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Title of proposal: A Wealth Tax Credit: My Second-Best Proposal

A Wealth Tax Credit: My Second-Best Proposal

The racial wealth gap in America is well-documented. Based on 2019 Federal Reserve data, the typical white family has eight times the wealth of the typical Black family and five times the wealth of the typical Hispanic family.¹ According to one report, it would take Black American families 228 years for their household wealth to equal the current wealth of white families.² As I have documented in “The Whiteness of Wealth: How the Tax System Impoverishes Black Americans and How We Can Fix It,” one of the hidden drivers of the racial wealth gap is tax policy.³ Tax reform, therefore, must be part of any effort to reduce the racial wealth gap.

Many of our tax policies have been enacted by Congress with white Americans’ experiences in mind. As a result, when white and Black Americans engage in the same activity, tax policy subsidizes the way white Americans engage in the activity while disadvantaging their Black peers. When white and Black Americans marry, white married couples are more likely to get a tax cut than their Black peers.⁴ White homeowners are more likely to benefit from the wealth-building tax breaks associated with homeownership than Black homeowners.⁵ White workers are more likely than Black workers to

¹ Neil Bhutta, Andrew C. Chang, Lisa Dettling, and Joanne W. Hsu with assistance from Julia Hewitt, Disparities in Wealth by Race and Ethnicity in the 2019 Survey of Consumer Finances, 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>

² Darla Mercado, Closing This Wealth Gap could take 228 years, CNBC.com

<https://www.cnbc.com/2016/08/09/closing-this-wealth-gap-could-take-228-years.html>

³ Dorothy A. Brown, *The Whiteness of Wealth: How the Tax System Impoverishes Black Americans – And How We Can Fix It* (New York: Crown Publishing 2021).

⁴ Dorothy A. Brown, *Race, Class, and Gender Essentialism in Tax Literature: The Joint Return*, 54 WASH. & LEE L. REV. 1469 (1997), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2423814. Brown, *The Whiteness of Wealth* pp. 29-63.,

⁵ Dorothy A. Brown, *Shades of the American Dream*, 87 WASH. U. L. REV. 329 (2009), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2465026; Dorothy A. Brown, *Homeownership in Black and White: The Role of Tax Policy in Increasing Housing Equity*, 49 U. MEM. L. REV. 205 (2018), <https://securservercdn.net/50.62.194.59/501.951.myftpupload.com/wp-content/uploads/2019/06/Brown-FINAL.pdf>. Brown, *The Whiteness of Wealth* pp. 64-95.

have employers who provide tax-subsidized retirement accounts.⁶ Generational wealth-building provisions benefit white Americans more than Black Americans.⁷

A study of the same set of Black and white families over a 25-year period (1984-2009) showed that while white Americans were five times more likely to receive an inheritance than Black Americans, white Americans were left roughly 10 times more wealth than Black Americans.⁸ “[E]ach inherited dollar contributed 91 cents of wealth for white families compared with 20 cents for African-American families.” How does that happen? Because while white Americans use their inheritances to build generational wealth, their Black peers must use their significantly smaller inheritances to help support extended family members, including parents and/or grandparents who were likely victims of Jim Crow and other racist policies and practices.

I argue that our tax system has been used to siphon money out of Black pockets and put it into the hands of white Americans in largely invisible ways because the Internal Revenue Service does not publish income tax statistics on the basis of race and/or ethnicity. Had I not become a detective over the last two decades, the research supporting “The Whiteness of Wealth” never happens.

The Treasury and the Internal Revenue Service are outliers in this regard. While other federal government agencies collect data by race, when it comes to tax data, we have nothing.⁹ And although President Biden signed a racial equity order in January that requires federal agencies to disaggregate data by race, 10 months later we still have nothing. Think of how much worse the COVID-19 vaccine rollout would have been had we not had the information about vaccine rates by race. This information allowed the Biden Administration to make mid-course corrections in order to ensure that Black Americans who were dying from the virus at higher rates than their white peers actually had access to the vaccine. Data are powerful tools, and the failure to provide race and tax data reinforces the myth that who pays taxes is a colorblind question.

Because the tax system takes money out of Black pockets, exacerbating the racial wealth gap, the racial wealth gap cannot be eliminated without significant tax reform. My ideal proposal would be the enactment of a tax credit available to Black Americans as compensation for the decades of higher taxes paid.¹⁰ I argue for a refundable tax credit that would offset any taxes owed, and if the credit amount were greater than the taxes owed, the difference would be refunded to the taxpayer – every April 15th. If a Black taxpayer did not have a tax liability at least equal to the credit, they would receive a refund from the government to offset the extra taxes they have paid in prior years. It is only an ideal, because, unfortunately, Supreme Court precedent indicates that the court would likely find the tax credit unconstitutional.

Washington v. Davis, 426 US 229 (1976) held that without finding Congressional intent to discriminate, it is virtually impossible to prove that disparate impact alone will cause a statute to be

⁶ Dorothy A. Brown, *Pensions, Risk, and Race*, 61 WASH. & LEE L. REV. 1501 (2004), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=616844; Dorothy A. Brown, *Pensions and Risk Aversion: The Influence of Race, Ethnicity, and Class on Investor Behavior*, 11 LEWIS & CLARK L. REV. 385 (2007), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=955856; Brown, *The Whiteness of Wealth* pp. 132-165.

⁷ Brown, *The Whiteness of Wealth* pp. 166-199.

⁸ Thomas Shapiro, Tatjana Meschede, Sam Osoro, *The Roots of the Widening Racial Wealth Gap: Explaining the Black-White Economic Divide*, Institute on Assets and Social Policy, Research and Policy Brief, February 2013. <https://heller.brandeis.edu/iere/pdfs/racial-wealth-equity/racial-wealth-gap/roots-widening-racial-wealth-gap.pdf>

⁹ Jeremy Bearer-Friend, *Should the IRS Know Your Race? The Challenge of Colorblind Tax Data*, 73 *Tax Law Review* 65 (2019).

¹⁰ Brown, *The Whiteness of Wealth* at pp. 216-220.

found unconstitutional. In that case, the issue was whether a hiring exam that was used to screen applicants hoping to become police officers was discriminatory when a greater percentage of Black applicants failed the test than white applicants. The Supreme Court rejected the argument that disparate impact is all that was needed. Their ruling meant that having a law penalize Black Americans more than white Americans is not enough to invalidate that law. A law would likely be unconstitutional if it in fact penalizes members of a single racial group. In that instance, racist intent would be assumed because of the absolute racial disparity.

Those were the facts of an earlier Supreme Court decision - *Yick Wo v. Hopkins*, 188 U.S. 356 (1886). In that case, for fear of fire, the local authorities forbade any business from operating a laundry in a wooden building without prior permission. On its face, the law was neutral, yet the reality was far from it. The plaintiff argued that over 200 petitions by those of Chinese ancestry were denied, and all but one of the petitions filed by non-Chinese applicants were granted. Absent a pattern as stark as that in *Yick Wo*, discriminatory impact alone will be insufficient. In other words, this will be an impossible burden to overcome regarding tax laws. You would need to show that no Black taxpayers benefitted from any of the provisions, which is an impossible burden to sustain. There are some Black married couples who receive a tax cut when they marry, benefit from the wealth-building subsidies for homeownership, and participate in their employer-provided tax-free retirement accounts. They are a clear minority, but they do exist.

Even if I could somehow show evidence of a discriminatory purpose, Congress could respond that it would have taken the same action without the discriminatory motivation. In other words, Congress could argue that the tax laws they enacted were intended to help the majority of taxpayers (who happen to be white), not hurt Black taxpayers specifically. The burden of proof is simply too high, and my ideal proposal would be considered illegal race discrimination against white taxpayers. As a consequence, targeted tax relief for Black taxpayers is simply not available.

Enter my second-best proposal: a refundable wealth tax credit.¹¹ A tax credit for all individuals living in U.S. households with below-median wealth, which is roughly \$100,000.¹² A wealth tax credit would help low-wealth taxpayers of all racial and ethnic backgrounds. And while it would help white taxpayers in low-wealth households, the racial wealth gap means that the effect would disproportionately help Black taxpayers *because* of the racial wealth gap. "In 2016, 83 percent of Black households had less net worth than the median for white households."¹³

A refundable wealth tax credit is different from the earned income tax credit because it is measured by household wealth, whereas the earned income tax credit is a function of income. In addition, a wealth tax credit would be quite straightforward to implement compared to the earned income tax credit, which is extremely complicated, results in significant errors, and may subject recipients to discrimination (see the recent Pro Publica reports indicating that the IRS is targeting Black EITC claimants for audits in the rural south¹⁴). It could be a fixed amount that each taxpayer is eligible to receive, eliminating any possible confusion about the amount of the credit claimed. If the taxpayer

¹¹ Brown, *The Whiteness of Wealth* at pp. 220-222.

¹² Juliana Menasce Horowitz, Ruth Igielnik and Rakesh Kochhar, *Trends in Income and Wealth Inequality*, Pew Research Center, January 9, 2020, <https://www.pewresearch.org/social-trends/2020/01/09/trends-in-income-and-wealth-inequality/>

¹³ Brown, *The Whiteness of Wealth* at p. 167.

¹⁴ Paul Kiel and Hannah Fresques, *Most Likely to Be Audited by the IRS?*, ProPublica, April 1, 2019, <https://projects.propublica.org/graphics/eitc-audit>

lives in a household with below-median wealth, the taxpayer is eligible for the refundable wealth tax credit. It could be a tax credit that ends after a term of years, or after the wealth gap decreases. Or it could continue in perpetuity. The *idea* of a refundable wealth tax credit is the important point, and the actual details should allow for flexibility in order to obtain political support.

A wealth-based tax credit is legal because of a Supreme Court decision - *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1 (1973). The court found that allocating government benefits based upon wealth only needs a logical or “rational” basis to be upheld as constitutional. The issue in that case was whether school districts could be funded by local property taxes, even though it meant wealthier school districts got more funding than poorer school districts and that had a negative effect on students who lived in poorer school districts, who were disproportionately students of color. Because the court found that linking funding to local property values was “reasonable,” it meant that decisions based on wealth would be found “reasonable” and therefore constitutional. All you need for a law that creates wealth disparities to be upheld by the Supreme Court is for that law to have a reason the court will respect. A wealth tax credit designed to reduce the wealth gap would seem to easily clear that hurdle.

A refundable wealth-based credit will not exclusively help the Black taxpayers who suffered under Jim Crow while paying “first-class” taxes or continue to pay higher taxes today because they are Black. But a refundable wealth tax credit will disproportionately go to Black taxpayers and still withstand any charges of unconstitutional race-based policy. A refundable wealth tax credit could help low-wealth family members who are currently being supported by higher-income relatives, which is relatively common among Black families.¹⁵

A refundable wealth tax credit would use the racial wealth gap in order to benefit Black Americans. For far too long, black Americans have paid higher taxes than their white peers, and fairness requires a significant change to the status quo. A refundable wealth tax credit would be a start.

¹⁵ Tatjana Meschede, Joanna Taylor, Alexis Mann, and Thomas Shapiro, Family Achievements?: How a College Degree Accumulates Wealth for Whites and Not for Blacks, 99 Federal Reserve Bank of St. Louis Review, First Quarter 2017; N. S. Chiteji and Darrick Hamilton, Family Connections and the Black-White Wealth Gap Among Middle Class Families, The Review of Black Political Economy, Volume 30 Issue 1 (May 2002) pp. 9-28.