



Volume 22 (2024) | ISSN 1932-1821 (print) 1932-1996 (online)
DOI 10.5195/taxreview.2024.242 | <http://taxreview.law.pitt.edu>

FIGHTING POVERTY EVERYWHERE ALL AT ONCE

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FIGHTING POVERTY EVERYWHERE ALL AT ONCE¹

Lynn D. Lu^{*}

I. INTRODUCTION

With COVID-19 lockdowns in the rear-view mirror and temporary pandemic relief long expired²—and with sunset looming over many provisions of the Trump-era Tax Cuts and Jobs Act (TCJA)³—economic reform is once again at the top of the agenda during a presidential campaign.⁴ In the absence of a robust social safety net, the COVID-19 pandemic forced the federal government to scramble to meet the basic needs of vulnerable people all across the nation,⁵ from all walks of life. The pandemic also showed the devastating consequences of longstanding racial disparities in wealth and access to health care to be inescapably obvious.⁶ Temporary emergency expansions of Medicaid, SNAP, and unemployment insurance benefits provided crucial aid,⁷ as did speedy rollout of a fully refundable version of the Child Tax Credit (CTC) previously unavailable to families

¹ With apologies to *Everything Everywhere All at Once* (A24 2022).

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² American Rescue Plan Act of 2021, Pub. L. No. 117-2, 135 Stat. 4.

³ Tax Cuts and Jobs Act, Pub. L. No. 115-97, 131 Stat. 2054 (2017).

⁴ Andrew Ross Sorkin et al., *The Economy Moves to Center Stage in the Election*, N.Y. TIMES (Aug. 15, 2024), <https://www.nytimes.com/2024/08/15/business/dealbook/economy-inflation-election.html>.

⁵ Nancy J. Knauer, *The Federal Response to COVID-19: Lessons from the Pandemic*, 73 HASTINGS L.J. 49, 52–53 (2022).

⁶ See, e.g., Alia Alhomsy et al., *Racial/Ethnic Disparities in Financial Hardship During the First Year of the Pandemic*, 7.1 HEALTH EQUITY 453, 453–61 (2023); Leo Lopez III et al., *Racial and Ethnic Health Disparities Related to COVID-19*, 325 JAMA, Jan. 22, 2021, at 719–20.

⁷ Andrew Hammond et al., *The Future of Anti-Poverty Legislation*, 112 GEO. L.J. 349, 358 (2023).

with incomes too low to incur tax liability.⁸ By August 2024, however, Congress returned to business as usual and declined to enact a permanent refundable CTC despite its effectiveness in alleviating economic hardship.⁹

In a revival of familiar arguments that social support creates dependency, ideology trumped the administrative efficiencies of providing anti-poverty assistance through the Internal Revenue Code (Code), even for already dependent children. While Republican Senator Charles Grassley candidly refused to “mail . . . out checks” that would boost approval rates for the incumbent Democratic administration,¹⁰ others objected on the principle that the CTC’s flexible income eligibility criteria disincentivized work.¹¹ The months-long bipartisan effort thus stalled due to legislators’ qualms about whose children deserve relief from poverty: all families in financial need, or only those who can also prove their moral worth.

It will take more than a pandemic to eliminate the divide between “deserving” and “undeserving” poor. Whether delivered as “government checks” or reduced tax liability, poverty relief remains conditioned upon establishing most-favored-household status, including through: participation in the market for paid labor,¹² heteropatriarchal marriage,¹³ care of minor dependent children,¹⁴ or immigration through restrictive legal pathways.¹⁵ As federal income taxation becomes more visible, and perhaps unavoidable, as a primary mode of poverty relief, the time is ripe to reexamine the lessons of

⁸ *Id.* at 12.

⁹ Andrew Duehren, *Senate Rejects Bipartisan Tax Deal*, N.Y. TIMES (Aug. 1 2024), <https://www.nytimes.com/2024/08/01/us/politics/senate-tax-bill.html>; Hammond et al., *supra* note 7, at 388.

¹⁰ Chabeli Carrazana, *Tax Day Came and Went Without a Vote on the Child Tax Credit*, 19TH NEWS (Apr. 16, 2024), <https://19thnews.org/2024/04/child-tax-credit-tax-day-2024/>.

¹¹ Chabeli Carrazana, *A Bigger Child Tax Credit Isn’t Coming. The Senate Just Voted Against It*, 19TH NEWS (Aug. 1, 2024), <https://19thnews.org/2024/08/child-tax-credit-2024-senate-votes-against-bill/>.

¹² *See, e.g.*, Ariel Jurow Kleiman, *Revolutionizing Redistribution: Tax Credits and the American Rescue Plan*, 2021 YALE L.J.F. 535, 536.

¹³ *See, e.g.*, Shannon Weeks McCormack, *America’s Failure to Rescue Parents: A Narrative of Inequitable Tax “Reform,”* U.C. L.J. (forthcoming) (manuscript at 4).

¹⁴ *Id.*

¹⁵ Kleiman, *supra* note 12, at 558. Most benefits discussed herein exclude undocumented immigrants and/or require a Social Security number.

ideological debates over ever-pilloried welfare programs for future efforts to achieve economic security for all.

This Essay compares federal taxation with federal spending programs as potential sites of repair and remedy for longstanding racial and economic injustice—and potential sources of never-ending stigma that relegates low- and no-income people to perpetual hardship. First, the Essay shows how punitive, ideologically driven policy choices have resulted in persistent poverty and the contraction of the social safety net—including in the supposedly neutral, rational, and efficient arena of federal income tax. Then, the Essay examines the most recent debates over poverty relief for children to show how stigmatizing narratives and fear of dependency continue to operate, whether through the Code or through spending legislation. Finally, the Essay offers counter-narrative approaches, especially through empirically informed Critical Race Theory (CRT), that could garner more popular support for anti-poverty measures by deliberately, transparently—and optimistically—aiming to share prosperity rather than assign blame.

II. TAX IS NO EXCEPTION TO PUNISHING POVERTY

For decades, before, during, and after welfare reform, the poverty rate has remained higher in the United States than in any other developed nation.¹⁶ Longstanding racial and gender disparities in poverty rates persist,¹⁷ and child poverty remains shamefully high among Western developed countries.¹⁸ The United States is alone among its peer countries in providing

¹⁶ Steven Pressman & Robert Haywood Scott III, *A Refundable Tax Credit for Children: Its Impact on Poverty, Inequality, and Household Debt*, 45 J. POST KEYNESIAN ECON. 536, 553 (2022) (“The United States has the highest poverty rate among developed nations and one of the highest levels of income inequality in the world.”). The official poverty measure and supplemental poverty measure are likely undercounts. See Indivar Dutta-Gupta & Elizabeth Lower-Basch, *A Better Poverty Measure Shows the Impact of Public Policies*, CTR. FOR L. & ECON. POL’Y (Aug. 31, 2023), <https://www.clasp.org/blog/a-better-poverty-measure-shows-the-impact-of-public-policies/>; see generally NAT’L ACADEMIES, AN UPDATED MEASURE OF POVERTY (2023), https://nap.nationalacademies.org/resource/26825/HLs_Measure-of-Poverty.pdf.

¹⁷ Bettina M. Beech et al., *Poverty, Racism, and the Public Health Crisis in America*, FRONTIERS PUB. HEALTH, Sept. 6, 2021, at 2.

¹⁸ Timothy Smeeding & Céline Thévenot, *Addressing Child Poverty: How Does the United States Compare With Other Nations?*, 16 ACAD. PEDIATRICS S67, S67 (2016); Pressman & Scott, *supra* note 16, at 553.

no child allowance,¹⁹ let alone universal entitlement to basic subsistence income.²⁰ The patchwork of public assistance programs that does exist—in the form of block grants to states and cooperative federal spending—helps only those who can navigate complex requirements that vary by state,²¹ with only bare procedural protections against administrative error.²² Meanwhile, wealth has increasingly concentrated in the hands of the already rich.²³ Without targeted intervention, vast disparities in wealth and by race continue unabated.²⁴

The United States is thus exceptional, not only based on sheer numbers of people living in poverty, but also in its lack of legal protections for the poor. Erwin Chemerinsky decades ago listed several essential steps on the road to a judicially enforced constitutional minimum entitlement²⁵—a road that tilts even more steeply uphill today. Highly visible human hardship remains legally invisible,²⁶ with few private rights of action to vindicate federal rights to government assistance,²⁷ no standing to challenge programs

¹⁹ Pressman & Scott, *supra* note 16, at 536.

²⁰ See, e.g., WORLD BANK GRP., EXPLORING UNIVERSAL BASIC INCOME: A GUIDE TO NAVIGATING CONCEPTS, EVIDENCE, AND PRACTICES (2020).

²¹ See, e.g., ILHAM DEHRY, SARAH KNOWLES & KATIE SHANTZ, GRAPHICAL OVERVIEW OF STATE TANF POLICIES AS OF JULY 2021 (2023), <https://www.urban.org/research/publication/graphical-overview-state-tanf-policies-july-2021>.

²² See generally *Goldberg v. Kelly*, 397 U.S. 254 (1970) (noting that due process requires pre-termination notice and opportunity to be heard for recipients of subsistence benefits).

²³ Daniel Shaviro, *The Mapmaker's Dilemma in Evaluating High-End Inequality*, 71 U. MIAMI L. REV. 83, 83 (2016).

²⁴ DARRICK HAMILTON ET AL., UMBRELLAS DON'T MAKE IT RAIN: WHY STUDYING AND WORKING HARD ISN'T ENOUGH FOR BLACK AMERICANS 8 (2015); Edward J. McCaffrey, *The Paradox of Taxing the Rich*, 26 FLA. TAX REV. 130 (2023).

²⁵ Erwin Chemerinsky, *Making the Case for a Constitutional Right to Minimum Entitlements*, 44 MERCER L. REV. 525, 526 (1993).

²⁶ Julie A. Nice, *Poverty as an Everyday State of Exception, in ACCUMULATING INSECURITY: VIOLENCE AND DISPOSSESSION IN THE MAKING OF EVERYDAY LIFE* 67, 91 (Shelley Feldman, Charles Geisler & Gayatri A. Menon eds., 2011) (“meaningful concern about the plight of poor people specifically, and about economic justice generally, is virtually unintelligible within American law”).

²⁷ See, e.g., *Blessing v. Freestone*, 520 U.S. 329, 332 (1997) (stating that Title IV-D of the Social Security Act “does not give individuals a federal right to force a state agency to substantially comply with Title IV-D”).

that only benefit the rich,²⁸ and lax judicial scrutiny of programs that target the poor for the worst treatment.²⁹ Far from a level playing field, this legal landscape can seem biased always in favor of the haves over the have-nots.³⁰ As Julie Nice argues, the “dialogic default” in the United States leaves the poor—subject to societal norms yet excluded from the most basic legal entitlements—in “an everyday state of exception.”³¹

While this state of affairs may pass constitutional muster, critics since Milton Friedman have continued to seek elimination of federal spending programs entirely as “poorly targeted, expensive, economically inefficient, and in many cases [the cause of] more harm than good.”³² Instead, the federal tax system has become the preferred vehicle for redistribution of income.³³ Progressive in rate structure,³⁴ with exemptions for the lowest income

²⁸ See, e.g., *Simon v. Eastern Ky. Welfare Rts. Org.*, 426 U.S. 26 (1976) (stating that indigent plaintiffs lack standing to challenge favorable tax treatment to hospitals that decline to treat indigent patients).

²⁹ See, e.g., *Harris v. McRae*, 448 U.S. 297 (1980) (stating that restrictions on Medicaid funding for abortions available to privately insured patients do not violate Equal Protection); *United States v. Vaello-Madero*, 596 U.S. 159 (2022) (stating that exclusion of otherwise-eligible residents of Puerto Rico from receipt of Social Security Income benefits available elsewhere in the United States does not violate Equal Protection).

³⁰ Nice, *supra* note 26, at 68; see also McCaffrey, *supra* note 24, at 33 (“The current—and limited—set of tax tools, designed with one meaning of ‘redistribution’—getting resources to the not-rich—in mind, ends up pitting the working classes, who bear the burdens of the increased wage taxes, against the nonworking and under-employed poor.”).

³¹ Nice, *supra* note 26, at 50, 72–73.

³² Jeffrey A. Miron, *Rethinking Redistribution*, 60 NAT’L AFFAIRS 70, 71 (2011).

³³ See, e.g., Milton Friedman, *The Case for the Negative Income Tax: A View from the Right*, in PROCEEDINGS OF THE NATIONAL SYMPOSIUM ON GUARANTEED INCOME 49 (U.S. Chamber of Commerce 1966) (“I have supported the negative income tax as a substitute for present welfare programs; as a device for accomplishing the objectives of those programs more efficiently, at lower cost to the taxpayer, and with a sharp reduction in bureaucracy. Many proponents of a negative income tax have favored simply adding it to existing programs.”).

³⁴ Jeremy Bearer-Friend & Emily A. Satterthwaite, *Taxation & Inequalities: USA National Report*, in TAXATION AND INEQUALITIES (R de la Feria ed.) (forthcoming 2025) (manuscript at 7).

taxpayers,³⁵ and indifferent to illegality of income source,³⁶ the tax system is designed to prioritize not only efficiency and administrability, but also horizontal equity, so that like taxpayers pay like taxes.³⁷ Furthermore, the legislative process for taxation has historically been seen as insulated from partisan politicking,³⁸ at least as compared with the “dysfunctional” appropriations process.³⁹ Tax reforms that evade the periodic reenactment requirements of spending legislation have proven to be notoriously durable.⁴⁰ Much tax legislation also evades robust judicial oversight, with a historical thumb on the scale favoring collection of revenue under the Anti-Injunction Act,⁴¹ through limits on taxpayer standing,⁴² and through limited due process protections for taxpayers.⁴³

But taxation is increasingly recognized as subject to the same need for public oversight as other forms of federal regulation, despite its revenue-collection function, as the allocation of tax burdens or benefits operates in

³⁵ MARGOT L. CRANDALL-HOLLICK ET AL., CONG. RSCH. SERV., R45971, THE IMPACT OF THE FEDERAL INCOME TAX CODE ON POVERTY (2020) (“The federal individual income tax is structured so that the poor owe little or no income tax.”).

³⁶ Francine J. Lipman, *The “Illegal” Tax*, 11 CONN. PUB. INT. L.J. 93 (2012); Douglas A. Kahn & Howard Bromberg, *The Tax Provisions Denying a Deduction for Illegal Expenses and Expenses of an Illegal Business Should Be Repealed*, 18 FLA. TAX REV. 207 (2015).

³⁷ Reuven S. Avi-Yonah, *The Three Goals of Taxation*, 60 TAX L. REV. 1, 1 (2006).

³⁸ See Rebecca M. Kysar, *The New Legislative and Regulatory Process*, 73 NAT’L TAX J. 1135, 1155 (2020) (contrasting contemporary use of the Budget Reconciliation process with prior practice, which involved tax committees and the Joint Committee on Taxation. “Reconciliation shifted power away from these committees into the hands of party leaders and the budget committees, making policy and technical expertise of the tax committees and other tax institutions less important.”).

³⁹ Joseph Fishkin, *Misappropriation*, BLOGSPOT (July 1, 2023), <https://balkin.blogspot.com/2023/07/misappropriation.html> (noting that spending legislation that requires appropriations is “subject to across-the-board budgets cuts, government shutdowns, sequestration, and all the other insanity that comprises the modern bipartisan bicameral budget circus”).

⁴⁰ See McCaffrey, *supra* note 24, at 38 (“People do not like to pay taxes. This simple and uncontroversial fact suggests that those taxes that are least salient or obvious and noticeable to people will be politically preferred.”).

⁴¹ I.R.C. § 7421; see Kristin Hickman, *Administering the Tax System We Have*, 63 DUKE L.J. 1717 (2014).

⁴² *United States v. Richardson*, 418 U.S. 166 (1974).

⁴³ *Phillips v. Comm’r*, 283 U.S. 589 (1931); see Leslie Book, *Collection Due Process at Twenty-Five: A Still Important and Needed Check on IRS Collection*, 20 PITT. TAX REV. 145 (2023).

the same way as other regulatory (dis)incentive schemes.⁴⁴ Tax administration has thus undergone significant transformation as its regulatory function has grown more visible and contested. At least since Chief Justice Roberts’s acknowledgement in *NFIB v. Sebelius* that “taxes that seek to influence conduct are nothing new,”⁴⁵ courts have grappled with the extent to which tax should be excepted from general administrative principles, including accountability to the public.⁴⁶

The tax system, then, does it all: collects revenue, redistributes it—and shapes taxpayer behavior to maximize optimal outcomes all the while.⁴⁷ In fact, the tax system redistributes much revenue towards the already wealthy through mechanisms that can escape scrutiny, including deductions, exemptions, and credits—tax expenditures—that are indistinguishable from spending.⁴⁸ Accordingly, over time, politically popular tax breaks have piled up for high-income taxpayers well positioned to influence lawmakers and finance litigation challenges, and disproportionately likely to be white.⁴⁹ For example, the TCJA enacted “the most sweeping tax overhaul in decades,”⁵⁰ but the bulk of the benefits (albeit temporarily) have flowed to corporations and wealthy families.⁵¹ In particular, the TCJA’s non-refundable CTC reserved the greatest benefits for the highest-income, single-breadwinner

⁴⁴ See Hickman, *supra* note 41, at 1717 (listing Code provisions that regulate behavior unrelated to income).

⁴⁵ Nat’l Fed’n of Indep. Bus. v. Sebelius, 567 U.S. 519, 567 (2012).

⁴⁶ See, e.g., Alice Abreu & Richard Greenstein, *Tax: Different, Not Exceptional*, 71 ADMIN. L. REV. 663 (2019).

⁴⁷ Avi-Yonah, *supra* note 37, at 1.

⁴⁸ See generally Stanley S. Surrey & Paul R. McDaniel, *The Tax Expenditure Concept and the Budget Reform Act of 1974*, 17 B.C. INDUS. & COM. L. REV. 679, 697–98 (1976).

⁴⁹ See MICHAEL J. GRAETZ, *THE POWER TO DESTROY: HOW THE ANTITAX MOVEMENT HIJACKED AMERICA* (2024); ASHLEY BURNSIDE & CARA BRUMFIELD, *A PATH FORWARD LET’S PROMOTE—NOT REDUCE—EQUITY IN OUR TAX CODE 1* (2023) (“The wealth gap, and the racial wealth gap, have widened in recent decades, and the TCJA furthered this divide. Nearly 80 percent of the tax cuts provided to individuals in the TCJA went toward white households, who represent only 67 percent of American taxpayers.”).

⁵⁰ Thomas Kaplan, *House Gives Final Approval to Sweeping Tax Overhaul*, N.Y. TIMES (Dec. 20, 2017), <https://www.nytimes.com/2017/12/20/us/politics/tax-bill-republicans.html>.

⁵¹ See generally Jon Bakija, *The U.S. Individual Income Tax: Recent Evolution and Evidence*, 38 J. OF ECON. PERSPECTIVES 33 (2024).

households.⁵² The sheer complexity of the Code has left many of these effects—including disparate impact by race—largely hidden from lay voters;⁵³ but as Dorothy Brown, Tessa Davis, and others have shown, such disparities are always already the product of deliberate policy choices to favor some taxpayers over others.⁵⁴

Poverty relief may be well-suited for tax administration, to the extent it can be implemented at the same time and in the same way as revenue collection; indeed, Kristin Hickman has recognized the Internal Revenue Service (IRS) as the biggest welfare agency in the federal government based on the sheer amount of claims for the refundable Earned Income Tax Credit (EITC) alone processed by the agency.⁵⁵ As a method of redistributing revenue, the EITC takes advantage of administrative efficiencies; as a form of poverty regulation, however, the EITC makes transparent the policy choices that transform mathematical calculations of need into moral judgment, even in the tax system. Far from neutral in design or impact, the EITC scheme reflects the same stigmatizing work-or-starve ideology animating other social safety net programs to preserve wealth for the rich while keeping the poor in poverty. For example, the EITC scheme excludes households without earned income,⁵⁶ reserves greater benefits for high-income households with dependent children,⁵⁷ introduces complexity remarkable even for the Code,⁵⁸ and establishes a punitive penalty structure

⁵² Linda Sugin, *The Social Meaning of the Tax Cuts and Jobs Act*, 128 YALE L.J. FORUM 403 (2018); see also Shannon Weeks McCormack, *America's Failure to Rescue Parents: A Narrative of Inequitable Tax "Reform,"* U.C. L.J. (forthcoming).

⁵³ See generally McCaffrey, *supra* note 24.

⁵⁴ DOROTHY BROWN, *THE WHITENESS OF WEALTH: HOW THE TAX SYSTEM IMPOVERISHES BLACK AMERICANS—AND HOW WE CAN FIX IT* (2021); Tessa R. Davis, *Taxing Choices*, 16 FIU L. REV. 327, 360 (2022) (exploring how tax “make[s] the subjective seem objective, often using the language of choice to cloak its normative judgments”).

⁵⁵ Kristin E. Hickman, *The (Perhaps) Unintended Consequences of King v. Burwell*, 2015 PEPP. L. REV. 56, 68–69 (2015) (“the IRS is now one of the government’s principal welfare agencies”).

⁵⁶ MARGOT L. CRANDALL-HOLLICK, CONG. RSCH. SERV., R43805, *THE EARNED INCOME TAX CREDIT (EITC): HOW IT WORKS AND WHO RECEIVES IT 2* (2023).

⁵⁷ *Id.* at 6.

⁵⁸ See, e.g., Robert Greenstein et al., *Reducing Overpayments in the Earned Income Tax Credit* CTR. ON BUDGET & POL’Y PRIORITIES (Jan. 31, 2019), <https://www.cbpp.org/research/reducing->

that reflects greater distrust of low-income EITC claimants than other taxpayers.⁵⁹ Tracing the stigmatizing ideology that pervades the EITC to welfare reform, or “workfare,” reveals that its enduring power transcends specific contexts—even those purporting to be neutral—to threaten rather than strengthen the social safety net.

III. FAMILIAR IDEOLOGY APPEARS EVERYWHERE

The well-documented harms of decades of workfare demonstrate the power of stigma to punish poor people, including children.⁶⁰ The explicit philosophy behind workfare, as launched at the federal level in 1996 through Temporary Assistance to Needy Families (TANF), is the belief that people are poor not due to circumstances beyond their control, but because they simply lack discipline.⁶¹ By conditioning bare subsistence benefits on compliance with strict work activities, workfare as implemented by TANF denies support to families with children despite financial need.⁶² Even for families that are able to comply—including by participating in unpaid “work experience programs”—TANF exacerbates racial disparities in poverty rates, as the states that provide the lowest cash assistance amounts also have the

overpayments-in-the-earned-income-tax-credit (“The EITC is one of the most complex elements of the tax code that individual taxpayers face.”).

⁵⁹ See Michelle Lyon Drumbl, *Beyond Polemics: Poverty, Taxes, and Noncompliance*, 5 E JOURNAL OF TAX RSCH. 253 (2016).

⁶⁰ See, e.g., Michele Estrin Gilman, *The Return of the Welfare Queen*, AM. U.J. GENDER SOC. POL’Y & L. 247, 258 (2014); Ife Floyd et al., *TANF Policies Reflect Racist Legacy of Cash Assistance*, CTR. ON BUDGET & POL’Y PRIORITIES (Aug. 4, 2021), <https://www.cbpp.org/research/income-security/tanf-policies-reflect-racist-legacy-of-cash-assistance>; Andrew Walker et al., *The Impact of Temporary Assistance for Needy Families Benefit Requirements and Sanctions on Maternal Material Hardship, Mental Health, and Parental Aggravation*, NAT’L LIBR. MED. (June 2, 2023), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC11022155/>.

⁶¹ Lawrence Mead, *Moral Overload*, AM. AFFS. J. (Jan. 3, 2018), <https://americanaffairsjournal.org/2018/01/moral-overload/> (“[T]he Left’s arguments have often weakened society’s usual expectations for good behavior. These norms include obeying the law, getting through school, having children within marriage, and so on. In America until the 1960s, such norms were seldom questioned, but today many of the groups drawing liberal attention are effectively excused. Given their disadvantages, many progressives argue that they cannot be expected to comply.”).

⁶² See generally *TANF 101: Policy Briefs on Temporary Assistance for Needy Families*, CTR. FOR L. & SOC. POL’Y, <https://www.clasp.org/tanf-101-policy-briefs-temporary-assistance-needy-families/>.

largest Black populations.⁶³ Perversely, rather than delivering meaningful support to individuals facing barriers to employment, TANF relegates low-income households and children to low- or no-wage, transitory, or dead-end work, often trapping them in a revolving door of welfare receipt, paid employment, job loss, and welfare receipt once again.⁶⁴

The history of punitive workfare takes on greater urgency post-pandemic, amid the ongoing failure to ensure women's economic security independent of a male breadwinner.⁶⁵ Congress designed TANF intentionally to promote heteropatriarchal families through procreation within marriage over single-mother-headed households—perceived by many to be predominantly Black⁶⁶—including through abstinence education and mandatory cooperation with child-support enforcement.⁶⁷ The idealized vision of economic self-sufficiency promoted through TANF in fact robs women of autonomy in family formation and reproduction.⁶⁸ After *Dobbs*,⁶⁹ even those who decry welfare have a moral responsibility at least to ensure that children are born into conditions in which they and their caregivers may not just survive, but thrive.

Accompanying welfare reform, an expanded EITC was intended primarily to assist families with both earned income and children.⁷⁰ With

⁶³ Ife Floyd & Ladonna Pavetti, *Improvements in TANF Cash Benefits Needed to Undo the Legacy of Historical Racism*, CTR. ON BUDGET & POL'Y PRIORITIES (Jan. 26, 2022), <https://www.cbpp.org/research/income-security/improvements-in-tanf-cash-benefits-needed-to-undo-the-legacy-of-historical>.

⁶⁴ See, e.g., SONDR A YOUDELMAN & PAUL GETSOS, *THE REVOLVING DOOR: RESEARCH FINDINGS ON NYC'S EMPLOYMENT SERVICES AND PLACEMENT SYSTEM AND ITS EFFECTIVENESS IN MOVING PEOPLE FROM WELFARE TO WORK* 50 (2005), <https://www.cvhaction.org/post/the-revolving-door>.

⁶⁵ See Susan Frelich Appleton & Laura Rosenbury, *Reflections on "Personal Responsibility" after COVID and Dobbs: Doubling Down on Privacy*, 72 WASH. U. J. L. & POL'Y 129, 146, 150 (2023).

⁶⁶ Gilman, *supra* note 60, at 257–58.

⁶⁷ See ANNA MARIE SMITH, *WELFARE REFORM AND SEXUAL REGULATION* 172, 178–79 (2007).

⁶⁸ See Appleton & Rosenbury, *supra* note 65, at 152 (“Legal doctrine and social policy once again send a message to ‘undeserving’ women of color, especially those living outside of marriage, to avoid sex or become an outlaw when one is not financially prepared for procreation and self-sufficiency.”).

⁶⁹ *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022) (overturning *Roe v. Wade*, 410 U.S. 113 (1973) (recognizing abortion as a fundamental right)).

⁷⁰ MARGOT L. CRANDALL-HOLLICK, CONG. RSCH. SERV., R44825, *THE EARNED INCOME TAX CREDIT (EITC): A BRIEF LEGISLATIVE HISTORY* 3 (2018).

eligibility tied to both wage work and reproduction, the EITC has enjoyed bipartisan support and has been heralded as an efficient and effective anti-poverty measure.⁷¹ Unlike TANF, the EITC allows claimants to self-report earned income annually without need for frequent visits to a local welfare center, potentially resulting in less stigma;⁷² fewer burdensome recertification requirements that introduce risk of error;⁷³ and uniformity of benefits across states.⁷⁴

Yet as noted above, the EITC, too, contains punitive features, separate and apart from its unique penalty provision for improper claims.⁷⁵ Its overly complex rules have reduced accessibility,⁷⁶ and until recently have obscured design defects resulting in racially disparate audit rates for Black claimants.⁷⁷ Where eligibility is in dispute, EITC claimants lack even the minimal procedural due process protections available to welfare recipients.⁷⁸ For example, where only a portion of an EITC refund is in dispute, the IRS may

⁷¹ Drumbl, *supra* note 59; Thomas L. Hungerford & Rebecca Theiss, *The Earned Income Tax Credit and the Child Tax Credit: History, Purpose, Goals, and Effectiveness*, ECON. POL'Y INST. (Sept. 25, 2013), <https://www.epi.org/publication/ib370-earned-income-tax-credit-and-the-child-tax-credit-history-purpose-goals-and-effectiveness/>.

⁷² *Increasing Take-Up of the Earned Income Tax Credit*, J-PAL, <https://www.povertyactionlab.org/evaluation/increasing-take-earned-income-tax-credit>; *see also* Pressman & Scott, *supra* note 16, at 536, 552 (2022) (stating that the CTC “doesn’t stigmatize the poor. It doesn’t require additional government bureaucracy to determine program eligibility; benefits can be determined easily from individual income tax returns.”).

⁷³ J-PAL, *supra* note 72.

⁷⁴ *State Fact Sheets: How States Spend Funds Under the TANF Block Grant*, CTR. ON BUDGET & POL'Y PRIORITIES (Aug. 29, 2024), <https://www.cbpp.org/research/income-security/state-fact-sheets-how-states-spend-funds-under-the-tanf-block-grant> (documenting “great variation across states” in TANF spending).

⁷⁵ *See* pt. II.

⁷⁶ *See, e.g.*, Greenstein et al., *supra* note 58.

⁷⁷ *See* Hadi Elzayn et al., *Measuring and Mitigating Racial Disparities in Tax Audits*, STAN. INST. FOR ECON. POL'Y RSCH. (Jan. 30, 2023), <https://siepr.stanford.edu/publications/working-paper/measuring-and-mitigating-racial-disparities-tax-audits>; Diane Kemker, *Do Black Taxpayers Matter? A Critical Tax Analysis of IRS Audit Practices*, 20 STAN. J.C.R. & C.L. 133 (2024).

⁷⁸ Johnny Rex Buckles, *Constitutional Law and Tax Expenditures: A Prelude*, 76 ARK. L. REV. 1, 70 n.336 (2023) (“[T]he EITC is a delayed benefit, whereas welfare support is necessary for daily survival.”).

withhold the entire amount pending resolution.⁷⁹ While Johnny Rex Buckles notes that the EITC is not intended to be a subsistence benefit⁸⁰—especially as paid out annually in a lump sum rather than periodically to smooth cash flow⁸¹—it is crucial for the economic stability of those eligible to receive it.

It has fallen to the SNAP program to fill the gaps in the social safety net left by TANF, including for households with some earned income.⁸² Contrary to the ideology underlying TANF's stingy benefits, many low-income households eligible for SNAP are already engaged in (low-)paid work, often for fewer or less predictable hours, and with less access to childcare, than workers themselves prefer.⁸³ Nevertheless, alongside the tax reform enacted under the TCJA to benefit corporations and wealthy households,⁸⁴ the Trump administration successfully reframed all government assistance as welfare, complete with stigma, and proposed work requirements once reserved for TANF as conditions for receipt of other benefits, such as medical assistance under Medicaid,⁸⁵ or nutrition assistance through SNAP.⁸⁶ As a result, the

⁷⁹ Kemker, *supra* note 77.

⁸⁰ Buckles, *supra* note 78.

⁸¹ Pressman & Scott, *supra* note 16, at 554 (“Many low-income households live paycheck to paycheck. Money now is more valuable to these families than money next year when their tax refund arrives.”).

⁸² See generally DANILLO TRISI & MATT SAENZ, DEEP PROBLEMS AMONG CHILDREN ROSE IN TANF'S FIRST DECADE, THEN FELL AS OTHER PROGRAMS STRENGTHENED (2020).

⁸³ Joseph Llobera & Lauren Hall, *SNAP Helps Millions of Workers with Low-Paying Jobs*, CTR. ON BUDGET & POL'Y PRIORITIES (July 30, 2024), <https://www.cbpp.org/research/food-assistance/snap-helps-millions-of-workers-in-low-paying-jobs>.

⁸⁴ Cf. Jon Bakija, *The US Individual Income Tax: Recent Evolution and Evidence*, 38 J. ECON. PERSPECTIVES 33, 56 (2024) (evidencing the greatest decrease in tax burden for the top one percent of taxpayers).

⁸⁵ See Akeiisa Coleman & Sara Federman, *Work Requirements for Medicaid Enrollees*, COMMONWEALTH FUND (Apr. 3, 2024); Sara Rosenbaum, *The Far-Reaching Implications of the Georgia Medicaid Work Experiment*, COMMONWEALTH FUND (Feb. 2, 2023) (despite prior waiver programs resulting in disenrollment of eligible working Medicaid recipients, Georgia recently won a lawsuit requiring approval of a new waiver program mandating paid work as a condition of expanding Medicaid eligibility to cover more populations).

⁸⁶ The Fiscal Responsibility Act amended the SNAP statute, 7 U.S.C. § 2011, to include as a new legislative purpose “to assist low-income adults in obtaining employment and increasing their earnings. Such employment and earnings, along with program benefits, will permit low-income households to obtain a more nutritious diet through normal channels of trade by increasing food purchasing power for

door is open for harsher work requirements in the future through “programs that encourage recipients to become self-sufficient, ultimately moving off of government support”⁸⁷—the same programs that for decades under TANF succeeded only in terminating support without accompanying gains in self-sufficiency.

By the time Congress considered reestablishing a refundable CTC to provide relief to poor children too young to participate in the labor market (yet), Tax Day 2024 had passed.⁸⁸ The IRS stood ready to activate a special claim portal in order to distribute the CTC retroactively and quickly.⁸⁹ Predictably, some considered the assistance to be too easily accessible and therefore an invitation to dependency for parents and their progeny. Republican Senator Mike Crapo, representing Idaho and ranking member of the Senate Finance Committee, reportedly announced that the CTC “goes too far toward the Democrats’ goal of turning the [CTC] into a subsidy untethered to work.”⁹⁰ As proposed, the CTC did in fact contain a minimum earned income requirement as a political compromise; yet even this modest revision failed to pass.⁹¹

The 118th Congress did not do nothing for children in poverty; it did enact the rosily named “SUN Bucks,” a summer food benefit for low-income children eligible for free lunch during the school year.⁹² As a cooperative spending program, SUN Bucks offered states the choice whether or not to participate. More than a dozen states with Republican governors chose not to offer SUN Bucks to income-eligible children in need of lunch during the

all eligible households who apply for participation.” Fiscal Responsibility Act of 2023 § 313, 7 U.S.C. § 2011.

⁸⁷ Carrazana, *supra* note 10.

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ Carrazana, *supra* note 11.

⁹¹ Tara Watson, *The new Child Tax Credit deal is really a safety net deal—and by that measure it is only a start* (Jan. 18, 2024), <https://www.brookings.edu/articles/the-new-child-tax-credit-deal-is-really-a-safety-net-deal-and-by-that-measure-it-is-only-a-start/>.

⁹² Julian Shen-Berro, *Summer Meals, Funding for High-Poverty Schools: What the Federal Spending Bill Means for Students*, CHALKBEAT (Dec. 21, 2022), <https://www.chalkbeat.org/2022/12/21/23521622/federal-spending-bill-omnibus-summer-meals-ebt-titlei-schools/>.

summer, with some apparently concerned that SUN Bucks offered parents too much opportunity to purchase non-nutritional food,⁹³ despite evidence to the contrary derived from prior demonstration projects.⁹⁴ Others opposed the requirement that states chip in half of the cost of administering the program—potentially significant due to the need to verify additional eligibility criteria, including school enrollment and income for those not already in receipt of SNAP.⁹⁵ While such costs could be saved by making SUN Bucks universally available—just as some states provide free, healthy meals for any student during the school year—Republican governors continue to object that students who can afford food should pay their way,⁹⁶ which is merely another way of saying that students who cannot, should pay in suffering and stigma.

IV. HOPE FOR A SAFETY NET RESET?

The polarized state of electoral politics may leave little room for hope even of the most minimal legislative compromises. But advocates must remain vigilant in resisting stigmatizing narratives that threaten to further erode rather than expand the social safety net. With the Supreme Court increasingly poised to intervene in “major” political or economic questions

⁹³ Unlike existing summer nutrition programs, SUN Bucks allows households to avoid stigmatizing interactions by using an EBT card (not physical food stamps) at a grocery store to purchase food rather than going to selected meal sites run by nongovernmental organizations. Unused benefits, if an income-eligible child not eat lunch during the summer, would expire after a few months. See Ashlie D. Stevens, *How Ron DeSantis Let Thousands of Florida Kids Go Hungry This Summer*, SALON (July 15, 2024), <https://www.salon.com/2024/07/15/how-ron-desantis-let-thousands-of-florida-kids-go-hungry-this-summer-2/>.

⁹⁴ See *Selected Electronic Benefits Transfer*, USDA FOOD & NUTRITION SERV. (Nov. 2023).

⁹⁵ The USDA made grants and a universal portal available to assist states with retooling existing systems for the complex process of determining financial eligibility and verifying school enrollment, given fears of fraud. See *USDA Announces \$100 Million Investment to Help Families Buy Food for Their Children During Summer Months*, USDA (July 10, 2024), <https://www.usda.gov/media/press-releases/2024/07/10/usda-announces-100-million-investment-help-families-buy-food-their>; Kalyn Belsha, *Summer EBT Delays Have Left Families Waiting Weeks or Months for Crucial Benefits*, CHALKBEAT (July 17, 2024), <https://www.chalkbeat.org/2024/07/17/summer-ebt-sun-bucks-delays-hurt-families-until-kids-return-to-school/>; *Summer EBT/SUN Bucks Online Application*, USDA FOOD & NUTRITION SERV. (July 18, 2024), <https://www.fns.usda.gov/sebt/implementing-agency/application>.

⁹⁶ Marcus Weaver-Hightower, *Free meals v hungry children: is this the school lunch election?*, GUARDIAN (Aug. 13, 2024), <https://www.theguardian.com/us-news/article/2024/aug/13/free-school-meals-election>.

as well as routine IRS and other agency decisions,⁹⁷ even popular safety net protections may now draw the judicial scrutiny that measures to protect the wealthy have historically evaded. The stakes are higher than ever for garnering resounding, crystal-clear political support to provide basic economic security and repair longstanding economic inequality.

Most recently, it has fallen to the newest Justice, Ketanji Brown Jackson to counsel judicial restraint to maintain some semblance of stability, and to urge the Court to return “pressing national concern[s]” to the ballot box.⁹⁸ Justice Jackson may have optimism in voters’ ability to find common ground; certainly expanding the social safety net and repairing structural inequities will require broad popular support, including from those historically less able or willing to engage in democratic processes.⁹⁹ In order to contribute their “wisdom” to evaluate the “practicability” of “any remaining policy questions,”¹⁰⁰ voters first require the baseline protection of economic security that permits their meaningful participation.¹⁰¹

⁹⁷ See, e.g., Louis J. Capozzi III, *The Past and Future of the Major Questions Doctrine*, 84 OHIO ST. L.J. 191 (2023); *Loper Bright Enters. v. Raimondo*, 144 S. Ct. 2244, 2273 (2024) (overruling *Chevron* doctrine and declaring that “courts need not and under the [Administrative Procedure Act] may not defer to an agency interpretation of the law simply because a statute is ambiguous”); Amandeep S. Grewal, *Tax Regulations After Loper Bright*, 2024 MICH. ST. L. REV. (forthcoming 2025); Alan Rappeport, *Supreme Court Ruling Could Undermine Treasury Department and I.R.S.*, N.Y. TIMES (June 28, 2024), <https://www.nytimes.com/2024/06/28/us/politics/scotus-chevron-irs-treasury.html>. See generally *Biden v. Nebraska*, 600 U.S. 477 (2023) (invalidating student loan debt forgiveness plan under major questions doctrine).

⁹⁸ *CFPB v. Cmty. Fin. Servs. Assoc.*, 601 U.S. 416, 446 (2024) (Jackson, J., concurring); *Dandridge v. Williams*, 397 U.S. 471, 487 (1970) (“[T]he intractable economic, social, and even philosophical problems presented by public welfare assistance programs are not the business of this Court.”).

⁹⁹ See Elie Mystal, *Ketanji Brown Jackson Is Redefining What It Means to Be a Liberal Justice*, NATION (Aug. 5, 2024), <https://www.thenation.com/article/society/ketanji-brown-jackson-legal-philosophy/> (“[O]n the fundamental question of who gets to participate in our democracy, Jackson unequivocally says ‘everybody’ and is in favor of using the full power of the court to make that a reality.”); see also Linda Greenhouse, *Ketanji Brown Jackson Points to a Way Forward for the Court*, N.Y. TIMES (May 29, 2024), <https://www.nytimes.com/2024/05/29/opinion/supreme-court-judicial-restraint.html>.

¹⁰⁰ *CFPB*, 601 U.S. at 446.

¹⁰¹ See *Goldberg v. Kelly*, 397 U.S. 254, 264 (1970) (stating that without the minimum protections of procedural due process, a welfare recipient “deprive[d] of the very means by which to live while he waits” is unable to expend unavailable resources to “seek redress from the welfare bureaucracy.”); see also Nice, *supra* note 26, at 67, 93 (describing barriers to political participation faced by people experiencing poverty).

In light of these obstacles, some commentators propose legislative solutions that would bypass the need for the political theater that periodically threatens to shrink the social safety net: for example, by embedding auto-indexing controls so that Congress can “set it and forget it” as economic conditions—including crises—change over time.¹⁰² Others focus on the data analysis required to inform policymaking, acknowledging the limits of seemingly neutral optimal tax theory,¹⁰³ law and economics,¹⁰⁴ and economic modeling for real-world solutions.¹⁰⁵ Instead, they counsel pluralistic approaches to anti-poverty efforts,¹⁰⁶ including taking into account more than the usual quantifiable costs and benefits, and assigning greater weight to intangible benefits or burdens on a broader range of stakeholders.¹⁰⁷ Such approaches admirably seek to harness greater human creativity in imagining innovative solutions.¹⁰⁸

Attempts to automate poverty relief, close loopholes in the patchwork safety net, or improve data-informed policymaking are welcome and long overdue. Yet advocates must also continue explicitly to anticipate, recognize, and resist stigmatizing ideology that equates social safety net support with debilitating dependency, rather than assuming it away. Anti-poverty advocates must continue “to profess human decency as a core constitutional

¹⁰² Ariel Jurow Kleiman et al., *The Future of Anti-Poverty Legislation*, 112 GEO. L.J. 349, 349 (2023) (“proposing that legislators incorporate legislative triggers and indexing—what we call ‘automatic fiscal policies’—to make means-tested programs more responsive to changing economic and social circumstances.”).

¹⁰³ See generally Linda Sugin, *A Philosophical Objection to the Optimal Tax Model*, 64 TAX L. REV. 229 (2011) (discussing multiple tax reform models in addition to the optimal tax model).

¹⁰⁴ See Zachary Liscow, *Redistribution for Realists*, 107 IOWA L. REV. 495, 501 (2022) (discussing that contrary to the standard approach limiting redistribution to taxation, “policymakers typically should redistribute everywhere available—a ‘thousand points of equity’ approach”).

¹⁰⁵ See Sarah B. Lawsky, *How Tax Models Work*, 53 B.C. L. REV. 1657 (2012) (suggesting new redistribution efforts that cover different policy areas and domains that include real-world considerations).

¹⁰⁶ See, e.g., Daniel Shaviro, *Ten Observations about Income Inequality* (June 20, 2024), <https://ssrn.com/abstract=4871782> (suggesting a need for “continuing methodological pluralism, agnosticism, and humility” in thinking about income inequality).

¹⁰⁷ See, e.g., Daniel Hemel, *Wealth, Schmealth, Welfare, and Schmelfare*, 60 WAKE FOREST L. REV. (forthcoming 2025) (assessing traditional and alternative approaches to cost-benefit analysis that variously ignore or take into account both distributional benefits and deadweight losses).

¹⁰⁸ Lawsky, *supra* note 105, at 1692 (suggesting that modelling can be effective “by describing credible worlds from which we can extrapolate to our actual world”).

value” and “to eloquently speak out about the plight of the poor in this society.”¹⁰⁹ These efforts might go a long way toward injecting dignity back into the political conversation.¹¹⁰

CRT has long offered ways to do more than promote dignity but also challenge structural inequities embedded in racialized social, legal, and political systems. Crucially, CRT gives context and content to a potentially abstract and idealized notion of dignity by revealing the structures that reinforce inequality and threaten the humanity of individuals.¹¹¹ Informed by lived experiences of people traditionally marginalized from view through persistent structural racism,¹¹² CRT puts race at the center of legal analysis and builds on interest convergence among dominant and subordinated groups.¹¹³ CRT not only shifts the perspective, but also reveals patterns and disparities hidden from view—yet always known to exist by those most directly affected.

Empirically informed CRT, in particular—including increased collection of data by race and class—can make visible what has been ignored in legal doctrine, providing a basis for decision-making that deliberately takes racialized oppression into account.¹¹⁴ Dorothy Brown acknowledges that reliance on empirical data to change minds “[is] an attempt to reach out to White America”¹¹⁵ in an appeal to the self-interest of the most privileged in order to bring their influence to bear. Professor Brown and other critical

¹⁰⁹ Erwin Chemerinsky, *Making the Case for a Constitutional Right to Minimum Entitlements*, 44 MERCER L. REV. 525, 526 (1993).

¹¹⁰ See Nicholas A. Mirkay & Palma Joy Strand, *Economic Dignity Creates a Pro-Tax Story for Racial Equity*, 21 PITT. TAX REV. 109, 144 (2023).

¹¹¹ See generally KHIARA BRIDGES, *CRITICAL RACE THEORY: A PRIMER* (2018).

¹¹² See, e.g., Leticia M. Saucedo, *Critical Race Theory and the Low-Wage Workplace: The Story of Janitorial Services in California*, 66 ST. LOUIS U. L.J. 739 passim (2022).

¹¹³ See Nicholas A. Mirkay & Palma Joy Strand, *Interest Convergence and the Racial Wealth Gap: Defusing Racism’s Divide-and-Conquer via Universal Basic Income*, 110 KY. L.J. 693, 719 (2022) (critically assessing interest convergence and noting, “in practical terms democracy is all about interest convergence”).

¹¹⁴ Mario L. Barnes, *Empirical Methods and Critical Race Theory: A Discourse on Possibilities for a Hybrid Methodology*, 2016 WIS. L. REV. 443, 476 (2016).

¹¹⁵ Dorothy A. Brown, *Fighting Racism in the Twenty-First Century*, 61 WASH. & LEE L. REV. 1485, 1489 (2004).

tax scholars have shown the powers that be that, far from having equitable results, facially neutral tax rules further entrench existing inequality.¹¹⁶ For example, armed with evidence showing racially disparate effects of neutral algorithms used to identify taxpayers allegedly most likely to claim EITC improperly, Diane Kemker shows how the results amplify racist tropes effectively targeting Black male heads of households for greater scrutiny and potential penalty.¹¹⁷ Efforts are underway to interrupt such patterns, as the Center for Taxpayer Rights has initiated qualitative empirical research to capture the personal stories of taxpayers harmed by structural defects in a harsh penalty system.¹¹⁸ Still, the stories that rise to the surface are likely to be those of taxpayers with high-dollar-value cases who are able to resist long enough to find a low-income taxpayer clinic to advocate on their behalf. The same urgency remains to be brought to highlight the experiences of those who continue to suffer the harshest impacts of punitive workfare, SNAP, or Medicaid sanctions, as their small-dollar-value cases may fail to gain public visibility or even access to counsel to raise legal challenges.¹¹⁹

Larger efforts, such as the sustained work of Raj Chetty, in partnership with Opportunity Insights, analyzing IRS and U.S. Census data over time, have shown the positive impact of anti-discrimination laws and increased opportunity to reduce the income gap for Blacks; however, a large racial gap persists.¹²⁰ At the same time, poor whites have fallen further behind their wealthy white counterparts, although less so where the racial gap has decreased.¹²¹ Such results are susceptible of use to support a narrative of

¹¹⁶ See Jeremy Bearer-Friend, *Colorblind Tax Enforcement*, 97 N.Y.U. L. REV. 101, 145–56 (2022); Krysten Crawford, *IRS Confirms Stanford Study of Racial Bias in Audits*, STAN. INST. FOR ECON. POL'Y RSCH. (May 15, 2023), <https://siepr.stanford.edu/news/irs-confirms-stanford-study-racial-bias-audits>.

¹¹⁷ Kemker, *supra* note 77.

¹¹⁸ See generally *Transforming Tax Administration: Race & Equity in Tax Administration*, CTR. FOR TAXPAYER RTS., <https://taxpayer-rights.org/transforming-tax-administration-race-equity-materials/>.

¹¹⁹ Nice, *supra* note 26, at 93.

¹²⁰ OPPORTUNITY INSIGHTS, *CHANGING OPPORTUNITY: HOW CHANGES IN CHILDREN'S SOCIAL ENVIRONMENTS HAVE INCREASED CLASS GAPS AND REDUCED RACIAL GAPS IN ECONOMIC MOBILITY 1* (2024), https://opportunityinsights.org/wp-content/uploads/2024/07/ChangingOpportunity_Nontech.pdf (“The Black-white gap in upward mobility shrank significantly in the past 15 years, although racial gaps remain wide.”).

¹²¹ *Id.* at 2 (reporting “growing class gaps among white children”); *id.* at 4 (“The areas where Black children’s outcomes improved most tend to be the same areas where white children’s outcomes

government benefits flowing to the undeserving,¹²² feeding racial resentment by whites toward Blacks and dividing people against each other.¹²³ Alternatively, the same data can be viewed and interpreted through a CRT lens to make visible how minimum protections have worked both to improve Black lives and the lives of all people in communities that are prospering together.¹²⁴ Indeed, Ian Haney-Lopez has shown that appeals for anti-discrimination and reparation, safety nets and economic justice, are most effective when made in the context of both race and class simultaneously to bring people of different races together in part due to our shared economic plight.¹²⁵ Instead of amplifying stigma, divisive ideology might then give way to shared investment in the future, with community success—not sanction—as the motivation to work harder, together.

V. CONCLUSION

Decades of lived experience and aggregate data reveal the failure of our tattered safety net to eradicate poverty in one of the wealthiest countries in the world. Anti-poverty advocates must not underestimate the power of stigmatizing ideology—whether implemented through conditional spending legislation or the assumed efficiencies of the federal income tax system—to

deteriorated the least. This finding underscores that opportunity is not a zero-sum game, and improvements for Black children do not come at the expense of their white counterparts.”).

¹²² See, e.g., AM. ENTER. INST., *Race and Economic Opportunity in the United States*, LINKEDIN (Aug. 3, 2024), <https://www.linkedin.com/pulse/race-economic-opportunity-united-states-u8rfe> (arguing that Opportunity Insights’ research “reinforces AEI scholars’ long-standing argument that stable employment and married families are key to increasing upward mobility”).

¹²³ See David Simson, *Hope Dies Last: The Progressive Potential and Regressive Reality of the Antibalkanization Approach to Racial Equality*, 30 WM. & MARY BILL RTS. J. 613, 672 (2022) (“[A] governmental program need not be explicitly or predominantly based on race in how it distributes benefits or opportunities for racial threats to operate and to generate white racial resentment and white opposition.”).

¹²⁴ OPPORTUNITY INSIGHTS, *supra* note 120, at 6 (“Growing up in a thriving community—where the adults are employed, in good health, etc.—dramatically improves children’s outcomes, even holding fixed their own family’s situation.”).

¹²⁵ IAN HANEY-LOPEZ ET AL., *RACE-CLASS: A WINNING ELECTORAL NARRATIVE 1* (2018), <https://ianhaneylopez.com/race-class-narrative> (“Pointing out . . . strategic racism and tying it to the class war that wealthy reactionaries are winning . . . provides a way for people of all races to understand our noxious racial environment and makes clear that white people will gain more from cross-racial solidarity than from siding with billionaires.”).

deem more and more vulnerable people undeserving of the protection of an ever-shrinking social safety net. Efforts must continue to highlight human dignity and empathy, including the perspectives of those most directly affected—as well as the unsupportable assumptions that trigger punitive cuts to social support. Neil Buchanan counsels: “[a]s long as value judgments must be made, it is far better to own up to those judgments up front rather than hiding them behind an incoherent notion of efficiency”¹²⁶—one that pits economic winners against losers in a perpetual blame game with impossible rules. In tax, as elsewhere, such consciously critical efforts can assist us in making more transparent, likely more contested, but ultimately more honest decisions that can break down structural barriers to equality and economic security, whenever and wherever they appear.

¹²⁶ Neil H. Buchanan, *The Role of Economics in Tax Scholarship*, in BEYOND ECONOMIC EFFICIENCY IN UNITED STATES TAX LAW 11, 23 (David A. Brennan, Karen B. Brown & Darryll K. Jones eds., 2013).