

HOW LAW AFFECTS POPULATION HEALTH

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An illustration at the bottom of the slide shows a variety of hands of different skin tones (white, light brown, dark brown, black) raised in the air. Some hands are wearing wristbands or watches. The background of the entire slide is a solid dark blue, and the text is set against a light beige rectangular area in the upper half.

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Outline:

- ▶ **WHY** DOES LAW AFFECT POPULATION HEALTH?
- ▶ **WHAT** LAW AFFECTS POPULATION HEALTH?
- ▶ **HOW** DOES LAW WORK TO AFFECT POPULATION HEALTH?
 - ▶ An Example: Harvard/UNC Affirmative Action Decision
- ▶ **RECOMMENDATIONS**



WHY DOES LAW AFFECT POPULATION HEALTH?

HEALTH EQUITY

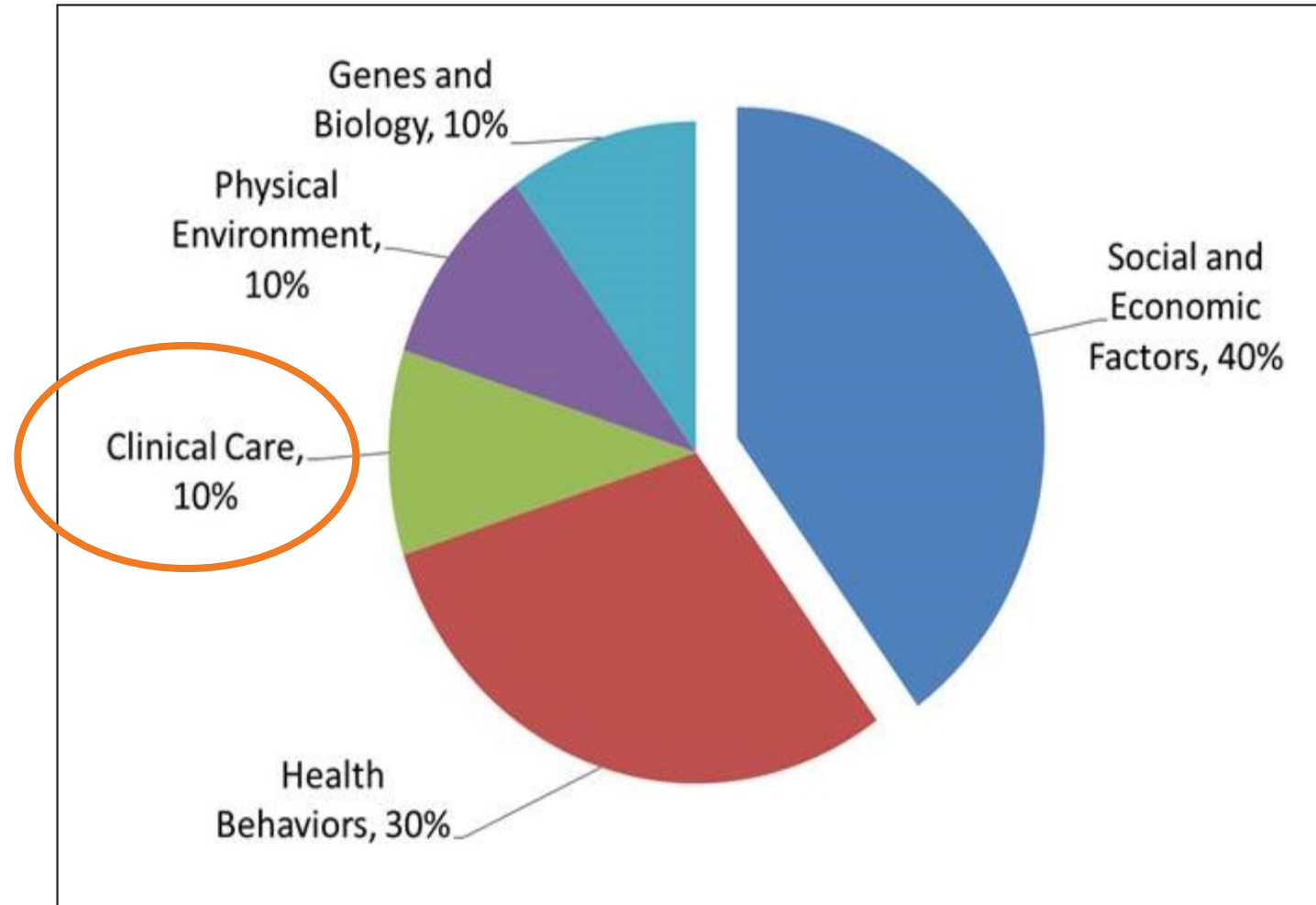


EVERYONE HAS A FAIR AND JUST
OPPORTUNITY TO BE AS HEALTHY AS
POSSIBLE.



WE ACHIEVE HEALTH EQUITY BY ELIMINATING
UNJUST, UNFAIR, AVOIDABLE DISPARITIES IN
HEALTH AND ITS DETERMINANTS

REQUIRES LAW TO CONTROL INJUSTICE



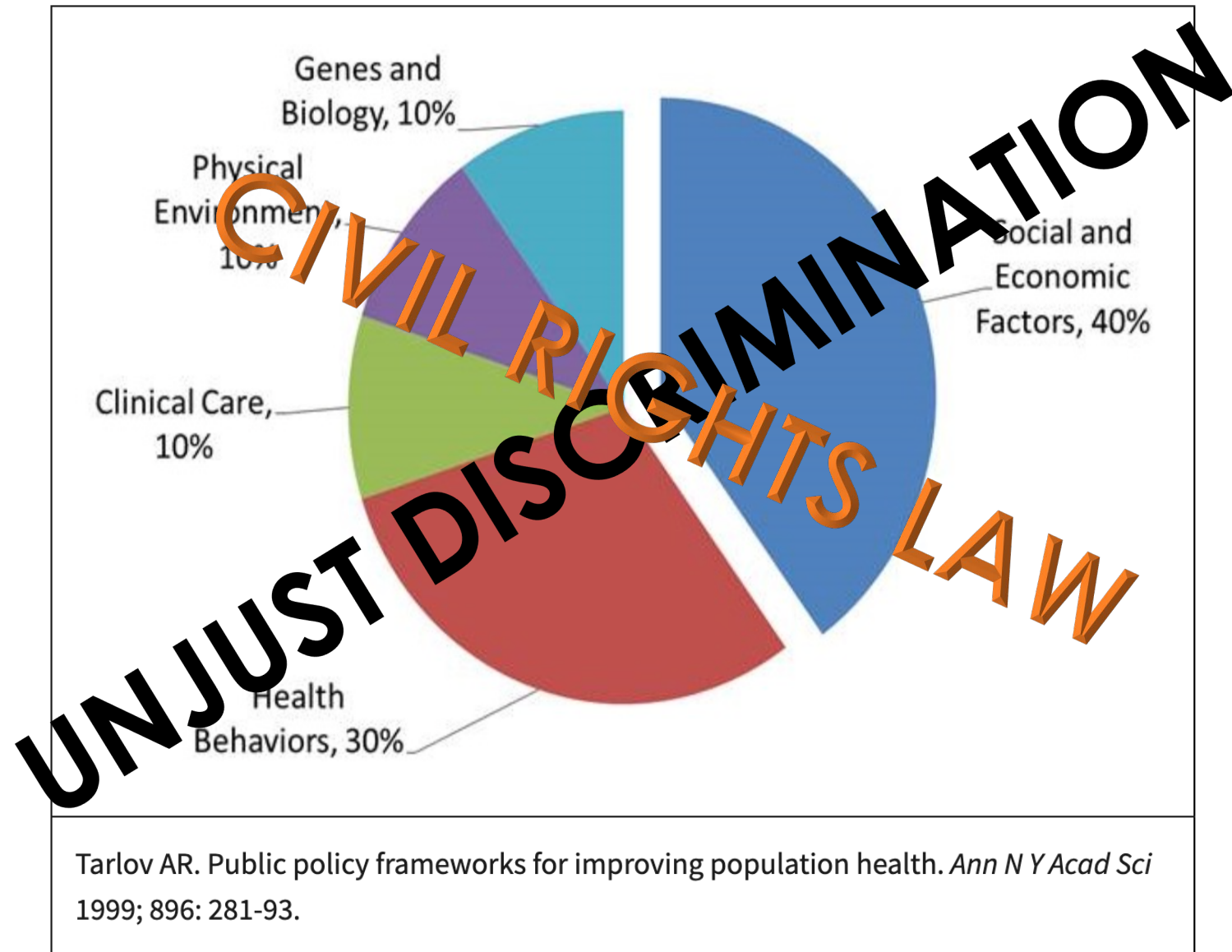
Tarlov AR. Public policy frameworks for improving population health. *Ann N Y Acad Sci* 1999; 896: 281-93.

UNEQUAL
TREATMENT

CONFRONTING RACIAL AND ETHNIC
DISPARITIES IN HEALTHCARE

INSTITUTE OF MEDICINE
OF THE NATIONAL ACADEMIES

Unjust Bias in Clinical Care



WHAT LAW AFFECTS POPULATION HEALTH?



The United States Constitution

RECONSTRUCTION AMENDMENTS

United States Civil War

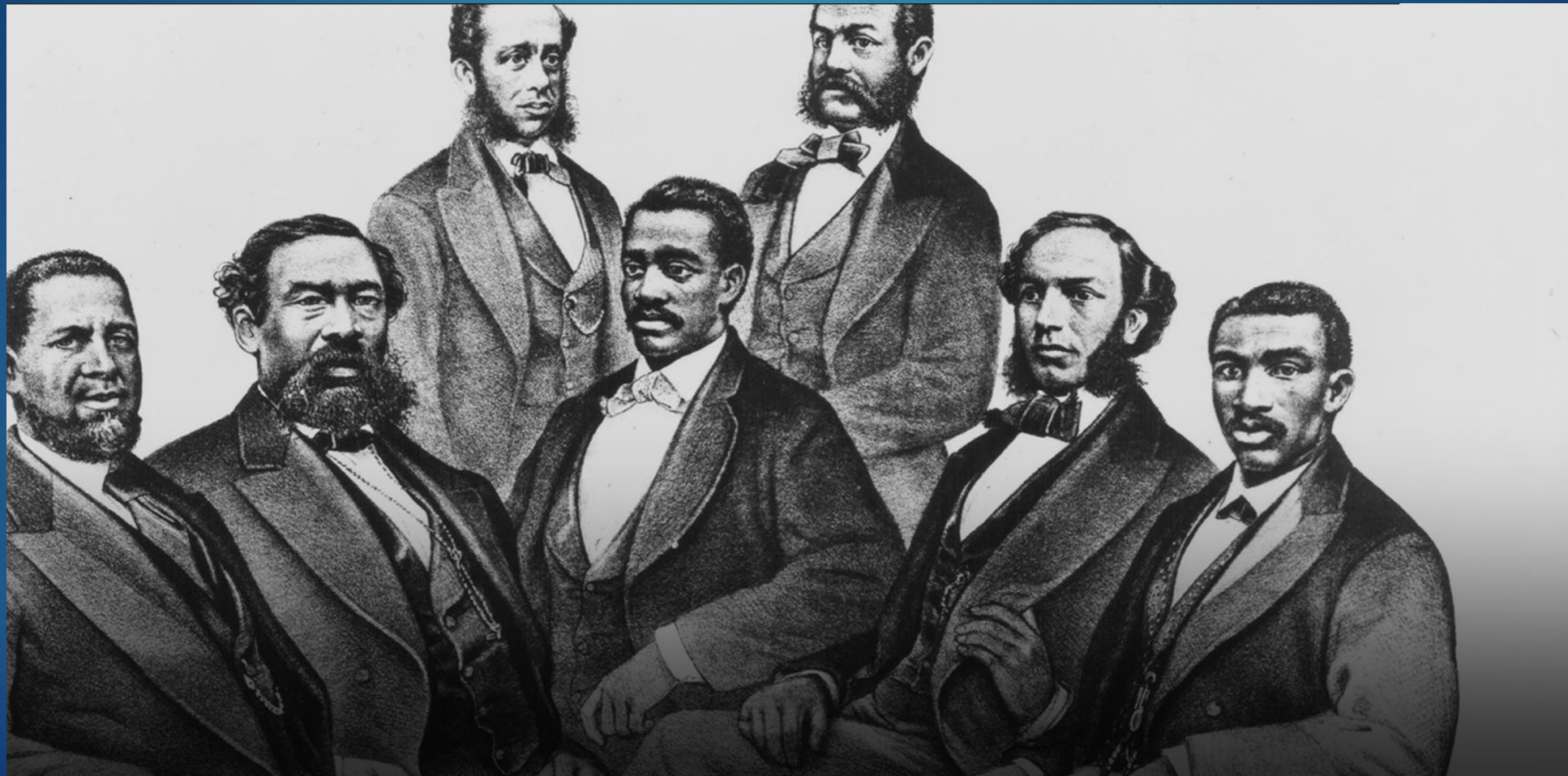
April 12, 1861 – April 9, 1865



B.W. KILBURN/LIBRARY OF CONGRESS/CORBIS/VCG/GETTY IMAGES

Reconstruction Era

1865-1877



The Reconstruction Amendments

- ▶ Amendment XIII – Prohibits Slavery
- ▶ Amendment XIV – Prohibits Denial of Equal Protection
- ▶ Amendment XV - Prohibits Denial of Right To Vote Based on Race

Amendment XIV

Ratified July 9, 1868

- ▶ **Section 1** – All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.
- ▶ **Section 5** – The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.



United States Civil Rights Legislation

1877 TO 2010

United States Civil Rights Legislation

- ▶ 1865 – The Black Codes
 - ▶ State laws to require work, criminalize vagrancy, and prohibit pay
- ▶ 1866 – Freedmen's Bureau Act – The Freedmen's Schools passed over President Jackson's Veto
- ▶ 1866 – Civil Rights Act of 1866 –
 - ▶ Civil Equality. Congress overrode Presidential veto to codify equal rights to vote, hold office, and protection against segregation and discrimination, equal rights which were beyond the 13th Amendment
- ▶ 1868 – 14th Amendment
 - ▶ Human Equality (Debated).
- ▶ 1870 – 15th Amendment
- ▶ 1870 – Enforcement Act of 1870 (Ku Klux Klan Act)
 - ▶ Criminalized violence against Black voters
- ▶ 1871 - Ku Klux Klan Act of 1871 – Civil Penalties against state anti-Black voting action
- ▶ 1875 – Civil Rights Act of 1875 – Equal enjoyment of public accommodations (Civil v. social rights)
- ▶ 1964 – Civil Rights Act of 1964 – Title VI
- ▶ 1965 – Voting Rights Act
- ▶ 1968 – Fair Housing Act
- ▶ 2010 – Section 1557 of Affordable Care Act

Title VI of the Civil Rights Act of 1964 – Congress Invokes Spending Power



Civil Rights Act of 1964

- ▶ **42 U.S.C. 1981** – prohibits discrimination based on race, color or national origin in the making and enforcement of **contracts**
 - ▶ **Ensures** – all citizens have the same contractual rights as enjoyed by “white citizens”
- ▶ **42 U.S.C. 1982** – provides that all citizens “have the same right, in every State and Territory, as enjoyed by white citizens thereof to inherit purchase lease, sell, hold and convey **real and personal property**”
- ▶ **42 U.S.C 1983** – provides opportunity for individuals to **sue government officials** to enforce the rights guaranteed under the Constitution and other laws
- ▶ **42 US.C. 1985** - creates civil cause of action for conspiracies to violate civil rights
 - ▶ **Imposes Liability for** “ two or more persons . . . conspire, or go in disguise on the highway . . . for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws”

Title VI of the Civil Rights Act of 1964 – Congress Invokes Spending Power

▶ Civil Rights Act of 1964 – Title VI

- ▶ *No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.*

▶ 42 U.S.C.A. § 2000d –

SOLUTION: FIGHT FOR EQUAL ACCESS TO HEALTH CARE

Simkins v. Cone

- Segregated hospitals nationally
- \$3.2 Million state and federal construction funds under Hill Burton Act
- 6 MDs, 3 Dentists, 2 Patients = Plaintiffs
- 4th Circuit Court of Appeals, 1963
 - Private hospitals spending public funds could not discriminate under 5th and 14th Amendment Equal Protection Clauses
- Civil Rights Act of 1965
- 7,160 Hospitals Desegregated



The Moses H. Cone Memorial Hospital, circa 1965. Image from the North Carolina Digital Collections.

Title VI Impact on Population Health

- ▶ **Cypress v. Newport News Gen Hospital (1967)** – Black MD and his patients denied admitting privileges violated Title VI
- ▶ **Marabel v. Alabama Mental Health Bd (1969)** – Mental health institution may not keep federal funds and segregate Black patients in inferior facilities in violation of Title VI
- ▶ **Coleman v. Humphreys County Mem Hospital (1973)** – Class action against county hospital by black residence enjoined discriminatory operations that violated Title VI
- ▶ **Battle v. Jefferson Davis Memorial Hospital (1976)** – Rejecting Black MD application was racially motivated in violation of Title VI
- ▶ **Jackson v. Conway (1979)** – Plaintiffs sued to require federal government to investigate closure of hospitals
- ▶ **Fobbs v. Holy Cross Health Care (1994)** – Black MD sued to challenge denial of admitting privilege
- ▶ **Linton v. Comm'r of Health Tennessee (1995)** – Minority Medicaid-eligible plaintiffs challenged bed policy at nursing home that segregated patients in violation of Title VI
- ▶ **Department of Health And Human Services (2010)** – University of Pittsburgh Medical Center – Entered voluntary compliance agreements that included extended hours, screening, transportation to rectify closing hospital in predominately Black area



United States Supreme Court Law

LIMITING THE ANTI-DISCRIMINATION IMPACTS

Civil Rights Cases (1883)

- ▶ **Issue:** Whether the Civil Rights Act of 1875 is constitutionally valid
- ▶ **Held:** No! Held Unconstitutional
- ▶ **Analysis**
 - ▶ **13th Amendment** – Applies to private conduct and to end all “badges and incidents of slavery” but not to eliminating discrimination
 - ▶ See, *Jones v. Alfred H. Mayer Co.* – 13th Amend Gives Congress right to enact 42 U.S.C. §1982 which applies to private conduct
 - ▶ See, *Runyon v. McCrary* – Same 42 U.S.C. §1981
 - ▶ **14th Amendment** – Congress lacks authority under Section 5 to enact under this amendment which applies only to government action not private behavior

Alexander v. Sandoval (2001)

- ▶ **Held:** There is no private right of action to enforce **disparate impact** cases under Title VI of the Civil Rights Act of 1964
- ▶ **Disparate Treatment** – Private enforcement of Title VI is available only for disparate treatment cases which require proof of intentional discrimination
- ▶ **Disparate Impact** – Cases alleging disparate impact or effects of activities based solely on statistical data must be administratively enforced



HOW DOES LAW AFFECT POPULATION HEALTH?

SFFA v. Harvard and UNC (2023)

- **Held: Harvard and UNC Race Conscious Admissions programs invalid under 14th Amendment**
- **Held:** Educational benefits of diversity no longer compelling interest, narrowly tailored to satisfy strict scrutiny because
 - Immeasurable – Judges Cannot Review Educational Benefits
 - No Nexus – between goals and means employed
 - Stereotypes Members of Minority
 - Negatively Harms Members of Majority
 - Interminable
- **Held:** Universities may consider race narrowly
- **Held:** “nothing in this opinion should be construed as prohibiting universities from considering an applicant’s discussion of how race affected his or her life, be it through discrimination, inspiration, or otherwise.”

(Slip Opinion)

OCTOBER TERM, 2022

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

STUDENTS FOR FAIR ADMISSIONS, INC. *v.*
PRESIDENT AND FELLOWS OF HARVARD COLLEGE

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE FIRST CIRCUIT

No. 20–1199. Argued October 31, 2022—Decided June 29, 2023*

Harvard College and the University of North Carolina (UNC) are two of the oldest institutions of higher learning in the United States. Every year, tens of thousands of students apply to each school; many fewer are admitted. Both Harvard and UNC employ a highly selective admissions process to make their decisions. Admission to each school can depend on a student’s grades, recommendation letters, or extracurricular involvement. It can also depend on their race. The question presented is whether the admissions systems used by Harvard College and UNC are lawful under the Equal Protection Clause of the Fourteenth Amendment.

At Harvard, each application for admission is initially screened by a “first reader,” who assigns a numerical score in each of six categories: academic, extracurricular, athletic, school support, personal, and overall. For the “overall” category—a composite of the five other ratings—a first reader can and does consider the applicant’s race. Harvard’s admissions subcommittees then review all applications from a particular geographic area. These regional subcommittees make recommendations to the full admissions committee, and they take an applicant’s race into account. When the 40-member full admissions committee begins its deliberations, it discusses the relative breakdown of applicants by race. The goal of the process, according to Harvard’s director of admissions, is ensuring there is no “dramatic drop-off” in minority admissions from the prior class. An applicant receiving a majority of

* Together with No. 21–707, *Students for Fair Admissions, Inc. v. University of North Carolina et al.*, on certiorari before judgment to the United States Court of Appeals for the Fourth Circuit.



SFFA v. Harvard and UNC

J. Thomas Concurs



J. Gorsuch Concurs



J. Sotomayor Dissents



SFFA v. Harvard and UNC

J. Thomas Concurs

Originalist defense of
Colorblind Constitution

All forms of affirmative
action are
unconstitutional

Any use of race in
higher education
violates the 14th
Amendment

J. Gorsuch Concurs

- Both Harvard and UNC Plans invalid under Title VI
- Title VI of Civil Rights Act does not tolerate any admission program decisions “on the ground of race”
- Title VI and VII of Civil Rights Act codify a categorical rule of “individual equality without regard to race.” (Bakke)
- Racial data “lumps together” white and Asian students

J. Sotomayor Dissents

- The Equal Protection Clause of the 14th Amendment enshrines a guarantee of racial equality” that is not and has never been **colorblind**
 1. Constitution Fugitive Slave clause,
 2. Constitution Art 1 s9 limits power to restrict slavery until 1809
 3. 13th Amendment was to abolish slavery except for punishment of crime
 4. 14th Amendment (See Bakke “the one purpose” language from 1873 Slaughter House Case)
 5. 14th amendment Passed with plenty of race conscious Acts
 1. Freedman’s Bureau Act
 2. Civil Rights Act of 1866 – to abolish the Blac Codes
- Completes the Harlan Phrase from *Plessy v. Ferguson* to show full white supremacy and Anti-Asian context.



Justice Jackson's Legal Epidemiology

THE ADVERSE HEALTH IMPACTS OF DISCRIMINATION AND BIAS

SFFA v. Harvard and UNC

Justice Jackson Dissent

- 14th Amendment race conscious - passed to afford Blacks natural rights
- Reconstruction Amendments to protect Negroes
- History of Black Role of Law in Civil Rights Suppression – White Affirmative Action
 - Black Codes (1865)
 - Homestead Act Land Grants (1862)
 - Plessy v. Ferguson (1896)
 - Home-Owners' ending Corp (1933)
 - Federal Housing Association (1934)
 - G. I. Bill \$96 million to vets(1944-1971)



SFFA v. Harvard and UNC

Justice Jackson
Dissent



- **Facially race-blind policies still work race-based harms today**
 - **Disparate Tax Treatment**
 - **Disparate Location Environmental toxins**
 - **Segregating Highway Locations**
- **“Persistent and pernicious denial of what has been done in every State of the Union for the white race.” (Harlan)**

Wealth Gaps

- ▶ B/W Median Wealth Gap - \$24,000 to \$288,000 (2019)
- ▶ B/W Educated Wealth Gap - \$300,000 more for white families with college (2019)
- ▶ Median Income Gap – W= \$67.1; Asian = \$98.2; Latino = \$56.1; Black = \$45.4
- ▶ 19.5 million American workers earn less than \$15/hour with 18% of Black and Latino workers under this threshold compared to 12% of white workers
- ▶ Black home ownership rates 25 percentage points behind White home ownership
- ▶ Disproportionate impact of housing discrimination, evictions, and substandard living conditions

Education Gaps

- ▶ 50% fewer Blacks w/college vs whites; 50% more debt at graduation
- ▶ Lower likelihood of access to preschool and early childhood education programs
- ▶ School disciplinary disparities that produce increased risk of involvement with criminal justice system

Health Gaps Track Financial Ones

- Black Children Elevated blood levels 2x white children
- Black and Latino children with heart conditions 2x more likely die than white
- Black infant mortality 2.5 x white
- Black men 2x likely to die from prostate cancer than white men; lower survival rate
- Black mothers 4x more likely to die
- Disparate COVID Deaths
- Disparate Obesity, hypertension, maternal mortality, infant mortality, stroke





The structural inequality of:

- low-wages
- sub-standard education
- residential segregation
- neighborhood violence
- environmental toxins, and life in a food desert

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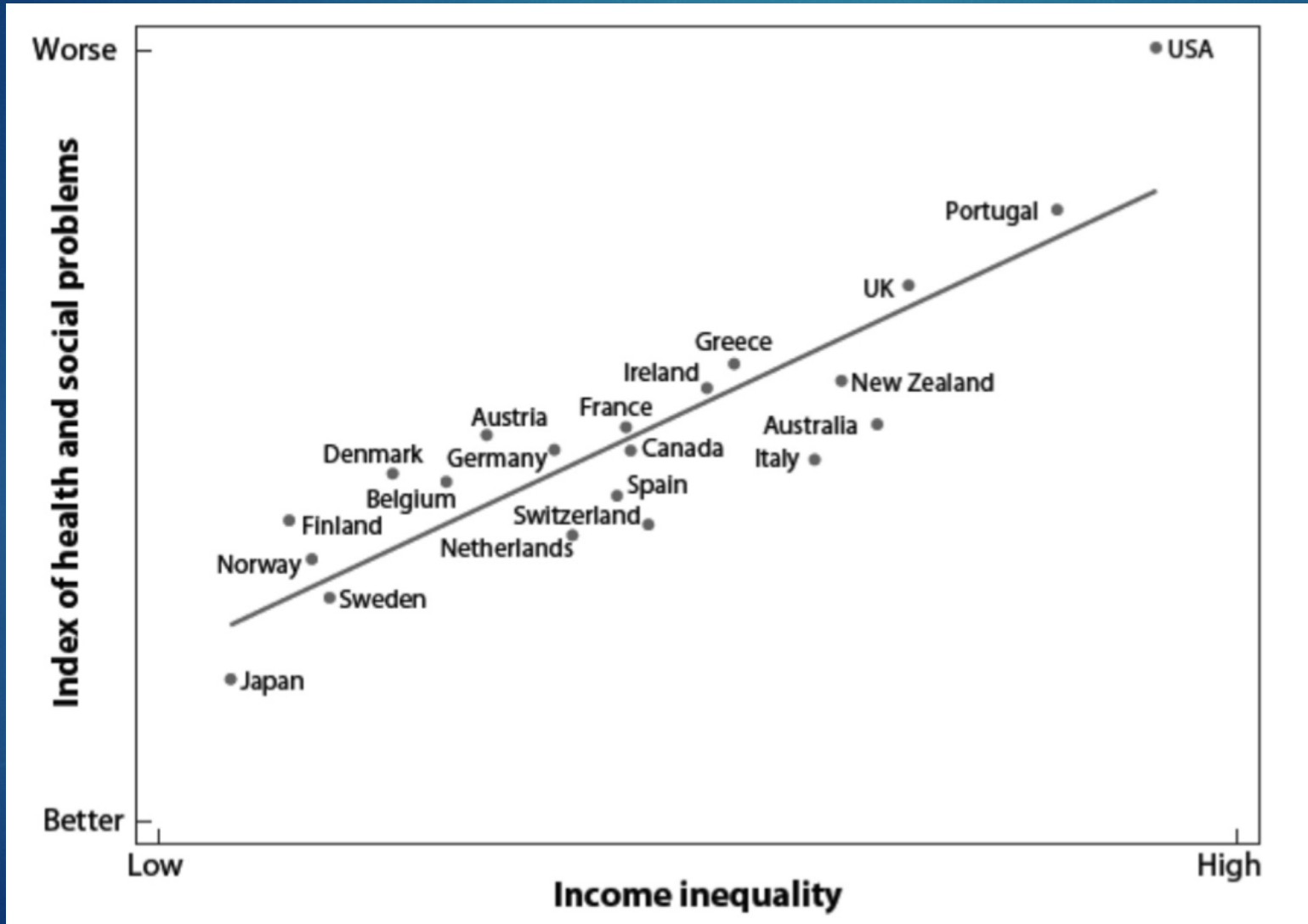
RECOMMENDATIONS





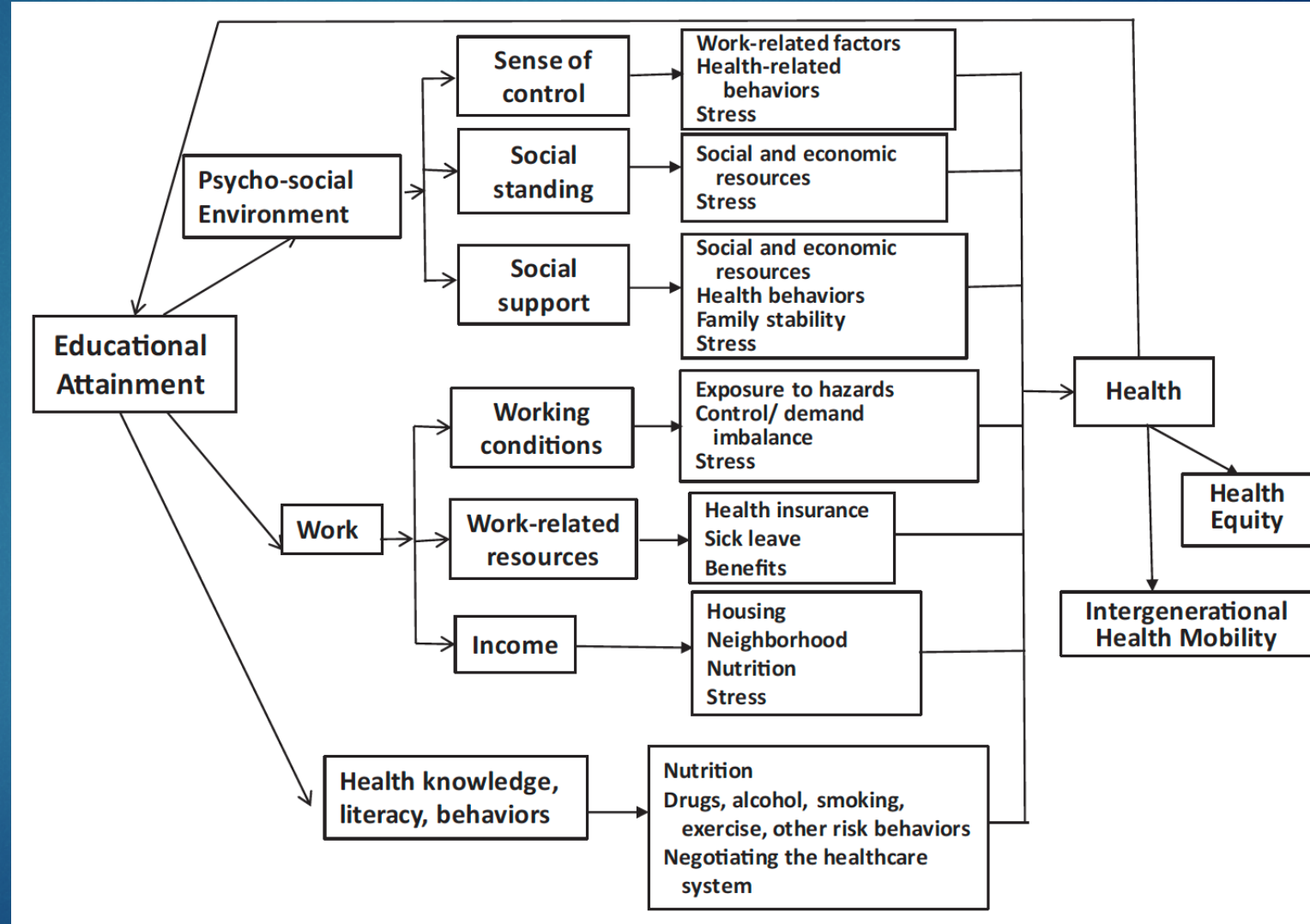
MEDICAL-LEGAL PARTNERSHIP

EXPLICITLY CONNECT HEALTH AND ECONOMIC RACIAL DISCRIMINATION

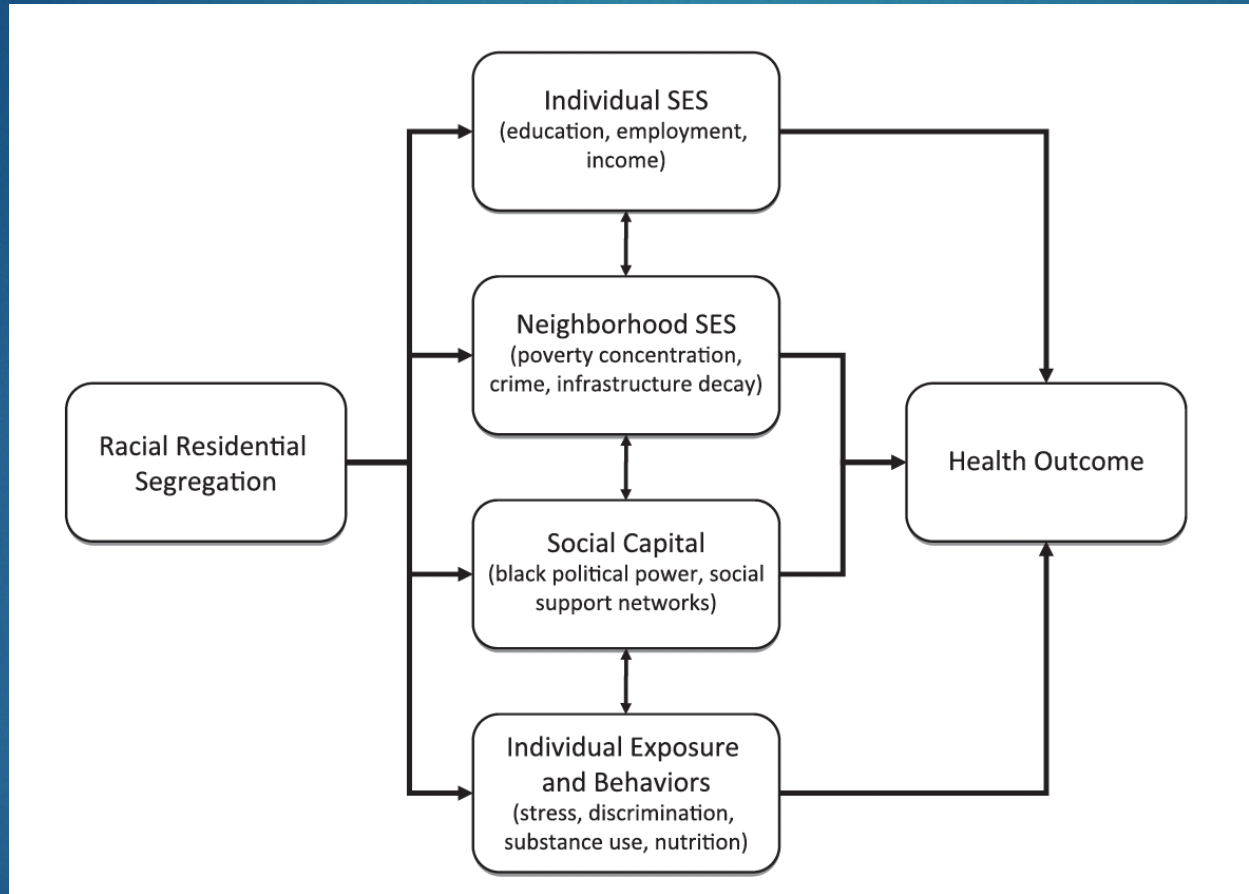


Index of Health and Social Problems Related to Income Inequality in Wealthy Nations

EXPLICITLY CONNECT HEALTH AND EDUCATION RACIAL DISCRIMINATION



EXPLICITLY CONNECT HEALTH AND HOUSING DISCRIMINATION



**Possible Pathways
Between
Segregation and
Health
(Houge)**

LaVeist, T., Pollack, K., Thorpe Jr, R., Fesahazion, R., & Gaskin, D. (2011). Place, not race: disparities dissipate in southwest Baltimore when blacks and whites live under similar conditions. *Health affairs*, 30(10), 1880-1887.



Identify Structural Racism

Defined as a social, economic, and political system that does two things: it structures opportunity and it assigns hierarchical value based on a social, not biological construct called “race.”

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Enforce Section 1557 of the Patient Protection and Affordable Care Act



Protect Title VI of the Civil Rights Act of 1964





“Health is the by-product of justice”
(Daniels, et al.)