Testimony of

Dorothy A. Brown

Asa Griggs Candler Professor of Law, Emory University

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Chairman Wyden, Ranking Member Crapo, and members of the Committee: Thank you for inviting me to share these views on how our tax system perpetuates racial inequality.

In my testimony today, I will discuss three ways that tax policies are more likely to provide tax breaks for white Americans than black Americans. The first looks at the tax breaks for marriage. The second looks at tax breaks for sales of homes. The third looks at tax breaks for employer provided retirement accounts. But if there is one thing that I hope you remember from what I will be sharing with you today it is that racial inequality is baked into how our tax laws operate.

My book *The Whiteness of Wealth: How the Tax System Impoverishes Black Americans – And How We Can Fix It*,[1] reveals how when black Americans engage in the same activity like marriage, homeownership, or work our federal income tax policies advantage how white Americans engage in the activity while at the same time disadvantaging how black Americans engage in the activity. As a result, tax policy causes black Americans to pay higher taxes than their white peers. The book builds upon my prior research.[2]

What my research has revealed is that because systemic racism is very real, all American taxpayers bring our racial identities onto our tax returns. Understanding how this happens is made more complicated because the Internal Revenue Service does not publish statistics by race, even though it has by gender and age.[3] The Federal government publishes a treasure trove of statistics by race – but not when it comes to our taxes. That single choice meant that

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[1] Dorothy A. Brown, The Whiteness of Wealth: How the Tax System Impoverishes Black Americans-And How We Can Fix It (Crown Publishing Co. 2021).

[2] Dorothy A. Brown, The Marriage Bonus/Penalty in Black and White, in Taxing America, edited by Karen B. Brown and Mary Louise Fellows (NYU Press 1996); Race, Class and Gender Essentialism in Tax Literature: The Joint Return, 54 Washington & Lee L. Rev. 1469 (1997); Pensions, Risk, and Race, 61 Washington & Lee L. Rev. 1501 (2004); The Tax Treatment of Children: Separate But Unequal, 54 Emory L. J. 755 (2005); Race and Class Matters in Tax Policy, 107 Columbia Law Review 790 (2007); Pensions and Risk Aversion: The Influence of Race, Ethnicity, and Class on Investor Behavior, 11 Lewis & Clark L. Rev. 385 (2007); Shades of the American Dream, 87 Wash. U. L. Rev. 329 (2009); Teaching Civil Rights Through The Basic Tax Course, 54 St. Louis University L. J. 809 (2010); and Homeownership In Black and White: The Role of Tax Policy in Increasing Housing Inequity, 49 Memphis L. Rev. 205 (2018).

[3] Jeremy Bearer-Friend, Should the IRS Know Your Race? The Challenge of Colorblind Tax Data, 73 Tax Law Review 1 (2019) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3231315

my research might never have happened had I not become a detective of sorts looking for proxy data by race that might inform my tax analysis.

My research shows that history plays a part here as many of our current tax provisions date back to a time when separate but equal was the law of the land, specifically before *Brown v. Board of Education*[4] was decided and before the 1964 Civil Rights Act, the 1965 Voting Rights Act, and the 1968 Fair Housing Act became law. We should not be surprised then that our tax policies were created to benefit white Americans. Another part of how we got here can be explained by the reality that although legal Jim Crow has been overturned, we live in a society where race unfortunately still matters. Data from the 2019 Survey of Consumer Finances show that white families have 8 times the wealth of black families.[5] In 21st century America, systemic racism impacts virtually every societal function – including how much we pay in taxes.

Tax policies around marriage are more likely to benefit white married couples.

Our joint return operates in such a way that certain marriages get a tax cut called a marriage bonus, others pay higher taxes called a marriage penalty and a small percentage see no change in their taxes. Marriage bonus couples are those where one spouse earns roughly all of the income while the other is a stay-at-home spouse and works in the home. Marriage penalty couples are those like my parents – my mother was a nurse and my father was a plumber – and each worked full-time and contributed about 50 percent to household income. Census Bureau data I analyzed show that white married couples were more likely to get a marriage bonus, while black married couples were more likely to pay a marriage penalty. But there has always been a certain minority of white married couples whose marriages look like most black marriages and therefore pay higher taxes when they marry.

What we know of as the joint return did not exist at the beginning of our progressive tax system because taxpayers were taxed on their income as individuals. But in 1927, a rich, white couple Charlotte and Henry Seaborn along with their lawyers took matters into their own hands effectively creating a joint tax return for themselves. Henry shifted half of his income to Charlotte which lowered the overall taxes they paid. The Internal Revenue Service objected, but the Seaborns took their case to the Supreme Court which rewarded their self-help with a win.[6] That led eventually to Congress creating a joint return in 1948. But even in 1948 a higher percentage of black wives worked outside of the home than white wives which meant it was entirely predictable that the joint return would lead to lower taxes for more married white

[4] 347 U.S. 483 (1954).

[5] Neil Bhutta, Andrew C. Chang, Lisa J. 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

[6] Poe v. Seaborn, 282 U.S. 101 (1930).

couples than married black couples.[7] It is referred to as equitable when we tax two households with $100,000 of income the same whether that is the result of two wage earners or one. Systemic racism in the labor market however means that it often takes two married black workers to equal one single wage earner. Those households should not pay the same amount in taxes in a progressive tax system.

While the Tax Cuts and Jobs Act temporarily eliminated marriage penalties for many,[8] the marriage bonus remains in our tax code today and continues to disadvantage married black couples. My solution: a return to individual filing like at the beginning of our modern progressive tax system.[9] Not only will it help dual wage earner couples, but it will also help America's singles as well.

Hidden within the marriage bonus/penalty discussion is the single's penalty. A single taxpayer that makes $100,000 of income will pay more taxes than a married single wage earner couple with $100,000 of income. According to the 2019 Census Bureau, 56 percent of white Americans are married, compared with almost 38 percent of black Americans. Most black Americans are single along with a significant percent of white Americans. Single Americans are a growing demographic in this country and a return to individual filing will also help them.

Tax subsidies for homeownership are more likely to benefit white homeowners.

The second area that I want to touch upon are tax subsidies for homeownership. The majority of white Americans are homeowners while the majority of black Americans are renters. According to the Census Bureau in the Fourth Quarter of 2020, the highest rate of homeownership was for white Americans at 74.5 percent and the lowest rate was for black Americans at 44.1 percent. As a result, all tax subsidies for homeownership will disproportionately benefit white Americans the most and black Americans the least. Homeownership has been historically and remains an asset tied to racial identity. Recent data show that roughly 1 in 10 Americans itemize deductions and those are disproportionately Americans with higher incomes.[10] The mortgage interest deduction, which can only be taken if a taxpayer itemizes their deductions, is becoming increasingly irrelevant to most homeowners.

There are other tax subsidies for homeownership however, that includes the tax treatment when we sell a home at a gain. Gains on sales of homes can escape taxation for up to $500,000 if the taxpayer is married or $250,000 if the taxpayer is single.[11] Losses on the sale of homes on

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[7] Claudia Goldin, Female Labor Participation: The Origin of Black and White Differences, 1870 and 1880, 37 Journal of Economic History, 87-108 (1977).

[8] Marriage penalties still exist for married couples eligible for the earned income tax credit and for high income households, where black couples are still more likely than white couples to pay a marriage penalty.

[9] Anthony C. Infanti, Decentralizing Family: An Inclusive Proposal for Individual Tax Filing in the United States, 2010 Utah Law Rev. 605 (2010) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1503543

[10] Tax Policy Center Analysis of 2018 Tax Return Data https://www.taxpolicycenter.org/model-estimates/impact-itemized-deductions-tax-cuts-and-jobs-act-jan-2018/t18-0001-impact-number

[11] Internal Revenue Code Section 121.

the other hand are not deductible.[12] The special tax treatment for gain dates back to 1951. By 1950, 55 percent of white Americans had become homeowners – just a decade earlier only 44 percent of white Americans were homeowners. That explosive white homeownership growth was aided by low-cost, long-term, fixed interest rate mortgages insured by the federal government that largely excluded black Americans.[13] From its origins, the tax break for gain on home sales was designed to benefit white homeowners.

Established research shows us that the greatest appreciation in our homes comes when we live in neighborhoods which are overwhelmingly white with very few black neighbors.[14] As the percentage of black homeowners in the neighborhood increases, the value of the homes decrease particularly because white home buyer preferences, as the majority of home buyers, help establish the market prices. While most white homeowners live in neighborhoods with very few black neighbors, the majority of black homeowners live in racially diverse or all black neighborhoods with many black neighbors. As a result, white homeowners but not most black homeowners are more likely to sell at a large tax-free gain. Research also shows that the homeowners most likely to sell their homes at a non-deductible loss are black.[15] Tax subsidies for homeownership therefore create white tax winners and black tax losers. The federal government should stop subsidizing a racist homeownership market.

Tax subsidies for employer provided retirement accounts are more likely to benefit white workers.

The final area I want to highlight are tax subsidies for work, specifically employer provided retirement accounts. Retirement accounts as a tax benefit traces its roots to 1942, when price and wage controls along with an excess profits tax, encouraged employers to provide non-wage benefits like retirement accounts. Amounts set aside in retirement accounts by employees (and if there's an employer-match amounts set aside by their employer) are not taxable to the employee until their expected withdrawal at retirement. If any amounts are withdrawn prior to the age of 59 ½ they are subject to an additional tax penalty. Black Americans are less likely than white Americans to work for employers that provide retirement accounts.[16] In the private sector, for workers aged between 21 and 64, 56 percent of white workers work for an employer that offers a retirement plan compared with 50 percent of black workers, and almost 35 percent of Hispanic workers. Almost 46 percent of white workers, almost 37 percent of black workers, and 25 percent of Hispanic workers actually participate in their private sector

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[12] Internal Revenue Code Section 165(c)(3).
[13] Richard Rothstein, The Color of Law: A Forgotten History of How Our Government Segregated America (Liveright Publishing Co., 2017).
[14] Dorothy A. Brown, Homeownership in Black and White: The Role of Tax Policy in Increasing Housing Inequity, 49 Memphis L. Rev. 205, 214-221 (2018).
[15] Sandra J. Newman & C. Scott Holupka, Is Timing Everything? Race, Homeownership and Net Worth in the Tumultuous 2000s, 44 Real Est. Econ. 307, 309 (2015).
[16] Craig Copeland, Employment-Based Retirement Plan Participation: Geographic Differences and Trends, 2013, Employee Benefit Research Institute, No. 405 October 2014.

employer provided retirement account. Research also suggests that black workers are more likely than all other racial and ethnic groups to take an early withdrawal regardless of income and pay a tax penalty.[17] One potential explanation could come from research that shows black college graduates are more likely to send money home to their parents and other family members in financial distress, while white college graduates are more likely to receive money from their parents and other family members that enable them to be able to save more and build wealth.[18] Black college graduates have to make their dollars stretch farther than their white peers which makes it less likely for them to be able to contribute to their retirement accounts and more likely to withdraw what they may have been able to contribute. Given that less than half of white workers, a little over a third of black workers and a quarter of Hispanic workers in the private sector participate in their retirement accounts, tax subsidies should be withheld until the private sector increases their participation rates.

The Whiteness of Wealth discusses many other areas where our federal tax policies disadvantage black Americans, but they all lead to the conclusion that our tax laws need a fundamental overhaul that places racial equity at the center.

Solutions

No single change will be sufficient to address all the ways that racial inequality is embedded in our tax laws. My recommendation for a first step however would be to have the Internal Revenue Service publish statistics by race. In addition, every future Congressional proposal for tax reform should come with a racial impact statement. In Chapter Six of *The Whiteness of Wealth* I outline my ideal tax system, but the point I wish to focus on here is that all income should be subject to the same progressive rate system. I am generally skeptical of deductions, exclusions, and loopholes because they tend to leave behind black Americans. I advocate for a wealth tax credit for all taxpayers in households with below median wealth. It would disproportionately benefit black taxpayers because of the racial wealth gap, but it would also benefit all taxpayers regardless of race and/or ethnicity with below median wealth. This proposal seeks to directly help those with the least wealth.

I will note in closing that other organizations have begun to highlight racial and other disparities found in our tax laws including the National Women's Law Center's report on Tax Justice is Gender Justice: Advancing Gender and Racial Equity by Harnessing the Power of the U.S. Tax Code[19] and the Center for Budget and Policy Priorities' How the Federal Tax Code Can Better Advance Racial Equity.[20] Congress can and must do better in order to achieve racial equity in

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[17] The Ariel/Aon Hewitt Study 2012, 401(k) Plans In Living Color at 11.

[18] Tatjana Meschede, Joanna Taylor, Alexis Mann, and Thomas Shapiro, "Family Achievements?" : How a College Degree Accumulates Wealth For Whites and Not For Blacks, Federal Reserve Bank of St. Louis Review, First Quarter 2017, 99(1), pp. 121-37. https://files.stlouisfed.org/files/htdocs/publications/review/2017-02-15/family-achievements-how-a-college-degree-accumulates-wealth-for-whites-and-not-for-blacks.pdf

[19] https://nwlc.org/wp-content/uploads/2019/11/NWLC-Tax-Executive-Summary-Accessible.pdf

[20] https://www.cbpp.org/research/federal-tax/how-the-federal-tax-code-can-better-advance-racial-equity

the operation of our tax laws. As I wrote recently in the New York Times: “Black taxpayers should not be required to finance our own subordination.”[21]

[21] Dorothy A. Brown, Your Home’s Value is Based on Racism, New York Times, Mar. 20, 2021, https://www.nytimes.com/2021/03/20/opinion/home-value-race-taxes.html