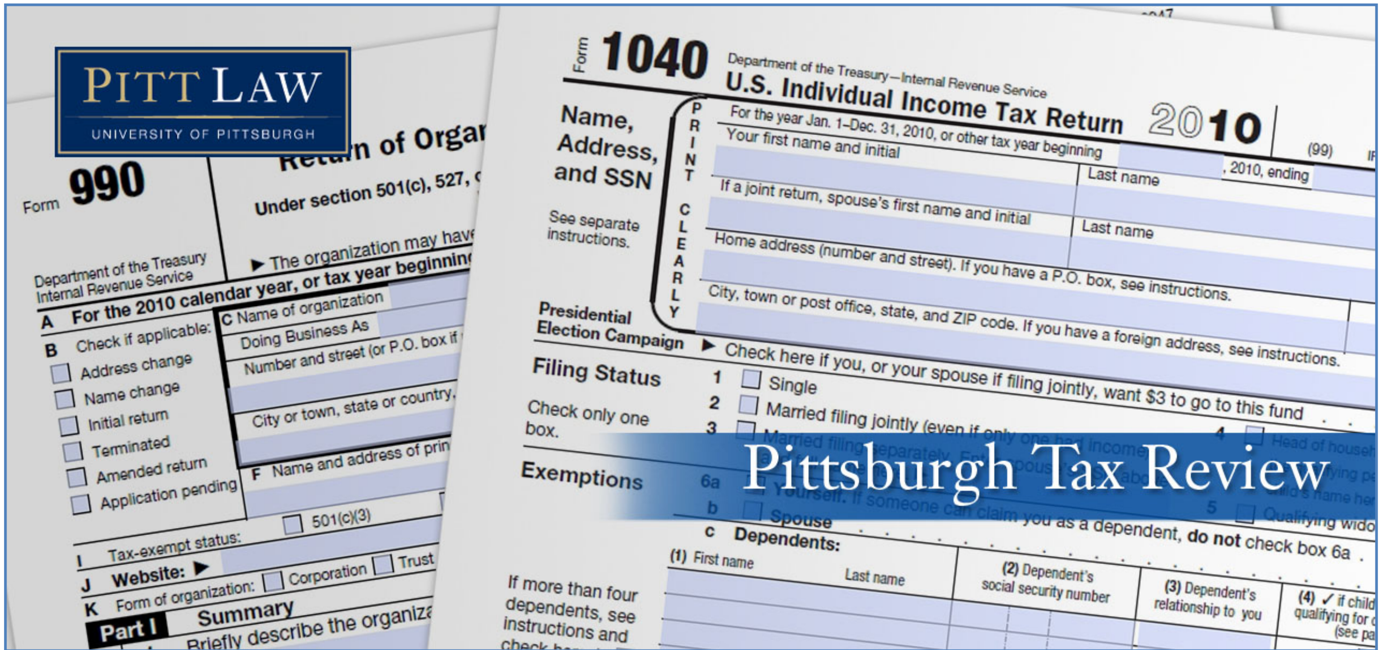

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WELFARE v. WEALTHFARE: THE ILLUSION OF EQUALITY IN TAX POLICY

Phyllis C. Taite

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WELFARE v. WEALTHFARE: THE ILLUSION OF EQUALITY IN TAX POLICY

Phyllis C. Taite[*]

INTRODUCTION

Tax laws and policies may be perceived as race-neutral because race data is not used to determine tax liability. Similarly, the rate structure may be perceived as progressive because tax rates increase as income increases. Nonetheless, history has demonstrated that tax laws and policies are biased against race and class and the tax system is not effectively progressive.[1] This Article explores a few ways that perceptions of tax policy do not match the reality of tax laws and policies.

This Article will discuss how estate and gift taxes were implemented permanently to raise revenue and combat wealth concentration.[2] Instead, the

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[1] *See generally* Phyllis C. Taite, *Inequality by Unnatural Selection: The Impact of Tax Code Bias on the Racial Wealth Gap*, 110 KY. L.J. 639 (2022); Jeremy Bearer-Friend, *Colorblind Tax Enforcement*, 97 N.Y.U. L. REV. 1 (2022); and Phyllis C. Taite, *Tax Code Bias and Its Starring Role in Perpetuating Inequalities*, 72 S.C. L. REV. 735 (2021).

[2] Jerome Kurtz & Stanley S. Surrey, *Reform of Death and Gift Taxes: The 1969 Treasury Proposals, the Criticisms, and a Rebuttal*, 70 COLUM. L. REV. 1365, 1366 (1970) ("It should be noted, however, that the estate tax was originally enacted to raise revenue and not for any of the theoretical reasons now used to justify one or another aspect of it."); Louis Eisenstein, *The Rise and Decline of the Estate Tax*, 11 TAX L. REV. 223, 224 (1956) ("While the tax produces a modest revenue, the revenue is inevitably incidental to its assault upon aggregates of wealth."); Carlyn S. McCaffrey & John C. McCaffrey, *Our Wealth Transfer Tax System—A View from the 100th Year*, 41 ACTEC L.J. 1, 8 (2015) ("Although the first three wealth transfer taxes seemed to have been solely motivated by a need to raise revenue, the inclusion of an estate tax in the War Revenue Act of 1898 was facilitated at least in part by the growing resentment over dynastic family wealth emerging from industrial capitalism and global trade.").

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federal transfer tax system is no longer effective for either purpose, though both are essential to effectively addressing vast economic inequalities. Through various tax acts, tax policy has subsidized the wealthy—people who need no financial assistance—rather than combat wealth concentration.[3]

Several tax changes have reinforced the stronghold of the wealthy by subsidizing four of the pillars of wealth mobility: inherited wealth, education, homeownership, and acquisition of appreciating assets.[4] By using tax policy to subsidize wealth transfers, education, homeownership, and appreciating assets, the government has supported wealthfare, and the scales of equality are unbalanced in perpetuity unless drastic measures are undertaken.[5] To reverse some of the effects of wealthfare, the government must invest in the households most damaged by past policies to create equitable solutions, and tax policy is an integral part of that process.

Part I addresses the illusion of tax neutrality and the consequences of economic inequality. Part II describes and analyzes the regressive effects on estate and gift taxes, including an analysis of the impact tax policy has on wealth mobility. Part III proposes equitable solutions to address economic inequalities with targeted wealth mobility programs, using tax policy, making homeownership more affordable, retirement more accessible, and tax relief for lower-income families more broadly available.

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[3] Eisenstein, *supra* note 2, at 223, 231 ("Although the estate tax rates pushed upward for a fleeting period, they made no discernible attempt to level inherited wealth. The tax was initially imposed in response to the need for revenue, and the rates increased as the need increased. The purpose of Congress did not embrace the destruction of large fortunes."); *see also* Susan Pace Hamill, *Moral Reflections on Twenty-First Century Tax Policy Trends*, 52 CUMB. L. REV. 1, 36–38 (2022) ("describing various tax cuts for the wealthy that eroded the progressivity of tax policy."). *See generally* Phyllis C. Taite, *Exploding Wealth Inequalities: Does Tax Policy Promote Social Justice or Social Injustice?*, 36 W. NEW ENG. L. REV. 201, 213 (2014) (describing how the estate tax and marital portability contribute to wealth inequality).

[4] *See* Kerry A. Ryan, *Human Capital and Transfer Taxation*, 62 OKLA. L. REV. 223, 231 (2010) (discussing tax-based subsidies for education as an investment in human capital for wealthier taxpayers); *see also* Michelle D. Layser, *How Federal Tax Law Rewards Housing Segregation*, 93 IND. L.J. 915, 934 (2018) (discussing the distribution of tax subsidies by mapping tax-based housing subsidies based on zip codes); THOMAS PIKETTY & GABRIEL ZUCMAN, WEALTH AND INCOME IN THE LONG RUN 1303–68 (2015) (conducting a comparative analysis of inherited wealth and indicating inherited wealth in the United States represents 40% of all wealth).

[5] MARK ZEPEZAUER, TAKE THE RICH OFF WELFARE 1–6 (2004) (defining wealthfare government subsidization for the wealthy or corporations in the form of tax expenditures).

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I. Consequences of Inequality

Policies that facilitate wealth mobility have historically favored White households almost to the exclusion of Black households.[6] This Article explores how certain government policies supported by tax policy exacerbate inequalities by promoting wealth mobility in assets primarily enjoyed by White households. Government leaders have ignored their role in contributing to economic inequalities.

For instance, the refusal to collect race-based data, despite the numerous sources indicating tax code bias, is but one example that demonstrates apathy to legitimate concerns. Research shows that even without collecting data, racial bias is evident in tax enforcement.[7] While congressional leaders may believe lack of data provides plausible deniability, there is enough data and research that demonstrate how tax policies hinder Black income and wealth mobility while promoting White income and wealth mobility.[8]

Scholars and economists have also demonstrated how tax policies favor the wealthy to the disadvantage of low-income households.[9] Professor

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[6] Liz Mineo, *Racial Wealth Gap May Be a Key to Other Inequalities*, HARV. GAZETTE (June 3, 2021), https://news.harvard.edu/gazette/story/2021/06/racial-wealth-gap-may-be-a-key-to-other-inequities/ ("After the end of slavery and the failed Reconstruction, Jim Crow laws, which existed till the late 1960s, virtually ensured that Black Americans in the South would not be able to accumulate or to pass on wealth. And through the Great Migration and after, African Americans faced employment, housing, and educational discrimination across the country. After World War II many white veterans were able to take advantage of programs like the GI Bill to buy homes—the largest asset held by most American families—with low-interest loans, but lenders often unfairly turned down Black applicants, shutting those vets out of the benefit."); *see also* Allison Anna Tait, *The Law of High-Wealth Exceptionalism*, 71 ALA. L. REV. 981 (2020) (discussing how high-wealth families use private trust companies and other estate planning tools to hoard wealth, impact financial markets, and shift tax burdens to lower-wealth families).

[7] Bearer-Friend, *supra* note 1, at 2 (discussing how race and ethnicity impact tax enforcement even though race and ethnicity data are not collected on tax forms).

[8] *See generally,* Taite, *supra* note 1 (discussing numerous ways tax policy inhibits Black wealth mobility); Dorothy A. Brown, *Racial Equality in the Twenty-First Century: What's Tax Policy Got to Do with It?*, 21 UNIV. ARK. LITTLE ROCK L. REV. 759, 763 (1999); Beverly I. Moran & William Whitford, *A Black Critique of the Internal Revenue Code*, 1996 WIS. L. REV. 751, 753–54 (analyzing tax provisions that promote White wealth).

[9] *Funding Our Nation's Priorities: Reforming the Tax Code's Advantageous Treatment of the Wealthy*, *Subcomm. on Select Revenue Measures, H. Comm on Ways & Means*, 177th Cong. (2021) (testimony of Adam Looney), https://www.brookings.edu/testimonies/funding-our-nations-priorities-reforming-the-tax-codes-advantageous-treatment-of-the-wealthy/ ("Wealth and income are heavily concentrated in the United States—and increasingly so. One factor that contributes to the concentration

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Repetti contends that "[i]nequality imposes measurable costs on the health, social well-being, and intergenerational mobility of our citizens as well as our democratic process."[10] He indicated that research shows the likelihood of wealth mobility from the lower economic levels to affluent levels is unlikely.[11]

Professor Beverly Moran discussed how the Earned Income Tax Credit (EITC) and the work required to receive welfare "workfare" was a backdoor way to provide financial assistance to the lowest-income households, the most financially vulnerable.[12]

The EITC benefitted low-income households quietly until Republicans used it to score points with their constituency.[13] By labeling EITC as welfare, they attached a negative connotation but did not treat wealthfare in the same manner. In addressing concerns about wealth inequality, she indicated the failure to tax wealth was equivalent to governmental subsidies for the wealthy.[14]

Economists and scholars agree there is too much economic inequality in America.[15] The disagreement lies in how to resolve it. Many Americans

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of income and wealth is the tax system's advantageous treatment of inherited wealth, corporate and non-corporate business income, and capital gains."); *see also* Daniel H. Cooper et al., Discussion Paper No. 11-7, *Quantifying the Role of Federal and State Taxes in Mitigating Income Inequality*, FED. RES. BANK OF BOSTON 17 (2011), https://www.bostonfed.org/publications/public-policy-discussion-paper/2011/quantifying-the-role-of-federal-and-state-taxes-in-mitigating-income-inequality.aspx ("Thus, the contrast we have found between the cross-sectional and time-series results on the impact of taxes on income equality—and, hence, in the effective, overall progressivity of the tax system—suggests to us that the parameters of the tax system may have shifted over time so as to reduce its overall progressivity to some degree.").

[10] James R. Repetti, *The Appropriate Role for Equity and Efficiency in a Progressive Individual Income Tax*, 23 FLA. TAX REV. 522, 523 (2020).

[11] *Id.* at 546.

[12] Beverly Moran, *Wealth Redistribution and the Income Tax*, 53 HOW. L.J. 319, 326–27 (2010).

[13] *Id.* at 327.

[14] *Id.* at 326.

[15] *See generally* Mohamed Akram Faizer, *Seven Steps to Truly Reform the Tax Code and Engender Socio-Economic Mobility*, 82 ALB. L. REV. 601, 606 (2018–2019); Emmanuel Saez & Gabriel Zucman, *Wealth Inequality in the United States Since 1913: Evidence from Capitalized Income Tax Data*, 131 Q.J. ECON. 516, 520–21 (2016); Paul L. Caron & James R. Repetti, *Occupy the Tax Code: Using the Estate Tax to Reduce Inequality and Spur Economic Growth*, 40 PEPP. L. REV. 1255, 1257 (2013); Thomas

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believe tax policy contributes to the wealth gap and that the wealthy are not paying their proportionate share of tax liability.[16] They are correct if measured by the effective tax rate instead of the statutory marginal rate.[17] The statutory marginal rate schedule is progressive because the tax brackets increase as income increases.[18] However, the effective tax rate paid by higher-wealth taxpayers after deductions and tax preferences is much lower. The effective tax rate of billionaires has decreased over the years to less than that of middle- and low-income taxpayers.[19] The decreased rates, with deductions and preferences, mask the regressive effects of tax policies.[20]

II. The Path of Regressivity

A. Tax Revenue and Its Essentiality

Taxation is the predominant source of revenue for the government.[21] Even so, numerous people run political campaigns based on their plans to reduce or eliminate certain taxes.[22] The revenue-generating purpose has been concealed by political rhetoric to distract the masses from the truth that taxation is necessary. The issue is determining how tax responsibility should

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Piketty & Emmanuel Saez, *How Progressive is the U.S. Federal Tax System? A Historical and International Perspective*, 21 J. ECON. PERSP. 3, 22–23 (2007).

[16] Taylor Orth, *Most Americans Support Raising Taxes on Billionaires*, YOUGOV AMERICA (Oct. 4, 2022), https://today.yougov.com/topics/politics/articles-reports/2022/10/04/most-americans-support-raising-taxes-billionaires.

[17] The statutory marginal rate is the tax rate indicated in the Internal Revenue Code ("I.R.C.") and the effective tax is the amount imposed after deductions.

[18] I.R.C. § 1(a)–(d).

[19] Christopher Ingraham, *For the First Time in U.S. History Billionaires Paid a Lower Tax Rate Than the Working Class Last Year*, WASH. POST (Oct. 8, 2019), https://www.washingtonpost.com/business/2019/10/08/first-time-history-us-billionaires-paid-lower-tax-rate-than-working-class-last-year.

[20] *Historical U.S. Federal Individual Income Tax Rates & Brackets, 1862–2021*, TAX FOUND. (Aug. 4, 2021), https://taxfoundation.org/historical-income-tax-rates-brackets/ (indicating the top marginal rate as high as 91% in 1950 and as low as 28% in 1988).

[21] *See, e.g.*, STAFF OF JOINT COMM. ON TAX'N, 177TH CONG., OVERVIEW OF FEDERAL TAX SYSTEM AS IN EFFECT FOR 2022, No. JCT-14-22, at 29 (2022).

[22] *See generally Major Candidate Tax Proposals Election 2016*, TAX POL'Y CTR. (2015), https://apps.urban.org/features/tpccandidate/.

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be distributed. Democrats generally support tax responsibility based on the ability to pay while Republicans generally support policies that reduce or eliminate taxation.[23]

When analyzing the impact of tax policy, what is clear, irrespective of politics, is that the burden of raising revenue has fallen primarily on payroll taxes[24] and individual income taxes.[25] Over the years, the burden on corporate, estate, and gift taxes has decreased, conversely, the income and payroll tax burdens have quietly increased.

How is it possible to increase tax burdens on the masses without public outcry? Politicians have been successful in convincing the public that taxation is not necessary. The concept is best illustrated by the phrase, "[t]he greatest trick the devil ever pulled was convincing the world he didn't exist."[26]

For example, without discussing or demonstrating how the government will function without revenue sources, politicians convince their constituents that taxation is the enemy, and if elected, they will eradicate this enemy. In

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[23] *In a Politically Polarized Era, Sharp Divides in Both Partisan Coalitions*, PEW RSCH. CTR. 91 (Dec. 2019), https://www.pewresearch.org/politics/2019/12/17/in-a-politically-polarized-era-sharp-divides-in-both-partisan-coalitions/ ("While Republicans have more positive views of the federal tax system than Democrats, they are more critical of their own tax burden. A majority of Republicans (56%) say they pay more than their fair share in taxes, compared with 38% who say they pay about the right amount. Democrats are more evenly divided: 46% say they pay more than their fair share, while 43% say they pay about the right amount.").

[24] Dana Miranda & Cassie Bottorff, *Payroll Tax Rates (2022 Guide)*, FORBES ADVISOR (Jan. 18, 2023), https://www.forbes.com/advisor/business/payroll-tax-rates/ (describing how the Federal Insurance Contribution Act (FICA) and Federal Unemployment Tax Act (FUTA) are statutorily based taxes determined by Congress automatically paid from wage income by employers and are commonly referred to as payroll taxes).

[25] *See* TAX POL'Y CTR., BRIEFING BOOK, *A Citizen's Guide to the Fascinating (Though Often Complex) Elements of the U.S. Tax System* (2020), https://www.taxpolicycenter.org/briefing-book/what-are-sources-revenue-federal-government (last visited Dec. 27, 2022) ("The individual income tax has provided nearly half of total federal revenue since 1950, while other revenue sources have waxed and waned . . . . In contrast, payroll taxes provided more than one-third of revenue in 2019, more than three times the share in the early 1950s.").

[26] THE USUAL SUSPECTS (PolyGram Filmed Entertainment 1995). *See also* JOHN WILKINSON, QUAKERISM EXAMINED: IN A REPLY TO THE LETTER OF SAMUEL TUKE 259–60 (1836) ("One of the artifices of Satan is, to induce men to believe that he does not exist: another, perhaps equally fatal, is to make them fancy that he is obliged to stand quietly by, and not to meddle with them, if they get into true silence.").

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reality, federal spending and expenditures rely on tax revenue for funding.[27] The Congressional Budget Office (CBO) prepares an annual report that provides an economic forecast based on projected spending and revenues.[28] Even if current tax revenues remain constant, the deficits are projected to triple over the next thirty years.[29] If the federal debt rises at the same time tax revenues decrease, the United States would experience another fiscal crisis.[30]

The most recent CBO report indicates the most significant revenue changes will be from tax laws implemented in the Tax Cuts and Jobs Act (TCJA).[31] The CBO projects that revenue will increase if the tax cuts scheduled to sunset at the end of 2025 are allowed to expire.[32] This CBO report and its predecessors make it clear that tax revenue is essential to the economic stability of the federal government. Therefore, by determining revenue sources, Congress determines who bears the financial burdens.

B. Transfer Taxes and the Path to Regressivity

Economic policies, including specific tax policies, must drastically change to reverse some of the regressive effects of our past economic policies. The federal estate and gift tax system is an obvious place to start because it is an excellent example of wealthfare. When the estate tax was permanently instated, the goal was to raise revenue and curtail concentrated wealth.[33]

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[27] Congressional Budget and Impoundment Control Act of 1974, Pub. L. No. 93-344, § 3(3), 88 Stat. 297, 299 (1974) ("The term "tax expenditures" means those revenue losses attributable to provisions of the Federal tax laws which allow a special exclusion, exemption, or deduction from gross income or which provide a special credit, a preferential rate of tax, or a deferral of tax liability; and the term "tax expenditures budget" means an enumeration of such tax expenditures.").

[28] CONG. BUDGET OFF., THE 2022 LONG-TERM BUDGET OUTLOOK (2022).

[29] *Id.* at 5.

[30] *Id.* at 12.

[31] Tax Cuts and Jobs Act, Pub. L. No. 115-97, 131 Stat. 2054 (2017).

[32] CONG. BUDGET OFF., *supra* note 28.

[33] Kurtz & Surrey, *supra* note 2.

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To prevent estate tax avoidance, Congress enacted the gift tax as well.[34] If the purpose of implementing the gift tax was to ensure the estate tax revenue stream, then subsequent congressional actions were inconsistent with that purpose. Congress adopted the marital deduction rules in 1948, rules to exclude life insurance in 1954, and the unlimited marital deduction in 1981.[35] Each of these congressional acts reduced estate tax liability for the wealthy and reduced tax revenue.

Further, the exemption amounts doubled, and the tax rates were significantly reduced after the Tax Reform Act of 1976.[36] Naturally, this reduced the number of estate tax return filings and the percentage of federal receipts for transfer taxes.[37] Also, the Reagan administration passed the Economic Recovery Tax Act 1981 (ERTA) and started incremental exemption increases, which sent transfer tax returns on a steep downward spiral.[38]

Thereafter, the Bush administration implemented the Economic Growth and Tax Relief Reconciliation Act (EGTRRA) of 2001, which was the greatest transfer tax break to date.[39] The Obama administration followed with the 2011 Economic Stimulus Package (ESP) that further increased the transfer tax exemptions to a historical high and included future adjustments

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[34] *See* David Frederick, *Historical Lessons from the Life and Death of the Federal Estate Tax*, 49 AM. J. LEGAL HIST. 197, 200 (2007).

[35] Darien B. Jacobson, Brian G. Raub & Barry W. Johnson, *The Estate Tax: Ninety Years and Counting*, IRS, 121 fig. C, https://www.irs.gov/pub/irs-soi/ninetyestate.pdf (last visited July 10, 2023).

[36] Laws and Concurrent Resolutions Enacted During the Second Session of the Ninety-Fourth Congress of the United States of America, Pub. L. No. 94-455, 90 Stat. 1520 (codified as amended in scattered sections of 26 U.S.C.).

[37] Patrick Fleenor, *A History and Overview of Estate Taxes in the United States*, 7 TAX FOUND. (1994), http:// www.taxfoundation.org/files/f7c34848582a114133f90711b50b9a3a.pdf.

[38] Jacobson, Raub & Johnson, *supra* note 35, at 122 fig. D (indicating under ERTA the exemption amount increased to $225,000 in 1982 up to $600,000 by 1987 and estate tax filings reduced by more than 50%).

[39] Economic Growth and Tax Reconciliation Relief Act of 2001, Pub. L. No. 107-16, 115 Stat. 38 (codified as amended in scattered sections of 26 U.S.C.) (Under EGTRRA the exclusion amount established incremental increases from $1 million in 2002, $1.5 million in 2004, $2 million in 2006, $3.5 million in 2009, and temporary repeal in 2010. The top marginal tax rates also declined incrementally from 50% to as low as 45% by 2009.).

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for inflation.[40] Between 2001 to 2011, the number of estate tax returns decreased from 50,000 to a mere 4,400, and tax revenue decreased from $24 billion to $11 billion.[41]

The Trump administration delivered the most devastating blow to the revenue potential for estate and gift taxes. The TCJA doubled the already substantially increased exemption amounts and adjusted for inflation.[42] With each new tax act, it is clear that congressional intent was not based on increasing revenue or diminishing wealth concentration.[43] The successively increased exemptions and reduced tax rates negated revenue purposes and further reduced tax liability for the wealthiest.[44]

Section 1014, often referred to as the "stepped-up basis" provision, has provided even more tax relief through wealth transfers.[45] While it may have been implemented to prevent double taxation, it is now an instrument to facilitate tax avoidance.[46] In 2010, the stepped-up basis was replaced with a carryover basis during the temporary estate tax repeal.[47] It was reinstated thereafter, which demonstrates the provision was not an oversight, but intentional tax relief. Annually, unrealized capital gain through estates costs

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[40] American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (codified as amended in scattered sections of U.S.C.), amended by Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Pub. L. No. 111-312, 124 Stat. 3296 (ESP reduced the top marginal rate to 35% and increased the unified transfer taxes to $5 million with adjustments for inflation).

[41] TAX POL'Y CTR., *supra* note 25.

[42] Pub. L. No. 115-97, 131 Stat. 2054 (2017).

[43] *Id.* (The TCJA increased the transfer tax exemption amount to $10 million and adjusted for inflations. The 2023 exemption amount is $12.92 per taxpayer according to Rev. Proc. 2022-38.).

[44] Paul L. Caron, *The One-Hundredth Anniversary of the Federal Estate Tax: It's Time to Renew Our Vows*, 57 B.C.L. REV. 823, 825 (2016) ("In this first twenty-five years, the estate tax's contribution to the federal fisc gyrated between 1% and 10% of the overall tax revenues, due to the frequently changing top rate from (10% to 77%).").

[45] Phyllis C. Taite, *Saving the Farm or Giving Away the Farm: A Critical Analysis of the Capital Gains Tax Preferences*, 53 SAN DIEGO L. REV. 1017, 1029 (2016) (discussing how the stepped-up provisions in I.R.C. § 1014 facilitate total income tax relief for unrealized capital gains).

[46] *Id.* at 1031 (indicating that more than half the value of large estates is comprised of capital property, and it goes untaxed).

[47] I.R.C. § 1014 was terminated as of December 31, 2009 pursuant to Economic Growth and Tax Relief Reconciliation Act § 541, and retroactively reinstated on December 17, 2010 by the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act § 301.

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billions in tax expenditures, and it exclusively benefits the wealthiest households.[48] These are classic examples of wealthfare.

C. The Impact of Inheritance on Wealth Mobility

At a decedent's death, their assets are distributed according to the jurisdiction's intestacy laws if a testamentary plan was not implemented. In addition to tangible and intangible property, decedents pass cultural wealth, which positively impacts wealth mobility.[49] Pierre Bourdieu, a prominent sociologist, argued that certain forms of cultural capital may help or hinder social mobility.[50] He determined that economic and cultural capital could only be acquired by inheritance or formal education.[51] He defined cultural capital as symbolic aspects of acquired knowledge because of a position in a social construct acquired from social interaction.[52]

Using Bourdieu's ideas of cultural capital, researchers and scholars posit that people of color are outside the necessary social circles to gain social mobility, therefore lack essential tools for wealth mobility.[53] Yosso challenges this theory by exposing the definition of cultural capital based on social norms associated with White, middle-class culture.[54]

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[48] *See A Citizen's Guide to the Fascinating (Though Often Complex) Elements of the U.S. Tax System*, TAX POL'Y CTR., https://www.taxpolicycenter.org/briefing-book/what-are-sources-revenue-federal-government (last visited Dec. 27, 2022) (indicating that in 2021, the tax expenditures for capital gains exclusion at death was almost $44 billion according to the Joint Committee on Taxation); JOINT COMM. ON TAX'N, ESTIMATES FOR FEDERAL TAX EXPENDITURES FOR FISCAL YEARS 2020–2024, JCX-23–20 (2020), https://www.jct.gov/publications/2020/jcx-23-20/ (indicating exclusions from capital gains at death is projected to cost $218 billion between 2020–2024).

[49] Susan A. Dumais, *Cultural Capital, Gender, and School Success: The Role of Habitus*, 75 SOCIO. OF EDUC. 44, 46 (2002) ("Along with economic, social, and symbolic capital, cultural capital serves as a power resource, or a way for groups to remain dominant or gain status.").

[50] *An Introduction to Pierre Bourdieu on Social and Cultural Capital*, OPEN HORIZONS, https://www.openhorizons.org/pierre-bourdieu-on-social-and-cultural-capital.html (last visited Feb. 10, 2023).

[51] *Id.*

[52] Dumais, *supra* note 49, at 46.

[53] Tara J. Yosso, *Whose Culture Has Capital?, A Critical Race Theory Discussion of Community Cultural Wealth*, 8 RACE ETHNICITY AND EDUC., no. 1, 2005, at 69–70.

[54] *Id.*

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These social norms do not include knowledge and skills that may be more beneficial to marginalized communities.[55] Further, she describes how sociologists Melvin Oliver and Thomas Shapiro demonstrate misleading explanations and conclusions of cultural capital and measuring inequality.[56] She explains how Oliver and Shapiro measure both income and wealth inequality and found that wealth inequality was increasing.[57]

While the research is not conclusive regarding the impact of cultural and social capital on wealth mobility; this research demonstrates that cultural capital is consistent with economic capital in that they are foundationally built with structural inequality.[58] Further, consistent with theories of economic inequality, cultural capital is presented as race-neutral, but bias and/or racism are present.

This leads to discussions of laws and policies regarding inheritance laws. Research demonstrates that Black households are less likely to receive an inheritance than White households.[59] Even when positively reported, White households received five times the value.[60] Policies that promote inherited wealth favor wealthier households.

Professor Allison Tait discussed how family trust laws support multigenerational wealth transfers by streamlining property management and protecting the assets from irresponsible beneficiaries and their creditors.[61]

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[55] *Id.*

[56] *Id.* at 77.

[57] *Id.*

[58] *Id.* (discussing how cultural capital found in marginalized communities is not valued by privileged groups). *See also* Taite, *supra* note 1 (discussing the structural inequality built into tax policy that justifies subsidies that financially support wealth mobility for wealthy White households while opposing financial subsidies for the poor).

[59] Dionissi Aliprantis & Daniel Carroll, *What is Behind the Persistence of the Racial Wealth Gap?*, ECON. COMMENT., Feb. 28, 2019, at 3.

[60] *Id.*

[61] Allison Tait, *Inheriting Privilege*, 106 MINN. L. REV. 1959, 1960–62 (2022).

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Properly drafted family trusts have the power to protect the trust assets for substantial periods and avoid estate taxes in the process.[62]

Professor Tait discussed how family trusts perpetuate inequalities because they facilitate wealth accumulation for wealthy families that protect against economic downturns while middle- and low-income households transfer few assets or worse, debt.[63] She also explained how family trusts reinforce notions of cultural capital by holding valuable cultural properties and funding experiences that reinforce privilege, advantage, and exclusion for the wealthy.[64]

On the other hand, inheritance laws do not make wealth transference as streamlined for middle- and low-income households. Most inherited property, if any, from middle- and low-income households, will transfer by will or intestacy and pass to the recipients through the probate process. Even under the best of circumstances, intestacy and probate are difficult ways to transfer wealth for numerous reasons.

First, if the property passes by intestacy to more than one recipient, they will own the property as tenants in common. Tenancy in common is problematic because it fractionalizes the property meaning that with each generational transfer the property value decreases.[65] Second, collateral consequences of tenancy in common include partition sales and tax sales for less than fair market value, in addition to clouded titles.[66] Instead of smoothing the path for low- and middle-income households, it is more difficult and expensive to transfer property.[67]

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[62] *Id.*

[63] *Id.*

[64] *Id.*

[65] Danaya C. Wright, *What Happened to Grandma's House: The Real Property Implications of Dying Intestate*, 53 U.C. DAVIS L. REV. 2603, 2610 (2020) (discussing problems of inheritance by intestacy including fractionalization and property value loss).

[66] *Id. See also* Thomas W. Mitchell, *From Reconstruction to Deconstruction: Undermining Black Landownership, Political Independence, and Community Through Partition Sales of Tenancies in Common*, 95 NW. U. L. REV. 505, 506 (2001).

[67] Phyllis C. Taite, *Remediating Injustices for Black Land Loss: Taking the Next Step to Protect Heirs' Property*, 10 BEL. L. REV. 301 (2023) (discussing the challenges of wealth transfer through probate property and the impact on Black families). *See also* Carla Spivack, *Broken Links: A Critique of Formal*

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D. Tax Policy and the Impact on Wealth Distribution and Mobility

Multiple factors contribute to the economic inequality crisis.[68] This Article addresses two aspects: income and wealth inequalities with a focus on socioeconomic status and race. Wealth provides a more accurate determination of financial stability than income, and therefore is a crucial element in bridging any gaps.[69] The state of wealth inequality between the wealthiest- and lowest-income households is enormous and still widening.

Tax policy contributes to economic inequalities. For example, when the top marginal income tax rates decreased from the 1980s through 2016, the top income earners received substantial tax relief.[70] Not coincidently, the income share for the wealthy increased substantially during that time.[71] Specifically, income inequality increased by 20% between 1980 and 2016.[72] During the same period, middle-income households experienced a

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Equality in Inheritance Law, 2019 WIS. L. REV. 191 (2019) (describing the impact of inheritance law on marginalized communities).

[68] *Most Americans Say There Is Too Much Economic Inequality in the U.S., but Fewer than Half Call it a Top Priority*, PEW RSCH. CTR. (Jan. 9, 2020), https://www.pewresearch.org/social-trends/2020/01/09/trends-in-income-and-wealth-inequality/ ("The rise in economic inequality in the U.S. is tied to several factors. These include, in no particular order, technological change, globalization, the decline of unions and the eroding value of the minimum wage. Whatever the causes, the uninterrupted increase in inequality since 1980 has caused concern among members of the public, researchers, policymakers and politicians.").

[69] *Id.* (explaining that wealth includes assets accumulated over time minus any debt).

[70] *Historical U.S. Federal Individual Income Tax Rates & Brackets, 1862–2021*, TAX FOUND. (Aug. 24, 2021), https://taxfoundation.org/historical-income-tax-rates-brackets/ (indicating the top marginal rate as high as 70% in 1980 and as low as 28% by 1988).

[71] PEW RSCH. CTR., *supra* note 68 ("In 2018, households near the top of the income ladder had incomes that were 12.6 times higher than those near the bottom. By comparison, in 1980, households near the top had incomes about nine times the incomes of households near the bottom.").

[72] *Id.*

> The CBO finds that the Gini coefficient in the U.S. in 2016 ranged from 0.595, before accounting for any forms of taxes and transfers, to 0.423, after a full accounting of taxes and transfers. These estimates bracket the Census Bureau's estimate of 0.481 for the Gini coefficient in 2016. By either estimate, income inequality in the U.S. is found to have increased by about 20% from 1980 to 2016 (The Gini coefficient ranges from 0 to 1, or from perfect equality to complete inequality). Findings from other researchers show the same general rise in inequality over this period regardless of accounting for in-kind transfers. *Id.*

substantial decrease in income share, and low-income households a slight decrease.[73]

In addition to tax rates, methods for taxing income contribute to income inequality. Preferences for capital gains provide substantial tax relief for the wealthy. Research has demonstrated the justifications for preferential rates are no longer justified and perhaps never were.[74] Capital gains subsidies persevere even though households that are most likely to invest in capital gains property are in higher income brackets.[75]

Another contributing factor to economic inequality is the tax treatment of retirement income. Tax deferral is a tax benefit that allows retirement income to grow tax-free and compound over time. If the taxpayer is indeed in a lower tax bracket when the retirement income is accessed, there is even more tax relief, yet another example of wealthfare. Research demonstrates that households most likely to have retirement income and benefit from these tax policies are in the higher income brackets.[76] Tax expenditures for exclusion and deferral of income in pension and retirement plans are expected to exceed a trillion between 2020–2023.[77]

These few examples indicate how tax policies contribute to economic inequality and the illusion of equality in tax policy. Wealth is more concentrated than ever and more pronounced by race.[78] Economists report

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[73] *Id.*

> More tepid growth in the income of middle-class households and the reduction in the share of households in the middle-income tier led to a steep fall in the share of U.S. aggregate income held by the middle class. From 1970 to 2018, the share of aggregate income going to middle-class households fell from 62% to 43%. Over the same period, the share held by upper-income households increased from 29% to 48%. The share flowing to lower-income households inched down from 10% in 1970 to 9% in 2018. *Id.*

[74] *See* Taite, *supra* note 45; John Lee, *The Capital Gains Sieve and the Farce of Progressivity 1921–1986*, 1 HASTINGS BUS. L.J. 1 (2005).

[75] Taite, *supra* note 45, at 1047.

[76] CONG. BUDGET OFF., THE DISTRIBUTION OF MAJOR TAX EXPENDITURES IN 2019, 18 (Oct. 27, 2021), https://www.cbo.gov/system/files/2021-10/57413-TaxExpenditures.pdf.

[77] JOINT COMM. ON TAX'N, *supra* note 48, at 36.

[78] Neil Bhutta et al., *Disparities in Wealth by Race and Ethnicity in the 2019 Survey of Consumer Finances*, FED. RSRV. (Sept. 28, 2020), https://www.federalreserve.gov/econres/notes/feds-notes/disparities-in-wealth-by-race-and-ethnicity-in-the-2019-survey-of-consumer-finances-20200928.html.

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that White families have substantially more wealth than racial and ethnic minorities no matter how wealth is measured.[79]

Homeownership is an important factor in creating wealth. White households are most likely to own their home and to live in a neighborhood where homes appreciate.[80] Black households are more reliant on homeownership for wealth building but have not benefitted from home appreciation and equity to the degree White homeowners, have enjoyed.[81]

Just as discrimination and racial bias negatively impacted home acquisitions, they have also negatively impacted home values.[82] Devaluation

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> New data from the 2019 Survey of Consumer Finances (SCF) show that long-standing and substantial wealth disparities between families in different racial and ethnic groups were little changed since the last survey in 2016; the typical White family has eight times the wealth of the typical Black family and five times the wealth of the typical Hispanic family.
>
> *Id.*

[79] *Id.*

> In the 2019 survey, White families have the highest level of both median and mean family wealth: $188,200 and $983,400, respectively (Figure 1). Black and Hispanic families have considerably less wealth than White families. Black families' median and mean wealth is less than 15 percent that of White families, at $24,100 and $142,500, respectively.

See also Ellora Derenoncourt et al., *Wealth of Two Nations: The U.S. Racial Wealth Gap, 1860–2020*, NAT'L BUREAU OF ECON. RSCH. (June 2022), https://www.nber.org/papers/w30101 ("The racial wealth gap is the largest of the economic disparities between Black and white Americans, with a white-to-Black per capita wealth ratio of 6 to 1. It is also among the most persistent.").

[80] INTERAGENCY TASK FORCE ON PROPERTY APPRAISAL AND VALUATION EQUITY, ACTION PLAN TO ADVANCE PROPERTY APPRAISAL AND VALUATION EQUITY 2 (Mar. 2022), https://pave.hud.gov/sites/pave.hud.gov/files/documents/PAVEActionPlan.pdf ("Researchers have observed a market value gap between *majority-Black and majority-white* neighborhoods for decades. On average, homes in majority-Black neighborhoods are valued at *less than half* of those in neighborhoods with few or no Black residents.").

[81] *Id.*

[82] *Id.* at 2–3 ("Statistical analyses show that accounting for neighborhood and property characteristics and amenities—such as the age of the property or its proximity to public transportation—does not explain the entire disparity. Recent research has identified appraisals as one of the drivers of the gap."). *See also* ANDRE PERRY, JONATHAN ROTHWELL & DAVID HARSHBARGER, THE DEVALUATION OF ASSETS IN BLACK NEIGHBORHOOD 5 (2018), https://www.brookings.edu/wp-content/uploads/2018/11/2018.11_Brookings-Metro_Devaluation-Assets-Black-Neighborhoods_final.pdf ("During the 20th century, segregation and Jim Crow forcibly lowered the quality of neighborhood conditions for Blacks and impeded their financial ability to move to better opportunities. This occurred through deed restrictions, redlining, and zoning, as well as other mechanisms.").

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is a collateral effect of racial segregation.[83] Black owned homes lose value by virtue of Black ownership.[84] Devaluation[85] affects acquisitions and sales because the home appraisal determines the amount the bank will finance and affects the down payment.[86] Further, devaluation may cause a seller to receive less than the fair market rate because a buyer may be unwilling to pay more than the appraised value. The Fair Housing Act (FHA) was enacted to prevent discrimination in housing.[87] Nevertheless, the FHA was not enough to reverse the impact of past discrimination, nor enough to prevent discrimination and racially biased practices.

Consider this example of a Black couple who sued a local real estate appraiser and online mortgage broker when their home appraised almost $300,000 higher with a second appraiser after a White colleague stood in for them.[88] It is not unusual for appraisers to devalue homes in Black neighborhoods.[89] This story stands out, in part, because this couple lived in

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[83] PERRY ET AL., *supra* note 82, at 13 ("During the 20th century, both explicit government institutions and decentralized political actions created and sustained racially segregated housing conditions in the United States. This has created what has been dubbed a "segregation tax," resulting in lower property valuations for Blacks compared to whites per dollar of income.").

[84] PERRY ET AL., *supra* note 82, at 9:

> We infer from this that home affordability patterns are similar for homeowners in majority Black neighborhoods and those outside them, controlling for everything else we see about the home and neighborhood. This result reinforces our finding that homes are devalued in Black neighborhoods in large part because they are in Black neighborhoods, and not only because the homes or neighborhoods have less desirable features or the residents have lowering purchasing power.

[85] PERRY ET AL., *supra* note 82, at 6 ("We define the devaluation of housing in Black communities as the property value penalty that characterizes an owner-occupied home in a neighborhood that is 50 percent Black.").

[86] *Id.* at 3 ("An appraisal that is below the contract price in a home sale can sometimes result in a higher required down payment for a home buyer. This unexpected, out-of-pocket increase can often cause a sale to fall through, potentially preventing a prospective buyer from purchasing a home.").

[87] 42 U.S.C. §§ 3601–19.

[88] Debra Kamin, *Home Appraised With a Black Owner: $472,000. With a White Owner: $750,000*, N.Y. TIMES (Aug. 12, 2022), https://www.nytimes.com/2022/08/18/realestate/housing-discrimination-maryland.html [https://perma.cc/W73W-7HFT].

[89] PERRY ET AL., *supra* note 82, at 13.

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a predominantly White neighborhood.[90] While the story about this family is new, the underlying problem is old.

Devaluation of Black owned homes undermines the appreciation value for home equity and sales.[91] Douglas Coate, an economist, and Richard Schwester, from the U.S. Department of Public Management, conducted a study on the impact of race on housing appreciation values in racially mixed, affluent neighborhoods.[92] Their report supports the long-held belief that an owner's minority status negatively impacts housing appreciation.[93] Consequently, devaluation also negatively impacts wealth status and the racial wealth gap, because homeownership typically represents the most valuable asset for a household.[94]

Devaluation is limited to the appreciation values.[95] Conversely, property values for property tax assessment are overstated, resulting in Black property owners paying a higher effective rate for property taxes.[96] Until systematic changes are implemented to address the multiple levels of wealth erosion through housing policies, it will be very difficult for homeownership to be profitable for Black homeowners.

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[90] Kamin, *supra* note 88 ("Dr. Connolly and Dr. Mott live in the North Baltimore neighborhood of Homeland, known for its strong public schools and colonial architecture, which has earned it a place on the National Register of Historic Places. A majority of their neighbors are white.").

[91] *See generally* Douglas Coate & Richard W. Schwester, *Black-White Appreciation of Owner-Occupied Homes in Upper Income Suburban Integrated Communities: The Cases of Maplewood and Montclair, New Jersey*, 20 J. HOUS. RSCH. 127, 127–39 (2011) (discussing differences in housing appreciation amongst minorities).

[92] *See id.*

[93] *See id.* at 131.

[94] Phyllis C. Taite, *Taxes, the Problem and Solution: A Model for Vanishing Deductions and Exclusions for Residence-Based Tax Preferences*, 59 N.Y.L. SCH. L. REV. 361, 378 (2014–2015) (discussing how homeownership represents the most valuable asset in family's wealth holdings).

[95] *See* Carlos Avenancio-León & Troup Howard, The Assessment Gap: Racial Inequalities in Property Taxation (Mar. 21, 2020) (unpublished manuscript), https://papers.ssrn.com/abstract=3465010 [https://perma.cc/H82J-WX3K].

[96] *See id.* at 1 ("As a result of the assessment gap, minority residents are therefore paying a significantly larger effective property tax rate for the same bundle of public services."). *See also id.* (reporting that in gentrifying neighborhoods White residents had lower effective tax rates).

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E. Effects of Wealth Inequality

The negative effects of wealth inequality were evident after the "Great Recession" and the global pandemic. The Great Recession marked a time when wealth eroded for many Americans for various reasons.[97] For some, they lost their jobs and income sources,[98] and for others, the subprime mortgage crisis resulted in the loss of their homes and livelihood.[99]

For Black households, the Great Recession was especially economically devastating because the residential home is often the asset of greatest value.[100] Households in the top 20% rebounded and increased their wealth from any wealth loss of the Great Recession while the lower percentiles had significantly lower wealth than they had in 2007.[101]

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[97] Bhutta et al., *supra* note 78 ("Despite growth over the last two surveys, the typical White family and the typical Black family have yet to recover to their pre-Great Recession levels of wealth. Over the entire 2007–2019 period, wealth fell by 11 percent for the typical White family and by 7 percent for the typical Black family.").

[98] *Chart Book: The Legacy of the Great Depression*, CTR. ON BUDGET AND POL'Y PRIORITIES (June 6, 2019), https://www.cbpp.org/research/economy/the-legacy-of-the-great-recession ("Job losses in the Great Recession were huge, and it took much longer than in previous recessions simply to get back to the level of payroll employment at the start of the recession. Employers did not begin to add jobs until 2010.").

[99] *Great Recession*, HISTORY (Dec. 4, 2017), https://www.history.com/topics/21st-century/recession ("The crisis led to increases in home mortgage foreclosures worldwide and caused millions of people to lose their life savings, their jobs and their homes. It's generally considered to be the longest period of economic decline since the Great Depression of the 1930s.").

[100] Edward N. Wolff, *Wealth Inequality in the United States*, THE REPORTER (June 2021), https://www.nber.org/reporter/2021number2/wealth-inequality-united-states ("The Great Recession hit Black households much harder than White because Blacks were more highly leveraged and had a greater share of their assets in their homes; the racial plunged to 0.14 in 2010, reflecting a 33 percent decline of Black wealth in real terms."). *See also On Views of Race and Inequality, Blacks and Whites Are Worlds Apart*, PEW RSCH. CTR. (June 27, 2016), https://www.pewresearch.org/social-trends/2016/06/27/on-views-of-race-and-inequality-blacks-and-whites-are-worlds-apart ("The racial gap extends to household wealth—a measure where the gap has widened since the Great Recession.").

[101] Juliana Menasce Horowitz et al., *Most Americans Say There is Too Much Economic Inequality in the U.S., but Fewer Than Half Call It a Top Priority*, PEW RSCH. CTR. (Jan. 9, 2020), https://www.pewresearch.org/social-trends/2020/01/09/most-americans-say-there-is-too-much-economic-inequality-in-the-u-s-but-fewer-than-half-call-it-a-top-priority/.

> When it comes to wealth accumulation, only those families ranked in the top 20% in terms of net worth have gained back the wealth lost during the Great Recession. Today the median net worth of those families is 13% higher than it was in 2007, while the net worth of families

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The next major negative impact on wealth was the COVID-19 pandemic.[102] For many, the loss of income resulted from one or more members of the family losing their jobs.[103] Others suffered financial setbacks from COVID-19 related deaths of one or more members of the household.[104] Consequently, the unemployment rate tripled between the last quarter of 2019 and the second quarter of 2020, and only slightly decreased by the end of 2020.[105] The unemployment rates from the pandemic surpassed the rates from the Great Recession.[106]

While unemployment rates increased for all groups, racial and ethnic minorities were most adversely affected.[107] Unemployment during the

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> in the 20th to the 40th percentiles of the wealth distribution is 39% lower than in 2007, according to Pew Research Center analysis of government data.

[102] U.S. BUREAU LAB. STATS., UNEMPLOYMENT RISES IN 2020, AS THE COUNTRY BATTLES THE COVID-19 PANDEMIC 1 (June 2021), https://www.bls.gov/opub/mlr/2021/article/pdf/unemployment-rises-in-2020-as-the-country-battles-the-covid-19-pandemic.pdf.

> A decade-long economic expansion ended early in 2020, as the coronavirus disease 2019 (COVID-19) pandemic and efforts to contain it led businesses to suspend operations or close, resulting in a record number of temporary layoffs. The pandemic also prevented many people from looking for work. For the first 2 months of 2020, the economic expansion continued, reaching 128 months, or 42 quarters. This was the longest economic expansion on record before millions of jobs were lost because of the pandemic.

[103] *Id.*

> Total civilian employment fell by 8.8 million over the year, as the COVID-19 pandemic brought the economic expansion to a sudden halt, taking a tremendous toll on the U.S. labor market. The unemployment rate increased in 2020, surging to 13.0 percent in the second quarter of the year before easing to 6.7 percent in the fourth quarter. Although some people were able to work at home, the numbers of unemployed on temporary layoff, those working part time for economic reasons, and those unemployed for 27 or more weeks increased sharply over the year.

[104] S. Silva, E. Goosby & M.J.A. Reid, *Assessing the Impact of one Million COVID-19 Deaths in America: Economic and Life Expectancy Losses*, SCI. REP. 13, 3065 (2023), https://doi.org/10.1038/s41598-023-30077-1 (reporting COVID-19 related deaths contributed to $3.57 trillion in economic loss).

[105] U.S. BUREAU LAB. STATS., *supra* note 102, at 1 (reporting the unemployment rate increased from 3.6% to 13%, the highest quarterly average in history).

[106] U.S. BUREAU LAB. STATS., *supra* note 102, at 6 ("In the second quarter of 2020, after the onset of the pandemic, the number of unemployed averaged 20.6 million, much higher than the peak reached in the aftermath of the Great Recession, when unemployment hit 15.2 million in the fourth quarter of 2009.").

[107] U.S. BUREAU LAB. STATS., *supra* note 102, at 13:

pandemic had a significant impact on earned income, consequently, income and wealth declined.[108] In addition to high unemployment rates during the pandemic, Black households had a higher rate of financial strain without adequate resources to address them.[109]

Black households had the fewest resources before the pandemic and were ill-equipped to endure the necessary consequences of the pandemic such as time from work and health care costs.[110] This is further evidence of the negative impact of wealth inequality and the underlying crises of financial insecurity created by economic policies.

Conversely, the wealthiest households experienced a significant increase in wealth according to a report prepared by Americans for Tax Fairness (ATF) and the Institute for Policy Studies (IPS) Program on Inequality.[111] The IPS report indicates that in addition to a wealth increase, the number of billionaires also increased.[112] The Great Recession and pandemic revealed how important wealth is to financial stability. Without the ability to save and build wealth, many households are at risk of financial peril

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> The unemployment rate for Blacks, at 10.3 percent in the fourth quarter of 2020, increased by 4.5 percentage points over the year. The jobless rate for Asians more than doubled, increasing by 4.0 percentage points over the year, to 6.7 percent. The rate for Hispanics increased by 4.7 percentage points, to 8.9 percent. The unemployment rate for Whites, at 6.0 percent, increased by 2.8 percentage points over the year.

[108] *See generally* U.S. BUREAU LAB. STATS., *supra* note 102.

[109] Christian E. Weller & Richard Figueroa, *Wealth Matters: The Black-White Wealth Gap Before and During the Pandemic*, CTR. FOR AM. PROGRESS (July 28, 2021), https://www.americanprogress.org/article/wealth-matters-black-white-wealth-gap-pandemic/ ("Data show that during the pandemic, Black households faced more financial emergencies with fewer economic resources, resulting in a widening gap in economic opportunity between Black and white households.").

[110] *Id.*

[111] Chuck Collins, *U.S. Billionaires Got 62 Percent Richer During Pandemic. They're Now Up to $1.8 Trillion*, INST. FOR POL'Y STUD. (Aug. 24, 2021), https://ips-dc.org/u-s-billionaires-62-percent-richer-during-pandemic/.

> U.S. billionaires have seen their wealth surge $1.8 trillion during the pandemic, their collective fortune skyrocketing by nearly two-thirds (62%) from just short of $3 trillion at the start of the COVID crisis on March 18, 2020, to $4.8 trillion on August 17, 2021, according to a report from Americans for Tax Fairness (ATF) and the Institute for Policy Studies Program on Inequality (IPS).

[112] *Id.* (reporting the number of billionaires increased from 614 in March 2020, to 708 by August of 2021, and $1.8 trillion was untaxed capital gains).

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when the next financial storm ensues, and their descendants will inherit that instability.[113]

III. PROPOSALS FOR TARGETED RELIEF FOR WEALTH BUILDING

A. Reduce the Effects of Capital Gains Preferences

Capital gains income receives multiple tax preferences that reduce tax liabilities almost exclusively for the wealthiest taxpayers, but this Part III will discuss three preferences: deferral, preferential rates, and stepped-up basis exclusion. First, capital gains income has the benefit of tax deferral.[114] Therefore, the appreciation is not taxable until a realization event occurs.[115] Consequently, the taxpayer has some decision-making over when or if the income will be taxed, an option that benefits only households that can afford to defer receipt of income.[116]

Second, capital gains income is afforded preferential rates.[117] Accordingly, capital gains income is taxed at substantially reduced rates compared to earned income from likely high-income taxpayers.[118] Similarly,

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[113] Angela Hanks et al., *Systemic Inequality: How America's Structural Racism Helped Create the Black-White Wealth Gap*, CTR. FOR AM. PROGRESS 3 (Feb. 2018), https://www.americanprogress.org/wp-content/uploads/2018/02/RacialWealthGap-report.pdf ("The persistent racial wealth gap leaves African Americans in an economically precarious situation and creates a vicious cycle of economic struggle. The lack of sufficient wealth means blacks are less economically mobile and therefore unable to grow their wealth over time.").

[114] Eisner v. Macomber, 252 U.S. 189, 211 (1920).

[115] *Id.*

[116] CHUCK MARR ET AL., CTR. ON BUDGET & POL'Y, SUBSTANTIAL INCOME OF WEALTHY HOUSEHOLDS ESCAPES ANNUAL TAXATION OR ENJOYS SPECIAL TAX BREAKS REFORM IS NEEDED 6–7 (2019):

> This deferral option disproportionately benefits wealthy households. Not only do they receive the large bulk of capital gains (see discussion below), but unrealized capital gains make up 34 percent of the assets of the wealthiest 1 percent of households, which held $6.6 million in unrealized capital gains apiece, on average, in 2013. The comparable figures for households in the bottom 90 percent are just 6.1 percent and $9,000, respectively.

[117] For the purpose of this discussion, capital gains preferences refer to long-term capital gains as defined in the I.R.C. §§ 1(h), 1222(3).

[118] MARR ET AL., *supra* note 116, at 1 ("Capital gains and dividends are taxed at a maximum income tax rate of 20 percent, far below the 37 percent top rate on wages and salaries.").

Congress privileged dividend income from investments with preferential rates, now permanent at 20%, to incentivize investing.[119] This combination of preferential rates provided targeted tax relief for high-income taxpayers.[120] The tax expenditures for preferential rates and dividends were forestated at $736.2 billion between 2020–2024.[121] Contrastly, tax expenditures for the EITC were forecasted at $356.4 billion, an amount that is significantly lower than tax expenditures for long-term capital gains preferences and dividends, between 2020–2024.[122] Yet, when congressional leaders are looking for ways to reduce spending, eliminating tax preferences are not at the top of the list but income security expenditures remain easy targets.[123]

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[119] MARR ET AL., *supra* note 116, at 1.

> Proponents argue that a low tax rate on dividends promotes investment and job creation, but a landmark study by University of California, Berkeley Professor Danny Yagan found that the 2003 dividend tax rate cut "caused zero change in corporate investment and employee compensation" while providing a windfall to high-income people. Dividend income is highly concentrated: 46 percent of qualified dividend income flows to the top 1 percent of households, and 28 percent flows to the top 0.1 percent. Nearly 89 percent of the top 0.1 percent of households have dividend income, compared to just 7.9 percent of the bottom 60 percent of households.

[120] *Id.*

> More than half of the tax benefits from these lower rates go to the top 0.1 percent of households; less than 5 percent go to the bottom 60 percent of households. In 2018, the lower rates raised after-tax incomes for the top 0.1 percent by $554,000 apiece (7.4 percent), on average, the Tax Policy Center estimates, compared to less than $30 for households in the bottom 60 percent.").

[121] *See A Citizen's Guide to the Fascinating (Though Often Complex) Elements of the U.S. Tax System*, TAX POLICY CTR., https://www.taxpolicycenter.org/briefing-book/what-are-sources-revenue-federal-government (last visited July 10, 2023); *see also supra* note 48 (According to the Joint Committee on Taxation, tax expenditures for preferential rates for dividends and long-term capital were projected at $736.2 billion between 2020–2024.).

[122] *See A Citizen's Guide to the Fascinating (Though Often Complex) Elements of the U.S. Tax System*, TAX POL'Y CTR., https://www.taxpolicycenter.org/briefing-book/what-are-sources-revenue-federal-government (last visited Dec. 27, 2022); *see also supra* note 73 (According to the Joint Committee on Taxation, tax expenditures for the earned income tax credit was projected at 356.4 billion between for 2020–2024.).

[123] Joel Friedman & Richard Kogan, *House GOP Budget Retains Tax Cuts for the Wealthy, Proposes Deep Program Cuts for Millions of Americans*, CTR. ON BUDGET POL'Y PRIORITIES, https://www.cbpp.org/research/federal-budget/house-gop-budget-retains-tax-cuts-for-the-wealthy-proposes-deep-program (discussing proposals for cutting trillions from income security programs).

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There are different approaches to reducing the effect of capital gains preferences. Senator Ron Wyden, Ranking Member of the Senate Finance Committee, proposed applying the mark-to-market rules such that wealth would be taxed annually.[124] This anti-deferral accounting method eliminates the benefits of deferral and provides a disincentive to hold capital assets for long periods.[125] As a result, there would be two additional revenue sources, the annual wealth tax and gains on sales.[126] The Wyden proposal targets the wealthiest 1% and seeks to raise revenue to secure Social Security.[127]

Opposition to the mark-to-market proposal includes similar issues discussed in the wealth tax including constitutional challenges[128] and difficulty in determining the proper valuation of assets on an annual basis.[129] It is not difficult to determine the value of publicly traded stock but there may be difficulty with assets such as works of art and closely held companies.[130] Wyden suggested maintaining a deferral for non-tradable assets and upon disposition to levy a lookback charge.[131]

This fee could discourage deferrals because the fee would increase until property disposition, therefore, the taxpayer would not likely hold the property for longer than necessary.[132] To ensure the wealth tax will only impact the wealthiest 1%, Wyden proposed the tax only apply to taxpayers with more than $1 million in annual income or more than $10 million in assets.

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[124] *Treat Wealth Like Wages*, U.S. SENATE COMM. ON FIN., https://www.finance.senate.gov/imo/media/doc/Treat%20Wealth%20Like%20Wages%20RM%20Wyden.pdf (last visited July 10, 2023).

[125] *Id.*

[126] *Id.*

[127] *Id.*

[128] *See supra* notes 98–18.

[129] MARR ET AL., *supra* note 116.

[130] *Id.* at 19.

[131] U.S. SENATE COMM. ON FIN., *supra* note 124 ("To calculate the tax due on gains from nontradable assets like investment real estate, closely-held businesses, and valuable collectibles, antideferral accounting would use a lookback rule upon realization. The resulting lookback charge would tax the gain in a way that diminishes the benefit of deferring tax until sale.").

[132] *Id.*

The Wyden plan exempts retirement savings and the first $2 million of the combined value of two personal residences.[133] These exemptions are warranted but they shield substantial wealth, therefore, the plan should do more to curtail wealth in other ways. In addition to supporting Social Security, my proposal would expand the tax base to also raise enough revenue to support targeted wealth-building programs.

With the personal residences and retirement savings exemptions, the tax base should include single taxpayers with gross income over $250,000, and $500,000 for married filing jointly taxpayers. The proposed expanded tax base includes households with incomes that have historically benefitted from tax preferences, as such, they should have a greater share in the tax burden.

The final proposal to reduce the effects of capital gains preference is to eliminate the stepped-up basis for the capital property at death.[134] The provisions under § 1014, as previously discussed, reward taxpayers for holding the property until death despite the revenue loss to the government.[135] If the taxpayer is successful in transferring the property through their estate, then the recipient would currently inherit the property and the unrealized gain would be excluded resulting in complete tax avoidance.[136]

Taxpayers who exclusively earn income through wages do not receive comparable benefits.[137] In 2021, the tax expenditures for exclusions from gains at death were almost $44 billion.[138] On the other hand, deemed realization will still permit taxpayers to transfer property whenever they wish

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[133] *Id.* (The proposal also exempts the first $5,000,000 of a family farm, flexible spending accounts, health reimbursement, other similar assets.).

[134] I.R.C. § 1014(e).

[135] *See* Taite, *supra* note 3.

[136] I.R.C. § 1014.

[137] MARR ET AL., *supra* note 116 ("In contrast, people who earn their income from work (for example, from wages or salaries) typically have income and payroll taxes withheld from every paycheck; if their tax liability for the year exceeds those withheld taxes, they must pay the balance by the following April 15.").

[138] TAX POL'Y CTR., *supra* note 25. *See also* JOINT COMM. ON TAX'N, *supra* note 48 (indicating exclusions from capital gains at death is projected to cost $218 billion between 2020–2024).

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but at death, the tax would be due. In addition to revenue, deemed realization brings more fairness to tax policy.

B. Tax Relief on Earned Income

As previously discussed, individual income and payroll taxes are responsible for the lion's share of revenue generation. Income from wages is the primary source of income for most middle- and low-income households.[139] Conversely, unearned income from capital gains assets is primarily owned by top-income households.[140] Not surprisingly, the government has shown preferential treatment for unearned income, the type primarily reported by wealthy taxpayers.[141]

In addition to capital gains preferences, the wealthy received reduced rates on their ordinary income.[142] Between 1963 and 1982, the top marginal rate was reduced from 91% to 50% and even further in the 1980s to as low as 28%.[143] Not surprisingly, inequalities increased during this time.[144]

In 2022, the top marginal rate was 37% and applied to income above $647,850 for a married couple.[145] This was substantial tax relief to the wealthiest taxpayers. Professor Faizer demonstrated the regression in payroll taxes by comparing the bottom 5% of income earners' payment of 6.6% of their income to the top 1% of income earners' payment of 2.3% of their

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[139] MARR ET AL., *supra* note 116 ("Most Americans primarily earn labor income; it constitutes at least 80 percent of the total income for each of the four bottom income quintiles, according to CBO.").

[140] *Id.*

> For the top 1 percent of households, in contrast, capital income—most of which enjoys preferential tax rates—constitutes 41 percent of their taxable incomes, while labor income makes up just 34 percent, according to CBO. Most of the remaining 25 percent is pass-through business profits, which are usually a combination of labor and capital income and also enjoy special tax preferences.

[141] *Id.*

[142] *Historical Highest Marginal Income Tax Rates*, TAX POL'Y CTR. (Feb. 9, 2022), https://www.taxpolicycenter.org/statistics/historical-highest-marginal-income-tax-rates.

[143] Economic Recovery Tax Act of 1981, Pub. L. No. 97-34.

[144] MARR ET AL., *supra* note 116.

[145] *See* Rev. Proc. 2021-45, 2021-48 I.R.B. 764.

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income.[146] To shift some of the burdens back to the wealthier taxpayers, he proposed eliminating federal payroll taxes to provide targeted tax relief for lower-income individuals.[147]

Professor Faizer recognized the substantial revenue loss associated with his proposal, and he proposed multiple tax reforms for additional revenue including: (1) a reduction in transfer tax exemptions to $2 million, (2) taxing unrealized capital gains at death, (3) implementing a national gas tax, (4) abolishing the mortgage interest deduction, and (5) implementing a national sales tax.[148] This is an aggressive approach to redirecting support for lower-income households. For the plan to work, there are too many moving parts; therefore, even if willing, Congress may use this fact to deny the reform altogether.

Still, Professor Faizer was on the right track to shift targeted tax support to lower-income households while placing more responsibility for revenue on higher-income households. To support the goal of reducing payroll taxes for lower-income households, Congress should expand the payroll taxes base by removing the maximum earning limit from Social Security wages and include capital gains income as part of that base to share in the responsibility.[149]

By eliminating the maximum earning limit, Congress opens a resource for revenue and adds structural progressivity. Further, with the additional revenue, Congress can provide targeted tax relief to middle- and lower-income taxpayers by exempting payroll taxes for households with a gross income of $75,000 or less for single taxpayers.

To generate more revenue and shift wealth mobility support to lower-income households, capital gains taxes should return to ordinary tax rates and

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[146] Faizer, *supra* note 15, at 610.

[147] *Id.*

[148] *Id.* at 610–11.

[149] *Publication 15 (2023), (Circular E), Employer's Tax Guide*, IRS, https://www.irs.gov/publications/p15 (last visited on July 10, 2023) (indicating the maximum wage base limit for social security is $160,200).

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be subject to FICA taxes.[150] Capital gains income should be a resource to help fund Social Security, Medicaid, and unemployment benefits. This reform is necessary to require the taxpayers that have benefitted the most from tax policy to contribute back into the system.

With this targeted relief, low- and middle-income taxpayers will have additional resources to acquire appreciating assets, participate in retirement benefits, and/or leave property to the next generation. Wealthy taxpayers experienced increased income share after the Reagan tax cuts and subsequent tax acts.[151] Therefore, this reform is justifiable to support wealth-building activity that will reduce the socioeconomic wealth gap and the racial wealth gap.[152]

C. Estate and Gift Tax Exemptions

Property transference through inheritance is another key component of wealth building.[153] Inheritance policies are critical to have an effective impact on intergenerational wealth mobility. State governments have the primary responsibility for post-death property transfers. Even so, the federal government impacts inheritance through transfer taxes. With increased exemptions and reduced rates, substantial wealth transfers enjoy reduced tax liability and more net wealth transferred.

As 2025 looms, Congress should not miss another opportunity to shift tax burdens to the wealthiest households. In this case, the best action for Congress is inaction. Permitting substantial tax breaks to sunset is expected

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[150] GREGG A. ESENWEIN, CONG. RSCH. SERV. 98-473, INDIVIDUAL CAPITAL GAINS INCOME: LEGISLATIVE HISTORY 3 (2006) (indicating capital gains taxes were instated at ordinary rates.).

[151] *Supra* notes 66–69.

[152] Emmanuel Saez & Gabriel Zucman, *Wealth Inequality in the United States Since 1913: Evidence from Capitalized Income Tax Data*, 554 (Nat'l Bureau of Econ. Rsch., Working Paper No. 20625, 2014) (Progressive income taxation can reduce wealth concentration by limiting the ability of rich households to accumulate wealth.).

[153] Vanessa Williamson, *Closing the Racial Wealth Gap Requires Heavy, Progressive Taxation of Wealth*, BROOKINGS (Dec. 9, 2020), https://www.brookings.edu/research/closing-the-racial-wealth-gap-requires-heavy-progressive-taxation-of-wealth/ ("Taxes on estates or inheritance are especially promising because intra-generational transfers account for fully half of total wealth in the United States as well as 'more of the racial wealth gap than any other demographic and socioeconomic indicators including education, income and household structure.'").

to recoup billions, annually, in tax revenue.[154] Reverting to the ESP provisions is not ideal, but it is better than the current policies to curtail wealth concentration. Allowing the TCJA tax cuts to sunset while also adopting an annual mark-to-market tax, a social security tax on higher income, and an additional tax on capital gains should generate sufficient revenue to provide tax relief to low- and middle-income and support targeted wealth mobility initiatives.

D. Targeted Wealth Mobility Initiatives

Overall family median wealth tripled between 1989–2019.[155] Even so, the distribution of wealth was still concentrated in the wealthiest families, and families in the bottom 50% experienced wealth erosion.[156] By 2019, the bottom 25% had negative wealth.[157] Most of the erosion was attributed to the effects of the housing crises from the Great Recession and increased debt, specifically student loan debt.[158]

When wealth is measured by race, the median wealth of White households had significantly more wealth than Black households.[159] The, "400 richest American billionaires have more total wealth than all 10 million

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[154] CONG. BUDGET OFF., *supra* note 28.

[155] CONG. BUDGET OFF., TRENDS IN THE DISTRIBUTION OF FAMILY WEALTH, 1989–2019, at 1 (2022) ("Often called net worth, marketable wealth is calculated as the value of a family's easily tradable assets (namely, home equity, other real estate, financial securities, bank deposits, defined contribution wealth, and business equity) minus its nonmortgage debt (including credit card debt, vehicle loans, and student loans).").

[156] *Id.*

> Wealth became less equally distributed over the 30-year period. The share of total wealth held by families in the top 10 percent of the distribution increased from 63 percent in 1989 to 72 percent in 2019, and the share of total wealth held by families in the top 1 percent of the distribution increased from 27 percent to 34 percent over the same period, CBO estimates. By contrast, the share of total wealth held by families in the bottom half of the distribution declined over that period, from 4 percent to 2 percent.

[157] *Id.*

[158] *Id.* at 13 ("In 1989, the most common type of nonmortgage debt held by families in the bottom 25 percent of the wealth distribution was vehicle debt, which accounted for 35 percent of total nonmortgage debt; in 2019, it was student loan debt, which accounted for 63 percent.").

[159] *Id.* at 20.

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Black American households combined."[160] When evaluating the causes, data shows that White families were more likely to own wealth-building assets such as homes, retirement accounts, and nonretirement financial assets.[161] It is estimated that if Black people owned their proportionate share of the wealth, it would be almost $13 trillion rather than $2.54 trillion.[162]

Disparities in educational attainment and homeownership are major contributors to the racial wealth gap.[163] Higher education and homeownership are two essential wealth-building blocks.[164] Black people have been systematically prevented from obtaining the full benefits of government resources for attaining homeownership and education.[165]

Even when Black people were successful in attaining homeownership, they have not benefitted to the same degree as White households.[166] Similarly, education is widely held to be an equalizer for income inequality and a gateway to wealth equality, the history of racial discrimination eroded the benefits, therefore, higher education alone has not been enough for Black income and wealth mobility. Comprehensive reform is necessary to have a meaningful impact on the racial wealth gap.[167] Even if the above proposals

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[160] Williamson, *supra* note 153.

[161] CONG. BUDGET OFF., *supra* note 155, at 21.

[162] Williamson, *supra* note 153.

[163] *On Views of Race and Inequality, Blacks and Whites Are Worlds Apart*, PEW RSCH. CTR. (June 27, 2016), https://www.pewresearch.org/social-trends/2016/06/27/on-views-of-race-and-inequality-blacks-and-whites-are-worlds-apart/ (indicating that even when accounting for education levels, the racial wealth gap persists and that White households own their home at a much higher rate than Black households).

[164] CONG. BUDGET OFF., *supra* note 155, at 19 ("The average value of assets and the average amount of debt increases with families' education level. The differences in the percentage of families in each education group holding particular types of assets explained some of the differences in values. Families with less education were less likely to own a home or to have retirement assets in 2019.").

[165] Williamson, *supra* note 153.

[166] *See* Taite, *supra* note 94 (discussing how the mortgage interest deduction and the principal residence exclusion subsidize White homeownership while Black households receive marginal benefits from these tax subsidies).

[167] Hanks et al., *supra* note 113 ("Policy levers such as improved access to higher education alone, while important, will not be enough to create equal opportunity in terms of wealth building for all. Only broad and persistent policy attention to wealth creation can address this glaring inequity.").

were all implemented, it is still necessary to implement multifaceted and targeted wealth mobility systems to build a proper wealth foundation for Black households.

Implementing fair housing practices to facilitate homeownership and fair appraisals will increase wealth mobility for Black households.[168] Therefore, the Department of Housing and Urban Development (HUD) should adopt policies that make it easier to financially sanction or regulate violators of fair housing requirements. Without harsh punishments, there are no disincentives for organizations to change. When artificial barriers that suppress home appreciation appraisals are eliminated, home equity becomes an asset for wealth mobility.

Next, current tax policies have over-invested in subsidies for homeownership for wealthy households.[169] This makes it clear that targeted government assistance is available, but it is currently targeted in the wrong direction. Government intervention in wealth mobility should be targeted at homeowners who live and buy in zip codes with a history of racially discriminatory practices.[170]

The next part of the proposal includes mortgage interest credit for fifteen years and a housing grant for a down payment of up to 20% of the housing value. A credit or grant will assist the homeowner in quickly gaining home equity. As home equity and debt reductions are essential to building wealth, this, along with removing artificial barriers furthers that effort.

The next key component of wealth mobility is increased savings.[171] When comparing the composition of wealth, lower-income families have less home equity, fewer retirement savings, and a disproportionate amount of debt

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[168] INTERAGENCY TASK FORCE ON PROPERTY APPRAISAL AND VALUATION EQUITY, *supra* note 80 ("According to recent studies, eliminating racial disparities in rates of homeownership would shrink the wealth gap between Black and white households by 31 percent and between Latino and white households by 28 percent.").

[169] JOINT COMM. ON TAX'N, *supra* note 48 (indicating tax expenditures for the mortgage interest deduction is projected at $125 billion between 2020–2023).

[170] Sarah L. Swan, *Discriminatory Dualism*, 54 GA. L. REV. 869, 879 (2021) (discussing the impact of red-lining and reverse redlining).

[171] *Id.* Saez & Zucman, *supra* note 152, at 565 ("Encouraging saving for the bottom 90% could also boost middle-class wealth by reducing the growing inequality in saving rates.").

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in their wealth portfolios.[172] Without savings, particularly retirement savings, it will be difficult to positively impact the racial wealth gap.[173] The federal government has made substantial investments in retirement savings that predominantly benefit wealthier, White, households.[174]

Retirement savings for middle- and low-income families are nonexistent, and most Black families have no retirement savings.[175] Plans to make retirement saving more accessible outside of employment have not increased participation for low- and middle-income families because design flaws have made them less attractive for low- and middle-income families.

For example, the traditional Individual Retirement Account (IRA) is less attractive because taxpayers must contribute upfront for a tax deduction in the following year if they have sufficient income.[176] The research shows the tax benefits were primarily distributed to middle- and high-income taxpayers.[177]

The Roth IRA was also a failure in incentivizing low- and middle-income families to invest in retirement assets.[178] The tax-free benefit of a

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[172] CONG. BUDGET OFF., *supra* note 155, at 17.

[173] *Inclusive Wealth Building Initiative*, ECON. INNOVATION GRP., https://eig.org/inclusive-wealth-building-initiative/ (last visited July 10, 2023).

[174] TAX POL'Y CTR., *supra* note 25 (indicating in 2021 tax expenditures of $158 billion and $109 billion to employer-defined contribution plans and defined benefits plans, respectively.).

[175] Teresa Ghilarducci & Kevin Hassett, *What if Low-Income American Workers Had Access to Wealth-Building Vehicles Like the Federal Employees' Thrift Savings Plan?*, ECON. INNOVATION GRP. 3 (Mar. 25, 2021), content/uploads/2021/03/Hassett-Ghilarducci-White-Paper-IWBI.pdf.

[176] *Id.*

> The deduction approach is regressive because those with the highest incomes and the highest marginal tax rate gain the most. Two workers saving the maximum amount allowed in their retirement accounts have wildly different levels of financial help from the government. The minimum wage worker whose income is so low that they do not deduct or pay income taxes gets no additional benefit for saving. By contrast, a worker earning enough to pay the top marginal rate can shelter large amounts of money (since they put the money away pre-tax) and receives an implicit 37 percent subsidy to do so. A dollar saved today is a dollar that does not face taxation.

[177] *Id.*

[178] *Id.* at 4.

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Roth IRA happens at withdrawal.[179] In both cases, the taxpayers need disposable income and there are no provisions for matching contributions by any government entity or employer. Research shows that taxpayers are more likely to contribute to retirement savings with automatic matching options.[180]

On the other hand, the Thrift Savings Plan (TSP) is a defined contribution plan for the federal government and military service members.[181] The TSP is a model that has had success across the education and income spectrum.[182] The TSP is the largest defined contribution plan, offers low expense ratios, yields higher returns, and managers are not conflicted by investment decisions.[183]

Ghilarducci and Hassett proposed extending the TSP model to low- and middle-income taxpayers.[184] Such a model would present the opportunity to substantially impact wealth mobility.[185] Rather than create a new model, the government should extend the current TSP to taxpayers with a gross income of $100,000 or less. As noted above, the program is already in place for federal and military employees, and automatic withdrawal and matching provisions are already integrated into the employment system.

Employers already have a system for automatic withdrawals from employees because they collect payroll taxes. To start the program, employees would be responsible for 3% of their gross income and their employers would be required to match. This is less than half the amount employees currently pay into Social Security.

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[179] I.R.C. § 408A(d)(1).

[180] CONG. BUDGET OFF., *supra* note 155, at 8.

[181] *About the Thrift Savings Plan*, THRIFT SAVINGS PLAN, https://www.tsp.gov/about-the-thrift-savings-plan-tsp/ (last visited July 10, 2023).

[182] Ghilarducci & Hassett, *supra* note 175, at 8 ("The positive impact was especially prominent for those in the bottom one-third of the earnings distribution, many of whom are nonwhite and have lower educational attainment.").

[183] *Id.* at 7.

[184] *Id.*

[185] *Id.* at 10 ("After 40 years, the household would have $20,660 with no match and no additional savings, $374,380 with 3 percent of earnings matched, $492,280 with 4 percent matched, and $610,190 with 5 percent matched. These figures are pre-tax and exclude the minimal fees a TSP-inspired model would levy.").

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Rather than send the payments to the Social Security fund, the employers would send them to the TSP fund. These are the same taxpayers who would be exempted from contributing to Social Security, therefore, they would still have a net increase in take-home pay. The employer's payroll responsibility would still equal 6.2% as the remaining 3.2% would still be submitted to the Social Security fund. Making automatic contributions with matching provisions could substantially impact socioeconomic wealth inequality and the racial wealth gap without changing the employers' current responsibilities.

CONCLUSION

Tax policy has the innate power to change the economic landscape and facilitate economic justice. The lack of political will to address wealth concentration and the racial wealth gap is evident in the inaction of government leaders. Congress has the power to modify the same tools that created disparities to shift more tax liability to wealthier households and provide tax relief to most households.

Tax policies have not provided sufficient direct benefits to low- and middle-income households, predominantly people of color, to acquire assets that mitigate the effects of wealth erosion. Instead, tax policies have created and facilitated inequalities resulting in intergenerational economic harm to communities of color.

Shifting the tax burden and providing targeted wealth mobility initiatives will significantly change the wealth status of lower-income and Black households. After centuries of unchecked subsidies for the wealthy, it is overdue for congressional leaders to reform tax policies to add progressivity and inject measures to bring equitable remedies to historically marginalized households.

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