furthermore, the burden on Black students continues to increase, as evidenced by the ever-growing racial student debt gap.¹⁸² Between 2000 and 2018, White

176. See Aissa Canchola and Seth Frotman, *The Significant Impact of Student Debt on Communities of Color*, CFPB (Sept. 15, 2016), <https://www.consumerfinance.gov/about-us/blog/significant-impact-student-debt-communities-color/> [<https://perma.cc/Y5FT-TXYH>] (providing data to illustrate the correlation between student loan debt and race).

177. See generally GAINFUL EMPLOYMENT: CIVIL RIGHTS PERSPECTIVE, *supra* note 144 at 6, 8 (analyzing the disparities between individuals of different races in student loan debt burdens).

178. See *id.* at 2.

179. KAHN ET AL., *supra* note 161 at 14.

180. See generally Judith Scott–Clayton & Jing Li, *The Looming Student Loan Default Crisis is Worse than We Thought*, BROOKINGS INST. (Oct. 20, 2016), <https://www.brookings.edu/research/black-white-disparity-in-student-loan-debt-more-than-triples-after-graduation/> [<https://perma.cc/E5RK-JKLC>] (acknowledging that students will amass high amounts of debt regardless of their graduation status).

181. See Melanie Hanson, *Student Loan Debt Statistics*, EDUC. DATA INITIATIVE (Dec. 12, 2021), <https://educationdata.org/student-loan-debt-statistics> [<https://perma.cc/QUZ4-G9F9>] (providing data).

182. See Anna N. Smith, *Student is a Racial Equity Issue. Here's How Mass Debt Relief Can Address It*, ROOSEVELT INST. BLOG (Oct. 29, 2020), <https://rooseveltinstitute.org/2020/10/29/student-debt-is-a-racial-equity-issue-heres-how-mass-debt-relief-can-address-it/> [<https://perma.cc/E8Z4-MHFY>] (indicating current student debt trends will continue to impact borrowers of color at significantly higher rates than their non-white counterparts).

student debt nearly doubled; however, Black student debt nearly quadrupled in the same time period.¹⁸³

B. Default Rates

Overall, student loan delinquency and default rates are astonishing.¹⁸⁴ An alarming 40.9% of student borrowers have had at least one delinquent payment within one year post-graduation.¹⁸⁵ In addition to the burden of loan delinquency, default rates among students of color— primarily Black students—are at crisis levels.¹⁸⁶ Default rates vary based on a student's race, ethnicity, the type of institution they attend and their level of educational attainment.¹⁸⁷ Over forty-eight percent of Black/African American borrowers defaulted, whereas only thirty-five percent of Latino borrowers defaulted and over twenty-one percent of White borrowers defaulted.¹⁸⁸

The racial gap is not easily explainable; however, studies indicate that historical, systemic, educational, and economic obstacles correlate to this flagrant gap.¹⁸⁹ The most prominent factor linked to student loan default is the type of institution they attended.¹⁹⁰ Students that attend private for-profit schools often borrow more frequently and in larger amounts.¹⁹¹ Approximately forty-eight percent of private for-profit school borrowers default within their first twelve years, compared to fourteen percent of borrowers at nonprivate schools and twelve percent of borrowers that

183. See *id.* (describing the widening wage gap between Black and White graduates).

184. See Melanie Hanson, *Student Loan Default Rate*, EDUC. DATA INITIATIVE (Dec. 19, 2021) <https://educationdata.org/student-loan-default-rate> [<https://perma.cc/772K-Z6H7>] (explaining that debt is not the only factor creating the student debt crisis).

185. See *id.*

186. See Scott-Clayton & Li, *supra* note 180 (indicating that more in-depth research shows trends that borrowers of color will default at alarmingly higher rates).

187. See *id.*

188. See *id.*

189. See *id.*

190. See Scott Macdonald, *Why Schools Need to be Accountable for Overextending Student Loans*, FORTUNE (Mar. 12, 2021, 9:06 AM), <https://fortune.com/2021/03/12/student-loan-debt-crisis-default-solutions/> [<https://perma.cc/CP6B-D4BY>] (demonstrating how for-profit schools are the worst offenders of predatory lending practices).

191. See Jiménez & Glater, *supra* note 19 at 147 (comparing how an associate's degree at a for-profit school costs nearly as much as a bachelor's degree at a public school).

attend public schools.¹⁹² Private for-profit institutions overrepresent students of color in their student body demographics, resulting in minority students having higher default rates than their peers.¹⁹³

Whether a student completes their higher education program also impacts their likelihood of default.¹⁹⁴ Sixty-five percent, forty-eight percent, and thirty-eight percent of Black, Latino, and White students, respectively, who did not complete their program defaulted on their student loans.¹⁹⁵ Moreover, students that did not complete their program at private for-profit institutions defaulted at crisis level rates within twelve years of starting their programs.¹⁹⁶ The most disturbing data reveals that twenty years after starting college, “White borrowers’ median student debt fell to six percent, whereas the median Black borrower still owed ninety-five percent of their student loan.”¹⁹⁷ Again evidencing that student borrowers of color carry a disproportionate percentage of total student loan debt.¹⁹⁸

V. SOLUTIONS

Since its inception in 1965, students have turned to the current student loan model to finance their higher education programs.¹⁹⁹ Easy access to federal and private student loans and skyrocketing tuition costs, have normalized borrowing as the primary means of funding for millions of

192. Macdonald, *supra* note 190 (highlighting differences in default rates based on institution type).

193. See Jiménez & Glater, *supra* note 19 at 161 (asserting minority students are overrepresented at for-profit schools).

194. See generally *id.*

195. See *id.* at 151.

196. See Scott–Clayton & Li, *supra* note 180 (finding that among all new students entering the for-profit sector in 2004, nearly half had defaulted within 12 years (47 percent), compared to ‘just’ 24 percent in the 1996 cohort. The default rate for for-profit entrants is nearly four times the rate seen in other sectors, where only 12 to 13 out of every 100 entrants’ defaults).

197. See Bethany Romano, *Reframing Student Debt Cancellation as a Racial Justice Issue*, BRANDIES (Oct. 26, 2021), <https://heller.brandeis.edu/news/items/releases/2021/impact-report-riere-student-debt.html> [<https://perma.cc/9MJL-SB85>] (highlighting the alarming disparities that exist in student loan borrowing and why student debt is a racial justice issue).

198. See generally *id.*

199. See Ayelet Sheffey & Andy Kiersz, *Student Loans Were Invented to Help Solve Racial Inequality, a New Book Says. They’re Doing the Opposite.*, BUS. INSIDER (Aug. 10, 2021, 1:40 PM), <https://www.businessinsider.com/student-loan-debt-racial-inequality-debt-trap-mitchell-lyndon-johnson-2021-8> [<https://perma.cc/FUZ3-3EGP>] (clarifying that the current student borrowing system fails to meet the original intent of the program).

students.²⁰⁰ Unresolved educational inequalities and persistent racially charged economic barriers disproportionately and negatively affect Black and Latino students.²⁰¹ Therefore, solutions to the student debt crisis should not only address the overall debt crisis, but also address the blatant racial and economic injustices that contribute to the crisis.²⁰²

A. *Current Alternatives / Options*

This impending financial crisis spurred many politicians, policymakers, social advocates, and economists to introduce changes to the current system and garnered enough attention for President Joe Biden and other major Democratic candidates to prioritize the student debt crisis as a part of their political platform.²⁰³ President Biden campaigned with a promise of debt relief of \$10,000 per borrower.²⁰⁴ Since taking office in January 2021, President Biden's current administration has forgiven approximately \$12²⁰⁵ dollars in student debt for select groups of borrowers.²⁰⁶ The select groups that have benefitted from loan forgiveness include borrowers defrauded by failed or questionable higher education institutions or trade schools; borrowers with total and permanent disabilities; and public servant employees

²⁰⁰ See generally Elissa Nadworny, *The Benefits of Taking Out Loans for College*, NPR (Nov. 14, 2018, 5:15 AM), <https://www.npr.org/2018/11/14/667699220/the-benefits-of-taking-out-loans-for-college> [<https://perma.cc/Y526-CEKG>] (commenting on the wide-spread use of loans as funding option for many students).

²⁰¹ See Sheffey & Kiersz, *supra* note 199 (criticizing the actual affects student loans have had on minority students), see also Jiménez & Glater, *supra* note 19 at 135 (discussing how students of color experience increased economic detriments because of the systemic barriers that exist within the student borrowing and higher education systems).

²⁰² See generally Jiménez & Glater, *supra* note 19 at 161-62 (contending minority student loan debt is a complex civil rights issue).

²⁰³ See Ayelet Sheffey, *President Joe Biden Asks Student-Loan Borrowers to "Do Their Part" in Preparing for Payments to Resume on May 1 as Pressure for Broad Cancellation Ramps Up Again*, BUS. INSIDER (Jan. 3, 2022, 12:06 PM), <https://www.businessinsider.com/biden-student-loan-payment-may-borrowers-do-their-part-debt-2022-1> [<https://perma.cc/96SE-P5QU>] (asserting influential politicians have acknowledged the student debt crisis).

²⁰⁴ *Id.*

²⁰⁵ See *id.*

²⁰⁶ See Cory Turner, *Biden Pledged to Forgive \$10,000 in Student Loan Debt. Here's What He's Done So Far*, NPR (Dec. 7, 2021 4:35 PM), <https://www.npr.org/2021/12/07/1062070001/student-loan-forgiveness-debt-president-biden-campaign-promise> [<https://perma.cc/7ANH-36MU>] (acknowledging President Biden's campaign promise to alleviate student debt).

including first responders, teachers, nurses, and other similar type professions.²⁰⁷ However, critics contend President Biden's debt-forgiveness is negligible compared to the overall outstanding student debt, and disregards the problematic and biased systems that led to the loan crisis.²⁰⁸ Furthermore, critics doubt President Biden's executive authority to forgive any student loan debt even for specified groups—making extremely controversial.²⁰⁹ Regardless of the criticism, these solutions are essential and should be expanded to student debt relief.²¹⁰

Though borrowers, social advocates, and various members of Congress have asked for significant or full student loan forgiveness, there is still no definite policy plan in place.²¹¹ President Biden has not fulfilled his promise to implement the \$10,000 student-loan forgiveness plan, nor has he approved any alternative amount.²¹² Thus, there are very few alternatives student borrowers can utilize to deal with mounting or unmanageable debt.²¹³

1. Income-Driven Repayment Plans

Income-driven repayment plans were created to provide borrowers with a payment option based on their current income and family size.²¹⁴

207. *See id.* (acknowledging President Biden's campaign promise to alleviate student debt).

208. *See id.*

209. *See* Ayelet Sheffrey, *President Joe Biden Asks Student Loan Borrowers to "Do Their Part" in Preparing for Payments to Resume on May 1 as Pressure for Broad Cancellation Ramps Up Again*, BUS. INSIDER (Jan. 3, 2022, 12:06 PM), <https://www.businessinsider.com/biden-student-loan-payment-may-borrowers-do-their-part-debt-2022-1> [<https://perma.cc/96SE-P5QU>] (supplying criticism from Republicans and Democrats alike which magnify the false sense of simplicity in student-debt forgiveness).

210. *See generally* *See* Clayton Jarvis, *Student Loan Forgiveness: US Cancels Another \$2B in Debt — but What About Relief for All Borrowers?*, YAHOO! (Nov. 14, 2021), <https://www.yahoo.com/now/2b-student-loan-debt-canceled-160000261.html> [<https://perma.cc/G4GA-Y9ZK>] (providing examples of positive results student debt relief would yield).

211. *See* Sheffrey, *supra* note 203 (providing statements from lawmakers and advocates expressing the desire to expand student debt forgiveness).

212. *See id.*

213. *See* Jarvis, *supra* note 211 (providing various ways to reduce debt while waiting for loan forgiveness).

214. *See* U.S. Dep't of Educ., *If Your Fed. Student Loan Payment are High Compared to Your Income, You May Want to Repay Your Loans Under an Income-Driven Repayment Plan.*, FED. STUDENT AID, <https://studentaid.gov/manage-loans/repayment/plans/income-driven> [<https://perma.cc/QCA9-9X5Z>] (informing borrowers of the types of student loan repayment options).

There are four types of income-driven repayment plans: Revised Pay As You Earn Repayment Plan (REPAYE Plan), Pay As You Earn Repayment Plan (PAYE Plan), Income-Based Repayment Plan (IBR Plan), and Income-Contingent Repayment Plan (ICR Plan).²¹⁵ These plans offer borrowers a more affordable monthly payment and the flexibility to change the amount based on adjusting income and family size.²¹⁶ Generally, these repayment plans take ten to twenty percent of a borrower's discretionary income and forgive any remaining debt after twenty or twenty-five years of payments.²¹⁷

However, income-driven payment plans have been criticized as lifetime "debt sentences" for borrowers of color and lower-income earners.²¹⁸ Many Black borrowers described this lifetime debt as "shackles on their ankles" and "Jim Crow."²¹⁹ Disturbingly, only thirty-two individuals enrolled in the income-driven repayment plans have successfully canceled loans, yet approximately two million borrowers have been in repayment for over twenty years.²²⁰ Confusing rules regarding costly long-term forbearance, delinquent payments, and default keep student borrowers tied to their increasing balances versus witnessing any decrease in amount, even after years of payments.²²¹ Widespread industry abuse and federal apathy cheat millions of vulnerable students out of years of credited loan payments and forgiveness.²²² The income-driven repayment payment program thoroughly fails to meet its goal of offering a "path out of debt" for millions of America's student

215. *See id.*

216. *See* Fed. Student Aid, *Income-Driven Repayment Plans*, OFF. U.S. DEP'T OF EDUC., <https://studentaid.gov/manage-loans/repayment/plans/income-driven> [<https://perma.cc/QCA9-9X5Z>] (citing the benefits of income-based loan repayment plans for borrowers).

217. *See id.*

218. *See* JALIL BISHOP & JONATHAN DAVIS, *JIM CROW DEBT: HOW BLACK BORROWERS EXPERIENCE STUDENT LOANS* 7 (EDUC. TR. 2021) (describing the impacts that income driven repayment plans have on low-income individuals).

219. *See id.* at 7.

220. *See* STUDENT BORROWER PROT. CTR., *EDUCATION DEPARTMENT'S DECADES-OLD DEBT TRAP: HOW THE MISMANAGEMENT OF INCOME-DRIVEN REPAYMENT LOCKED MILLIONS IN DEBT* 1 (NAT'L CONSUMER LAW CTR.: STUDENT BORROWER PROT. CTR. 2021) (stating the results of the income-driven repayment plan).

221. *See* BISHOP & DAVIS, *supra* note 219 at 10 (explaining how the rules and requirements for income driven repayment plans prolongs Black borrowers' repayments).

222. *See* EDUCATION DEPARTMENT'S DECADES-OLD DEBT TRAP: HOW THE MISMANAGEMENT OF INCOME-DRIVEN REPAYMENT LOCKED MILLIONS IN DEBT, *supra* note 221 (unraveling the effects of a poorly run loan payment program).

borrowers.²²³ An effective income repayment solution should include a time limit to ensure students avoid life-long debt.²²⁴

2. Public Service Loan Forgiveness (PSLF)

In 2007, as an alternative to the general debt forgiveness structure, Congress created the Public Service Loan Forgiveness (PSLF) program.²²⁵ This federal program incentivizes students to enter public service careers such as teaching, nursing, policing, government work, or other similarly qualified non-profits.²²⁶ PSLF forgives borrowers' remaining loan balances in exchange for ten years of working in a qualified position *and* ten years of "qualified" payments on eligible loans.²²⁷ While the program's promise and terms seem simple, the reality is the PSLF program is neither a simple nor an effective tool for loan forgiveness.²²⁸

Complicated requirements, confused borrowers, uninformed loan servicers, and a lack of governmental guidance have all led to disastrous results.²²⁹ Before 2021, PSLF denied approximately 99% of PSLF loan forgiveness applications.²³⁰ In 2018, over 1 million borrowers were denied forgiveness after years of enrollment and payment into the "system" due to misinformation and mistakes.²³¹

223. *See id.* at 1.

224. *See id.*

225. *See* College Cost Reduction and Access Act, H.R. 2669, 110th Cong. (2007) (discussing the reason Congress passed the Public Service Loan Forgiveness Program).

226. *See* U.S. Department of Education Announces Transformational Changes to the Public Service Loan Forgiveness Program, Will Put Over 550,000 Public Service Workers Closer to Loan Forgiveness, U.S. DEP'T OF EDUC. (Oct. 6, 2021), <https://www.ed.gov/news/press-releases/us-department-education-announces-transformational-changes-public-service-loan-forgiveness-program-will-put-over-550000-public-service-workers-closer-loan-forgiveness> [<https://perma.cc/8W35-D3EU>] (summarizing the Public Service Loan Forgiveness program incentives for individuals who enter into various careers).

227. *See id.*

228. *See* Cory Turner, *Why Public Service Loan Forgiveness Is So Unforgiving*, NPR (Oct. 17, 2018, 9:27 AM), <https://www.npr.org/2018/10/17/653853227/the-student-loan-whistleblower> [<https://perma.cc/6M96-GDDN>] (depicting the hopeful promise of the program while acknowledging its huge downfalls).

229. *See id.*

230. *See id.*

231. *See* U.S. GOV'T ACCOUNTABILITY OFF., GAO-18-547, PUBLIC SERVICE LOAN FORGIVENESS: EDUCATION NEEDS TO PROVIDE BETTER INFORMATION FOR THE LOAN SERVICER

The program's rejection issues were so blatant that the U.S. Government Accountability Office (GAO) launched its own investigation.²³² The GAO's findings supported critics' assertions that the PSLF's program, "as is", was an ineffective means for loan forgiveness.²³³ Thousands of borrowers were rejected for a variety of reasons, such as minor application mistakes, wrong repayment plans, wrong loan servicer, and/or ineligible employer.²³⁴

In response, the Biden Administration has overhauled the PSLF program.²³⁵ The U.S. Department of Education announced changes that address the most common rejection issues: 1) "A limited PSLF waiver that allows all payments by student borrowers to count toward PSLF, regardless of [the] loan program or payment plan"; 2) "Automatically providing credit toward PSLF for military service members and federal employees using federal data matches; and 3) "Reviewing denied PSLF applications for errors and giving borrowers the ability to have their PSLF determinations reconsidered."²³⁶

This temporary overhaul will bring automatic student debt relief to over twenty-two thousand student borrowers, totaling \$1.74 billion.²³⁷ Moreover, an additional twenty-seven thousand borrowers can qualify with a period of employment certification, increasing forgiveness to \$2.82 billion.²³⁸ Critics argue that while a PSLF overhaul is necessary, it neither corrects "longstanding issues with PSLF," nor considerably improves the economic positions of minorities.²³⁹ The PSLF program

AND BORROWERS (2018) (exploiting the gross discrepancy in the number of applicants compared with the number of borrowers who benefited from the program).

232. *See id.*

233. *See generally id.*

234. *See* Turner, *supra* note 229 (explaining the significant difficulties borrowers faced due to inefficient department and service providers).

235. *See* Ivory A. Toldson, *Overhauling the Public Service Loan Forgiveness Program is Not Good Enough*, NAACP (Oct. 6, 2021), <https://naacp.org/articles/overhauling-public-service-loan-forgiveness-program-good-not-enough> [<https://perma.cc/QFK5-S9EC>] (reporting the overhaul of the PSLF program and how it could potentially make loan forgiveness a reality for public service workers).

236. *See* U.S. Department of Education *Announces Transformational Changes to the Public Service Loan Forgiveness Program, Will Put Over 550,000 Public Service Workers Closer to Loan Forgiveness*, *supra* note 227 (listing the changes to PSLF by the U.S. Department of Education).

237. *See id.*

238. *See id.*

239. *See* Toldson, *supra* note 236 (arguing that "an overhaul of PSLF is overdue, however, the plan, as announced, will not correct longstanding issues with PSLF, nor significantly improve

incentives students to shoulder huge amounts of debt and dedicate years to essential but low-paying positions.²⁴⁰ Meanwhile, the average amount forgiven by the PSLF program is not nearly the amount necessary to impact the existing racial wealth and debt gaps.²⁴¹ For efficacy, the PSLF program should simplify its process, continue issuing waivers, and expand forgiveness.²⁴²

3. Student Loan Servicing Refinance

In certain instances, student borrowers can manage their increasing debt by resorting to refinancing their federal student loans.²⁴³ Student loan refinancing is only beneficial for a narrow segment of student borrowers.²⁴⁴ Refinancing student loans can lower an interest rate, shorten repayment periods, and combine and transfer multiple loans.²⁴⁵ However, excellent credit is required and the cons many outweigh these benefits. Private loan refinancing ignores economic obstacles faced by low-income and minority borrowers by disqualifying repayment eligibility, loan forgiveness options, and federal deferment/forbearance and ignores economic obstacles faced by low-income and minority borrowers.²⁴⁶

the economic position of Black people who carry significantly more student loan debt than White Americans”).

240. See Stacy Cowley and Erica L. Green, *Troubled Student Loan Forgiveness Program Gets an Overhaul*, N.Y. TIMES (Oct. 6, 2021), <https://www.nytimes.com/2021/10/06/us/politics/student-loan-forgiveness.html> [<https://perma.cc/JWX9-JK9F>] (asserting the negative implications of the program).

241. See Toldson, *supra* note 236 (stating that “the Brookings Institute estimates that at least \$50,000 of student loan relief is necessary to improve the racial wealth gap, yet the PSLF forgave an average of \$1,004.50 per applicant”).

242. See *id.*

243. See Federal Student Aid, *Income Driven Repayment Plans*, OFF. U.S. DEP’T OF EDUC., <https://studentaid.gov/manage-loans/repayment/plans/income-driven> [<https://perma.cc/QCA9-9X5Z>] (listing loan management options).

244. See Kat Tretina and Alicia Hahn, *8 Pros and Cons of Refinancing Federal Student Loans*, FORBES ADVISOR (Dec. 6, 2021, 7:34 AM), <https://www.forbes.com/advisor/student-loans/refinance-federal-student-loans/> [<https://perma.cc/V473-JJTN>] (contending that very few students benefit from loan refinancing as an option to their federal student loans).

245. See *id.*

246. See *id.*

4. Temporary COVID-19 Relief

The COVID-19 pandemic magnified our current student debt crisis.²⁴⁷ Large segments of the US economy shut down led to high unemployment, diminished liquid assets, and an inability to afford bills for many families.²⁴⁸ The Coronavirus pandemic disproportionality affected and continues to affect Black and Hispanic families and students.²⁴⁹ During peak shutdown periods, reports cited that up to 81% of university students were facing some type of financial difficulty.²⁵⁰ Black and Hispanic students reported higher levels of food and housing insecurity than their White counterparts.²⁵¹ Moreover, Black and Hispanic students were more likely to take on additional debt to remedy their COVID-19 economic losses, further exasperating an already difficult financial situation.²⁵²

To reduce COVID's economic impact on college students and borrowers, former President Trump implemented a temporary student loan relief program via the CARES Act on March 27, 2020.²⁵³ The CARES Act automatically and temporarily paused payments, interest accrual, and involuntary collection for most federal student loan borrowers.²⁵⁴ President Biden has further extended the pause on student repayment, interest, and collections until May 2022.²⁵⁵ Temporary

247. See HOW THE PANDEMIC COULD AFFECT THE RISE IN STUDENT DEBT, PEW CHARITABLE TR. at 2 (2021), <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2021/12/how-the-pandemic-could-affect-the-rise-in-student-debt> [<https://perma.cc/9FW2-GKHM>] (analyzing the increased student debt levels before and after the pandemic).

248. See *id.* at 8.

249. See generally Mary Ann Cooper, *COVID-19 Devastates Student Finances*, HISP. OUTLOOK (May 2020), <https://www.hispanicoutlook.com/articles/covid-19-devastates-student-finances> [<https://perma.cc/BSE7-VPZN>] (reporting results from a recent survey showing Hispanic and Black students face a devastating impact from COVID-19).

250. See *id.* (quoting statistics from a recent report that of the 81% “more than a quarter [of students] are having trouble paying bills or feeding themselves.”).

251. See *id.*

252. See *id.*

253. See Meghan Lustig, *Coronavirus Student Loan Relief: Borrower Update*, U.S. NEWS & WORLD REP. (April 8, 2022, 4:24 PM), <https://www.usnews.com/education/blogs/student-loan-ranger/articles/update-on-coronavirus-relief-for-student-loan-borrowers> (restating the CARES Act, which helped federal student loan borrowers during the COVID-19 pandemic).

254. See *id.*

255. See *id.*

student loan relief, while useful, simply band aids the broken and biased student loan system.²⁵⁶

B. Proposed Solutions

Currently, there is no long-term solution to the student loan crisis.²⁵⁷ The current student loan program's broken systems and resulting trillions of dollars of debt are neither sudden nor unexpected.²⁵⁸ Many economic experts and political figures advocate for genuine solutions and relief.²⁵⁹ Recent mounting pressure from advocates and lawmakers has finally pushed student debt relief to the forefront of political and legal debates.²⁶⁰

1. Executive Authority via Secretary of Education

Legal experts are split on whether the President has executive power to cancel student loan debt.²⁶¹ In April 2021, President Biden asked the Department of Education to review his legal authority to cancel \$10,000

256. See generally Teresa R. Manning, *The Student Debt Relief Band-Aid*, NAT'L ASSOC. OF SCHOLARS (Sept. 15, 2021), <https://www.nas.org/blogs/article/the-student-debt-relief-band-aid> [<https://perma.cc/7962-TNBY>] (expressing the feelings and frustrations with the system that borrowers have).

257. See generally Lorie Konish, *One-Time Presidential Pardon Will not do Much to Alleviate Student Debt Crisis, Economists say. These Changes may be a Better Solution*, CNBC (Sept. 19, 2022, 10:28 PM), <https://www.cnbc.com/2022/09/19/these-changes-can-fix-student-debt-crisis-and-are-better-than-forgiveness.html> [<https://perma.cc/7L2M-4CPJ>] (highlighting how current solutions to the student debt crisis are only short-term fixes and do not provide much relief to borrowers).

258. See Hess, *supra* note 2 (exploring the history and development of student loan debt).

259. See Megan Leonhardt, *We Asked More than 500 Congress Members About Student Loan Forgiveness—Here's what we Found*, CNBC (Apr. 22, 2021, 11:51 AM), <https://www.cnbc.com/2021/04/22/student-loan-forgiveness-where-members-of-congress-stand.html> [<https://perma.cc/T63J-KYSU>] (recounting which members of Congress are in support and opposition to student loan forgiveness); see also Jay Wallis, *Economics Experts Worry About Impact Student Loan Forgiveness will have on the Country*, WFAA NEWS (Aug. 24, 2022, 7:30 PM), <https://www.wfaa.com/article/news/local/economics-experts-worry-impact-student-loan-forgiveness-on-country/287-81a8315a-ecfb-4bdc-83e7-956d1f9eb97a> [<https://perma.cc/C6BT-5XTF>] (providing expert opinions on the economic effects of student loan forgiveness).

260. See Christian Spencer, *Pressure Mounts on Biden to Cancel \$50k in Student Loan Debt*, THE HILL (July 28, 2021), <https://thehill.com/changing-america/enrichment/education/565339-pressure-mounts-on-biden-to-cancel-50000-in-student> [<https://perma.cc/556Y-RJ7V>] (quoting several political advocates for loan forgiveness).

261. See Alexis Gravely, *Can Biden Cancel Student Debt? Depends on Who You Ask*, Inside Higher Ed (Aug. 11, 2021), <https://www.insidehighered.com/news/2021/08/11/legal-experts-are-split-whether-biden-can-cancel-debt> [<https://perma.cc/Q7GM-KLX4>] (detailing the legal analysis regarding the use of presidential authority).

in debt per student borrower.²⁶² However, the findings are “ongoing” and still unavailable to the public.²⁶³ Additionally, prominent members of Congress on both sides of the aisle hold opposing views regarding President Biden’s authority to forgive student loans unilaterally.²⁶⁴

Proponents of student debt cancellation by executive order reference former President Trump’s moratorium on payments and interests, which President Biden extended as evidence of existing executive authority.²⁶⁵ On its face, The Higher Education Act of 1965 explicitly grants the power of broad loan forgiveness to the Secretary of Education.²⁶⁶ This statutory provision grants the Secretary of Education the power to “enforce, pay, compromise, waive, or release any right, title, claim, lien, or demand, however acquired, including any equity or any right of redemption.”²⁶⁷ Therefore, President Biden may indeed have legal standing for broad and general student loan forgiveness in amounts that could significantly impact historically marginalized borrowers and, as such, should utilize this power immediately.²⁶⁸

2. House Bills/Legislation

Opponents of student loan forgiveness by executive order believe that President Biden holds neither constitutional nor statutory authority for sweeping cancellations.²⁶⁹ If so, Congress should create, introduce, and sign into law effective student loan cancellations programs

262. See Ayelet Sheffey, *Read the Redacted Student-debt Cancellation Memo that Biden Has Been ‘Examining’ Since April*, INSIDER (Nov. 1, 2021, 12:20 PM), <https://www.businessinsider.com/read-the-redacted-student-debt-cancellation-memo-biden-education-department-2021-11> [<https://perma.cc/2H5K-ZHRR>] (discussing how “Biden has likely known whether or not he can legally cancel student debt”).

263. See *id.*

264. See Gravely, *supra* note 262 (examining the different answers given in regard to the President’s legal authority to discharge student loan debt).

265. See *id.*

266. See Higher Educ. Act of 1965 (HEA), *amended by* Higher Educ. Opportunity Act of 2008, P.L. No. 110-315, § 20, 122 Stat. 3078, 3117 (2008) (demonstrating that there is legislation that grants the Secretary of Education legal authority for student loan forgiveness).

267. *Id.*

268. See Letter from Eileen Connor et al., LEGAL SERVS. CTR. OF HARVARD L. SCH., to Sen. Warren (Jan. 13, 2020) (on file with HARVARD KENNEDY SCH. POL’Y MEMO RES.) (explaining why and how President Biden’s student debt cancellation plan is lawful).

269. See Gravely, *supra* note 262 (referring to Reed Rubinstein’s argument that President Biden does not have the authority to spend or allocate funds that have not been appropriated).

immediately.²⁷⁰ President Biden stated that he would sign a loan forgiveness bill should Congress put one before him; however, he desired to limit the forgiveness amount to \$10,000.²⁷¹ Many critics believe \$10,000 is not enough and \$50,000 in student loan forgiveness is needed to impact “the ‘exacerbated’ effect on existing ‘racial inequality,’” and “canceling debt would be a step in reversing ‘decades of economic injustice and racial inequality.’”²⁷² However, political and social pressures dictate that broad loan student forgiveness should be pushed forward now.²⁷³

3. H.R. 4797 - Student Loan Relief Act

Several bills introduce solutions to address the student loan crisis, ranging from full forgiveness, partial forgiveness, tax forgiveness, and bankruptcy allowance.²⁷⁴ H.R. 4797, commonly referred to as the “Student Loan Relief Act,” would require the Department of Education to forgive up to \$50,000 in federal student debt for all student borrowers.²⁷⁵ Forgiving \$50,000 in student debt would cancel eighty percent of student loans for over thirty-six million student borrowers.²⁷⁶

270. See Sydney Lake, *Schumer: Biden Can—and Should—Cancel \$50,000 in Student Debt*, FORTUNE (Oct. 20, 2021, 1:04 PM), <https://fortune.com/education/business/articles/2021/10/20/schumer-biden-can-and-should-cancel-50000-in-student-debt/> [<https://perma.cc/LV72-JQ85>] (stating that if President Biden doesn’t have the authority to forgive student loans, then Congress does).

271. See Russell Berman, *The Bold Economic Move Joe Biden Refuses to Make*, THE ATL. (Jan. 12, 2022), <https://www.theatlantic.com/politics/archive/2022/01/biden-student-loan-debt-cancellation/621224/> [<https://perma.cc/9LVW-DH6D>] (stating President Biden would only cancel up to \$10,000 per borrower).

272. See Spencer, *supra* note 261 (quoting Senator Chuck Schumer who stated that canceling student loan debt would be a step in reversing “decades of economic injustice and racial inequality”).

273. See *id.*

274. See generally Anshu Siripurapu and Mia Speier, *Is Rising Student Debt Harming the U.S. Economy?*, COUNCIL ON FOREIGN REL. (Apr. 13, 2021, 4:14 PM), https://www.cfr.org/backgrounder/rising-student-debt-harming-us-economy?gclid=Cj0KCQjwnP-ZBhDiARIsAH3FSRfU29FQCL6NHH6eS3e_mahGj07kDI4eF5fEsN4cw3Cx9XnYb0MO4r4AiyVEALw_wcB [<https://perma.cc/SM9Y-DQPU>] (describing legislative proposals for student loan reform).

275. See Student Loan Relief Act, H.R. 4797, 117th Cong. (2021) (stating the purpose of the proposed legislation).

276. Sarah Ewall-Wice, *Canceling \$50,000 in Student Loan Debt Could Wipe Out Burden for 84% of Borrowers*, CBS NEWS (Apr. 13, 2021, 5:58 PM),

Moreover, \$50,000 in loan forgiveness would decrease the racial wealth gap significantly, reducing debt burdens significantly for Black and Latino borrowers while increasing their wealth.²⁷⁷ Congress, along with the current administration, should prioritize and enact this bill into law.²⁷⁸

CONCLUSION

“People feel like the system is rigged against them, and here is the painful part, they’re right. The system is rigged.”²⁷⁹ The student debt crisis directly links to racial, social, educational, and economic justice.²⁸⁰ Black, Latino, and low-income students disproportionately attend lower-performing schools.²⁸¹ Black and Latino students receive inferior college preparation opportunities and consequently, lack equal access to quality higher education institutions.²⁸² Additionally, lack of generational and family wealth has forced millions of minority students into higher debt levels than their White counterparts.²⁸³ These discriminatory and systemic practices have resulted in Black and Latino students shouldering an inordinate share of this country’s crisis-level student debt.²⁸⁴ Unless all students—regardless of color and station in life—receive an equal and quality education, racial wealth and social gaps are acknowledged and addressed, and the federal government forgives past student debt, the

<https://www.cbsnews.com/news/student-loan-forgiveness-wipe-out-debt/>
[<https://perma.cc/4HLN-DRKB>].

277. See Alí Bustamante, *How Canceling Student Debt Would Bolster the Economic Recovery and Reduce the Racial Wealth Gap*, ROOSEVELT INST. (Dec. 8, 2021), <https://rooseveltinstitute.org/2021/12/08/how-canceling-student-debt-would-bolster-the-economic-recovery-and-reduce-the-racial-wealth-gap/#:~:text=For%20example%2C%20analysis%20in%20a,Black%20Americans%20by%2040%20percent.> [<https://perma.cc/W6RH-VK44>] (explaining that Black and Latinx households shoulder a disproportionate burden from student loan payments).

278. See generally *id.*

279. Sen. Elizabeth Warren, Address at the Democratic Nat’l Convention: The System is Rigged (Sep. 6, 2012) (acknowledging that race and income significantly impacts social and economic mobility).

280. See Ewall-Wice, *supra* note 277 (“Make no mistake, despite the dominant narrative, the student debt crisis has always been both a racial and economic justice issue”).

281. See generally Jiménez & Glater, *supra* note 19 at 168 (arguing that Black and Latinx scholars disproportionately lack meaningful access to quality education).

282. See *id.* at 161.

283. See generally BISHOP & DAVIS, *supra* note 219 at 4, 7.

284. See Bustamante, *supra* note 278 (explaining that borrowers of color typically borrow more for their education than their White counterparts).

student debt crisis will continue to unjustly and disproportionately harm students of color.²⁸⁵ The evidence is clear, time has run out and we must eliminate our students' debt.

285. See generally Jiménez & Glater, *supra* note 19 at 172 (arguing higher education should be accessible to the public, regardless of wealth or income).