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How to Design an Antiracist State and Local Tax System

Francine J. Lipman

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* William S. Boyd Professor of Law. William S. Boyd School of Law, University of Nevada, Las Vegas. As this Article was being reviewed by *Seton Hall Law Review* (SHLR) editors in New Jersey, less than 400 miles away a white supremacist consumed by racism targeted and terrorized a Black neighborhood grocery store in New York. The Buffalo massacre adds to escalating domestic terrorism rooted in racism. What can we do to help those whose lives have been lost or forever changed by this horrific mass murder? Antiracism is a commitment to regularly engage in actions to defeat racism. I commend the SHLR editors and staff for their commitment to and actions regarding this antiracism Article. I encourage all to embrace antiracism. "Racism has no home here." https://racismhasnohomehere.org.

I. INTRODUCTION

Since the first ship of enslaved African people landed in Virginia in 1619, racist policies in institutions, systems, structures, practices, and laws have ensured inequity for people of color.[1] These racist policies include every imaginable variant of injustice from slavery to lynching, to segregation, and to economic injustices, including those delivered through tax systems today.[2] Although facially color-blind, tax systems have long empowered the explosion of white wealth and undermined wealth accumulation for Black families and communities of color.[3] State and local tax systems, especially in the South, have deeply-rooted racist fiscal policies, including Jim Crow laws that continue to sustain and bolster racial inequality today.[4] These injustices have become even more obvious during the global pandemic.

As Americans struggle with COVID-19 and its aftermath, racial inequality has become even more salient.[5] People of color have suffered

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[1] *See* NIKOLE HANNAH-JONES, THE 1619 PROJECT: A NEW ORIGIN STORY 37 (2021) (starting with the first ship arriving in the British colony of Virginia with about 30 enslaved people from Africa, through the next 250 years and beyond, slavery impacts every aspect of contemporary American society and its racist policies); Kilolo Kijakazi, Jonathan Schwabish & Margaret Simms, *Racial Inequities Will Grow Unless We Consciously Work to Eliminate Them*, URB. INST.: URB. WIRE (July 1, 2020), https://www.urban.org/urban-wire/racial-inequities-will-grow-unless-we-consciously-work-eliminate-them.

[2] *See id. See generally* DOROTHY A. BROWN, THE WHITENESS OF WEALTH: HOW THE TAX SYSTEM IMPOVERISHES BLACK AMERICANS–AND HOW WE CAN FIX IT (2021) (unpacking embedded racism in tax systems that enhance white wealth at the expense of Black Americans).

[3] *See* Palma Joy Strand & Nicholas A. Mirkay, *Racialized Tax Inequity: Wealth, Racism, and the U.S. System of Taxation*, 15 NW. J.L. & SOC. POL'Y 265, 279 (2020) (describing the connection between racial wealth inequality and increasing structural racism in the U.S. tax system since the 1970s).

[4] *See* Vanessa Williamson, *The Long Shadow of White Supremacist Fiscal Policy*, TAX POL'Y CTR. (Nov. 4, 2020), https://www.taxpolicycenter.org/sites/default/files/publication/160684/brief-the-long-shadow-of-white-supremacist-fiscal-policy.pdf (examining oppressive economic policies after Reconstruction that bear witness to "a legacy of American racial apartheid"); MICHAEL LEACHMAN ET AL., CTR. ON BUDGET & POL'Y PRIORITIES, ADVANCING RACIAL EQUITY WITH STATE TAX POLICY (2018), https://www.cbpp.org/research/state-budget-and-tax/advancing-racial-equity-with-state-tax-policy (detailing long-standing racism in state and local tax systems with suggestions on how to mitigate them); Misha Hill et al., *Taxes and Racial Equity: An Overview of State and Local Policy Impacts*, INST. TAX'N & ECON. POL'Y (Mar. 31, 2021), https://itep.org/taxes-and-racial-equity/ (setting forth a historic framework for reviewing the heavy financial burden of state and local taxes on communities of color as compared to their white counterparts).

[5] *See* Valerie Wilson, *Inequities Exposed: How COVID-19 Widened Racial Inequities in Education, Health, and the Workforce*, ECON. POL'Y INST. (June 22, 2020), https://

higher rates of unemployment, impoverishment, infection, and death from COVID-19.[6] Moreover, scientists, economists, engineers, and doctors agree that racism, not race, is the cause of this disproportionate impact.[7] As we struggle to battle COVID-19 and rebuild from its devastation, federal, state, and local governments have used many tools, including tax systems. In 2021, the federal government, together with twenty-nine states and the District of Columbia, enacted significant tax cuts, with nearly all states cutting individual income tax rates and many tax systems meaningfully delivering expanded tax credits for workers and their children.[8]

With race increasingly front and center as a cause of economic inequality,[9] this Article applies Dr. Ibram X. Kendi's transformative concept of antiracism as the framework to rethink state and local tax systems to better serve all Americans.[10] Deriving an antiracist framework from decades of exhaustive research, Dr. Kendi, a professor

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www.epi.org/publication/covid-19-inequities-wilson-testimony/; Elise Gould & Valerie Wilson, *Black Workers Face Two of the Most Lethal Pre-Existing Conditions for Coronavirus—Racism and Inequality*, ECON. POL'Y INST. (June 1, 2020), https://www.epi.org/publication/black-workers-covid/ (describing record unemployment, business demise, wage and benefits gaps, and demands to serve as essential workers).

[6] *Racial Data Dashboard*, ATL.: COVID TRACKING PROJECT, https://covidtracking.com/race/dashboard (last updated Mar. 7, 2021); Rhitu Chatterjee, *How the Pandemic Is Widening the Racial Wealth Gap*, NAT'L PUB. RADIO (Sept. 18, 2020, 5:01 AM), https://www.npr.org/sections/health-shots/2020/09/18/912731744/how-the-pandemic-is-widening-the-racial-wealth-gap.

[7] Bret Milano, *With COVID Spread, 'Racism—Not Race—Is the Risk Factor*, HARV. GAZETTE (Apr. 22, 2021), https://news.harvard.edu/gazette/story/2021/04/with-covid-spread-racism-not-race-is-the-risk-factor/ (noting that since the beginning of the pandemic experts have noted the disproportionate toll of the pandemic on communities of color as compared to their white neighbors); Kijakazi et al., *supra* note 1.

[8] *See* Richard C. Auxier, *How Post-Pandemic Tax Cuts Can Affect Racial Equity*, URB. INST. (Feb. 9, 2022), https://www.urban.org/research/publication/how-post-pandemic-tax-cuts-can-affect-racial-equity-0; *FACT SHEET: The American Rescue Plan Will Deliver Immediate Economic Relief to Families*, U.S. DEP'T TREASURY (Mar. 18, 2021), https://home.treasury.gov/news/featured-stories/fact-sheet-the-american-rescue-plan-will-deliver-immediate-economic-relief-to-families; *Assistance for American Families and Workers*, U.S. DEP'T TREASURY, https://home.treasury.gov/policy-issues/coronavirus/assistance-for-American-families-and-workers (last visited Feb. 27, 2022); American Rescue Plan Act of 2021, Pub. L. No. 117-2, 135 Stat. 4 (2021).

[9] 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/ (noting that any plan to eliminate the racial wealth gap resulting from centuries of discrimination and exploitation of Black Americans would require heavy progressive taxation of the concentrated wealth).

[10] *See generally* IBRAM X. KENDI, HOW TO BE AN ANTIRACIST (2019) [hereinafter ANTIRACIST].

of history, international relations, and an award-winning author, has facilitated a broader understanding of racism, its poisonous consequences, and most importantly provides antiracist tools to dismantle it.[11]

II. ANTIRACIST FRAMEWORK

Framing matters. The framing of any discussion or analysis, like a camera, will necessarily impose a specific, focused view. This Article uses antiracist framing, as developed by Dr. Kendi in his recent collection of books, to demonstrate through historical and personal lenses how endemic and pervasive racism has been and is currently present in every facet of American life. Dr. Kendi derives and details a number of tools to apply an antiracist framework that inform the application of a uniform critical analysis. The tools include and build on a series of definitions. These definitions and their interrelationships follow.

A. *Antiracist Definitions*

The definitions that Dr. Kendi applies reveal much about how racism has and does operate in American society. As a trained historian, Dr. Kendi's framework focuses on history and policies that underlie the status quo of racism. Dr. Kendi intentionally chooses "policies" as his focus because it is the central agent of power and "cuts to the core of racism."[12] Dr. Kendi notes that we all have the power to discriminate, but only "an exclusive few" have the power to make policy.[13] In this context, policy is broadly defined to include "written and unwritten laws, rules, procedures, processes, regulations, and guidelines that govern people."[14] Dr. Kendi notes that "racist policy" is a more exacting term than "racist institutions," "racist structures," or "racist systems."[15] Dr. Kendi describes the later terms as redundant because "racism itself

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[11] *Id.* at 10; *see also* IBRAM X. KENDI, STAMPED FROM THE BEGINNING 9, 11 (2016); JASON REYNOLDS & IBRAM X. KENDI, STAMPED (FOR KIDS): RACISM, ANTIRACISM, AND YOU (2021) (adopted by Sonja Cherry-Paul) (beginning with origins of anti-Blackness and colonialism in medieval Europe through the founding of America and modern day racism in education, justice, and financial systems, children learn where racist ideas came from, how to identify them, and how to use antiracist strategies to stamp out racist ideas and policies).

[12] ANTIRACIST, *supra* note 10, at 17–19 (setting forth and explaining select definitions).

[13] *Id.* at 19.

[14] *Id.* at 18.

[15] *Id.*

is institutional, structural, and systemic".[16] "Racist policy" focuses on "racist power" rather than on individual "racist discrimination."[17] "Racist discrimination" results from individuals carrying out "racist policies."[18] "Racist policies" through "racist discrimination" undermine equality of racial groups or do not protect one racial group from another.

Specifically, "[a] racist policy is any measure that produces or sustains racial inequity,"[19] and "racial inequity" occurs "when two or more racial groups are not standing on approximately equal footing."[20] In contrast, racial equity occurs when "two or more racial groups are standing on relatively equal footing."[21] Similarly, an "antiracist policy" is any measure that produces or sustains racial equity.[22] Perhaps most notably, Dr. Kendi argues that there is no such thing as a nonracist or race-neutral policy.[23] He argues that "[e]very policy in every institution in every community in every nation is producing or sustaining either racial inequity or equity between racial groups."[24] Similarly, in her testimony before Congress, Dr. Valerie Rawlston Wilson, Director of the Economic Policy Institute on Race, Ethnicity, and the Economy, affirmed that:

> [N]o policy is truly race-neutral. Even when a policy is race-neutral on its face, the implementation of that policy often is not because it is being applied to racially stratified social and economic structures. All policy essentially shapes how the nation's income and wealth will flow and, as a result, how access and opportunity will flow.[25]

Americans have justified racial inequity for centuries with racist ideas that one racial group is inferior or superior to another racial group.[26] Thomas Jefferson, who served America as a Founding Father, principal author of the Declaration of Independence, Secretary of State, Vice President, and President, stated that "the blacks . . . are inferior to

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16 *Id.*

17 *Id.* at 19.

18 ANTIRACIST, *supra* note 10, at 19.

19 *Id.* at 18.

20 *Id.*

21 *Id.*

22 *Id.*

23 *Id.*

24 ANTIRACIST, *supra* note 10, at 18.

25 Wilson, *Inequities Exposed*, *supra* note 5.

26 ANTIRACIST, *supra* note 10, at 20 (setting forth and explaining select definitions).

the whites in the endowments both of body and mind."[27] Racist ideas have given rise to racist policies that have been used "to systematically exclude, marginalize, exploit, and generate unequal economic outcomes, while also being used to justify and normalize those unequal outcomes."[28] In contrast, antiracist ideas are grounded on the equality of racial groups. Antiracist ideas arise from the premise that every racial group is equal and that there is nothing inferior, "right or wrong with any racial group."[29]

Those with "racist power"[30] have argued since the 1960s civil rights movements that any discrimination based on race is racist.[31] For example, affirmative action policies that reduce racial inequities have been condemned and even outlawed as "reverse discrimination" and "racist."[32] But race-based discrimination that reverses inequity to assist underrepresented groups is necessary to remedy past discrimination.[33] If racial discrimination creates equity, it is antiracist. In 1978, U.S. Supreme Court Associate Justice Harry A. Blackmun explained that "[i]n order to get beyond racism, we must first take account of race. . . . And in order to treat some persons equally, we must treat them differently."[34] Applying this analysis and framework, it is easy to understand that President Biden's commitment to nominate the first Black women to the U.S. Supreme Court in 2022 is a necessary antiracist policy and not reverse discrimination or racist.

Racist power perpetuates racism by demanding race neutral or color-blind policies and arguing against antiracist policies.[35] But under Dr. Kendi's framework, "race-neutral" and "color-blind" policies are either racist or antiracist because the concept of neutral policies does not exist.[36] Policies that are race neutral or color-blind can perpetuate,

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27 THOMAS JEFFERSON, NOTES ON THE STATE OF VIRGINIA 150 (Bos.: Lily & Wait, 1832).

28 Valerie Wilson, *Racism and the Economy*, ECON. POL'Y INST.: WORKING ECON. BLOG (Nov. 21, 2020), https://www.epi.org/blog/racism-and-the-economy-fed/ (noting how absurd it is that a social construct like superficial aspects of physical appearance would be statistically significant for economic outcomes like wages, employment, income, and wealth).

29 ANTIRACIST, *supra* note 10, at 20.

30 *Id.* at 19, 238 (describing race and racism as power constructs that are neither natural nor godly and racist policy and racist policymakers as racist power).

31 *Id.* at 20.

32 *Id.*

33 *Id.* at 19.

34 *Id.*

35 ANTIRACIST, *supra* note 10, at 20.

36 *Id.*

sustain, and even exacerbate racist policies.[37] Similarly, race neutral and color-blind policies can be antiracist if they perpetuate, sustain, or even bolster other antiracist policies.[38] Dr. Kendi defines all policies, including race neutral, color-blind, and reverse discrimination policies as either "racist policies" or "antiracist policies."[39] Simply put, policies that produce or sustain racial inequity are racist policies and policies that produce or sustain racial equity are antiracist policies.[40]

B. *Antiracism Building Blocks*

Using these definitions, Dr. Kendi lays bare the foundational building blocks of racism and the tools to dismantle it. Dr. Kendi finds that racism is a collection of racist policies that lead to racial inequities that arise from and are substantiated by racist ideas.[41] Therefore, the only way to combat racism is through antiracist ideas that lead to antiracist policies that result in racial equity. Antiracist ideas lead to antiracist policies that often must discriminate in favor of one race to counterbalance racial inequity that arises from racist policies that emerge out of and are sustained by racist ideas.[42] And therefore, race-neutral and color-blind ideas or policies are neither and fall into the categories of racist or antiracist.

Dr. Kendi's definitional guideposts provide a timely framework for reviewing state and local tax systems. On the first day of his administration, President Biden signed an executive order to advance "equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality."[43] The order includes a directive to all federal executive departments and agencies to redress racial inequities in their policies and programs and creates an interagency working group tasked with improving access to federal data that measures and advances racial equity.[44] The order directs these government units, including the U.S. Treasury, to center racial equity as integral to the design, planning, structure, and implementation of all

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[37] *Id.*

[38] *Id.*

[39] *Id.*

[40] *See id.*

[41] ANTIRACIST, *supra* note 10, at 20.

[42] *Id.*

[43] Exec. Order No. 13,985, 86 Fed. Reg. 7009 (Jan. 20, 2021).

[44] *Id.*

current public policies.[45] In summary, President Biden has charged all federal executive departments and agencies with developing antiracist policies and programs.

III. APPLYING AN ANTIRACIST FRAMEWORK TO STATE & LOCAL TAX SYSTEMS

A. *Legislative Foundations of State & Local Tax Systems*

1. Brief Historical Overview

President Biden's executive order to center racial equity in federal policy is in sharp contrast to America's history of resistance to taxation generally, especially when designed to foster racial equity.[46] After the Civil War, Reconstruction governments focused on rebuilding America through antiracist policies, including broad-based public services using tax revenues assessed on wealth.[47] Reactions to these post-war efforts by white male supremacist leaders were swift and robust.[48] These leaders pushed back on antiracist policies and shifted tax burdens from wealthy whites to communities of color and impoverished white households necessarily reducing revenues and social services for these communities.[49] "On average, white schools received two to three times the per-pupil funding of black schools. But black tax rates were between two and six times as high white tax rates."[50]

As democratic antiracist policies began to take root, southern states led by white, wealthy legislators passed new constitutions to undermine expanded rights and ensure that any antiracist policy changes to racist tax systems would be nearly impossible by requiring supermajority votes.[51] In 1890, wealthy white Mississippi landowners passed the oldest constitutional supermajority requirement in the

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[45] Daniel Kuehn, *Biden's Executive Order Injects Racial Equity into Regulatory Review*, URB. INST.: URB. WIRE (Mar. 18, 2021), https://www.urban.org/urban-wire/bidens-executive-orders-inject-racial-equity-regulatory-review; *see also* Lisa D. Cook, *Racism Impoverishes the Whole Economy*, N.Y. TIMES (Nov. 18, 2020), https://www.nytimes.com/2020/11/18/business/racism-impoverishes-the-whole-economy.html; Andre M. Perry & Darrick Hamilton, *Just As We Score Policies' Budget Impact, We Should Score for Racial Equity as Well*, BROOKINGS (Jan. 25, 2021), https://www.brookings.edu/blog/the-avenue/2021/01/25/just-as-we-score-policies-budget-impact-we-should-score-for-racial-equity-as-well/.

[46] *See* Williamson, *The Long Shadow of White Supremacist Fiscal Policy*, *supra* note 4.

[47] *Id.*

[48] *Id.*

[49] *Id.*

[50] *Id.*

[51] *Id.*

country, requiring three-fifths of both legislatures to approve all state tax increases while simultaneously disenfranchising nearly all Black voters.[52] Arkansas and Louisiana followed Mississippi by adopting supermajority voting requirements to raise revenues.[53] After the Great Migration and Civil Rights Movement, enhanced voting requirements and restrictions similar to the supermajority spread across America for tax increases.[54]

Jim Crow laws from the late 1800s through the 1960s denied Black individuals the right to vote and disenfranchised southern Black communities.[55] This was particularly true in the deep southern states of Louisiana, Mississippi, Alabama, Georgia, and South Carolina.[56] Because people of color had little to no representation in state legislatures, white lawmakers developed racist tax policies, among others, that have sustained white supremacy even in states where Black individuals constitute a significant percentage of the population.[57] As restrictive voting requirements and lack of representation spread, state and local governments were unable to raise taxes for necessary revenue. In response, state governments increasingly relied on non-tax revenue—most notably high fees and fines.[58] Because these fines and fees are often connected to lack of access to justice or violations of law, the consequences have been criminalization for those that are unable to afford to make the payments,[59] further undermining their rights,

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[52] LEACHMAN ET AL., *supra* note 4, at 1, 8 ("Indeed, the delegate who introduced the supermajority requirement later said of the convention delegates, 'All understood and desired that some scheme would be evolved which would effectually remove from the sphere of politics in the State the ignorant and unpatriotic negro.'"); *see also* J. Morgan Kousser, *Separate but* Not *Equal: The Supreme Court's First Decision on Racial Discrimination in Schools*, 46 J.S. HIST. 17 (1980); J. Morgan Kousser, *Making Separate Equal: Integration of Black and White School Funds in Kentucky*, 10 J. INTERDISC. HIST. 399 (1980).

[53] LEACHMAN ET AL., *supra* note 4, at 1–2.

[54] *See* Williamson, *The Long Shadow of White Supremacist Fiscal Policy*, *supra* note 4.

[55] Russell Brooker, *Voting Rights for Blacks and Poor Whites in the Jim Crow South*, AMERICA'S BLACK HOLOCAUST MUSEUM, https://www.abhmuseum.org/voting-rights-for-blacks-and-poor-whites-in-the-jim-crow-south/ (last visited Apr. 21, 2022).

[56] *Id.*

[57] *Cf. id.* (describing how white people in power in the South kept African Americans from voting thus affording African Americans no say in the election of politicians).

[58] Kelsey Shoub et al., *Fines, Fees, Forfeitures, and Disparities: A Link Between Municipal Reliance on Fines and Racial Disparities in Policing*, 49 POL'Y STUD. J., 835, 843 (2021); Akheil Singla et al., *Race, Representation, and Revenue: Reliance on Fines and Forfeitures in City Governments*, 56 URB. AFFS. REV. 1132, 1133 (2020).

[59] U.S. COMM'N ON CIV. RTS., TARGETED FINES AND FEES AGAINST COMMUNITIES OF COLOR: CIVIL RIGHTS AND CONSTITUTIONAL IMPLICATIONS 1–5 (2017) https://www.usccr.gov/files/pubs/

including voting rights and racial equity.[60] This historical foundation has fostered, sustained, and exacerbated racial inequity in state and local tax systems for centuries. Due to high hurdles for change, many racist tax policies, including supermajority voting requirements, have endured through today.[61]

On average, almost 20 percent of states' current general revenue comes from non-tax resources.[62] In the aggregate, non-tax resources provide more revenue to states in America than income taxes.[63] This reliance on fees and fines marginalizes communities of color. The path from unpaid fees and fines to incarceration for communities of color is best demonstrated by the 2015 U.S. Department of Justices' report on persistent civil rights violations in Ferguson, Missouri.[64] In August 2014, in a suburb outside of St. Louis, Missouri, a Ferguson police officer shot and killed Michael Brown, an eighteen-year-old Black man, claiming self-defense.[65] The police officer fired twelve shots at Michael Brown, but he was never charged despite several state and federal investigations.[66] Nevertheless, a federal report noted that

> Ferguson's law enforcement practices are shaped by the City's focus on revenue rather than by public safety needs. This emphasis on revenue has compromised the institutional

2017/Statutory_Enforcement_Report2017.pdf; *see also* KAARYN S. GUSTAFSON, CHEATING WELFARE: PUBLIC ASSISTANCE AND THE CRIMINALIZATION OF POVERTY (2011).

60 *See* CAMILLE WALSH, RACIAL TAXATION: SCHOOLS, SEGREGATION, AND TAXPAYER CITIZENSHIP, 1869–1973, at 3–4 (2018) (describing how tax policy and taxpayer identity were built on the foundations of white supremacy and intertwined with white privilege).

61 Cortney Sanders, *States Can Create Antiracist and Equitable Tax* Codes, CTR. ON BUDGET & POL'Y PRIORITIES (Apr. 12, 2021, 11:20 AM), https://www.cbpp.org/blog/states-can-create-antiracist-and-equitable-tax-codes (demonstrating that historic and ongoing racism can be mitigated with antiracist remedies including removing tax reform barriers like supermajority voting requirements).

62 TAX POL'Y CTR., *What Are the Sources of Revenue for State Governments?*, *in* THE TAX POLICY CENTER'S BRIEFING BOOK (2020), https://www.taxpolicycenter.org/briefing-book/what-are-sources-revenue-state-governments.

63 *Id.*

64 "The Department's investigation revealed that the financial relationship between Ferguson's municipal courts and its police department resulted in the disproportionate ticketing, fining, and jailing of its African American residents. The Department also found evidence of intentional racism in these practices." U.S. DEP'T OF JUST.: CIV. RTS. DIV., INVESTIGATION OF THE FERGUSON POLICE DEPARTMENT 1, 2 (2015).

65 *Shooting Death of Michael Brown — Ferguson, MO*, U.S. DEP'T OF JUST.: CMTY. RELS. SERV. (2014) https://www.justice.gov/crs/timeline-event/shooting-death-michael-brown-ferguson-mo; U.S. DEP'T OF JUST.: CIV. RTS. DIV., REPORT REGARDING THE CRIMINAL INVESTIGATION INTO THE SHOOTING DEATH OF MICHAEL BROWN BY FERGUSON, MISSOURI POLICE OFFICER DARREN WILSON 7, 86 (2015).

66 *Id.*

> character of Ferguson's police department, contributing to a pattern of unconstitutional policing, and has also shaped its municipal court. . . . Further, Ferguson's police and municipal court practices both reflect and exacerbate existing racial bias.[67]

2. Status Quo State & Local Tax Legislative Policies

People of color are much less likely to hold seats in local government relative to their share of the population as compared to their white counterparts.[68] In 2018, Black Americans comprised 13 percent of the population but only 9 percent of state legislators.[69] Similarly, Asian, Latinx, and Indigenous individuals, who comprised about 25 percent of Americans in 2018, only comprised 7 percent of state lawmakers.[70] This lack of representation, together with supermajority requirements for all or certain state tax increases in fifteen states, sustains racist tax policies today.[71] While most states only demand supermajority voting requirements in limited circumstances (e.g., Arkansas doesn't require a supermajority vote for sales and alcohol tax increases; Michigan only requires a supermajority vote for property tax increases),[72] seven states require a supermajority vote of each legislative body in addition to the Governor's approval for any tax increase.[73] The seven states requiring supermajority votes for tax increases or new taxes include Arizona, California, Delaware, Louisiana, Mississippi, Nevada, and Oregon.[74] Delaware, Mississippi, and Oregon currently require a three-fifths approval from both legislative bodies, while Arizona, California, Nevada, and Louisiana currently require a

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[67] INVESTIGATION OF THE FERGUSON POLICE DEPARTMENT, *supra* note 64, at 2.

[68] About 1 in 6 Black residents live in communities where their representation in local government is less than their percentage of the population. The ratio is 1 in 66 for their white counterparts. LEACHMAN ET AL., *supra* note 4, at 6.

[69] *Id.*

[70] *Id.*

[71] Roxanne Bland, *Are State Supermajority Requirements to Enact New Taxes a Good Idea?*, FORBES (Apr. 10, 2020, 10:53 AM), https://www.forbes.com/sites/taxnotes/2020/04/10/are-state-supermajority-requirements-to-enact-new-taxes-a-good-idea/?sh=206e36513332 (noting that Colorado imposes the additional requirement that voters approve the tax measure).

[72] *Id.*

[73] *Policy Basics: State Supermajority Rules to Raise Revenues*, CTR. ON BUDGET & POL'Y PRIORITIES (Feb. 5, 2018), https://www.cbpp.org/research/state-budget-and-tax/state-supermajority-rules-to-raise-revenues.

[74] *Id.*

two-thirds vote of each state legislative body.[75] Given the fiscal challenges supermajorities impose on states trying to navigate economic and environmental challenges, they are disfavored by credit rating agencies.[76] Therefore, these states are more likely to suffer higher interest rates on bonds to fund capital improvements and downgrades of state creditworthiness. These adverse fiscal consequences can impose even higher pressure on state revenues.

3. Antiracist Legislative Voting Tax Policies

States should reform or repeal supermajority requirements for increasing taxes, imposing new taxes, or eliminating targeted racist tax benefits. Removing artificial and extensive constraints on revenue raising allows for justified tax increases on those who can best afford it to finance necessary public investments in education, healthcare, housing, and food security that promote shared economic prosperity. By removing limits on tax revenues, states can minimize or even eliminate fines and fees that disproportionately push people of color into debt, the cycle of impoverishment, unwarranted engagement with the criminal justice system, and even incarceration and death.[77]

Finally, representation, political engagement, and voting rights matter.[78] When all voices are at the table, more perspectives will be represented and heard. This broader input should mitigate missteps, including unseen costs and notable issues, and maximize benefits before laws are enacted. When communities of color are represented in state and local governments as legislators, the economic hurdles that these

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75 *Id.*

76 MICHAEL LEACHMAN ET AL., CTR. ON BUDGET & POL'Y PRIORITIES, SIX REASONS WHY SUPERMAJORITY VOTING REQUIREMENTS TO RAISE TAXES ARE A BAD IDEA (2012), https://www.cbpp.org/research/six-reasons-why-supermajority-requirements-to-raise-taxes-are-a-bad-idea (noting that states with supermajority voting requirements to raise taxes are more likely to have lower bond ratings and therefore higher costs to borrow); *see also* KIM RUEBEN & MEGAN RANDALL, SUPERMAJORITY BUDGET AND TAX RULES: HOW VOTING REQUIREMENTS AFFECT BUDGETS (2017), https://www.urban.org/sites/default/files/publication/94936/supermajority-budget-and-tax-rules_5.pdf.

77 U.S. COMM'N ON CIV. RTS., TARGETED FINES AND FEES AGAINST COMMUNITIES OF COLOR: CIVIL RIGHTS AND CONSTITUTIONAL IMPLICATIONS 1–5 (2017) https://www.usccr.gov/files/pubs/2017/Statutory_Enforcement_Report2017.pdf; *see also* GUSTAFSON, *supra* note 59.

78 *See* Jenifer Fernandez Ancona, *Why Our Government Representation Should Look More Like Us*, HILL (Sept. 22, 2016, 8:01 AM), https://thehill.com/blogs/pundits-blog/campaign/297143-why-our-representation-in-government-should-look-more-like-us (noting that practically no women of color nationally are involved in federal law-making and legislation because roughly 80 percent of federal lawmakers are white men).

communities may face can be addressed before they become costly.[79] As Heather McGhee writes in her seminal book *The Sum of Us*, the economy is not a fixed sized pie that is divided into pieces to be distributed among all individuals.[80] When diversity is embraced and antiracism policies are implemented, trust and participation in government and business increases, which allows everyone to benefit exponentially.[81] Economist and Professor of International Relations, Dr. Lisa D. Cook has found, in her research, that the exclusion of Black individuals and female workers from technological innovation industries has cost the economy almost $1 trillion or 4.4 percent of gross domestic product annually.[82] Research in economics, finance, management, political science, social science, medicine, liberal arts, and tax law demonstrates that diversity, equity, and inclusion not only benefits all, but its absence has cost all.[83]

B. *State & Local Tax Systems Generally*

State and local governments wield enormous economic power. They raise and collect nearly one-third of all U.S. taxes; distribute almost one-half of domestic government expenditures; and own more than 90 percent of non-defense infrastructure (e.g., transit—including airports and roads—and water systems).[84] State and local governments fund virtually all education opportunities including more than 90 percent of K–12 school funding and most of the funding for public colleges and universities.[85] How states and localities raise and spend collected revenue—including what, how, where, and who they tax, fine, assess, fund and finance—has major implications for racial equity.

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79 *See* Sophie Vaughan, *Why Representation in Politics Actually Matters*, TEEN VOGUE (Mar. 17, 2020), https://www.teenvogue.com/story/why-representation-in-politics-matters.

80 *See* HEATHER MCGHEE, THE SUM OF US: WHAT RACISM COSTS EVERYONE AND HOW WE CAN PROSPER TOGETHER, at xxi–xxiii (2021) (describing the zero-sum paradigm of a steady state static economy to be distributed between and among individuals as counterproductive, racist, and misinformed).

81 *See* Fresh Air, *'Sum of Us' Examines the Hidden Cost of Racism—for Everyone*, NAT'L PUB. RADIO (Feb. 17, 2021, 1:45 PM), https://www.npr.org/2021/02/17/968638759/sum-of-us-examines-the-hidden-cost-of-racism-for-everyone. *See generally id.* (marshalling a wealth of economic date demonstrating that racism costs all of us and presenting collaborative resolutions that benefit all of us).

82 HYUN SUNG KHAN, THE ACCIDENTAL ECONOMIST, FIN. & DEV. 48, 51 (Dec. 2020), https://www.imf.org/external/pubs/ft/fandd/2020/12/pdf/profile-of-economist-lisa-cook-michigan-state-university.pdf (featuring Dr. Lisa Cook, renowned economist and scholar).

83 *Id.* (noting that "You can't be what you can't see").

84 LEACHMAN ET AL., *supra* note 4, at 11.

85 *Id.*

Unfortunately, state and local tax policies have generally sustained, extended, or cemented racial inequity that has been hand-in-glove with tax policy for centuries.

As Dr. Kendi and other experts have explained, all policies are either racist or antiracist.[86] Accordingly, state and local tax policies are neither color-blind nor race neutral.[87] Tax systems have critical consequences for racial equity because governments need substantial revenues to fund meaningful investments in services and institutions.[88] Adequate funding for education, employment, health services, food security, childcare, affordable housing, and other critical needs is essential for moving toward racial equity.[89] The structure for how tax revenues are raised similarly can cause, sustain, and exacerbate racial inequity or move communities toward racial equity.[90] Regressive tax policies that maximize state and local tax burdens for lower income families and minimize tax burdens for high-income households struggle to raise adequate revenues and exacerbate racial inequity.[91]

For centuries most state and local tax systems across America have actually worsened racial inequities. Forty-five out of fifty state tax systems require lower-income households to pay a larger share of their income in taxes than higher-income households.[92] Nationally, the lowest 20 percent of income households pay a much higher percentage of their income in state and local taxes on average than the top 1 percent of income households.[93] In eight states, households in the lowest income quintile pay three times more of their income, on average, than the richest households.[94] In Washington, Florida, and Nevada, the

[86] ANTIRACIST, *supra* note 10, at 18 (finding that "[e]very policy in every institution in every community in every nation is producing or sustaining either racial inequity or equity between racial groups").

[87] Sanders, *States Can Create Antiracist and Equitable Tax Codes*, *supra* note 61.

[88] *Id.*

[89] *Id.*

[90] *Id.*

[91] *Id.*

[92] Hill et al., *supra* note 4, at 8.

[93] MEG WIEHE ET AL., WHO PAYS? A DISTRIBUTIONAL ANALYSIS OF THE TAX SYSTEMS IN ALL 50 STATES 1 (6th ed. 2018), https://itep.sfo2.digitaloceanspaces.com/whopays-ITEP-2018.pdf.

[94] *Id.* at 7 fig.4 (setting forth effective tax rates for the top ten most regressive states including all but Oklahoma and Illinois with multiples greater than three times when comparing the rates for the lowest income households with the highest income households).

lowest income quintile households pay five times more of their income in taxes than the top 1 percent.[95]

Centuries of American tax policies have advantaged and privileged white individuals and undermined income opportunities and wealth accumulation for individuals of color.[96] Racist policies have led to a significant overconcentration of wealth and income in white households and a dearth of wealth and income in households of color.[97] White families have eight times the median wealth of Black families and five times the median wealth of Latinx families.[98] White households comprise 60 percent of all American households, but own 84 to 87 percent of aggregate wealth.[99] The wealthiest 10 percent of white households own 65 percent of all wealth.[100] By contrast, Black families comprise 13.4 percent of all households but own only 4 percent of aggregate wealth.[101]

Even before the global pandemic, white household median income of $76,057 was more than 150 percent of Black household median income of only $46,073.[102] Similarly, as of 2019, the top 20 percent of all income earners were disproportionately white while people of color

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95 *Id.* (setting forth effective tax rates for the top ten most regressive states including Washington, Florida, and Nevada with multiples greater than five times when comparing the rates for the lowest income households with the highest income households).

96 *See* Strand & Mirkay, *supra* note 3; Francine J. Lipman, Nicolas A. Mirkay & Palma Joy Strand, *U.S. Tax Systems Need Anti-Racist Restructuring*, 168 TAX NOTES FED. 855, 857–58 (2020).

97 *See* Strand & Mirkay, *supra* note 3.

98 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.htm.

99 *Wealthiest 10 Percent of White Households Own Two-Thirds of U.S. Wealth*, CTR. ON BUDGET & POL'Y PRIORITIES, https://www.cbpp.org/wealthiest-10-percent-of-white-households-own-two-thirds-of-us-wealth (last visited Feb. 21, 2022); Emily Moss et al., *The Black-White Wealth Gap Left Black Households More Vulnerable*, BROOKINGS (Dec. 8, 2020), https://www.brookings.edu/blog/up-front/2020/12/08/the-black-white-wealth-gap-left-black-households-more-vulnerable/.

100 *Wealthiest 10 Percent of White Households Own Two-Thirds of U.S. Wealth*, *supra* note 99.

101 Moss et al., *supra* note 99.

102 Valerie Wilson, *Racial Disparities in Income and Poverty Remain Largely Unchanged Amid Strong Income Growth in 2019*, ECON. POL'Y INST. (Sept. 16, 2020), https://www.epi.org/blog/racial-disparities-in-income-and-poverty-remain-largely-unchanged-amid-strong-income-growth-in-2019/.

were disproportionately impoverished.[103] Black households endure poverty rates over 18 percent, even after noncash and tax benefits, while Latinx households suffer rates of nearly 19 percent.[104] Almost 12 percent of Asian households endure poverty while only 8 percent of white households experience poverty.[105] Tragically, racial inequities soar for children of color,[106] who are far more likely to suffer poverty than their white counterparts.[107] Black, Latinx, and Indigenous children have the highest rates of poverty at 27, 21, and 21 percent, respectively, compared to only 8 percent for white children.[108]

State and local tax systems exacerbate racial inequality by taxing low-income households at higher rates than higher income households.[109] Since households of color are more likely to have low incomes, they tend to pay larger shares of their incomes in state and local taxes than white households.[110] Regressive tax structures exacerbate racial inequality as incomes become more unequal after state and local taxes.[111] Progressive tax systems reduce racial inequity

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[103] SARAH A. DONOVAN ET AL., CONG. RSCH. SERV., R44705, THE U.S. INCOME DISTRIBUTION: TRENDS AND ISSUES 10 (Jan. 13, 2021), https://sgp.fas.org/crs/misc/R44705.pdf (describing rising income inequality since the 1970s). *See generally* Liana Fox, *Current Population Reports*, *in* THE U.S. CENSUS BUREAU: THE SUPPLEMENTAL POVERTY MEASURE: 2019 (2020), https://www.census.gov/content/dam/Census/library/publications/2020/demo/p60-272.pdf.

[104] *See* Liana Fox, *Current Population Reports*, *in* THE U.S. CENSUS BUREAU: THE SUPPLEMENTAL POVERTY MEASURE: 2019, at 5 fig.3 (2020), https://www.census.gov/content/dam/Census/library/publications/2020/demo/p60-272.pdf (finding poverty rates of 18.3 percent for Black households and 18.8 percent for Hispanic (any race) households).

[105] *Id.*; Areeba Haider, *The Basic Facts About Children in Poverty*, CTR. FOR AM. PROGRESS (Jan. 12, 2021), https://www.americanprogress.org/article/basic-facts-children-poverty/ (detailing that because of systemic inequality, America, one of the wealthiest countries in the world, has one of the highest rates of childhood poverty of all OECD countries and children are approximately one third of all impoverished people).

[106] *Id.*

[107] *See id.*

[108] *Id.*

[109] "State and local tax systems exacerbate growing income inequality precisely because they capture a greater share of income from low- or moderate-income taxpayers. Moreover, regressive state tax codes overall result in higher tax rates on communities of color, which are more represented in the low-, moderate- and middle-income quintiles, thereby worsening racial income and wealth divides." INST. ON TAX'N & ECON. POL'Y (ITEP), FAIRNESS MATTERS: A CHART BOOK ON WHO PAYS STATE & LOCAL TAXES (2019), https://itep.sfo2.digitaloceanspaces.com/030619-Fairness-Matters-Chart-Book_ITEP.pdf; *see also* WIEHE ET AL., *supra* note 93, at 1–2.

[110] *See* ITEP, *supra* note 109; WIEHE ET AL., *supra* note 93, at 12

[111] CARL DAVIS, MISHA HILL & MEG WIEHE, INST. ON TAX'N AND ECON. POL'Y, TAXES & RACIAL EQUITY: AN OVERVIEW OF STATE & LOCAL POLICY IMPACTS 13 (2021).

by taxing households with the highest incomes, who are predominately white, at higher rates than their lower-income counterparts.[112] State policymakers using these antiracist tax policies can reduce racial inequity by reducing income and wealth gaps, poverty, and by expanding economic opportunities, investments, and social safety nets. Communities should pursue antiracist policies that tax higher income and wealthy households to a greater degree than households with lower incomes raising revenue for broad based investments that target racial inequities.

Tax policies that advantage high-income households and disadvantage low-income individuals have disproportionately positive effects on white individuals and negative effects on people of color. These policies under Dr. Kendi's framework create or sustain racial inequities and therefore are racist tax policies.[113] Tax policies designed to benefit high-income and wealthy taxpayers including cutting top income tax rates, providing preferential tax treatment for investment income, eliminating wealth taxes including estate taxes, and funding government mainly through regressive consumption taxes (e.g., sales and use taxes, gas taxes, marijuana, alcohol, and gaming taxes) primarily benefit households that are overwhelmingly white.[114] Similarly, increasing sales and excise taxes to subsidize and reduce income taxes or property tax rates disproportionately redistributes income and wealth away from communities of color to wealthier white households.[115]

Different forms of taxation have varying impacts on racial inequity. State and local governments generally choose from a menu of three broad categories of taxes to fund public services: consumption, property, and income taxes.[116] "Typically, consumption taxes are very regressive, property taxes are somewhat regressive, and income taxes are usually progressive."[117] The following analysis will proceed by breaking down state and local tax systems into the most significant components: (1) consumption taxes, most commonly sales and use taxes; (2) property taxes; and (3) state income taxes. The analysis will include a historical perspective, when relevant, a discussion of how different state tax structures effect households depending on income

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112 *Id.*

113 *See supra* text accompanying notes 12–40 (describing Dr. Kendi's antiracist definitions and analytical framework).

114 DAVIS, HILL & WIEHE, *supra* note 111, at 10–13.

115 *Id.* at 5–7.

116 *Id.* at 13.

117 *Id.*

level and race and provide potential antiracist remedies to mitigate racial inequities.

C. *Consumption Taxes (Sales & Use Taxes)*

"Consumption taxes, most notably general sales taxes, are the most regressive type of taxes relied on by state and local governments and the most significant drivers of racial inequity . . . ."[118] Consumption taxes tend to worsen racial inequities because they are not based upon ability to pay, but rather are imposed on spending. Lower-income families, disproportionately households of color, spend most of their income to survive. This means that a larger share of their income is subject to consumption taxes than higher-income households, and that lower-income households pay a higher effective consumption tax rate relative to their income. Higher-income households, predominately white households, are able to save and invest much of their income in real estate, stocks, and bonds, which are not subject to consumption taxes. These predominately white households avoid paying sales and excise taxes on these investments.

1. Brief History

In the midst of the Great Depression, the State of Mississippi, and many Mississippi property owners, were in debt and facing default.[119] In a speech before state legislators, Mississippi's Governor pushed for America's first sales tax:

> One of the chief purposes of the sales tax . . . is to decrease the tax burden by broadening the tax base. There are today in Mississippi thousands of people who pay no taxes, but who enjoy all the rights and privileges of citizenship. These people will be glad of an opportunity to share in the responsibility of maintaining the government of the state in which they live.[120]

The governor's statement was far from true because most Black Mississippians did not have the right and privilege to vote in the 1930s.[121] Moreover, broadening the tax base meant reducing taxes for white property owners and increasing taxes on Black households who owned little or no property.[122]

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118 Hill et al., *supra* note 4.

119 LEACHMAN ET AL., *supra* note 4, at 9.

120 *Id.*

121 *Id.*

122 *Id.* at 10.

Mississippi, a state with pervasive racial violence, intimidation, and Jim Crow laws, added another race-based burden when white Mississippi legislators passed America's first sales tax. The sales tax increased the effective tax rate on Black Mississippians, not only compared to the pre-1932 period, but relative to their white neighbors. Sales tax revenue allowed legislators to decrease property taxes that white households predominately paid. Not long after Mississippi enacted the first sales tax, other states across the country adopted sales taxes to realize the significant revenue-raising power.[123]

2. Status Quo

i. Sales & Use Tax Policies

Today, Mississippi households in the lowest 20 percent income category suffer a 10.2 percent average effective state and local tax rate, while the top 1 percent of households with the highest-income pay a 6.7 percent effective rate.[124] This regressive structure is due almost entirely to Mississippi's heavy reliance on sales tax, which accounts for 75 percent of its state and local taxes.[125] While lower-income Mississippians endure a high effective state and local tax rate, it is not the highest among all states.[126]

The bottom 40 percent of income households in eight of the ten states most reliant on general sales tax revenues suffer a 10 percent or higher state tax rate.[127] Among the other forty states, effective state tax rates average 9.5 percent of income for these same households.[128] In states where sales and excise taxes account for 30 percent or more of state and local revenue, effective tax rates on lower-income households typically exceed 10 percent.[129] By comparison, lower-income households in states with no more than 15 percent of revenue from consumption taxes generally have state and local tax rates of 8 percent or less.[130]

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[123] *Id.*

[124] WIEHE ET AL., *supra* note 93, at 81 (reporting the effective tax rates for Mississippians).

[125] LEACHMAN ET AL., *supra* note 4, at 10.

[126] WIEHE ET AL., *supra* note 93, at 26–27 (reporting the effective tax rates for all states).

[127] ITEP, *supra* note 109, at 8.

[128] *Id.*

[129] *Id.* at 9.

[130] *Id.*

While Mississippi enacted the first sales tax grounded in racist tax policies almost 100 years ago, most states today have joined Mississippi and rely on consumption taxes more than any other source of tax revenue.[131] State and local governments derived 35 percent of their total tax revenue from sales and use taxes in 2015.[132] American households with the lowest 20 percent of income have a 7.1 percent sales tax burden, the middle 20 percent of income households pays 4.8 percent, and the top 1 percent of income households is subject to an insignificant 0.9 percent sales tax burden.[133] These highly regressive sales and use taxes impose a significantly lower tax burden on higher income households compared to lower- and middle-income households. These taxes undermine racial equity because higher income households pay the least under regressive taxes and are disproportionately white, while high-taxed, lower-income families disproportionately are people of color.

ii. Antiracist Sale & Use Policies

Applying Dr. Kendi's antiracist framework to sales and use taxes, we can see that racist ideas contributed to racist policies that continue to lead to racial inequities. States can dismantle this racism by reducing reliance on sales and use taxes. Of the ten states with the most regressive tax systems nationally, six derive 50 to 67 percent of their tax revenue from consumption taxes, compared to the national average of only 35 percent.[134] States with the highest state and local sales taxes are Alabama, Arkansas, Louisiana, Tennessee, and Washington, ranging from 9.24 percent up to 9.52 percent in 2022.[135] In these states the lowest 20 percent income households suffer state and local tax rates that are up to 600 percent of the tax rates imposed on the highest income households.[136] Only five states currently do not impose general sales and use taxes: Alaska, Delaware, Montana, New Hampshire, and Oregon.[137]

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131 *Id.* at 18.

132 *Id.*

133 ITEP, *supra* note 109, at 18.

134 The states in order of most to least regressive are Washington, Texas, Florida, South Dakota, Nevada, and Tennessee. *Id.* at 2.

135 *Id.*

136 WIEHE ET AL., *supra* note 93, at 26–27 (reporting the effective tax rates for all states for all income quintiles).

137 Tonya Moreno, *The 5 U.S. States Without a Statewide Sales Tax*, BALANCE, https://www.thebalance.com/states-without-a-sales-tax-3193305 (last updated Feb. 10, 2022).

In addition to the percentage of gross revenue and the effective tax rates, another critical factor regarding sales and use taxes is what items are included in or excluded from the tax base. Expanding sales and use tax bases to cover services and intangible assets, like stocks and bonds, could shift the tax burden to higher income households.[138] Moreover, higher-end goods, like luxury boats, vehicles, and airplanes, could be taxed at higher effective tax rates. Additionally, taxing food, baby formula, prescription and non-prescription medicines, and household supplies is particularly regressive because lower-income families spend much of their income on these necessities.[139] Half of the twelve states with higher-than-average effective sales tax rates, particularly on lower-income households, include food in their sale tax bases.[140] Arkansas, Hawaii, Kansas, Oklahoma, South Dakota, and Tennessee fully tax food.[141] Arkansas and Tennessee, however, tax food at a lower rate than other goods, and Kansas and Oklahoma offer a partial offset with an income tax credit against state income taxes.[142]

Targeted sales tax relief through refundable income tax credits can be an effective tool to mitigate harmful sales and use tax regressivity. "Seven states offer an income tax credit to help offset the sales and excise taxes" for lower-income families.[143] If the tax credits are not fully refundable then only middle- and higher-income households with a pre-credit state income tax will receive a reimbursement of sales taxes paid. Similarly, if the income tax credit is available to all income levels, then all households receive a benefit including the highest income households, which does not mitigate racial inequities. Some of the state income tax credits are specifically designed to offset the impact of sales taxes on groceries. These credits are typically a fixed dollar amount subject to a lower-income requirement that may increase for family size.[144] Unfortunately, these tax credits are usually administered annually and only delivered through a state income tax return filing, which delays the timing of the reimbursement and may add a prohibitive preparer cost for those not otherwise required to file a state income tax return.

Tax deductions for paid state sales taxes provide even less relief for lower-income households. State tax deductions are typically only

138 Hill et al., *supra* note 4.

139 WIEHE ET AL., *supra* note 93, at 19.

140 *Id.*

141 *Id.*

142 *Id.* at 16.

143 *Id.*

144 *Id.*

available to those who itemize their deductions versus taking a standard deduction amount.[145] Moreover, tax deductions as compared to tax credits are an upside-down subsidy. This means that high-income taxpayers who are typically subject to the highest marginal income tax rate receive the highest tax benefits. This treatment exacerbates, rather than mitigates, the regressivity of sales and use taxes.

Similarly, state sales tax holidays, which are common especially in the fall before school starts, are not antiracist tools because they apply to all consumers equally.[146] The holidays merely reduce to some extent the effective tax rate and gross sales tax revenues collected. Generally reducing aggregate tax revenues for public goods and services hurts lower-income households relative to higher-income households who are less likely to rely on these services. Moreover, some businesses could take advantage of these events by not having sales that might otherwise have occurred to increase sales revenue. Therefore, sales tax holidays are generally not an antiracist tax policy. Targeted income tax credits are a more effective antiracist policy. Fortunately, there are other sources of state and local revenues that can be less regressive than consumption taxes.

D. *Property Taxes*

Property taxes are the single-largest source of revenue for local governments.[147] Cities, counties, schools, and special districts raise about 72 percent of their tax base or $500 billion per year in property taxes.[148] A recent national study found that the lowest-income homeowners effectively subsidize the property tax burdens of their higher-income counterparts, increasing inequality generally and racial inequities specifically.[149] Assessment levels for homes in the bottom quintile of value as a percentage of price were twice as high, on average,

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[145] *See* 26 U.S.C. § 63 (setting the election to itemize deductions for federal income tax purposes versus using the applicable standard deduction amounts).

[146] Francine J. Lipman, *State and Local Tax Takeaways*, *in* HOLES IN THE SAFETY NET: FEDERALISM AND POVERTY 110, 120 (Ezra Rosser ed., 2019); Francine J. Lipman, *State and Local Tax Takeaways Redux*, 101 TAX NOTES STATE 683, 692 (2021).

[147] Christopher Berry, *Property Tax Burdens Fall on Nation's Lowest-Income Homeowners, Study Finds*, U. CHI. NEWS (Mar. 9, 2021), https://news.uchicago.edu/story/property-tax-burdens-fall-nations-lowest-income-homeowners-study-finds (noting that property taxes are regressive and create clear economic and racial disparities).

[148] Christopher Berry, Reassessing the Property Tax 1 (Mar. 1, 2021) (unpublished manuscript).

[149] *Id.*

as assessment levels on homes in the top decile.[150] Properties located in predominately Black owned and occupied residential neighborhoods experience levels that are more than 1.5 times the average for their county.[151] This racial inequity is evident throughout the United States.[152] Before we explore antiracist policy remedies for these racial inequities, we first review a brief history of property tax policies generally.

1. Brief History

Following Reconstruction in 1875, Alabama adopted highly restrictive constitutional property tax limits that are among the oldest in operation today.[153] White Alabama property owners wanted continued dominance over Black residents.[154] For more than 140 years property tax limits in Alabama have sustained and fostered racial inequities.[155] As a result of these limits, Alabama's property tax revenue share is the lowest of any state in the nation.[156] Arkansas, Missouri, and Texas have similar property tax limits in their constitutions.[157]

Even more egregious than imposing limits on property taxes, white government officials have used tax assessments to punish Black property owners who protested Jim Crow laws.[158] White officials in Mississippi targeted Black protesters who participated in a boycott of white-owned businesses in 1966 (which the refusal to integrate a local swimming pool prompted) with increased assessments of more than 50 percent in one year.[159] This patent racist tax policy occurred less than sixty years ago. Today, limits on property taxes, like Proposition 13 in Oakland, California, disproportionately benefit white wealthy homeowners three times as much as the benefits provided to households of color.[160] Moreover, the lost tax revenue in Oakland,

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150 *Id.*

151 *Id.* at 14.

152 *Id.* at 23; THE TAX FAIRNESS PROJECT, BURDENS AND BENEFITS: INVESTIGATING PROP. 13'S UNEQUAL IMPACTS IN OAKLAND 9 (2022), https://www.spur.org/sites/default/files/2022-02/SPUR_Burdens_and_Benefits.pdf (noting that for every $10,000 increase in household income, houses are under-assessed by an additional $35,000 on average).

153 LEACHMAN ET AL., *supra* note 4, at 2.

154 *Id.*

155 *Id.* at 9.

156 *Id.* at 2.

157 *Id.* at 11.

158 *Id.*

159 LEACHMAN ET AL., *supra* note 4, at 11.

160 THE TAX FAIRNESS PROJECT, *supra* note 152, at 11.

California, alone is billions of dollars.[161] Oakland's lost tax revenue is more than ten times its budget for reducing homelessness, seven times the budget for renters and affordable housing, and more than five times its budget for children's programs and services.[162]

Housing segregation and assessment discrimination have resulted in higher tax bills for people of color relative to white homeowners in similarly valued homes.[163] Much of this disparity in home values has been driven by racism. Historian Andrew Kahrl has found that county tax assessor offices in Chicago over assessed Black-owned properties in the 1970s.[164] Tax assessors did not include market value drops due to decreased demand from white buyers when Black families moved into neighborhoods.[165] Similarly, the U.S. Department of Housing and Urban Development found that low-income Black homeowners in Baltimore, Chicago, and Philadelphia suffered a higher effective property tax rate than middle-income white homeowners.[166]

Even in 2022, households of color are less likely to own property including homes due to hundreds of years of racism in zoning, banking, housing, employment, and other income and wealth-building policies.[167] Racial income and wealth gaps including meaningful differences in intergenerational wealth afford more large purchasing opportunities to white individuals versus people of color.[168] Moreover, even when households of color purchase property, their homes tend to be less

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161 *Id.* at 16 (Proposition 13 enacted in California in the late 1970s capped property tax assessment increases to 2 percent per year markedly reducing property tax revenues and property tax burdens for homeowners).

162 *Id.*

163 Carlos Avenacio-Leon & Troup Howard, *The Assessment Gap: Racial Inequities in Property Taxation*, *in* WASHINGTON CENTER FOR EQUITABLE GROWTH WORKING PAPER SERIES 1, 2 (2020), https://equitablegrowth.org/working-papers/the-assessment-gap-racial-inequalities-in-property-taxation/; *see* also Berry, *supra* note 147 (noting that property taxes are regressive and create clear economic and racial disparities).

164 LEACHMAN ET AL., *supra* note 4.

165 *Id.*

166 *Id.*

167 *See* THE TAX FAIRNESS PROJECT, *supra* note 152, at 4, 10; Christian E. Weller & Lily Roberts, *Eliminating the Black-White Wealth Gap Is a Generational Challenge*, CTR. FOR AM. PROGRESS (Mar. 19, 2021), https://www.americanprogress.org/article/eliminating-black-white-wealth-gap-generational-challenge/; *see* Kriston McIntosh et al., *Examining the Black-White Wealth Gap*, BROOKINGS (Feb. 27, 2020), https://www.brookings.edu/blog/up-front/2020/02/27/examining-the-black-white-wealth-gap/ (finding that because intergenerational transfer of wealth is lightly taxed, historical gaps have persisted over generations).

168 Kriston McIntosh et al., *supra* note 167.

expensive as well as inadequately valued because of racism.[169] This phenomenon tends to be exponential because over time higher valued white neighborhoods enjoy higher property tax revenue, resulting in better-funded schools and other services. This further increases home values and in turn property tax assessments and revenues, albeit potentially subject to limits.[170]

As a result, white households are much more likely to own property including homes and business real estate than households of color and tend to own much more valuable properties. Therefore, white households are more likely to be subject to property taxes—although renters, who are disproportionately people of color, pay property taxes through higher rental payments. In response to these factors, white legislators across America have enacted a myriad of tax caps to reduce their property taxes. These limits do not reduce the need for revenue and therefore often result in increased consumption taxes, fees, and fines, which disproportionately burden people of color and low-income households.

2. Status Quo

i. Property Tax Policies

Taxes on property are a significant revenue source for state governments, comprising about 30 percent of total state and local tax revenues annually.[171] Property taxes are often the primary source of revenue for local governments and a considerable source for funding public K–12 education.[172] Property tax bases typically include only a subset of total wealth: primarily homes and business real estate and, in

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169 "In the average U.S. metropolitan area, homes in neighborhoods where the share of the population is 50 percent Black are valued at roughly half the price as homes in neighborhoods with no Black residents. ANDRE M. PERRY ET AL., BROOKINGS, THE DEVALUATION OF ASSETS IN BLACK NEIGHBORHOODS: THE CASE OF RESIDENTIAL PROPERTY 2 (2018), https://www.brookings.edu/wp-content/uploads/2018/11/2018.11_Brookings-Metro_Devaluation-Assets-Black-Neighborhoods_final.pdf (finding that owner-occupied homes in Black neighborhoods "are undervalued by $48,000 per home on average, amounting to $156 billion in cumulative losses").

170 *Id.*

171 *See State and Local Finance Initiatives: Property Taxes*, URB. INST., https://www.urban.org/policy-centers/cross-center-initiatives/state-and-local-finance-initiative/projects/state-and-local-backgrounders/property-taxes (last visited Feb. 27, 2022) (setting forth 2018 amounts with a detailed analysis).

172 LEACHMAN ET AL., *supra* note 4, at 11; "Local governments collected $559 billion in property taxes in 2019, or 30 percent of local general revenue." *Id.* (noting that property taxes are one of the largest sources for revenue for local government and especially school districts).

some states, cars and business personal property like furniture, fixtures, and equipment.[173] Intangible assets like business ownership interests, stocks, bonds, patents, copyrights, savings, and other "intangible" property are not generally subject to property taxes by any level of government.[174] This "sales and use tax" base benefits white households who own a disproportionate amount of wealth generally and these excluded assets specifically.[175] The most commonly targeted assets and the most significant property tax revenue generators for most state and local governments are residents' homes.[176] Researchers have found that Black and Latinx homeowners face a 10–13 percent higher property tax burden than white homeowners because tax assessments exceed home sales prices in neighborhoods with more residents of color and because of disparities in assessments.[177] Researchers in Oakland, California, found that for every $10,000 in increase in household income, home values were under assessed by $35,000, saving disproportionately white wealthy households tens of thousands of dollars in property tax burdens.[178]

Property taxes are regressive, but not as regressive as consumption taxes.[179] While higher-income households typically own more expensive homes than middle- or lower-income households, those homeowners generally pay a smaller share of their income in property taxes.[180] Property taxes represent a larger share of income for middle-

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173 "A property tax is a tax levied on "real property" (land and buildings, both residential and commercial) or personal property (business equipment, inventories, and noncommercial motor vehicles)." *Id.*

174 *Id.*

175 SHARMILA CHOUDHURY, RACIAL AND ETHNIC DIFFERENCES IN WEALTH HOLDINGS AND PORTFOLIO CHOICES (Soc. Sec. Admin., Working Paper No. 95, 2002).

176 *See generally* Linna Zhu & Sheryl Pardo, *Understanding the Impact of Property Taxes Is Critical for Effective Local Policymaking*, URB. INST.: URB. WIRE (Nov. 5, 2020), https://www.urban.org/urban-wire/understanding-impact-property-taxes-critical-effective-local-policymaking (noting that property tax policy impacts housing supply and residential mobility).

177 Carlos Avenacio-Leon & Troup Howard, *The Assessment Gap: Racial Inequities in Property Taxation*, *in* WASHINGTON CENTER FOR EQUITABLE GROWTH WORKING PAPER SERIES 1, 2 (2020), https://equitablegrowth.org/working-papers/the-assessment-gap-racial-inequalities-in-property-taxation/; *see also* Aravind Boddupalli & Kim Rueben, *How Income Taxes Interact With Racial Disparities*, TAX POL'Y CTR. (Jan. 30, 2020), https://apps.urban.org/features/race-and-taxes/ (highlighting a tool that analyzes the intersection of race and taxes).

178 THE TAX FAIRNESS PROJECT, *supra* note 152 (noting that for every $10,000 increase in household income, houses are under-assessed by an additional $35,000 on average).

179 *See* WIEHE ET AL., *supra* note 93, at 21.

180 *Id.*

income families who are fortunate enough to own a home.[181] Property taxes paid by lower-income tenants through higher rental payments generally represent a larger percentage of their income than the percentage for high-income homeowners.[182] "On average low-income families pay 4.2 percent of their incomes, middle-income families pay 3.0 percent of their incomes, and the top 1 percent pay 1.7 percent" in property taxes.[183]

Black and Latinx homeowners tend to pay higher effective property tax rates due to a number of racist policies, including measures that segregate Black families into lower-value neighborhoods.[184] Lower property values can force higher tax rates to collect required revenues. Similarly, racist "assessment gaps" cause higher property taxes for Black-owned homes compared to white-owned homes of equal values.[185] Using Dr. Kendi's framework state legislators can enact antiracist tax provisions to mitigate these inequities.

ii. Antiracist Property Tax Policies

Fortunately, states have several options to mitigate inequities in property taxes. Assessment practices can be improved by implementing better training for assessors and using more objective price data and techniques.[186] High-value homes, which are more likely to be owned by white families, can be subject to higher rates resulting in "mansion taxes."[187] Revenue from state property taxes can be allocated based on community need rather than residential location to ensure that all children receive a quality education. Property taxes on lower-income

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181 *Id.*

182 *Id.*

183 *Id.* (finding that 4.2 percent of income for lower-income households is a significant burden for these families to bear).

184 *See* Abigail Fagan, *How Systemic Racism Is Embedded in Property Taxes*, PSYCH. TODAY (July 14, 2020), https://www.psychologytoday.com/us/blog/evidence-based-living/202007/how-systemic-racism-is-embedded-in-property-taxes (describing systemic racism in home ownership); Ambika Sinha, *Why Local Governments Need an Anti-Racist Approach to Property Tax Assessments*, ITEP (Aug. 5, 2021), https://itep.org/why-local-governments-need-an-anti-racist-approach-to-property-assessments/ (describing racist policies that have resulted in property owners of color suffering higher effective property tax rates).

185 *Id.*

186 Sinha, *supra* note 184 (describing racist policies that have resulted in property owners of color suffering higher effective property tax rates).

187 *See generally* MICHAEL LEACHMAN & SAMANTHA WAXMAN, STATE "MANSION TAXES" ON VERY EXPENSIVE HOMES, CTR. ON BUDGET & POL'Y PRIORITIES (2019), https://www.cbpp.org/sites/default/files/atoms/files/1-24-19sfp.pdf (describing a variety of property tax strategies for mitigating wealth inequality through progressive property taxes).

families including renters who struggle to pay rent can be offset through refundable tax credits that offset annual state income taxes.[188] Similar to refundable "sales and use tax" credits, however, there is a timing delay and tax filing compliance costs that may undermine the effectiveness of this offset.

Property tax limits take a variety of forms. Limits include caps on the annual percentage increase of assessed values, on increases to the property tax rate, on the property tax amount, and on the growth in property tax revenue.[189] In general, the savings from property tax limits are greater for owners of higher-value homes, who are more likely to be white.[190] Disparities also occur when property values rise more quickly in areas with more high-value homes, increasing the relative value of a property tax limitation.[191]

Better alternatives are available to states to relieve property taxes for lower-income taxpayers and seniors who might have difficulty affording the taxes. "Circuit breakers" provide relief to households whose property tax payments are deemed unaffordable, usually because they exceed a certain percentage of household income.[192] Income-based circuit breakers allow the property tax to continue to fund essential services like education while targeting tax relief to those who need it.[193] Targeted property tax credits available to all low-income homeowners and renters regardless of age can help mitigate racial inequities.[194] Unfortunately, one-half of all states providing property tax offsets only provide property tax reductions to senior citizens.[195]

About thirty states and the District of Columbia used property tax circuit breakers or tax credits for low-income families based on their income in 2018.[196] Most circuit breaker programs are only available to

[188] Lipman, *State and Local Tax Takeaways Redux*, *supra* note 146, at 689–90.

[189] *Id.*; Lipman, *State and Local Tax Takeaways*, *supra* note 146, at 114–15.

[190] *See* THE TAX FAIRNESS PROJECT, *supra* note 152, at 9 (noting that for every $10,000 increase in household income houses are under-assessed by an additional $35,000 on average).

[191] *See* THE TAX FAIRNESS PROJECT, https://www.taxfairnessproject.org (demonstrating the regressive impact of Prop 13 including an example showing a tax rate of only 0.06 percent for a $9,000,000 property versus a 1.58 percent rate for a $331,000 property) (last visited Apr. 2, 2022).

[192] Aidan Davis, Property Tax Circuit Breakers in 2018, INST. TAX'N & ECON. POL'Y, at 2 (Sept. 2018), https://itep.sfo2.digitaloceanspaces.com/091318-Property-Tax-Circuit-Breakers.pdf.

[193] *Id.*

[194] *Id.*

[195] *Id.*

[196] *Id.*

elderly and disabled residents, or to very low-income households.[197] States could broaden use of this strategy by extending property tax relief to overburdened middle- and lower-income households. If states relax or eliminate property tax limits, they could mitigate the increased tax burdens with circuit breakers for any residents whose property tax exceeds a specified percentage of their income. The vast majority of the benefits would go to low- and middle-income households.

Similar to limits and income tax credits, homestead exemptions are an antiracist policy that can reduce racial inequities. As housing values increase over time due to inflation and appreciation, states concerned about tax incidence on lower-income households have correspondingly increased the value of their homestead exemptions.[198] States that are less concerned about racial inequities have allowed their annual homestead exemption amounts to shrink to a less meaningful offset.[199] States that allow a generous homestead exemption that is regularly adjusted for inflation and fluctuations in housing values can mitigate some of the hardship of property tax racial inequities.[200]

E. *Income Taxes*

1. Status Quo Income Tax Policies

Of the three different state tax structures, income tax is the only one under which effective tax rates traditionally account for income levels. As a result, state income tax structures can be designed to be progressive to offset the regressivity of sales and use and property taxes. "On average, state income taxes generate about 20 percent of aggregate state tax revenues,[201] and subject low-income families to a

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197 *Id.* at 4 (providing a detailed description of the property tax offsets for each state and Washington D.C.).

198 Yesim Sayin Taylor, D.C. POL'Y CTR., *How Property Tax Exemptions Amplify Racial Inequities*, GREATER WASH. (Nov. 10, 2018), https://ggwash.org/view/69865/most-new-dc-housing-wealth-is-accruing-in-existing-homes-taxes-race (explaining that because the homestead exemption reduces property tax home values by a fixed amount, the relative value of the benefit is greater for homes with lower values, which are disproportionately owned by people of color).

199 *See* WIEHE ET AL., *supra* note 93, at 22.

200 *Id.*

201 Liz Malm & Ellen Kant, *The Sources of State and Local Tax Revenues*, TAX FOUND. (Jan. 28, 2013), https://taxfoundation.org/sources-state-and-local-tax-revenues/; *see also State and Local Finance Initiative: Individual Income Taxes*, URB. INST., https://www.urban.org/policy-centers/cross-center-initiatives/state-and-local-finance-initiative/projects/state-and-local-backgrounders/individual-income-taxes (last visited Feb. 27, 2022) (setting forth individual income taxes as a percentage of total state revenues).

0.04 percent effective rate, middle-income families to a 2.1 percent effective rate, and the top 1 percent to a 4.6 percent effective rate."[202]

Antiracist policies, including progressive income and wealth taxes, have a valuable role to play in reducing racism.[203] Income and wealth taxes can help to address income inequality by imposing higher rates on families with higher incomes and significant wealth, thus narrowing post-tax income and wealth gaps between taxpayers.[204] Progressive income tax systems, including graduated tax rates and significant refundable low-income tax credits, can narrow the racial income gap.[205] Flat-rate income taxes, or those with tax benefits for investors or other high-income families, have limited potential to reduce racial inequities.[206]

2. Antiracist Income Tax Policies

Increasing effective tax rates on disproportionately white, higher income households is an effective antiracist policy state and local governments can impose to improve racial equity. The benefits are severalfold, including directly reducing income and wealth inequality and potentially increasing aggregate tax revenues for enhanced public investments in racial equity goods and services. Raising income taxes to lessen reliance on regressive sales and excise taxes can also help state tax systems reduce overall regressivity and further mitigate racial inequities. Policymakers can foster racial equity with targeted antiracist provisions in their state and local income tax system designs.[207] By enacting income tax systems with a series of progressively higher tax brackets at the top income ranges, restoring estate or inheritance taxes, taxing wealth, retirement income, and earnings from wealth at least on par with earnings from work, policymakers can meaningfully address economic and racial inequality. Because households of color are more likely to fall in lower income groups, and white households are more likely to fall in higher income groups, a graduated progressive income tax narrows the racial income gap by taxing low-income households of color less and higher-income white households more.

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[202] WIEHE ET AL., *supra* note 93.

[203] Williamson, *Closing the Wealth Gap Requires Heavy, Progressive Taxation of Wealth*, *supra* note 9 (calculating a greater than $10 trillion dollar racial wealth gap).

[204] *Id.*

[205] *See id.*

[206] *See* WIEHE ET AL., *supra* note 93, at 14.

[207] *See id.* at 12, 22.

Income taxes are the only major source of state and local revenue that are based on a taxpayers' ability to pay and achieves vertical equity.[208] The states with the most regressive overall tax systems typically lack a broad-based progressive income tax.[209] But a state income tax has to be designed with antiracist policies to ensure that it will be progressive. States with flat tax rate income tax systems can be inequitable and regressive. Flat tax rate income tax states Alabama and Pennsylvania actually have regressive income tax systems.[210] States with income tax systems that have a series of higher marginal tax rates as taxable income rises with refundable tax credits for lower income working families are more likely to be progressive and based on ability to pay, and vertical and horizontal equity. California, Delaware, Minnesota, New Jersey, Vermont, and the District of Columbia have relatively progressive income tax structures.[211]

As income inequality and the racial wealth gap have exploded, states have increased tax rates at the highest income ranges to mitigate inequality and to raise critical revenues for underfunded schools and other public services. Arizona, California, Connecticut, New Jersey, New York, and the District of Columbia have enacted tax brackets for taxable income over at least $500,000 and as high as $25,000,000.[212] California has an additional tax on incomes over $1 million.[213] Hawaii, Maryland, Minnesota, New Mexico, North Dakota, Oregon, Vermont, and Wisconsin have top brackets for income over at least $248,000 for joint filers.[214] Washington, a state without an individual income tax that has been ranked as the state with the most regressive tax system, recently enacted a 7 percent annual excise tax on long-term capital gains greater than $250,000 (excluding real estate and depreciable business assets)

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[208] "Vertical equity means that people in different income groups should pay different amounts or different percentages of their incomes as taxes." IRS, *Understanding Taxes* https://apps.irs.gov/app/understandingTaxes/student/whys_thm04_les03.jsp (last visited Apr. 2, 2022).

[209] *See* WIEHE ET AL., *supra* note 93, at 2.

[210] *Id.* at 14.

[211] *Id.* at 9.

[212] Carl Davis et al., *State Income Taxes and Racial Equity: Narrowing Racial Income and Wealth Gaps with State Personal Income Taxes*, INST. TAX'N & ECON. POL'Y, app. B (Oct. 2021), https://itep.sfo2.digitaloceanspaces.com/State-Income-Taxes-and-Racial-Equity_Appendices_ITEP_October2021.pdf (listing all states maximum tax rates and the applicable income threshold level).

[213] *Id.* at 10.

[214] *Id.* at app. B.

to fund public education.[215] The tax is effective beginning January 1, 2022, and is expected to impact only 0.2 percent of all Washingtonians.[216]

Higher-income households, which are disproportionately white, are more likely to derive a large portion of their income from investments than lower-income households.[217] Moreover, given centuries of racist policies, even higher-income households of color are less likely than higher income white households to hold and profit from investments.[218] As a result, preferential tax benefits for investment income and investments disproportionately benefit white households. Tax rate preferences and income exclusions for dividends, pass-through income, capital gains, and other investment income disproportionately benefit high income, wealthy white households.[219] These tax benefits also reduce aggregate tax collections, potentially shifting the tax burden to other less fortunate households or reducing services for their communities.

Most state income tax systems include tax deductions and tax credits. Income tax credits are generally more valuable than income tax deductions, especially for lower income households. Tax deductions provide a tax benefit equal to taxpayers' marginal tax rate on the amount of taxable income being sheltered. Low- and no-income households typically do not enjoy any meaningful benefit from tax deductions because their taxable income is negligible, and their marginal tax rate is

[215] "In March of 2022, the Douglas County Superior Court ruled in *Quinn v. State of Washington* that the capital gains excise tax (ESSB 5096) does not meet state constitutional requirements and, therefore, is unconstitutional and invalid. The State has appealed the ruling to the Washington Supreme Court. While the appeal is pending, the Department will continue to provide guidance to the public regarding the tax as a courtesy. Any guidance provided herein will apply only if the tax is ruled constitutional and valid, in its entirety, by a court of final jurisdiction." DEPT. OF REV., WASH. STATE, *Capital Gains Tax*, https://dor.wa.gov/taxes-rates/other-taxes/capital-gains-tax (last visited Apr. 21, 2022) (setting forth the details of the new capital gains tax as enacted).

[216] Melissa Santos, *Washington State's New Capital Gains Tax: A Primer*, CROSSCUT (Dec. 21, 2021), https://crosscut.com/politics/2021/12/washington-states-new-capital-gains-tax-primer (estimating that only about 7,000 Washingtonians will be subject to the tax or about 0.2 percent of all taxpayers).

[217] Davis et al., *supra* note 212, at 7, 16–19; *see generally* Williamson, *Closing the Wealth Gap Requires Heavy, Progressive Taxation of Wealth*, *supra* note 9.

[218] *See* Williamson, *Closing the Wealth Gap Requires Heavy, Progressive Taxation of Wealth*, *supra* note 9.

[219] CHUCK MARR ET AL., SUBSTANTIAL INCOME OF WEALTHY HOUSEHOLDS ESCAPES ANNUAL TAXATION OR ENJOYS SPECIAL TAX BREAKS, CTR. ON BUDGET & POL'Y PRIORITIES 1, 4–8 (2019), https://www.cbpp.org/research/federal-tax/substantial-income-of-wealthy-households-escapes-annual-taxation-or-enjoys.

low. By comparison, tax credits for low (and high) income households can reduce income tax liabilities dollar for dollar down to and even below zero (for refundable tax credits) generating cash refunds.[220] Certain state income tax credits reimburse lower-income taxpayers for sales taxes paid on groceries, or property taxes paid by seniors, and other targeted homeowners. Some states provide tax credits that effectively reimburse working parents for out-of-pocket caregiving expenses.[221]

Targeted refundable credits can offset regressive taxes, including consumption, property, and payroll taxes that disproportionately impact low-income people. Earned Income Tax Credits ("EITCs") are typically refundable tax credits targeted to low- and middle-income working families with children at home.[222] The amount of the federal EITC increases based upon the amount of earned income up to certain amounts (before it starts phasing-out) and the number of qualifying children in the household.[223] Decades of research demonstrates that the cash flow generated from EITCs in low-income households generates significant benefits resulting in better health for the family, improved academic performance in school, increased current household earnings, and future earnings from enhanced retirement benefits.[224]

At least thirty-one states, the District of Columbia, and Puerto Rico have enacted antiracist EITCs to mitigate state tax system regressivity resulting in racial inequities.[225] State EITCs have infused billions of dollars into low-income working families' households and their communities annually.[226] State EITCs have not only increased taxpayer participation rates in state income tax systems, but have incentivized

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220 Lipman, *State and Local Tax Takeaways Redux*, *supra* note 146, at 694.

221 *Id.*

222 For an overview on the EITC, see Francine J. Lipman & Dawn Davis, *Heal the Suffering Children: Fifty Years After the Declaration of War on Poverty,* 34 B.C. J.L. & SOC. JUST. 311, 322–24 (2014) (recounting the antipoverty benefits of the EITC).

223 26 U.S.C. § 32(a)–(b).

224 CHUCK MARR ET AL., EITC AND CHILD TAX CREDIT PROMOTE WORK, REDUCE POVERTY, AND SUPPORT CHILDREN'S DEVELOPMENT, RESEARCH FINDS, CTR. ON BUDGET & POL'Y PRIORITIES (2015), http://www.cbpp.org/cms/?fa=view&id=3793.

225 Lipman, *State and Local Tax Takeaways Redux*, *supra* note 146, at 684. Missouri enacted its EITC in 2021 effective in 2023.

226 *See* ELAINE MAAG & DAVID WEINER, HOW INCREASING THE FEDERAL EITC AND CTC COULD AFFECT STATE TAXES, URB. INST. (Apr. 22, 2021), https://www.urban.org/sites/default/files/publication/104132/how-increasing-the-federal-eitc-and-ctc-could-affect-state-taxes.pdf (describing that one change to the 2021 federal EITC enhancement will increase state EITCs in 2021 by over $700 million). *See generally* MARR ET AL., *supra* note 224.

households to file federal income tax returns to secure higher aggregate tax refunds.[227] While the majority of state EITCs are fully refundable, there are a number of states in which state EITCs are nonrefundable and therefore are only available to households that have a state income tax liability.[228] Some states like Ohio further limit EITC benefits to a percentage of state income taxes, thereby reducing EITC benefits and shifting them from lower-income and no income households to higher income households who are disproportionately white.[229] These provisions limit EITC benefits for low-income households, even reducing benefits completely for nonrefundable state EITC.[230] These states should consider better targeting lower- and no-income households to achieve antiracist goals.

In response to income inequality and the pandemic, many states have added or expanded EITC benefits.[231] Consistent with antiracist policies, states have implemented more inclusive EITC structures and rules that mitigate racial inequities.[232] For example, Minnesota's EITC is more inclusive than the federal EITC, providing benefits for 21- to 24-year-old wage earners without qualifying children.[233] EITC enhancements have included a 50 percent "savings match" for EITC recipients who save a portion of their refund for at least six months.[234] During the pandemic the federal government and many states have expanded childless worker EITC benefits, both in the amount of the benefit and in who qualifies.[235]

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[227] *See* David Neumark & Katherine E. Williams, *Do State Earned Income Tax Credits Increase Participation in the Federal EITC?*, 48 PUB. FIN. REV. 579, 607 (2020).

[228] The states with refundable EITCs include California, Colorado, Connecticut, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Massachusetts, Maryland, Michigan, Minnesota, Nebraska, New Jersey, New Mexico, New York, Oklahoma, Oregon, Rhode Island, Washington, Wisconsin, Vermont, and the District of Columbia. *Policy Basics: State Earned Income Tax Credits*, CTR. ON BUDGET & POL'Y PRIORITIES (Oct. 13, 2021), https://www.cbpp.org/research/state-budget-and-tax/state-earned-income-tax-credits; ERICA WILLIAMS ET AL., STATES CAN ADOPT OR EXPAND EARNED INCOME TAX CREDITS TO BUILD A STRONGER FUTURE ECONOMY, CTR. ON BUDGET & POL'Y PRIORITIES (Mar. 9, 2020), https://www.cbpp.org/research/state-budget-and-tax/states-can-adopt-or-expand-earned-income-tax-credits-to-build-a.

[229] *See* Lipman, *State Tax Takeaways Redux*, *supra* note 146, at 694–95.

[230] *Id.*

[231] *Id.* at 696.

[232] *Id.*

[233] *Id.*

[234] Press Release, Off. Brianne K. Nadeau, Nadeau Bill Increases Tax Refund for Low-Income DC Taxpayers (June 26, 2018), https://www.brianneknadeau.com/updates/press-release/nadeau-bill-increases-tax-refund-low-income-dc-taxpayers.

[235] Lipman, *State Tax Takeaways Redux*, *supra* note 146, at 684.

Because state EITCs are targeted to low- and middle-income working families, the aggregate cost to a state can be modest. Current refundable state EITCs cost less than 2 percent of annual state tax revenues.[236] Historically, EITC refunds have been spent quickly, locally, and have had a $1.5 to $2 multiplier effect.[237] EITC refunds can provide a targeted economic stimulus, especially for communities of color and their businesses creating jobs and generating tax revenue.[238] The EITC is an effective antiracist policy that has facilitated racial equity.

State refundable EITCs can be particularly helpful in states without individual income tax systems because these states typically rely heavily on sales, excise, and property taxes. Because of this reliance, low- and middle-income families in these states pay a higher share of their income in taxes than higher-income families. Washington is the only current state without an income tax with an EITC.[239] The Washington Working Families Tax Rebate is designed to use IRS data on federal EITC recipients to determine state credit eligibility.[240] Officials estimate that administration costs for states without a state income tax system are only 4 percent of the cost of the EITC.[241] While Washington enacted its EITC in 2008, it did not fund its EITC until 2023.[242] Washington's EITC includes taxpayers who are younger and older than those who qualify for the federal EITC and taxpayers who do not qualify for a Social Security number, but rather use an Individual Taxpayer Identification Number ("ITIN") to file their tax returns.[243]

Perhaps because ITIN holders, who are disproportionately essential workers of color, were denied any federal COVID relief and have been denied any federal EITC for decades, eight states have

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236 WILLIAMS ET AL., *supra* note 228. To determine the costs for various levels of state refundable EITCs, see generally ERICA WILLIAMS ET AL., HOW MUCH WOULD A STATE EARNED INCOME TAX CREDIT COST IN FISCAL YEAR 2019?, CTR. ON BUDGET & POL'Y PRIORITIES (June 8, 2018), https://www.cbpp.org/research/state-budget-and-tax/how-much-would-a-state-earned-income-tax-credit-cost-in-fiscal-year.

237 *See* U.S. CONF. OF MAYORS, DOLLAR WI$E BEST PRACTICES: EARNED INCOME TAX CREDIT (2008), http://www.usmayors.org/workforce/documents/2006Best%20Practices-Earned%20IncomeTaxCredit.pdf.

238 *See id.*

239 WILLIAMS ET AL., *supra* note 228.

240 *Id.*

241 *Id.*

242 Lipman, *State and Local Tax Takeaways Redux*, *supra* note 146, at 684.

243 *Id.*; RICHARD C. AUXIER, HOW POST-PANDEMIC TAX CUTS CAN AFFECT RACIAL EQUITY 9 (2022), https://www.urban.org/sites/default/files/publication/105447/how-post-pandemic-tax-cuts-can-affect-racial-equity_0.pdf.

expanded the scope of their EITC coverage to include ITIN holders.[244] These states include California, Colorado, Illinois, Maine, Maryland, New Mexico, Oregon, and Washington.[245] Colorado took its antiracist policy further and enacted a targeted Child Tax Credit for families that include children with ITINs.[246] The Tax Cut and Jobs Act signed into law by former President Trump in 2017 requires a Social Security number for qualifying children for the Child Tax Credit through the end of 2025.[247] In addition to expanding the scope of eligible EITC recipients to include ITIN holders, some states have expanded age eligibility for childless workers.[248] States and advocates who work on the front lines understand that racial inequality has no age limits. These antiracist expansions of the EITC will lift millions out of poverty, including a disproportionate number of children of color. There is, however, much more antiracist policy work to do.

IV. CONCLUSION

Racist policies have deep roots in America generally, and in tax systems specifically.[249] Our founding fathers were raised on racist ideas, including slavery, that served their self-interests—protecting and enhancing their power and wealth accumulation. Their racist ideas gave rise to racist policies that have been hard-wired in American systems, institutions, laws, and minds for centuries. While racist policies have deep roots, racism is not invariable, but rather is a dynamic state that can be dismantled. Dr. Kendi explains "racism and antiracism are not fixed identities. . . . What we say about race, what we do about race, in each moment determines what—not who—we are."[250] Racism is a policy problem that antiracism policies enacted through broad legislation throughout our institutions and systems, including tax and spending, can change.[251]

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244 AUXIER, *supra* note 243, at 9, 39–40.

245 *Id.* at 9. Legislators in Illinois expanded its EITC in April of 2022 to include a broader age category of taxpayers and ITIN holders.

246 Lipman, *State and Local Tax Takeaways Redux*, *supra* note 146, at 684.

247 26 U.S.C. §§ 24(h)(1), (7).

248 Lipman, *State and Local Tax Takeaways Redux*, *supra* note 146, at 684.

249 *See, e.g.*, IBRAM X. KENDI, STAMPED FROM THE BEGINNING: THE DEFINITIVE HISTORY OF RACISM IN AMERICA 115–16 (2016) (discussing race and taxation at the Constitutional Convention).

250 ANTIRACIST, *supra* note 10, at 10.

251 See *Policy and Legislative Change*, RACIAL EQUITY TOOLS https://www.racialequitytools.org/resources/act/strategies/policy-and-legislative-change (last visited Apr. 25, 2022) for a comprehensive list of examples, organizations, and action items.

Scholars focusing on racial inequities understand they derive from a myriad of historical and current policy choices with their own sets of motivations and disparate impacts based on factors that are also the result of historic and current policy choices.[252] Racism is broad and deep and enduring, resulting today in outrageous racial inequities. The income gap between white households and Black households in America is a glaring example of racial inequity from racist policies. Median household income ranges "from $45,792 in Mississippi to $86,738 in Maryland."[253] States with the highest share of Black residents generally have the lowest median household incomes.[254] Even in these low median income states the income gap between white households and Black households is stark.[255] In every state and the District of Columbia, the median income for white households exceeds the median income for Black households by up to 300 percent.[256] The racial wealth gap between white households and Black households is several times greater than the income gap. Black households would have to increase their wealth 500 percent, and Latinx households would have to increase their wealth 400 percent to achieve wealth equity with white households.[257] These racial inequities are due to racial discrimination from racist policies grounded in racist ideas. Given the magnitude of these Black-white economic gaps, it will take a range of antiracist policies, including in state and local tax systems, over an extended period of time to remedy.[258]

State and local tax systems across America not only raise one-third of all tax revenue but disperse about one-half of all domestic spending.[259] These are powerful fiscal tools that if properly reformed using antiracist policies, including many of those suggested above, could

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252 *See* ARAVIND BODDUPALLI & KIM RUBEN, STATE AND LOCAL GOVERNMENT REVENUES AND RACIAL DISPARITIES, TAX POL'Y CTR. 1, 2 (2021), https://www.taxpolicycenter.org/publications/state-and-local-government-revenues-and-racial-disparities.

253 *Id.* at 3.

254 *See id.*

255 *Id.*

256 *See id.*

257 *See cf.* Aditya Aladangady & Akila Forde, *Wealth Inequality and the Racial Wealth Gap*, FED. RSRV. (Oct. 22, 2021), https://www.federalreserve.gov/econres/notes/feds-notes/wealth-inequality-and-the-racial-wealth-gap-20211022.htm.

258 *See* 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/.

259 LEACHMAN ET AL., *supra* note 4, at 11.

begin to dismantle economic injustice.[260] Past racist policies sustain and amplify racial inequities; future antiracist policies can be shaped to address and counterbalance those inequities. There is no shortage of antiracist tax tools that can be implemented by government policymakers if only they have the will to design and enact antiracist state and local tax systems.[261]

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260 *See* Sanders, *States Can Create Antiracist and Equitable Tax Codes*, *supra* note 61 (demonstrating the different racial impact from tax systems in Tennessee versus Minnesota).

261 *See id.* (providing examples of antiracist state tax policies that are available for policymakers); *see also* RICHARD C. AUXIER, URB. INST., HOW POST-PANDEMIC TAX CUTS CAN AFFECT RACIAL EQUITY 1–2 (2022), https://www.urban.org/sites/default/files/publication/105447/how-post-pandemic-tax-cuts-can-affect-racial-equity_0.pdf (providing examples of antiracist and racist state tax policies that have been enacted post-pandemic).