

SWEAT EQUITY: A CONTEMPORARY ANALYSIS OF LAND DISPOSSESSION OF BLACK FARMERS IN THE SOUTHERN UNITED STATES

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ABSTRACT

Black rural land ownership is not what it was once was and Black rural landowners own far less than what they could and should own. Upwards of ninety percent of Black rural landowners have been dispossessed of their land due to government agency failure, systemic discrimination, and private prejudice that has shaped the legal landscaped since Reconstruction. Without legislation or policy to protect Black rural landowners, a lack access to legal representation, debt, and poorly shaped federal relief make them more vulnerable to dispossession of their land. This note examines the history of land dispossession of rural Black American farmers through a survey of relevant case law and offers critiques of federal legislation such as the Civil Rights Act of 1964 and the Black Farmers Act. This Note argues that initiatives intended to provide relief for historic racialized injustices have no place in federal government legislation aimed at providing relief for the entirety of the American population. In response, this Note proposes the authors' own recommendations for future policy initiatives which are aimed at effectively remedying injustices suffered by Black American farmers through institution of policies that prevent localized discrimination and target systems of injustice that have too long enabled racially prejudicial dispossession of land from Black rural landowners.

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INTRODUCTION

There has been a sharp decrease in rural land ownership among Black Americans since the end of the Reconstruction Era.¹ This land loss is largely attributed to systemic public and private sector discrimination, coupled with the U.S. Government's failure to administer economic justice on behalf of formerly enslaved Black Americans and their descendants. Even today, government agencies miss the mark, failing to eradicate systemic discrimination and institute repair for past harm suffered as a result of private prejudice and its impact on public policy.

This note will explore the sharp decrease in rural land ownership experienced by Black farmers due to land dispossession and involuntary land loss, outline the various methods in which Black communities faced land extraction, and explore how social discrimination crafted public policy to the farmers' disadvantage. At the turn of the twentieth century, recently emancipated African Americans owned from 12 to as much as 14 million acres of farmland.² By the year 2000 however, nearly 90 percent of that land had been lost.³ Various factors contributed to this dispossession, including overt discrimination at the hands of federal agencies spanning several decades.⁴ Also contributing was the Great Migration, although it was not a cause.⁵

Throughout the United States, there is little legislation to shield Black farmers from involuntary land loss, some of which is the result of systemic dispossession.⁶ In most cases, existing measures to aid these landowners

1. Throughout this analysis when referencing Black American farmers, the terminologies "Black American" and "Black" will reference those persons formerly classified as *American Negroes* and their progeny from the period following enslavement through much of the twentieth century.

2. U.S. DEP'T OF AGRIC. RURAL BUS. COOP. SERV., *Black Farmers in America, 1865-2000: The Pursuit of Independent Farming and the Role of Cooperatives*, RBS RSCH. REP. 194, 4 (2002), <https://www.rd.usda.gov/files/RR194.pdf> (noting that figures from the Census of Agriculture "show 1910 as the peak year" [of nonwhite farming operators' acreage ownership] in the South which totaled nearly 12.8 million acres being either fully or partly owned) [hereinafter RBS]. *Id.* See *infra* text accompanying note 33. See also Brian Barth, How Did African-American Farmers Lose 90 percent of Their Land?, MODERN FARMER (Aug. 19. 2019), <https://modernfarmer.com/2019/08/how-did-african-american-farmers-lose-90-percent-of-their-land/>.

3. See Barth, *supra* note 2. See also *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 202 (1995).

4. RBS, *supra* note 2, at 8.

5. Barth, *supra* note 2.

6. Keith Romer & Jacob Goldstein, *Planet Money: How Jacob Loud's Land Was Lost*, NPR (Apr. 7, 2021), <https://www.npr.org/transcripts/983897990>.

have only assisted them in selling or auctioning off property.⁷ Adding insult to injury is the lack of access that many farmers and their families have to legal services to assist in estate planning, increasing their vulnerability to property loss.⁸ In the rural context, debt can be higher than the appraised value of the land, forcing the property owner or descendants of the record owner to sell or abandon the property altogether.⁹ Given the compounded effect of this vulnerability for more than a century, substantive policy to aid Black farmers appears to be the only viable solution to correct historic harm and provide redress. In 2021, the administration of U.S. President Joseph R. Biden unveiled the American Rescue Plan Act to provide economic relief and address the effects of the coronavirus pandemic.¹⁰ Included in this economic package was debt relief to *socially disadvantaged* farmers.¹¹ The measure was met with opposition in the form of lawsuits filed against the United States Department of Agriculture on grounds that it had not been tailored to the needs of current farmers and unconstitutionally discriminated on the basis of race.¹² Following the challenges, the Biden administration forwent an appeal of a judicial order blocking the relief for socially disadvantaged farmers.¹³

Part I of this note examines the history of land dispossession affecting rural Black American farmers, including the violence and deception to which many were subjected; the emergence and weaponization of public policy changes against Black farmers during the New Deal Era; freezing out of subsidy programs by banks and government actors; and various legal measures that inhibit or burden property transfers from record owners to

7. *Id.*

8. Telephone Interview with Peter J. Hoffman, Managing Attorney of Neighborhood Advocacy Program, Legal Services of Eastern Missouri (Nov. 16, 2021).

9. *Id.*

10. Rachel Siegel, *What's in the House's \$1.9 trillion coronavirus plan*, WASH. POST (Feb. 27, 2021, 8:01 AM), <https://www.washingtonpost.com/us-policy/2021/02/26/american-rescue-plan-house-coronavirus-stimulus/>.

11. Press Release, U.S. Dept. of Agric., Press Release on USDA Commencement of Loan Payments to Socially Disadvantaged Borrowers under American Rescue Plan Act Section 1005 (May 21, 2021), <https://www.usda.gov/media/press-releases/2021/05/21/historic-move-usda-begin-loan-payments-socially-disadvantaged>.

12. Reese Oxner, *Texas Agriculture Commissioner Sid Miller alleges aid to farmers of color discriminates against white farmers in suit against Biden administration*, TEX. TRIB. (April 27, 2021, 2:00 PM), <https://www.texastribune.org/2021/04/27/sid-miller-farmers-lawsuit/>.

13. Josh Gerstein & Ximena Bustillo, *DOJ forgoes appeal of order blocking money for minority farmers*, POLITICO (Aug. 24, 2021), <https://www.politico.com/news/2021/08/24/doj-appeal-minority-farmers-506820>.

their descendants, such as heirs' property laws, partition sales, Torrens Acts (in states where they remain on the books), and property tax sales. This includes chronicling the ways in which the dispossession occurred and how it was legally enabled through public policy during the New Deal Era.¹⁴ Also included is the failure of the U.S. Government to enforce anti-discrimination laws in localities throughout the South—providing little recourse to those who found themselves victims of racist agents in local branches of government program offices.¹⁵ This section will end by detailing the methods aimed at redress on a federal level, including *Poole v. Williams*, which was brought forth in the years following the passage of the Civil Rights Act of 1964.¹⁶

Next, Part II will outline some of the most prevalent ways in which Black farmers face land dispossession. Part III will discuss the landmark Pigford cases beginning in 1999, along with the proposed Justice for Black Farmers Act and debt relief included in the American Rescue Plan Act of 2021. Part IV of this note features my own proposals and recommendations for future policy initiatives. This includes arguing that historic repair for racialized injustices should not have been included in economic stimulus relief packages or other government initiatives intended to provide relief to the entirety of the American population. Furthermore, I argue that legislative solutions should be directed by the federal government, but enforced at a local level where discrimination in practice has historically occurred. Subsequently, the note concludes, summarizing the issues and solutions outlined and presenting a call to action for the United States to finally pursue justice on behalf of its Black farmers.

14. Vann R. Newkirk II, *This Land Was Our Land*, THE ATLANTIC, (Aug. 12, 2019), <https://www.theatlantic.com/magazine/archive/2019/09/this-land-was-our-land/594742/>.

15. *Id.*

16. Greg Moses, *Apartheid in Texas Agriculture: A Biography of "Affirmative Action" (Part II)*, TEX. CIVIL RIGHTS R., (February 19, 1996), <https://texascivilrightsreview.org/1996/02/>.

I. ANALYZING THE HISTORY OF BLACK LAND DISPOSSESSION

A. *Emancipation and the Promise of Land Ownership*

In January 1865, just months before the end of the American Civil War, Union General William T. Sherman issued the historic Field Order No. 15 from Savannah, Georgia, which promised forty acres to enslaved Black Americans along the rice coasts of South Carolina, Georgia, and Florida.¹⁷ In theory, this was the first federally proposed effort to redistribute to the enslaved the lands that they had tilled for generations.¹⁸ Issued in the interest of sheer pragmatism, Sherman's order served to provide refuge to thousands of enslaved Black families who had followed the Union army in Sherman's historic *March to the Sea* and to punish the Confederate planters along the southeast coast for their role in starting the war.¹⁹ Unfortunately, this promise was never realized. Following the assassination of U.S. President Abraham Lincoln in April 1865, his successor overturned Field Order No. 15,²⁰ resulting in some 400,000 acres of redistributed land being returned to Confederate landowners.²¹ Following the war, many Black Americans throughout the U.S. South worked to purchase their own land to the best of their abilities.²² For the newly freed—many of whom were already skilled agriculturalists—land ownership represented a source of self-sustenance through farming in addition to affording them physical safety and familial stability whenever possible.²³

B. *Collective Progress and Socio-Political Backlash*

In the decade following the end of Reconstruction in 1877, the Farmers' Alliance established the Colored Farmers' National Alliance and

17. Barton Myers, *Sherman's Field Order No. 15*, NEW GA. ENCYCLOPEDIA, (Sept. 29, 2020), <https://www.georgiaencyclopedia.org/articles/history-archaeology/shermans-field-order-no-15>.

18. *Id.*

19. *Id.*

20. Henry Louis Gates, Jr., *The Truth Behind 40 Acres and a Mule*, PBS, <https://www.pbs.org/wnet/african-americans-many-rivers-to-cross/history/the-truth-behind-40-acres-and-a-mule/>.

21. *Id.*

22. See Newkirk II, *supra* note 14, at I.

23. *Id.*

Cooperative Union (the “NACU”). As a segregated subdivision of the larger organization, the NACU provided economic and practical assistance to Black farm operators to assist them with mortgage payments and farm labor.²⁴ The establishment of agricultural colleges for Black students under the Second Morrill Act of 1890, coupled with various farming initiatives, promoted independent farming among Black farm operators, furthered farm diversification and self-sufficiency, and lessened indebtedness to former slaveowners—a situation faced by many Black sharecroppers in the postbellum era.²⁵

The work of the Farmers’ Alliance also served to introduce the idea of cooperatives to Black farmers, which was replicated throughout the South in subsequent years.²⁶ For example, East Texas community leader and educator Lloyd Smith established the Farmers’ Improvement Society of Texas (the “FIST”) to provide economic upward mobility to Black farm families amidst the perpetual cycles of sharecropping debt.²⁷ The organization’s success eventually led to its competition with the Farmers’ Alliance, as its membership grew to nearly 2,500 branches and expanded beyond Texas into neighboring Oklahoma and Arkansas by 1900.²⁸ During this time, FIST also began assisting Black landowners in obtaining credit to acquire land for agricultural development, in addition to establishing an agricultural college and hosting fairs to demonstrate the efficacy of its programs.²⁹ By 1912, FIST owned 75,000 acres of land that was valued at more than \$1 million.³⁰ Throughout the South, organizations similar to FIST emerged with the help of church congregations to provide services that aided farmers in purchasing land and homes.³¹ These cooperatives became some of the most prominent forms of self-help for southern Black farmers.³²

Overall, between 12 and 14 million acres of land were either fully or

24. RBS, *supra* note 2, at 5-6.

25. *Id.*

26. *Id.*

27. *Id.*

28. *Id.*

29. Lawrence D. Rice, *Farmers’ Home Improvement Society*, TEX. STATE HIST. ASSOC. (September 11, 2020), <https://www.tshaonline.org/handbook/entries/farmers-home-improvement-society>.

30. *Id.*

31. RBS, *supra* note 2, at 4.

32. *Id.*

partially owned by Black farmers in 1910.³³ The high levels of farmland ownership represented the progress that nearly one-fourth of Black farm operators experienced from the end of Reconstruction in 1877 until 1920.³⁴ While some were able to establish farms on untilled land, acquisition of such acreage was largely dependent upon their relationships with White planters, who provided tenant farmers with opportunities to purchase property in proportion to their efficiency in production.³⁵ Thus, the collective held little autonomy—a factor that likely increased vulnerability to predatory schemes in subsequent decades.³⁶ With the onset of Jim Crow laws in the 1890s, the self-sufficiency and political activism of the various cooperatives that spurred some economic independence for southern Black farmers likely influenced southern Whites to favor Black disenfranchisement and further segregation.³⁷ Undoubtedly, the apparent economic mobility of some of the formerly enslaved posed a threat to their White counterparts.³⁸ In spite of the success enjoyed by some Black agriculturalists during the postbellum period, the institutions and arrangements that had previously fostered gainful agricultural production began exercising exploitative control over Black farm operators by the late 1920s.³⁹

C. Dispossession: Barred from Ownership

It is impossible to consider the sharp decrease in Black farmland ownership over the course of the twentieth century without understanding when the declines in land ownership began.⁴⁰ There were various methods

33. *Id.* at 4; *Id.* at 4 n.6. There was a steady increase in overall southern farmland ownership from 1880 to 1890, but farm operators were not distinguished by race until 1900 when a distinction was made between “white” and “non-white” owners. In these figures, western states in the South, such as Texas and Oklahoma, included a sizeable Mexican American population with the White population. Therefore, the increase of non-White farmers is representative of the Black population in this respective region. The year 1910 is commonly cited as the peak year for land ownership among Black farmers.

34. RBS, *supra* note 2, at 4.

35. *Id.*

36. See RBS, *supra* note 2, at 4 (noting that the majority of Black farmers experienced few increases in land ownership and prosperity as compared to non-Black farmers).

37. *Id.*

38. *Id.*

39. *Id.*

40. Newkirk II, *supra* note 14, at I (conclusively noting the distinctiveness of Black landowners’ experiences in the South and how a century of land loss—much of which occurred during the latter half

of legal and coercive dispossession that fueled these changes in ownership.⁴¹ In some instances, land was violently extracted from Black farm owners, who had no legal recourse against their White counterparts once Jim Crow laws went into effect.⁴² Undeniably, the structural imbalance of power and social mobility in the post-Reconstruction Era inhibited the exercise of self-autonomy.⁴³

With the onset of the Great Depression in the early 1930s, the federal New Deal programs provided various methods of relief for agriculturalists throughout the nation, including in the American South.⁴⁴ This, however, was inaccessible for Black farmers, as private prejudice became cemented into public policy.⁴⁵ Federal agencies, such as the United States Department of Agriculture (the “USDA”), regularly practiced denial of farm loans to Black farmers and distribution of sharecropping work to White people over their Black counterparts.⁴⁶ Furthermore, many Black Americans found themselves excluded from land planning and administration by government agencies, which hastened mass out-migration of Blacks from the rural south to northern industrialized cities.⁴⁷

Moreover, in efforts to support cotton production, the U.S. Government restricted cotton acreage and guaranteed minimum prices, which displaced

of the twentieth century—was propelled by economic change, white racism, and white power.

41. *Id.* at I (noting that following Emancipation, “legal,” “coercive,” and sometimes “violent” means were used to extract land from Black landowners).

42. *Id.* Section II (“Land Hunger”) details that strong resistance from antebellum-era planters during Reconstruction diminished the promise of land ownership among newly freed slaves, forcing them to remain servile in a “war of attrition” that included legal obstacles preventing subsequent passing of title to descendants and violence enacted against those who promoted self-sufficiency and political organization. This was especially the case in Leflore County, Mississippi, where white farmers responded violently to farm organizer Oliver Cromwell’s attempts to protest the marginal treatment experienced by Black farmers at the hands of white landowners. The victims of this lethal violence were Black farmers and sharecroppers, including many women and children. *See also* Hiroko Tabuchi and Nadja Popovich, *Two Biden Priorities, Climate and Inequality, Meet on Black-Owned Farms*, N.Y. TIMES (June 23, 2023), <https://www.nytimes.com/2021/01/31/climate/black-farmers-discrimination-agriculture.html#:~:text=The%20discrimination%20and%20racist%20violence,Black%20farmers%20from%20their%20land>.

43. *Id.*

44. *One Million Black Families Have Lost Their Farms*, EQUAL JUST. INITIATIVE (Oct. 11, 2019), <https://eji.org/one-million-black-families-have-lost-their-farms/>.

45. *Id.*

46. *See* Newkirk II, *supra* note 14, at III (noting that the catastrophe of Black land loss was created and maintained by federal policy and the ways in which it ignored or was weaponized against Black farmers).

47. Tabuchi and Popovich, *supra* note 42.

many Black farmers and sharecroppers.⁴⁸ For Blacks who were employed by White farm owners, many often found themselves not being paid at all for their labor, despite an increase in federal subsidy programs to provide economic relief to White farm owners.⁴⁹ For distribution of resources, federal agencies relied upon politically connected and often racially segregated groups in rural communities, further diminishing the access that Black farmers had to these services.⁵⁰ Legislation such as the Agricultural Adjustment Act of 1933 (the “AAA”) also raised entry barriers to acquiring ownership of farmland.⁵¹ While providing price supports increased the value of local farmland by as much as 15 to 20 percent nationally, these increases were tied to lands which Black farmers did not own, as many were tenant farmers who had been unable to purchase their own land.⁵² Furthermore, the diminished access that Black farmers had to AAA programs prevented them from taking advantage of cheaper prices resulting from the Great Depression; non-Black farmers saw opposite results.⁵³ In the South, the first half of the 1930s saw farmland ownership for White farmers increase by 35 million acres, while farmland ownership for non-White farmers decreased by more than 2 million acres—a disparity largely attributed to limited access to federal subsidies.⁵⁴

The impact of acreage reduction and low cotton prices cannot be understated.⁵⁵ Although these policies assisted White farm owners with access to the AAA programs in their acquisition of additional acreage, it had

48. RBS, *supra* note 2, at 8.

49. RBS, *supra* note 2, at 8-9.

50. *Id.* at 9.

51. *Id.*

52. *Id.* See also Abril Castro & Caius Z. Willingham, *Progressive Governance Can Turn the Tide for Black Farmers*, CTR. FOR AM. PROGRESS, Apr. 2019, at 4 (explaining that the provisions of the Agricultural Adjustment Act incentivized farmers to produce less by providing rental and other benefit payments to those who cultivated less acreage. There was little outreach to Black farmers and consistent disregard for their rights under the AAA, especially in the case of sharecroppers. As a result of this coupled with high illiteracy rates, many were exploited by white landowners, who pocketed government subsidies instead of distributing them among their tenant farmers).

53. RBS, *supra* note 2, at 9.

54. *Id.*

55. *Id.* at 8. White farmers were given more access to credit than Black farmers, and thereby able to store excess capital until the economic crisis improved. Having been denied access to credit, Black farmers found themselves financially unable to do the same, inhibiting their abilities to pay off mortgages and other debts and forcing them to sell their land for a fraction of its value. See also Newkirk II, *supra* note 14, at I.

the opposite effect for Black farmers.⁵⁶ As mentioned, commodity price support increased land values, amplifying the added wealth of White farm owners who were able to expand their property holdings once federal acreage restrictions on cotton had been lifted.⁵⁷ As government agencies like the AAA continued to provide farm subsidies almost exclusively to White farmers, land ownership became increasingly hard for Black farmers.⁵⁸ For those who managed to acquire farmland during this period, staying in business and operating independently of their White counterparts became another hurdle.⁵⁹ The disparities created by such policies would have dire consequences for Black farmers with acreage adjacent to White-owned farms.⁶⁰

D. Dispossession: A New Deal?

While likely not an intentional move to correct racial disparities and land ownership inaccessibility exacerbated by the onset of the Great Depression, government policy initiatives of the late 1930s moderately sought to provide subsistence and economic relief for displaced Black farmers.⁶¹ Between 1935 and 1941, the Resettlement Administration attempted to assist former Black farmworkers in becoming independent farm operators.⁶² Although it did little to address the overall labor supply in the South, the Resettlement Administration provided loans to assist farmers in acquiring farmland and machinery.⁶³ This period saw the return of cooperative programs, as the federal government now had become their key sponsor through the Farm Security Administration.⁶⁴ Aware of the displaced farmers' lack of farm assets and land, as well as the inability to qualify for land-purchase loans, the Farm Security Administration established both

56. RBS, *supra* note 2, at 3-4 (noting that the discriminatory treatment faced by Black farmers, such as the Federal Government's efforts to grant the majority of emergency relief funding to white farmers).

57. RBS, *supra* note 2, at 9.

58. RBS, *supra* note 2, at 9.

59. *Id.*

60. *Id.*

61. *Id.*

62. *Id.*

63. *Id.*

64. *Id.*

farm production cooperatives and land-lease cooperatives.⁶⁵ Of the two, land-lease cooperatives were the most productive, allowing displaced farmers to lease subdivided farm tracts on large tracts of government-acquired land.⁶⁶ Farmers would lease and work the land, eventually acquiring ownership.⁶⁷ These programs were not widespread throughout the South, however, and while some lasted into the 1950s, the vast majority did not operate after 1941.⁶⁸ Nevertheless, as testament to the effectiveness of the cooperative model, the period between 1940 and 1945 saw a 13.5 percent increase in full landownership for southern Black farmers.⁶⁹ Unfortunately, this number would decrease sharply in subsequent decades.⁷⁰

E. The Post-World War II Era

In 1946, the Farm Security Administration was replaced by the Farmer's Home Administration.⁷¹ This marked the establishment of the loan and subsidy structure that still undergirds American agriculture in the modern era.⁷² While the federal government made few racial delineations in the administration of the programs, Jim Crow era practices remained heavily prevalent at the local level well into the 1950s.⁷³ Federal agencies that were implicated include bureaus such as the Agricultural Stabilization and Conservation Service, which *officially* provided loans to farmers on a colorblind basis but nevertheless received complaints of discrimination at local agency outposts in the South.⁷⁴

Localized discrimination prevented federal programs from having as

65. *Id.* at 10.

66. *Id.*

67. *Id.*

68. *Id.*

69. RBS, *supra* note 2, at 9.

70. RBS, *supra* note 2, at 23. Full ownership totals in the South for non-white farmers were 141,902 in 1940. *Id.* By 1945, this number had increased to 160,980—only to decline to 141,482 by 1950. By 1959, the number of Black farmers in the southern states had decreased to less than 100,000.

71. U.S. DEP'T OF AGRIC. FARM SERV. AGENCY, *History of USDA's Farm Service Agency*, <https://www.fsa.usda.gov/about-fsa/history-and-mission/agency-history/index> [hereinafter Farm Serv. Agency].

72. RBS, *supra* note 2, at 4. *See also* Farm Serv. Agency, *supra* note 71.

73. RBS, *supra* note 2, at 4.

74. Valerie Gim, *Black Participation in the Farmers Home Administration and Agricultural Stabilization and Conservation Service, 1964-1990*, AGRIC. HIST. (1996), <https://scholarworks.iu.edu/dspace/bitstream/handle/2022/27342/Aghisto%20Black%20Participation.pdf?sequence=1>, at 330.

broad of a reach for Black farmers. In many southern states, committee members responsible for administering federal funds were elected locally, offering Black farmers little protection against long-held racial prejudices.⁷⁵ The USDA became the safety-net, price-setter, chief investor, and sole regulator for a sizeable portion of the farm economy, but no strategies were employed to prevent local-level discrimination against Black farmers in lending practices.⁷⁶ Rampant discrimination by local agency administrators coupled with Black landowners' increased reliance on the USDA exacerbated their plight.⁷⁷ At the time, the USDA outcompeted banks and many private lenders through its ability to offer low-interest rates, which these landowners were often unable to refuse.⁷⁸ The USDA's dominance of the lender market provided an advantage to White landowners, who were able to secure loan approval, allowing white-owned farming operations to boom, while black-owned operations—often unable to secure funding—suffered and ceased production.⁷⁹ Local bureaucrats actively sought to dispose of Black farmers, and federal administrative officials never took action against these practices.⁸⁰ Therefore, the organization was complicit with the discrimination.⁸¹

The record is largely absent of court cases in the years preceding the Civil Rights Act of 1964, but the data speaks for itself.⁸² For example, Black farmers in Mississippi saw their land taken from them in ways that were all too common during this period.⁸³ During the 1950s, White farmers who had

75. *Id.* at 4.

76. RBS, *supra* note 2, at 5.

77. Debra A. Reid, *African Americans and Land Loss in Texas: Government Duplicity and Discrimination Based on Race and Class*, 72 FAC RSCH. & CREATIVE ACTIVITY 265 (2003). https://thekeep.eiu.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1071&context=history_fac at 20.

78. Cassandra Jones Havard, *African American Farmers and Fair Lending: Racializing Rural Economic Space*, 12 Stan. L. & Pol'y Rev. 333, 334 (2001), https://scholarworks.law.ubalt.edu/cgi/viewcontent.cgi?article=1301&context=all_fac&httpsredir=1&referer=. See generally PETE DANIEL, DISPOSSESSION: DISCRIMINATION AGAINST AFRICAN AMERICAN FARMERS IN THE AGE OF CIVIL RIGHTS (2013).

79. Kali Holloway, *How Thousands of Black Farmers were Forced Off Their Land*, THE NATION (Nov. 1, 2021), <https://www.thenation.com/article/society/black-farmers-pigford-debt/> (noting that discriminatory loan denials and deliberate delays in financial aid allowed the USDA to systematically block Black farmers from accessing critical federal funds).

80. Reid, *supra* note 77, at 262-63.

81. *Id.* at 277.

82. See Newkirk II, *supra* note 14, at I.

83. *Id.*

accumulated vast amounts of small Black-owned farmland aggregated it into larger farms and eventually sold it to corporations, including large pension firms and corporate landlords, such as AgriVest, Hancock Agricultural Investment Group, and the Teachers Insurance and Annuity Association (the “TIAA”).⁸⁴

As a result, the current amount of land owned by large firms in proportion to the local Black population is striking.⁸⁵ In Washington County, Mississippi, TIAA purchased 50,000 acres for more than \$200 million.⁸⁶ As of 2011, Black Americans in the same county made up 72 percent of the population, but owned just 11 percent of the farmland.⁸⁷ In nearby Tunica County, where TIAA acquired large plantations, Black Americans comprised 77 percent of the population, but owned only 6 percent of the farmland.⁸⁸ TIAA acquired those plantations from some of the largest White landowners in the state.⁸⁹ The same can be said of Holmes County, Mississippi, one of the most populous African American counties in the United States, where Blacks comprise 80 percent of the population, but only own 19 percent of the farmland.⁹⁰ These disparities in ownership were the result of the involuntary land loss that intensified during the mid-twentieth century.⁹¹

With little oversight from the Federal Government, racial equity in USDA administration was virtually non-existent.⁹² This allowed illegal pressures levied against Black farmers by the organization’s loan programs to result in massive wealth transfers from Black farmers to their White counterparts, accounting for stark increases in land disparities.⁹³ Also, it was not a coincidence that the height of this disenfranchisement occurred in the 1950s, as the modern Civil Rights Movement was beginning to gain national momentum. It was common that such practices ultimately resulted in

84. *Id.*

85. *Id.*

86. *Id.*

87. *Id.*

88. *Id.*

89. *Id.*

90. *Id.*

91. *Id.* (citing that between 1950 and 1964 in the State of Mississippi, Black farmers lost as much as 800,000 acres of land).

92. *Id.*

93. *See e.g.*, Castro & Willingham, *supra* note 52, at 5 (noting that there were numerous instances during the twentieth century of equal opportunity violations at county-level offices where Black farmers were denied loan applications or suffered discriminatory delays).

widespread displacement and impoverishment of Black farmers and their families.⁹⁴

II. THE ABETMENT OF LAND DISPOSSESSION

A. Heirs' Property

Today, local policies relating to property and title transfers exacerbate the harm that results from decades of policy inaction. In addition to economic and political weaponization that Black farmers faced in recent decades, many today live on highly valuable land that is now ripe for real estate development.⁹⁵ Laws remain on the books that make it easy for families with little to no access to wealth to be preyed upon by speculators.⁹⁶ Under the heirs' property system, if an intestate person passes away or their estate manages to avoid probate, multiple heirs could inherit their real property, creating a tenancy in common by multiple heirs.⁹⁷ As tenants in common, each heir has a right to use and possess all the property with no right to exclude other tenants.⁹⁸

In the South, it was and remains common for rural landowners to bequeath real property through word-of-mouth, making ownership of heirs' property more widespread.⁹⁹ Historically, this tendency was most prevalent

94. See Newkirk II, *supra* note 14, at III.

95. Dominique T. Hazzard, *The Gullah People, Justice, and the Land on Hilton Head Island: A Historical Perspective*, (Apr. 2012), (Ph.D. Thesis, Wellesley College), (on file with the Wellesley College Digital Scholarship and Archive) (noting that much of the Sea Islands was rural in 1950, but this changed when developers sought to alter the islands' perception to outsiders). See also Amanda Lee Myers & Ariana Triggs, 'Messing with the wrong lady:' 93-year-old South Carolina woman fights off developers, *USA TODAY* (July 12, 2023), <https://www.usatoday.com/story/news/nation/2023/07/12/josephine-wright-vs-hilton-head-south-carolina-developers/70400156007/> (chronicling the struggle of 93-year-old Josephine Wright, a member of South Carolina's Gullah-Geechee community, and her family's battle against a local developer to save land that has been in her family since the end of the Civil War).

96. *Id.* See also Nate Blakeslee & Jason Heid, *Black-Owned Land Is Under Siege in the Brazos Valley*, *TEXAS MONTHLY* (Nov. 2023), <https://www.texasmonthly.com/news-politics/heirs-property-black-owned-land-brazos-county/> (detailing how vulnerable Black farmers and their families have lost long-held property in Central and East Texas at the hands of two men who weaponized enigmatic documents to purloin valuable land).

97. Caitlin Henderson, *Heirs Property in Georgia: Common Issues, Current State of the Law, and Further Solutions* 55 GA. L. REV. 877, 877 (2021).

98. *Id.* at 878.

99. *Id.*

among Black families, where oral tradition and illiteracy in decades past led to a strong reliance on state intestacy statutes.¹⁰⁰ In 2019, it was estimated that over 35 percent of Black-owned rural land was heirs' property.¹⁰¹ Black owners of heirs' property face many unique challenges because they do not possess clear legal title to their property.¹⁰² If the title to the property remains in the name of the deceased landowner, the heirs possess what is known as "cloudy title," meaning that they are technically the owners of the land through inheritance, but not listed on the title as the rightful owners.¹⁰³ Making substantive decisions with the property becomes increasingly challenging with each passing generation.¹⁰⁴ Even if the property were transferred into the names of the rightful heirs, one of those heirs seeking to encumber the property through a loan would need the permission of everyone else with a legal interest in the property.¹⁰⁵

For the many farm families struggling to maintain possession of their lands, a lack of access to legal counsel prevents landowners from having wills drafted to determine which of their descendants and relatives will become their legal heirs.¹⁰⁶ The laws as they currently exist make it difficult for heirs' property owners to perform the same functions that other landowners traditionally employ to build wealth.¹⁰⁷ This is problematic for Black families, as nearly half of all heirs' property in the United States is owned by Black Americans.¹⁰⁸

At the turn of the twentieth century, black farmers were forced to buy farmland that no one else wanted and was relatively low in value.¹⁰⁹ However, with urban expansion, the same farmland became increasingly

100. *Id.* at 881 (noting that the tendency of minorities to not execute wills continues into the present, as studies reveal Whites being twice as likely than non-whites to have executed a will).

101. Noah Goyke et al., *Do Ownership Structures Effect Forest Management? An Analysis of African American Family Forest Landowners*, 106 *FOREST POL'Y & ECON.*, Sept. 2019), <https://www.sciencedirect.com/science/article/pii/S1389934119302084#>.

102. See Henderson, *supra* note 97, at 884. See also Crystal Chastain Baker & Shunta Vincent McBride, *A Primer on Heirs Property and Georgia's New Uniform Partition of Heirs Property Act: Protecting Owners of Heirs Property*, 19 *GA. BAR J.* 16, 16 (noting that racial minorities are disproportionately affected by heirs' property issues and face the heaviest burdens from heirs' property).

103. *Heirs' Property*, *CTR. FOR AGRIC. & FOOD SYS.*, <https://farmlandaccess.org/heirs-property/> (last visited July 31, 2023).

104. *Id.*

105. *Id.*

106. See Hoffman, *supra* note 8.

107. See NPR Public Radio, *supra* note 6.

108. *Id.*

109. *Id.*

more valuable by mid- and late-century, making this it attractive to real estate developers and speculators.¹¹⁰ Such speculators took advantage of the fact that these properties, often owned by descendants of the record owner, were under the heirs' property system which was easy to exploit.¹¹¹ Developers often found the weakest link to purchase an interest in the property among the heirs, contributing to involuntary land loss and displacement in many parts of the South.¹¹²

Residents of the Sea Islands of South Carolina, Georgia, and Florida have now experienced the same displacement at the hands of economic forces.¹¹³ Political disenfranchisement and lack of access to wealth for proper estate planning exacerbates the situation.¹¹⁴ Economically strained and without policy to sustain what was once a multi-generational practice, younger generations of these farm families often decide to relocate from these areas altogether.¹¹⁵ An all-too-common scenario, the lack of legal protection and the flaws of existing laws make these families most vulnerable to encroaching development.

Considering the recent economic challenges facing property owners nationwide as a result of the COVID-19 Pandemic, heirs' property owners are unable to access COVID-19 economic relief due to an inability to prove ownership of land.¹¹⁶ Until 2018, the same could be said in regard to loans and programs provided through the USDA.¹¹⁷ Furthermore, owners of cloudy title cannot rely upon the heirs' property as collateral to qualify for a mortgage or other type of loan on farm operating expenses.¹¹⁸ With heirs' property, it is exceedingly difficult for heirs to profit from the natural resources on their land for the same reasons.¹¹⁹ As mentioned, many states

110. *Id.*

111. *Id.*

112. *Id.*

113. See Hazzard, *supra* note 95, at 43 (noting that outside of farming, Sea Island Geechee farmers only have access to seasonal jobs that pay minimum wage with little opportunity for professional advancement, and many find themselves having to compete with younger, wealthier workers for these positions—worsening their economic situation).

114. *Id.*

115. *Id.*

116. See CTR. FOR AGRIC. & FOOD SYS., *supra* note 103, at 9.

117. Ximena Bustillo, *USDA implements heirs' property lending program from 2018 Farm Bill*, POLITICO, July 29, 2021, <https://www.politico.com/news/2021/07/29/usda-heirs-property-program-501573>.

118. See CTR. FOR AGRIC. & FOOD SYS., *supra* note 103, at 9.

119. *Id.*

consider heirs' property owners to be tenants in common, meaning that before anything can be done with the property, consent of all living heirs must be obtained.¹²⁰ In large families where the descendants of the original property owners are many in number, this often proves to be difficult with the passing time because the number of interests in the property increases. For example, if a record property owner passes away intestate, leaving his land to his children, each of those children also would leave an interest in the property to their children—the grandchildren of the deceased owner on record.¹²¹

What is unique about heirs' property laws is that if, hypothetically, the record owner were to die intestate and leave behind five children, the heirs of the decedent would not own an interest in a particular property parcel of the land, but a 1/5 interest in all the land itself.¹²² Thus, if they were to sell anything, they would have to sell their interest as opposed to a parcel.¹²³ When the interest is sold to someone outside of the family, the purchaser can then file for a partition sale.¹²⁴

B. Partition Sales

Owners of heirs' property are particularly vulnerable to partition actions, another legal method resulting in land dispossession.¹²⁵ As heirs' property generally passes through intestate succession, state laws allow tenant-in-common heirs to bring an action in court to enforce their interest in the property, as they provide a legal foundation for which parties stand to inherit property via intestate succession or non-testamentary devises.¹²⁶ The court action can result in either a *partition in-kind* or a *partition by sale*.¹²⁷ When courts order a partition in-kind, the land must be divided among each landowner in a fashion that is equitable and proportionate to their share of the land.¹²⁸ On the other hand, partitions by sale, which are more likely to

120. See Henderson, *supra* note 97, at 878.

121. *Id.*

122. See NPR, *supra* note 6.

123. *Id.*

124. *Id.*

125. Francine Miller, *Heirs' Property: Understanding the Legal Issues in Missouri*, CTR. FOR AGRIC. & FOOD SYS. (Feb. 2023), at 6.

126. *Id.* at 12.

127. *Id.* at 6.

128. *Id.*

result in involuntary land loss among Black families, are the result of court orders that land be sold to the public at an auction; in these instances, family members who are not parties to the sale receive only a small share of the sale price, which is usually well below the property's fair market value.¹²⁹

Equally as detrimental to maintaining land ownership, heirs of a decedent landowner are able to sell their interest in the heirs' property to a real estate speculator without the consent of other heirs,¹³⁰ inadvertently triggering a partition by sale.¹³¹ Laws in many states provide these speculative new owners with ample means through which they can seize control of property at below-market rates.¹³² While many states favor partitions in-kind because of the equitable relief that it provides to landowners, courts in several states have opted for partitions by sale, even in situations where the land can equitably be divided among the tenant-in-common heirs.¹³³

In partition sales, any co-tenant family member with an eagerness to sell for any reason can be targeted by speculators.¹³⁴ With such a small interest, any speculator can request a forced sale—at which point he or she is bound to successfully make the acquisition.¹³⁵ This is largely because the forced sales are advertised in legal classifieds and remain relatively unknown to many including the other co-tenant heirs.¹³⁶ In addition, partition laws prevent prospective buyers from going to inspect the land ahead of time, forcing prospective buyers to purchase the property even if they have not seen it. Furthermore, these sales are often cash sales.¹³⁷ This puts many Black families at a disadvantage, because they are often unable to present large amounts of cash at auction even if co-tenant family

129. *Id.*

130. AMER. BAR ASSOC., *Restoring hope for Heirs Property Owners: The Uniform partition of Heirs Property Act*, (Oct. 1, 2016), https://www.americanbar.org/groups/state_local_government/publications/state_local_law_news/2016-17/fall/restoring_hope_heirs_property_owners_uniform_partition_heirs_property_act/.

131. *Id.* See also NPR, *supra* note 6.

132. CTR. FOR AGRIC. & FOOD SYS., *supra* note 103, at 6.

133. AMER. COLL. OF TRUST & EST. COUNSEL, *Heirs Property and Generational Land Loss*, <https://www.actec.org/diversity/heirs-property-generational-land-loss/> (last visited Aug. 1, 2023) (noting that courts began to order partition sales during the 1940s and 1950s, which resulted in the substantial depletion of assets for African American families).

134. See NPR Public Radio, *supra* note 6.

135. See AMER. COLL. OF TRUST & EST. COUNSEL, *supra* note 133.

136. See NPR, *supra* note 6.

137. *Id.*

members want to place a bid on the property; as it exists at present, this system is ideal for allowing speculators to purchase a family's land at very low costs.¹³⁸

If a partition sale were brought before a court, the small interest of the one landowner who demanded the sale would become irrelevant, and legally, a judge could divide up the land into pieces that correspond with everyone's share.¹³⁹ However, the variations in topography of the land can make the process difficult, preventing judges from wanting to insert themselves into this process.¹⁴⁰ In such scenarios, the court will recommend that the family sell all the land and divide the proceeds among everyone who owns the land—often through auction sales.¹⁴¹ Forced sales of heirs' property are relatively common throughout the United States.¹⁴² In some states, there is a legal preference for a partition in-kind as opposed to a sale given that the former is more feasible in rural areas.¹⁴³ Of the two, the partition in kind is the more equitable remedy, because it leaves property owners with the same rights held before the action occurred.¹⁴⁴ As per early interpretations of partition law, it is only when courts find it unfeasible to conduct a partition in kind without great prejudice to those with interest in the property will they resort to ordering a sale.¹⁴⁵

The lack of access to legal assistance and education has often exacerbated this problem for many Black farmers and their families, as tenant-in-common heirs are often unaware of the consequences of deciding to sell their individual shares of the heirs' property to real estate speculators.¹⁴⁶ General ignorance of the law and real estate market make some family members more likely to be allured into profiting from a fast sale.¹⁴⁷ In the present-day, this undeniably hastens the land loss experienced

138. See AMER. COLL. OF TRUST & EST. COUNSEL, *supra* note 133.

139. See NPR, *supra* note 6.

140. *Id.*

141. *Id.*

142. *Id.*

143. See AMER. BAR ASSOC. *supra* note 130.

144. *Id.*

145. See *Clark v. Dady*, 131 S.W.3d 382, 386-87 (Mo. Ct. App. 2004) (holding that partitioning of personal property in kind is authorized, although in many cases...impossible due to its character). See e.g., Mo. Ann. Stat. § 528.260 (granting authority to commissioners to divide land parcels and allot portions and shares to respective parties).

146. See Hoffman, *supra* note 8.

147. See AMER. COLL. OF TRUST & EST. COUNSEL, *supra* note 133.

by Black farmers.¹⁴⁸ Such occurrences force the sale of millions of acres of property and the loss of intergenerational familial wealth through land ownership.¹⁴⁹

C. Property Tax Sales

Other predatory practices that remain common to Black farm owners include property tax sales. In situations where the value of the land skyrockets, this leads to a rise in property taxes for landowners.¹⁵⁰ As many Black farm owners are of low- to moderate-income, increases in property taxes often result in farmers and their families being unable to keep up with the local rates, ultimately leaving them with tax sales as the only option.¹⁵¹ Whereas local governments could mitigate the harm of this process by assisting vulnerable families to stay on their lands or navigating rapid changes in property tax evaluations, county governments throughout the United States often choose to act on their rights to auction tax-delinquent properties.¹⁵²

D. Torrens Acts

Although not as widespread, but still in existence in the U.S. South, Torrens Acts have long proven to be a hindrance for Black families, providing “loopholes” to third-parties to force families off their land.¹⁵³ In real estate, Torrens Certificates assign property rights to a registered titleholder without the recording of a deed.¹⁵⁴ Although intended to simplify the title registry through the use of the judiciary, these Acts have the effect of removing families from their land through partition sales, as the rules associated with the Acts protect buyers from any legal recourse sought by tenant-in-common owners who knew nothing of the sale.¹⁵⁵ Because the

148. *Id.*

149. *See also* AMER. BAR ASSOC., *supra* note 130.

150. *See* Barth, *supra* note 5.

151. *Id.*

152. *Id.*; *see also* Newkirk II, *supra* note 14 (expounding upon regional occurrences).

153. *See* Barth, *supra* note 5.

154. Anh T. Le, *Property—the Effect of the Hersh Decision on the Torrens Act: Getting to the Root of the Problem Hersh Properties, LLC. McDonald’s Corp.*, 588 N.W.2d 728 (Minn. 1999), 26 WM. MITCHELL L. REV. 601, 610-11 (2000).

155. *Id.*; Tykeisa Nesbitt, *Black Land Theft and the Racial Wealth Divide*, INEQUALITY.ORG (May

legitimacy of the certificate of title stems directly from the judge, all items contained directly within it are deemed to be legally valid.¹⁵⁶ The new landowner is issued a certificate of title and legal rights to the property without having to trace the certificate of title, making the land more marketable in situations where there are numerous heir owners.¹⁵⁷ Torrens Acts shield one tenant-in-common owner, who has decided to sell their portion of inherited family land, from legal liability and recourse from other descendant owners.¹⁵⁸ Said tenant-in-common owner can often sell his or her portion of the property without the other tenant-in-common heirs even being notified until after the sale has taken place.¹⁵⁹ Anyone wanting to take advantage of this loophole would only have to target the most vulnerable tenant-in-common owner and make an irresistible offer.¹⁶⁰

III. THE MODERN ERA

Regional discrimination patterns continued to disadvantage Black farmers despite the passage of the Civil Rights Act of 1964.¹⁶¹ Practices employed by Texas agencies were no exception. Although the Act protections intended to eliminate discrimination in federally assisted programs and prohibit job discrimination, they never made their way to the *Negro* division of Texas Agriculture Extension Service.¹⁶² In fact, Texas Agriculture Extension Service officials utilized the legislation to eliminate services to African Americans, based on race, while simultaneously protecting White agents.¹⁶³ In the years following the passage of the Civil Rights Act of 1964, Black agents who worked with Texas Agriculture Extension Service also received demotions in title, office accommodations, and compensation and benefits to protect the status of their White

6, 2022),

<https://inequality.org/research/black-land-theft-racial-wealth-divide/#:~:text=Once%20the%20sale%20was%20made,of%20their%20land%20was%20devastating>.

156. See Anh T. Le, *supra* note 154.

157. *Id.* at 611 (citing *United States v Ryan*, 124 F. Supp. 1, 4 (D. Minn. 1954) which provided a brief explanation of the history of the Torrens system and legislative purposes for adopting it).

158. *Id.*

159. Nesbitt, *supra* note 155.

160. See NPR, *supra* note 6.

161. See Reid, *supra* note 77, at 21.

162. *Id.*

163. *Id.*

counterparts.¹⁶⁴ These practices would help to spur litigation in subsequent decades.¹⁶⁵

A. Litigation in the Post-Civil Rights Era: A New Form of Advocacy

Although there have been several aims to provide redress to disenfranchised Black farmers, many of these—which include court decisions—ultimately have fallen short in the long run. Litigation on behalf of Black farmers began as early as the 1970s.¹⁶⁶ In *Poole v. Williams* (1974), Preston E. Poole, an agent of the Texas Agriculture Extension Service (“TAEX”) filed a lawsuit against the organization, which was the state branch of the United States Department of Agriculture Extension Service.¹⁶⁷ His lawsuit alleged employment discriminatory practices against members of the *Negro* division, which had been created to provide Black farmers with access to information about USDA programs in a subordinate fashion to White farmers.¹⁶⁸

Believing that the relationships between local and federal authorities should be reinterpreted, Preston Poole, who worked in Galveston County, Texas, alleged that the Department of Agriculture condoned discriminatory behaviors by failing to acknowledge them.¹⁶⁹ *Poole v. Williams* revealed that not only did the Civil Rights Act of 1964 fail to eliminate racial discrimination in federal farm subsidy programs, but it likely laid the foundation for lawsuits to be brought on behalf of Black farmers in subsequent years.¹⁷⁰ Similarly, even though the federal government did not officially endorse discrimination through many of these programs, no mechanisms were established prior to nor immediately following the passage of the Civil Rights Act to prohibit local-level discriminatory

164. *Id.*

165. *Id.*

166. *Id.*

167. *Id.* at 21 (detailing the origins of *Poole v. Williams*).

168. *Id.* at 20-21 (noting that Poole believed that “two groups of people suffered because of chronic discrimination: the Black employees of TAEX and [the farmers]” because the wheels turned slowly at TAEX in regard to enforcing compliance with the Civil Rights Act of 1964, the access that African American farmers had to government information and programs was severely reduced due to unstable working conditions created). These conditions formed the basis for Poole’s lawsuit. *Id.*

169. *Id.* at 20 (noting that USDA officials condoned discrimination in the Texas extension service and refused to interfere with the TAEX decision-making and implementation process).

170. *Id.* at 21-22.

practices in program administration.¹⁷¹ Following *Poole*, special legislation failed to aid Black farmers and remedy the discrimination that they continued to experience in Texas.¹⁷² Throughout the country—notably in North Carolina, Alabama, and Mississippi—lawsuits were brought simultaneously by Black farmers alleging the same practices of racial discrimination. Ultimately, the *Poole* case resulted in cash settlement payouts and the integration of the TAEX Headquarters at Texas A&M University.¹⁷³

In 1999, the United States District Court for the District of Columbia approved a settlement agreement and consent decree in *Pigford v. Glickman*, another discrimination suit brought by Black farmers against the USDA which claimed racial discrimination on the part of the agency in benefits provision.¹⁷⁴ The lawsuit also alleged a failure to investigate complaints by farmers of racial discrimination in various localities between 1983 and 1997.¹⁷⁵ Following the *Pigford* decision, many farmers raised concerns that they were unable to file their claims in a timely manner.¹⁷⁶ Thus, those unsubmitted claims were consolidated into one suit in 2008—*In re Black Farmers Discrimination Litigation Settlement*.¹⁷⁷ As part of this consolidated suit (“*Pigford II*”), U.S. Attorney General Eric Holder and Secretary of Agriculture Tom Vilsack announced a \$1.2 million settlement.¹⁷⁸ With the passage of the Claims Resolution Act of 2010, the *Pigford II* settlement gave the farmer claimants a fast track to adjudication and the ability to receive higher payments if they underwent a more strict

171. *Id.* at 21 (noting that the inequities and preferential treatment not resolved in *Poole v. Williams* continued, leading to later charges of discrimination between 1981 and 1996).

172. See generally *Moses*, *supra* note 16. There was no official holding in *Poole v. Williams*, as the parties settled outside of court given that evidence for discrimination against the plaintiffs was widely available considering similar legal challenges being launched in several other southern states at the time; also noting that the Court made the Extension Service aware of the likelihood that a court would find discriminatory patterns in their practices based on rulings in simultaneous cases in which legal challenges have been brought. In the settlement, Texas A&M University, through which the Agriculture Extension Service was operating, agreed to pay cash settlements and integrate its operational facilities.

Id.

173. *Id.*

174. See *CTR. FOR AGRIC. & FOOD SYS.*, *supra* note 103, at 6.

175. *Id.*

176. See *CONG. RSCH. SERV.*, RS20430, *The Pigford Cases: USDA Settlement of Discrimination Suits by Black Farmers* 1, 7 (2013).

177. *Id.*

178. *Id.*

claim and documentation review.¹⁷⁹ Still, many of the Black farmers who were claimants to the lawsuit were unable to file claims due to internal administrative hurdles.¹⁸⁰

Nevertheless, in the years following the *Pigford* cases, there was mismanagement in how the settlement claims were distributed and little consideration given to the amount of resources available to address past harm with specificity.¹⁸¹ The U.S. Department of Agriculture opted to include payouts to women and Hispanic Americans as a way of neutralizing any arguments that the government favored Black farmers over Hispanic, Native American, or women farmers.¹⁸² Despite the settlement agreement being an attempt at redress for harm suffered specifically by Black farmers, the addition of other marginalized groups who were not parties to the litigation now diminished the monetary resources available for distribution.¹⁸³ In addition to hurting Black farmers who were legally entitled to restitution, this decision increased fraud, as parties not part of the litigation nor part of the designated marginalized groups on whose behalf the litigation was pursued were able to submit settlement claims.¹⁸⁴ Involuntary Black land loss continued.¹⁸⁵

While Black farmers pushed for redress, court decisions of the 1980s and 1990s persisted in other areas relating to race-based reparative initiatives.¹⁸⁶ In *Wygant v. Jackson Board of Education*, the Supreme Court

179. *Id.* at 7.

180. *Id.* (noting that 80,000 claim forms were mailed out, but only 40,000 were filed, and of the filed claims, only 34,000 were deemed complete, timely and eligible).

181. Conor Friedersdorf, *How Did Progressive Journalists Get Pigford So Wrong?*, THE ATLANTIC (May 7, 2013), <https://www.theatlantic.com/politics/archive/2013/05/how-did-progressive-journalists-get-pigford-so-wrong/275593/>.

182. *Id.*

183. *Id.*

184. *Id.* Members of the named marginalized groups who had no valid claims were able to join the litigation—to the detriment of the Black, Hispanic, Native American, and women farmers, who could show that harm that had been suffered.

185. Holloway, *supra* note 79. The foreclosure relief, priority consideration for future federal farm loans, access to the agency's land inventory, and billions of dollars to cancel the wrongful debt and interest charges that resulted from the USDA's discrimination never came. Instead, the USDA continued to seize Black farmer's land through foreclosure and the Justice Department under the Bush and Obama administrations poured millions of dollars into fighting claims and denying payouts. *Id.* See also Acres of Ancestry Initiative/Black Agrarian Fund, *Black Farmers' Appeal: Cancel Pigford Debt Campaign*, <https://acresofancestry.org/black-farmers-appeal-cancel-pigford-debt-campaign/> (noting that for over two decades since the Pigford settlement, thousands of black farmers have either faced foreclosure or been forced to resort to dependence on private loan subsidies to pay off outstanding debts to the USDA).

186. See, e.g., *Wygant v. Jackson Bd. of Educ.*, 476 U.S. 267 (1986) (establishing the criteria for

of the United States (the “Court”) held that race-based decisions by government agencies were subject to strict scrutiny under the Fourteenth Amendment of the U.S. Constitution.¹⁸⁷ The Court established two prongs to examination of distinctions based on race. Notably, any racial classification “must be justified by a compelling governmental interest and [. . .] the means chosen to effectuate its purpose must be narrowly tailored to achievement of that goal.”¹⁸⁸ In the view of the Court, societal discrimination alone against a particular group was not sufficient to satisfy making racial classification for purposes of remedy; instead, there must have been “convincing evidence of prior discrimination by the governmental unit involved before allowing limited use of racial classifications to remedy such discrimination.”¹⁸⁹

B. Legislative Efforts

Passed by the U.S. Senate, the Justice for Black Farmers Act of 2021 proposed policies that would allegedly end discrimination within the USDA and protect Black farmers from involuntary land loss.¹⁹⁰ The Act proposed the establishment of an independent Civil Rights Oversight Board within the Department of Agriculture to protect the rights of individuals who seek to file discrimination complaints with the Office.¹⁹¹ Among other things, the Board would conduct fact-finding reviews of alleged discrimination, issue decisions within a timely fashion, and recommend improvements to Department practices in its handling of cases involving socially disadvantaged farmers.¹⁹² Furthermore, the Act also proposed the establishment of an Equity Commission to study the historical and continuing discrimination by the Department against Black farmers and ranchers as perpetuated through laws and policies and to recommend actions to end systematic disparities in treatment.¹⁹³ The proposed commission would have consisted of Black farmers, as well as other appointees, to

categorization based on race by governmental agencies as a means of providing redress for past harm).

187. *Id.* at 280.

188. *Id.* at 267, 274.

189. *Id.* at 267.

190. S. 300, 117th Cong. (2021).

191. *Id.*

192. *Id.*

193. *Id.*

analyze and correct the errors of the *Pigford* settlement payouts.¹⁹⁴ Additionally, the initiative also would have featured land grants to create a new generation of Black farmers—redistributive measures that would mimic the proposed land redistribution of General Sherman’s Order No. 15 and those propagated by the Homestead Act.¹⁹⁵ Although the Justice for Black Farmers Act passed in the Senate, it failed in the House of Representatives.¹⁹⁶

Lastly, President Biden and his administration proposed the American Rescue Plan Act to provide economic relief to the American economy as a response to the coronavirus pandemic.¹⁹⁷ The plan incorporated language from the Justice for Black Farmers Act and proposed to pay debt relief up to 120% of the total amount that socially disadvantaged farmers from nine states owed on Farm Service Agency Direct and Guaranteed Farm Loans and Farm Storage Facility Loans.¹⁹⁸ The stimulus relief proposed in this package would have benefitted Black farmers in ways that signal long-sought redress after decades of discrimination by government agencies at the federal and state levels, as well as from the private sector.¹⁹⁹ It was not long before the measure met opposition in lawsuits.²⁰⁰ In response, farmers from nine states filed suit against the USDA, alleging that the plan was not tailored to the needs of current farmers and that it unconstitutionally discriminated against them on the basis of race.²⁰¹ Following the challenge, the U.S. Department of Justice forwent an appeal of an order blocking the relief for disadvantaged farmers.²⁰²

194. *Id.*

195. S. 300, 117th Cong. (2021).

196. *Id.*

197. U.S. DEPT. OF AGRIC., Press Release on USDA Commencement of Loan Payments to Socially Disadvantaged Borrowers under American Rescue Plan Act Section 1005 (May 21, 2021), <https://www.usda.gov/media/press-releases/2021/05/21/historic-move-usda-begin-loan-payments-socially-disadvantaged>.

198. *Id.*

199. *Id.*

200. Roxana Hegeman & Allen G. Breed, *Black US farmers awaiting billions in promised debt relief*, AP NEWS, Aug. 31, 2021, at 13.

201. *Id.*

202. See Gerstein & Bustillo, *supra* note 13, at 1.

IV. PROPOSAL

As noted, efforts at redress to disenfranchised Black farmers have largely fallen short of their goals. Rampant discrimination dominated local implementation of federal legislation prior to the Civil Rights Movement.²⁰³ As a result, it was not until after the passage of the Civil Rights Act of 1964 that Black farmers began to put pressure on the government to correct local-level and systemic injustices in federal programs.²⁰⁴ *Poole v. Williams* was the largest and most notable anti-discrimination case to be brought on behalf of Black farmers against a federal agency for discrimination in its practices. Simultaneously, other smaller cases were brought in jurisdictions throughout the South, which contributed to the out-of-court settlement.²⁰⁵ *Poole v. Williams* laid the framework for subsequent cases, including the famous *Pigford* cases, which resulted in an initial settlement of \$1.2 million for plaintiff farmers who had been discriminated against, and later, an allocation of \$100 million made available through the 2008 Farm Bill to provide restitution to those who were unable to file timely claims.²⁰⁶ Unfortunately, this did little to reconstitute the Black farmers who held valid claims under the litigation.²⁰⁷ Furthermore, it was during this time under the Obama administration that the USDA foreclosed on many Black-owned farm properties, leaving existing discrimination complaints unresolved.²⁰⁸ New complaints filed under the *Pigford* cases were dismissed and underrepresented in reporting.²⁰⁹ By the turn of the twenty-first century, land ownership for Black farmers had decreased to 1.4 million acres, amounting to a loss of 12.6 million acres, or 90%, of land previously owned.²¹⁰ Nearly two decades later, the disparities persisted.²¹¹ Between

203. See Newkirk II, *supra* note 14.

204. See Reid, *supra* note 77, at 21.

205. *Id.*

206. See Cong. Rep. Serv., *supra* note 176, at 6-7.

207. *Id.*

208. Nathan Rosenberg & Bryan Wilson Stucki, *How USDA distorted data to conceal decades of discrimination against Black farmers*, THE COUNTER, June 26, 2019, at 1.

209. *Id.*

210. See Barth, *supra* note 5, at 5. See Newkirk II, *supra* note 14, at II (expounding upon regional occurrences).

211. Megan Horst and Amy Marion, *Racial, ethnic, and gender inequities in farmland ownership and farming in the U.S.*, 36 AGRIC. AND HUMAN VALUES 1-16 (2018), https://www.researchgate.net/publication/328570754_Racial_ethnic_and_gender_inequities_in_farmland_ownership_and_farming_in_the_US.

2012 and 2014, White farm operators owned 98% of land and operated 94% of all farmland.²¹² At the same time, white farm operators were able to generate 98% of all farm-related income from land ownership and 97% of income from farm operatorship.²¹³

The actions of the U.S. Department of Agriculture following the *Pigford* cases and some of the language in the Justice for Black Farmers Act shed light on the need for specificity in legislation and advocacy.²¹⁴ This was exacerbated by the Biden administration's proposals through the American Rescue Plan Act.²¹⁵ Despite that, the substance of the proposed legislation was anything but reparative in nature for Black farmers, the Biden administration's plan had been billed incorrectly in media as a reparations plan of sorts for Black farmers.²¹⁶ The failure to make legislative policy narrowly tailored to provide historic redress did an injustice to those farmers suffering compounded intergenerational harm.²¹⁷ Although historical harm suffered by Black farmers was used to justify the legislation, the remedies and nature of the plan broadly encompassed socially disadvantaged groups.²¹⁸ This terminology likely condemned the initiatives to failure, because the socially disadvantaged categorization encompassed a broad grouping of individuals while excluding others on the basis of what appeared to be race.²¹⁹ Under the American Rescue Plan Act, the socially disadvantaged criteria uses the 1990 definition for socially disadvantaged farmers, which included Blacks or African Americans, American Indians or Native Alaskans, Hispanics, Asians, and Native Hawaiians or Pacific Islanders.²²⁰ For the marginalized groups other than Black farmers, there likely was not as much documentation and precedent to survive a Section

212. *Id.*

213. *Id.*

214. See RBS, *supra* note 2, at 8.

215. *Id.*

216. Alan Rappeport and Ana Swanson, *Biden Administration Ramps Up Debt Relief Program to Help Black Farmers*, N.Y. TIMES (March 25, 2021), <https://www.nytimes.com/2021/03/25/us/politics/biden-debt-relief-Black-farmers.html>.

217. *Id.*

218. *Id.*

219. See Oxner, *supra* note 12, at 1.

220. Chris Clayton, *Ag Policy Blog: Analyzing Totals for Socially Disadvantaged Farmers*, PROGRESSIVE FARMER DTN (Mar. 12, 2021, 11:10 AM), <https://www.dtnpf.com/agriculture/web/ag/blogs/ag-policy-blog/blog-post/2021/03/12/analyzing-loan-totals-socially>.

1981 Claim under the Civil Rights Act of 1866.²²¹

Under the Fourteenth Amendment of the United States Constitution, race-conscious policies enacted at the state and federal levels could only be enacted if they pass the *strict scrutiny* standard.²²² In such cases, the legislation would need to be “narrowly tailored to meet a compelling government interest through the least restrictive means available.”²²³ Thus, it would need to be shown that the policy provided specific redress for harm caused by discrimination, and there was no other means through which redress could be provided.²²⁴ Under this requirement, General William Sherman’s Special Field Order 15, which called for the redistribution of plantation lands to the persons who had worked the land and made it profitable as slaves, might have withstood strict scrutiny, because it would have compensated those “personally victimized by slavery.”²²⁵ One could infer that the Court establishes the strict scrutiny standard alone as a foundation for racial classification schemes, and that disadvantage justifying said schemes must be proved apart from race; merely constituting a marginalized group will not suffice if the classification cannot serve a compelling government interest and is not narrowly tailored in furtherance thereof.²²⁶

The lack of specificity in the American Rescue Plan Act laid the foundation for equal protection challenges, as its grouping together of all non-white farmers made it impossible to link specific harm to a specific party. Not only did this amount to an erasure of Black farmers’ justice claim, but it diminished the likelihood that the Act would withstand allegations of

221. See e.g., 42 U.S.C. § 1981. See also Cornell Law School Legal Information Institute, *Section 1981*, (Apr. 2021), https://www.law.cornell.edu/wex/section_1981 (noting that as part of the Civil Rights Act of 1866, the statute establishes that certain rights are to be guaranteed to U.S. citizens and protected against impairment by racial discrimination in actions taken by the federal government, state government, and private individuals).

222. See *Wygant v. Jackson Bd. of Educ.*, 476 U.S. 267 (1986)

223. Charles Lane, *Opinion: Would reparations for slavery be constitutional?*, WASH. POST (August 12, 2019), https://www.washingtonpost.com/opinions/would-reparations-for-slavery-be-constitutional/2019/08/12/76677182-ba10-11e9-b3b4-2bb69e8c4e39_story.html; See also *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 202 (1995) (holding that all racial classifications...must pass strict scrutiny review...serv[ing] a compelling government interest and must be narrowly tailored to further that interest).

224. *Id.*

225. Lane, *supra* note 223, at 2.

226. *Adarand*, 515 U.S. at 212-213. See also *Students for Fair Admissions, Inc. v. President and Fellows of Harvard Coll.*, No. 20-1199, slip op. at 22 (S. Ct. June 29, 2023) (citing the court’s precedent for colorblind policies).

unconstitutional discrimination by those not included.²²⁷ The need for specificity parallels ongoing discussions regarding race-conscious policy in relation to the nation's grim history of discrimination against Black Americans and how best to devise remedies.²²⁸ In critique of the "socially disadvantaged" categorization, more narrow language would have properly tailored the debt relief measures outlined in section 1005 to the documented multigenerational harm suffered by Black farmers up to the present day, providing the link needed for a narrowly-tailored specificity that would withstand strict scrutiny challenges.²²⁹ Furthermore, economic restitution for Black farmers constitutes a compelling government interest on its own merit, and with specificity, it would properly ensure that Black farmers as a class stand to be made whole for directly suffered harms and their inherited legacies. In other words, the discriminatory treatment suffered by Black farmers, their families, and living descendants allows them to constitute a specifically aggrieved class for which specific remedies are available from the federal government.²³⁰

Given the outcome of the *Pigford* cases, which served as the basis for including the alleged redress in the economic stimulus, it is clear that the U.S. Government had exhausted other available remedies before attempting *race-conscious* ones.²³¹ Similarly, the history alone surrounding land dispossession by Black farmers provides a foolproof case to remedy discrimination suffered.²³² Several decades of policy proposals along with litigation designed to enforce just practices on behalf of Black farmers were unable to provide protection from social and institutional prejudices.²³³ Although the Act offered substantial debt relief, the majority of the funds would likely have gone to White farmers given the percentages of land owned; by the same token, Black farmers would have received the smallest

227. *Miller v. Vilsack*, No. 21-11271, 2022 WL 851782, at *3 (5th Cir. Mar. 22, 2022).

228. *Students for Fair Admissions, Inc. v. President and Fellows of Harvard Coll.*, No. 20-1199, slip op. (S. Ct. June 29, 2023) [hereinafter *Students for Fair Admissions*].

229. Ximena Bustillo, *In 2022, Black farmers were persistently left behind from the USDA's loan system*, NPR (Feb. 19, 2023), <https://www.npr.org/2023/02/19/1156851675/in-2022-black-farmers-were-persistently-left-behind-from-the-usdas-loan-system> (citing an NPR analysis of USDA data, which found that "Black farmers still receive a disproportionately low share of direct loans given to farmers leaving them behind in a program that is important to their livelihoods.").

. *Id.*

231. See CONG. RSCH. SERV., *supra* note 176.

232. See RBS, *supra* note 2, at 8.

233. Christopher Walljasper, *U.S. defends minority farmer relief despite legal fight*, Reuters, June 15, 2021, at 1.

portion of the debt relief offered.²³⁴ If the goal of the Biden Administration is to provide specific redress to a segment of the American population against which harms were committed, such measures deserve their own legislation just as much as the aggrieved parties deserve specificity to be made whole; the relief packages in which the Biden administration has attempted to address this issue are incapable of constituting racial equity or reparative models because they are not designed as such.²³⁵ Furthermore, the Biden administration's failure to push back against legal challenges to the proposal signaled a lack of confidence in the initiative's success.²³⁶

In crafting legislative strategies, solutions should be directed by the federal government, but monitored at the local level, as suggested by the proposals in the Justice for Black Farmers Act.²³⁷ Historically, federal policy sometimes did not explicitly implicate racial discrimination, but discrimination occurred when left to local administrative officials without adequate oversight.²³⁸ Also at the local level, there are ways to ensure that existing laws pertaining to property transfer are less predatory.²³⁹ Such elements include allowing owners of heirs' property to buy off the tiny share or interest of a lone relative or possessor who might prefer to sell his or her share of the property instead of going to auction.²⁴⁰ This would provide heirs

234. Antonio Moore (@ToneTalks), Twitter (Mar. 14, 2021, 10:08 PM), <https://twitter.com/tonetalks/status/1370949967368445953>. See also Summer Sewell, *There Were Nearly A Million Black Farmers in 1920. Why Have They Disappeared?*, THE GUARDIAN, April 29, 2019, <https://www.theguardian.com/environment/2019/apr/29/why-have-americas-black-farmers-disappeared> (elaborating that only five percent of beneficiaries today are black). See also Bustillo, *supra* note 229.

235. See generally Leah Douglas, *Analysis: Biden debt relief plan disappoints Black farmers for avoiding race*, REUTERS (Aug. 17, 2022), <https://www.reuters.com/world/us/biden-debt-relief-plan-disappoints-black-farmers-avoiding-race-2022-08-17/> (citing activists' disappointment with the Biden Administration's second attempt to include reparations-adjacent remedies in an emergency era relief act). The Director of Land Retention and Advocacy at the Federation of Southern Cooperatives, an advocacy group for Black farmers, noted that the measure, "does not even approach a racial equity model that this administration and the USDA [have] been speaking about since the beginning of its term." *Id.*

236. *Id.*

237. S. 300, 117th Cong., at s. 102 (2021). Section 102 defines and outlines the strategies to be employed by a federal civil rights oversight board, which will monitor the Department of Agriculture and local farm service agencies—a much needed practice given the long history of local-level discrimination permitted by the Department of Agriculture.

238. See Reid, *supra* note 77, at 20 (noting that USDA officials condoned discrimination by refusing to interfere with local decision-making and implementation processes).

239. Lawrence Anderson Moye IV, *Is It All About the Money? Considering a Multi-Factor Test for Determining the Appropriateness of Forced Partition Sales in North Carolina* 33 CAMPBELL L. REV. 411, 445 (2011).

240. *Id.*

with an opportunity to keep family land while also providing the individual who wishes to sell with an opportunity to make a profit.²⁴¹

Similarly in relation to partition sales, the law should evolve to reflect the growing concept that there is a non-monetary value to property, such as one's history, pride in familial legacy, and the sense of self-awareness that is often tied to property ownership.²⁴² The remedy of partition itself is one of equity, which dictates the consideration of non-economic factors when deciding whether to dispossess a landowner of property.²⁴³ In such cases, courts should be obliged to consider non-monetary factors before entering a judgment in favor of third parties against families in such sale proceedings.²⁴⁴ By encouraging judges to consider multiple factors, reliance is based upon an actual "totality of the circumstances" test, which would encourage judicial authorities to weigh all of the factors before ordering action.²⁴⁵ The multi-factor test remedies the taking aspect of partition actions, in that the non-petitioning co-owner is no longer subjected to having his or her property taken by the government through "the conversion of real property into a less valuable, inequivalent monetary sum without the consent of the holder."²⁴⁶ Furthermore, consideration beyond economic factors is already recommended by expert bodies that specialize in partition investigations, including the National Conference of Commissioners on Uniform State Law.²⁴⁷

Furthermore, it is possible that if the judge in a partition sale proceeding were to decide in favor of making the family sell the land, then the land should be sold via the open real estate market, rather than through court auction.²⁴⁸ This allows the family to keep their dignity and walk away with a fair monetary offer on their land.²⁴⁹ Regardless of a consensus on the effectiveness of such proposals, the sobering reality is that predatory laws remain in place, because Black farmers and their communities are largely

241. *Id.*

242. *Id.*

243. *See* NPR, *supra* note 6.

244. *See* Moye IV, *supra* note 239, at 424-25.

245. *Id.*

246. *Id.* at 426.

247. *Id.* The Conference has recommended in its own *Uniform Partition of Heirs Property Act* that all states allow for the consideration of additional non-economic factors in addition to fair market value of property before mandating partition actions.

248. *See* NPR Public Radio, *supra* note 6.

249. *Id.*

devoid of the political capital and economic strength to wield the power needed to initiate change.²⁵⁰

In recent years, the arduous struggle of Black farmers has caught the attention of several grassroots advocacy organizations, including the recently founded American Descendants of Slavery Advocacy Foundation (the “Foundation”).²⁵¹ The Foundation promotes the idea of *lineage-specific* redress, as opposed to redress based solely upon race.²⁵² Through its work, the Foundation advocates that the key to correcting multigenerational atrocities against Black Americans is to devise policy that is anchored in lineage classifications, an argument that bears striking parallels to recent precedent set by the Supreme Court of the United States regarding race classifications and historical redress.²⁵³ Similarly, efforts at redress should specifically tailored to the harm suffered by those Black Americans who are descendants of formerly enslaved *negroes* and survivors of Jim Crow.²⁵⁴ Ultimately, a lineage-based argument could withstand the strict scrutiny requirements set forth by the Supreme Court to make the case for narrowly tailoring redress to Black farmers, as redressable grievances were suffered directly by newly freed Black Americans and their descendants as a result of social prejudices stemming from the period of enslavement, the Civil War, and the failure of Reconstruction.²⁵⁵ In light of recent Court precedent, many of the ambiguous legislative initiatives to date that have purported to provide redress to Black farmers indicate a lack of will on the part of this country to pursue justice for its Black farmers—and more broadly—for Black Americans.²⁵⁶ This is especially true in regard to involuntary land and wealth loss at the hands of the federal government.²⁵⁷ As comprehensive

250. *Id.*

251. ADOS Advocacy Foundation, *The Black Agenda – Agriculture*, <https://www.adosfoundation.org/agriculture/> (last accessed on Aug. 23, 2023).

252. ADOS Advocacy Foundation, *About Us – Mission Statement*, <https://www.adosfoundation.org/mission-statement/> (last accessed on Aug. 23, 2023). *See also Students for Fair Admissions, Inc. v. President and Fellows of Harvard Coll.*, No. 20-1199, slip op. at 22 (S. Ct. June 29, 2023).

253. *Students for Fair Admissions, Inc. v. President and Fellows of Harvard Coll.*, No. 20-1199, slip op. at 22 (S. Ct. June 29, 2023).

254. *Id.*

255. *Id.* *See generally* Newkirk II, *supra* note 14 at II (outlining the experiences of Black American farmers and their struggle to acquire land following the end of Reconstruction). *See also* ADOS Advocacy Foundation *supra* note 251.

256. Douglas, *supra* note 235.

257. *Id.*

policy, the Foundation calls for land grants for new and existing Black farmers to rectify a massive *lineage-based* land ownership disparity, as well as government-subsidized loans with low interest rates for the purpose of building primary residences on newly granted and currently owned farmland by Black Americans.²⁵⁸ In essence, in addition to narrowly tailored and improved policy at the national level, government-sponsored land redistribution with earmarks to promote intergenerational inheritance would constitute substantive restitution for the land lost as a result of the government's negligence.

CONCLUSION

In order to effectively remedy the harm suffered by Black American farmers from the Reconstruction Era to the present-day, the federal government must play a large role in advocating on their behalf. There must be an effort to actively create and enforce policies that prevent discrimination from occurring locally. Policy measures should offer solutions that are narrowly tailored to provide redress to the harmed parties. Such efforts would ensure that any solutions remain foolproof against claims of unfairness. This is not to say that the government is not within its right to create broad-sweeping categories for aiding socially disadvantaged persons; this, however, should be done through other initiatives. Efforts made to date have failed to do this. As indicated in the History section of this note, the discrimination suffered by Black farmers in the United States has a long trajectory and epitomizes systemic injustice. The intergenerational experiences of Black farmers with involuntary land loss and land dispossession illustrate the ability of social prejudice to repeatedly influence and weaponize public policy against Black farmers. Additionally, the History section emphasizes that this is an American issue, as it can be traced directly from the struggles that Black farmers faced following emancipation into the modern era. In closing, history and available data justify the need for redress on behalf of Black farmers. If the United States ever finds the will to act, it has a duty to remedy the harm suffered, pay the debts owed, and exercise justice on behalf of its Black farmers.

258. ADOS Advocacy Foundation, *Agriculture – A green future for Black America*, 2021, <https://adosfoundation.org/agriculture>.