

COLORISM: SHADES OF FREEDOM: THE LEGAL IMPLICATIONS OF COLORISM IN THE UNITED STATES JUSTICE SYSTEM

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I. INTRODUCTION

As the United States of America and the world become browner,¹ people must be cautious not to replace racism with colorism—“shadeism,” or “complexion discrimination.”² Both racism and colorism are tied to colonialism; both are equally toxic. We readily acknowledge the pain of racism, but often disregard the pain of colorism. As the United States’ deep-rooted association with racism grows increasingly more apparent to its residents and the world, so do attempts to acknowledge racism and repair its effects. Colorism, however, as well as its negative impacts on so many people in the United States and across the globe, is also more frequently being discussed, mainly by those whom colorism affects in the United States and the world. The U.S. legal system is increasingly facing arguments

¹ Domenico Montanaro, *How the Browning of America is Upending Both Political Parties*, NPR (Oct. 12, 2016, 11:16 AM), <https://www.npr.org/2016/10/12/497529936/how-the-browning-of-america-is-upending-both-political-parties> [<https://perma.cc/QJW2-2VME>] (“The country is changing — it’s getting browner, as population growth slows among whites. Non-whites now make up a majority of kindergartners; by the next presidential election, the Census Bureau predicts they will be a majority of all children; and by 2044, no one racial group will be a majority of the country.”); FARAI CHIDEYA, *THE COLOR OF OUR FUTURE* 5 (1999) (“Around the year 2050, whites will become a minority [in the United States.]”); Robert Ferris, *World Population: Quarter of Earth Will Be African in 2050*, CNBC (July 31, 2015, 1:03 PM), <https://www.cnbc.com/2015/07/30/world-population-quarter-of-earth-will-be-african-in-2050.html> [<https://perma.cc/D5NW-QXQY>] (“By 2050, 1 in 4 people on Earth will be African, and the report expects Africa to be the only region that will continue to grow after 2050. But Africa will not be the only one growing. Asia will contribute 900 million new people in that timeframe as well, and South and Central America will contribute a smaller share. Nine countries are expected to account for half of the world’s population growth, and they’re almost all in Africa or Asia: India, Nigeria, Pakistan, Democratic Republic of the Congo, Ethiopia, Tanzania, Indonesia and Uganda are expected to grow the most, roughly in that order.”).

² ALICE WALKER, *In Search of Our Mothers’ Gardens*, in *WOMANIST PROSE* 231, 290-91 (1983) (“Colorism—in my definition, prejudicial or preferential treatment of same-race people based solely on their color . . . impedes us.”); Trina Jones, *Shades of Brown: The Law of Skin Color*, 49 *DUKE L.J.* 1487, 1489 (2000) (“In a 1982 essay, Alice Walker called this prejudicial treatment ‘colorism.’ Although this terminology appears to be relatively new, colorism is not a recent invention.”); Audrey Elisa Kerr, *The Paper Bag Principle: Of the Myth and the Motion of Colorism*, 118 *J. OF AM. FOLKLORE* 271, 273 (2005) (“[C]omplexion discrimination is the implosion of racism—the internalization of slavery and Jim Crowism—wherein the profound and enduring residue of black social quarantine resides.”); see also John Blake, *White Supremacy, with a Tan*, CNN (Sept. 4, 2021, 8:07 AM), <https://www.cnn.com/2021/09/04/us/census-browning-of-america-myth-blake/index.html> [<https://perma.cc/A7ZM-8UCZ>] (“Racism will likely be just as entrenched in a browner America as it is now. It will still be White supremacy, with a tan.”).

about the impact of colorism in court proceedings. Ultimately, the exclusion of persons based upon their skin tone can no longer be ignored as the country rapidly browns.³

For centuries, racism has been fought on the frontlines in America, and solutions, whether effective or not, have been set in place. However, this is not the case for colorism. Colorism is largely unacknowledged except by darker-skinned individuals who overwhelmingly seem to suffer the brunt of its negative effects. Solutions focused on policy, practice, and litigation that were arguably helpful to deter racism are often ineffective against colorism.⁴ As Ellis P. Monk, Jr., a Harvard sociology professor, explains:

In a way, colorism and skin tone stratification is an even more difficult problem to fix because you could make the

³ Ellis P. Monk, Jr., *The Unceasing Significance of Colorism: Skin Tone Stratification in the United States*, DÆDALUS, J. AM. ACAD. ARTS & SCI. 76, 87 (2021) [hereinafter Monk, *Unceasing Significance*] (“In a society with increasing intermarriage and ‘multiracial’ children—in which everyone will look mixed—the importance of skin tone should only increase over time as ethnoracial categories become even more heterogeneous with respect to phenotype.”); Brent Staples, *As Racism Wanes, Colorism Persists*, N.Y. TIMES (Aug. 22, 2008, 4:36 PM), https://archive.nytimes.com/theboard.blogs.nytimes.com/2008/08/22/as-racism-wanes-colorism-persists/?%3fmc=aud_dev&ad-keywords=auddevgate&gclid=EAIaIQobChMI_cym1p_K8gIVtQiICR19kQwYEAMYASAAEgJB-_D_BwE&gclidsrc=aw.ds [<https://perma.cc/Q8TZ-CT27>] (“The country is moving away from the blunt-force racism that once banished black people to the other side of the Jim Crow line. But we have entered a period of secondary discrimination—or ‘colorism’—that will be difficult to overthrow.”).

⁴ Monk, *Unceasing Significance*, *supra* note 3, at 76-77 (“[B]y any reasonable standard, a century after their Emancipation and despite relatively recent legal victories in the form of civil rights legislation, the Negro was still not free.”); Jennifer L. Hochschild & Vesla Weaver, *The Skin Color Paradox and the American Racial Order*, 86(2) SOC. FORCES (2007), <https://scholar.harvard.edu/jlhochschild/publications/skin-color-paradox-and-american-racial-order> [<https://perma.cc/5RCL-82MP>] (“[M]ost remedies for the primary marginalization of racial hierarchy do nothing to help, or even exacerbate, the secondary marginalization of colorism.”); Shriya Meesala, *Not Fair, Still Lovely: The Perpetuating Toxicity of Colorism* (Feb. 8, 2021), U. OF ALA. INST. FOR HUM. RTS. BLOG, <https://sites.uab.edu/humanrights/2021/02/08/not-fair-still-lovely-the-perpetuating-toxicity-of-colorism/> [<https://perma.cc/75MN-4PQD>] (“Colorism and racism, while closely related problems need different solutions, and while some of these solutions may overlap, each has a unique set of problems.”); Ellis P. Monk, *The Color of Punishment: African Americans, Skin Tone, and the Criminal Justice System*, ETHNIC & RACIAL STUD. 1, 15 (2018) [hereinafter Monk, *Color of Punishment*] (stating that Civil Rights legislation is often blind to color discrimination. “So blind, in fact, that it is often difficult to even launch lawsuits on the basis of colour bias (Jones 2000). Ultimately, then, scholars and policymakers alike must attempt to conduct research and craft solutions that are more faithful to and better engage with the manifold complex processes implicated in the production and reproduction of [ethnoracial] inequality.”); Taunya Lovell Banks, *Colorism: A Darker Shade of Pale*, 47 UCLA L. REV. 1705, 1713 (2000) (“[T]here are no simple solutions to the problem of colorism. Nevertheless, courts already have the basic jurisprudence to address some colorism claims brought by black litigants and must be prepared for the more complex claims they are likely to confront in the twenty-first century.”); *see also* Trina Jones, *Intra-Group Preferencing: Proving Skin Color and Identity Performance Discrimination*, 34 N.Y.U. REV. L. & SOC. CHANGE 657 (2010).

argument that everyone is involved in the system of colorism. . . . If we think about race and racial inequality without taking these skin tone differences seriously, then we're actually missing how this system of racial inequality works.⁵

This article was inspired by a panel discussion on colorism at the Florida Agricultural and Mechanical College of Law in March 2021 and from the poignant words of a Black female law student who courageously shared her thoughts. Part II will open with a shared experience of that law student and her nearly 25 years of dealing with colorism as a dark-skinned, young, Black woman of African descent raised in Florida. As she recalls her painful experiences with colorism from elementary school to law school, she also shares her revelations and motivations as a result of being heckled and excluded throughout her life because of her darker skin tone. Part III will provide a backdrop of the historical development of colorism. Part IV will discuss cases that have attempted to deal with colorism in the legal system under civil rights laws and the viability of skin tone as a cognizable classification within the framework of the United States Supreme Court's Batson challenge for jury participation that already applies to race and sex. Part V will discuss the complexities of colorism and the Civil Rights Movement. Part VI will conclude with the conundrums of colorism and where we go from here as the United States and the world move toward a browner society. No longer can colorism be viewed as only existing in a victim's head or as something less hurtful than racism or sexism. We must acknowledge colorism as one of the growing means of discrimination—a close “cousin” of white supremacy—that keeps people from experiencing their full rights and freedoms in employment, housing, education, and society at large.⁶

II. COLORISM: HER LIFE AS A DARK-SKINNED BLACK WOMAN IN THE UNITED STATES⁷

Recently, I attended a panel on colorism at my law school. I was nervous to participate; I usually never discuss my

⁵ Associated Press, *Beyond 'In the Heights,' Colorism Persists, Rarely Addressed*, VOA NEWS (June 19, 2021, 7:30 AM), <https://www.voanews.com/usa/race-america/beyond-heights-colorism-persists-rarely-addressed> [<https://perma.cc/7XQL-GEMN>] (quoting Professor Ellis P. Monk).

⁶ See CHIDEYA, *supra* note 1, at 40 (“For most of America’s history, racial categories have been used to segregate and to deny opportunity.”).

⁷ Personal experience as written by Tolu Agboola, student, Florida Agricultural and Mechanical University College of Law.

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experiences with colorism because in my experience people can be very dismissive of individual experiences. I did not say much, but I did listen. Even during the panel, I felt that some comments were dismissive of the traumas that women of a darker skin tone experience, especially within the African American community.

There were comments about how women of lighter tones also may have experienced colorism. I am honest enough to say that I may not be ready or accepting of those conversations yet. Some of my most painful experiences and comments come from women within our own community, and most are fair-skinned. Also, I do not play trauma Olympics; I like to validate everyone's point of view and experiences, but some experiences just felt minimal in comparison to my own. I understand that this residual feeling of disdain is rooted in my own issues with colorism. Notwithstanding, I thought the panel was beneficial for students, and colorism is something that should be discussed more often, especially in the legal community, which is comprised mainly of older, white men. These are the key players in positions of authority to make a difference in diversity.

My experiences with colorism are such a big part of who I am and have molded me into the woman I am today. I believe that colorism has helped me build a high level of resilience and confidence. I know that some of the hardships I have experienced in life have come due to the color of my skin. While difficult to accept, these experiences have changed me and the way that I navigate life.

I often state that I want my children to also be of a darker complexion because it builds character, or it did for me. Being dark skin in a society that tends to look down on darker complexions afforded me an experience that forced me to stay true to who I am. Colorism has allowed me to stay true to myself.

As an adolescent I wanted to change who I was. I wanted to mold myself into something more acceptable. I wanted to be seen and heard as everyone else was. As an adult I am prepared to be who I am, unapologetically.

My dark skin is not an identifying trait; it is my identity. It is who I am. I am a proud, resilient, Black woman.

This is my story.

People often think back to elementary school as a time in the past when things were simpler and life was easygoing. I often think of elementary school as the start of my coming-of-age story. Although I did not know it at the time, the jokes, and the laughs that I endured because of my dark skin tone were just the start of a very long battle: “me versus my skin.”

As a young girl, I was never picked on for my hair, clothes, or personality—it was always for how dark I was. Really, it was for how black my skin was. It was as if being a Black girl was a crime. And not only was I dark-skinned, but darker than most other people.

In my opinion, bullying or teasing is a natural part of childhood. The teasing that I received as a young child taught me that I was different from others. I knew that I was a dark brown complexion, but I did not start seeing my skin as too dark until this time. As a fourth grader, all I understood was that I was too dark for activities of two types: 1) typical outside activities that most children enjoyed, swimming or using the playground; and 2) social activities—nobody wanted to pick the darker girl for teams or groups, and this isolated me from my peers. This was the first battle in the “me versus my skin” war.

At this young age, I started to change my behavior to reflect how I felt about my skin tone. For example, recess is something all kids look forward to—but not me, not anymore. I spent my recess on the benches or anywhere with shade. I did not want to be anywhere near the sun for fear of getting darker. I opted to stay inside during recess, in afterschool, and even at home. As a result of my less sociable behaviors, I lost friends and was left out of birthdays and parties. But to me, the sacrifice was worth it to avoid getting darker. By then, I believed that my skin tone was my number one enemy. I thought that if I could avoid getting just a few shades darker while everyone else got darker, that my skin tone would even out in comparison to others, and I would be more socially acceptable.

By definition, teasing is “the act of persistently annoying someone, especially playfully and with silly jokes about them; . . . the act of bullying, harassing, or tormenting someone.”⁸ Teasing often entails a little bit of a back and forth to be actual teasing. If you have ever been around a group of children, you understand that the dynamics of teasing require a joke and a response. What response do you have about something you cannot change? What kind of comeback do you have to something you were born with? For

⁸ *Teasing*, DICTIONARY.COM, <https://www.dictionary.com/browse/teasing> (last visited January 9, 2023) [<https://perma.cc/LZ2W-Z5WK>].

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me, this was the most difficult part of the war for a long time. Even as children, we learn to fix things about ourselves that make us uncomfortable. From thick, chunky glasses to slimmer, more fashionable ones. From shorter hair to longer hair that can be styled differently. From tom-boy clothes to clothes a little more feminine. But what can you do to change your skin tone?

Living in the age of technology, I began my own online research about how to change my skin tone. I read all the top results on search engines: “Can you lighten your skin?” “What does it mean to have dark skin?” “How can you change your skin tone?” Even with all the research that the Internet could offer and that I could read and understand, I found no answers. This is when I understood and accepted that there is absolutely nothing I could do to change the color of my skin permanently. I was born this way; I would die this way. Although I knew this, it was many more years before I accepted it.

As I progressed through adolescence, the understanding of my skin tone and how it would affect me throughout my life continued to deepen. There are subtle things in life that tend to affect you more than people like to admit.

I was super excited to try out for sports in middle school. I wanted to be active and be a part of a team. Most sports require skin tone stockings to go under dresses or shorts of the uniform. My mother and I went to about six department stores, but we could not find skin tone stockings to match my skin tone. This is something that has not occurred to most people. Black stockings are not the color of my skin. I have a rich dark brown skin complexion. Most department stores carried beige, light brown, or black stockings. So, my moment to finally be a part of a team was just another moment where I stood out as a girl on the team who looked different from everyone else. I remember thinking to myself, “Why didn’t they have my color? Why was the supply so limited? I was sure there were girls with similar complexions. Had nobody thought of us?” This was especially frustrating for my mother, who grew up in Africa, where most Africans were the same skin tone. There, she never had a problem finding anything that matched her skin tone, so she did not have much to say to me.

This was also a difficult area to navigate alone because my mother and I did not grow up the same. She grew up in Nigeria in the 1960s, when Nigeria was prospering and growing, both economically and agriculturally. My mother grew up in a house of all like-colored people. Most people in my family and in the whole country of Nigeria are of a darker complexion. Thus, she never had to endure the bullying and mixed feelings I experienced because I was darker than my peers. It was only the wealthy Africans and

white people, who also had money, who were showed favoritism in her era in Nigeria. As a result, she did not have much advice to give.

This was a difficult process for me, having to figure things out on my own, again, with no guidance, no safe space about what I was experiencing. I did not fault my mother for these things. There is no way she could be equipped to deal with these things. But I would be lying if I acted like this specifically did not adversely affect me. If I could not turn to my mother, then to whom could I turn?

Around this time, I discovered that there was a word to describe everything that I was feeling and experiencing: “colorism.” I understood “colorism” to mean that those with light skin were treated more favorably than those with dark skin. I researched it and found that colorism is defined as:

A practice of discrimination by which those with lighter skin are treated more favorably than those with darker skin. This practice is a product of racism in the United States, in that it upholds the white standards of beauty and benefits white people in the institutions of oppression (media, medical world, etc.).⁹

At this time, all I could conceptualize about colorism was that because of my skin tone, things were different for me. Someone once asked if I had on tights under my shorts; I did not. The room froze, I looked down at my legs and they looked normal to me. Then after a short pause, the giggles came. By this age I was able to snap back, and although I do not remember what I said, I knew that my feelings were hurt. In hindsight I can see now that the question was likely asked because the skin on my legs is simply that smooth and rich. But, because of my past experiences and how I viewed myself, I received it as an insult. I did not wear shorts to school for the rest of the year.

The thing about colorism is that while I was experiencing negative impacts from the outside world, I also internalized these impacts. I started to really hate my skin, hated my parents for making me so dark, and began questioning my faith—my life in its entirety. Why would God make me so dark? Was it my destiny to suffer in life? I believed that my life would be different if I were lighter; my life would be better, easier. I felt that my lighter toned friends simply had an easier time at navigating life in general. From school to friends to extracurricular activities, it was just easier for them, or so it seemed.

⁹ *Colorism*, NAT’L CONF. FOR COMTY. AND JUST., <https://www.nccj.org/colorism-0> [<https://perma.cc/B2SM-XUFX>] (last visited June 17, 2022).

I often had talks about my skin tone with a close friend, who was fair-skinned and of Haitian descent. We had similar upbringings in terms of food, religion, parenting styles, and outlook on life. For example, both cultures eat rice with every meal; our parents are typically stricter and stress the value of education more than American parents; our religions are deeply rooted in our households; and Haitians and Africans are both outcast in America. We expressed our shared experiences with colorism and discussed how it has individually affected our lives. We shared stories about our childhoods and how colorism has impacted us. Her grandmother did not allow her to play outside as a child for fear that she would get darker and it would be more difficult for her to marry. We even had different experiences as two Black girls at the same school. Because of her fair skin, when others teased her, it was because of her being Haitian or snooty, but when I was teased, it was always about the color of my skin. When it came to boys, she had better experiences with them than I had because they did not want a girlfriend darker than they were or a girl that others found unattractive.

One day, it became very clear to the both of us that things were different for me, and neither of us knew the answers. Another friend and I attended the same school and had a few classes together. Once, the teacher was asking for responses to a question. She and I gave the same exact answer, but the teacher associated rudeness and a bad attitude with my answer. This was not the first time the classroom would be a place where my skin tone affected me, and it also would not be the last.

It can be tough to navigate life with something that clearly affects you but that you cannot change. That was the most difficult for me to understand when it came to colorism. My skin tone was something that I could not change. I could not just magically wake up a different tone. So how could someone—especially a teacher—be upset about something I could not change? How could someone view me differently simply because of how I was born? I pondered these questions to myself for many years, and even still at 25 years old, I do not have the answers.

As I grew older, I started to develop a disdain for people of lighter tones. This stemmed from the widespread rejection I received because of my darker skin tone. As a teenager, I started to see colorism on a much larger scale. I did not see darker women in movies, music videos, or magazines. I did not see a reflection of myself anywhere in the world I was living. This was a devastating realization for me but was also slightly comforting to know that it was not just me, that the problem was much bigger than me, that there were other people in the world who felt as I did, not just women.

In high school, I discovered a song called “Shades” by the popular rapper Wale. This song channeled some of my resentment and anger from

people of lighter tones to the systems that created these disparities. The song discusses Wale’s upbringing being a male of darker complexion. I had no idea that men also felt the anger and despair that I felt. In the song, Wale mentions growing up with the characteristics of a darker male and how that affected his adolescence, how he dealt with love, and his overall outlook on people of lighter complexions. These are topics that I resonated with deeply, and it allowed me to see the error of my ways. My misplaced anger and frustration were brought to light and conceptualized in a way that made it easy to dissect my own emotions. Now that I understood my emotions and feelings as a dark-skinned girl, I finally felt slightly more confident in my beauty and into whom I was developing.

But alas, the battle of “me versus my skin” makes another go around. At the age of about sixteen, when dating is introduced to teens and more socially respected, romantic relationships are something that most are experiencing, and I wanted that as well. I never had any issues with my perception of my own beauty, except when it came to my skin tone.

Around this time, my perception started to shift, and my beauty was now tied to my skin tone. Many boys told me they liked me or were interested in dating me but did not ask me out because of my skin tone. This was another heartbreaking moment for me, as I did not know how to perceive those responses. I thought, “You like me, but my skin is too dark?” This was a difficult battle for me because romantic emotions were involved. This added to the rejection I felt I was receiving from the outside world. I pondered, “If my own peers are telling me I am too dark, then maybe I am?”

Being dark-skinned had interfered with the growth of my self-esteem in the past, but never like this. At this point, colorism was cutting deep into my life. I wondered, “What was it about dark skin that people disliked so much? Why is the color of my skin the reason I cannot be seen as beautiful?”

My research began yet again. I found most of the answers I sought. The short explanation: racism and Jim Crow. The long explanation: colonialism. During my research, I discovered something called the “paper bag” test. The paper bag test was used in the nineteenth and twentieth centuries.¹⁰ The test was utilized mostly in the African American community and for the hiring of African Americans.¹¹ If someone were the same color or lighter than the paper bag, they would be allowed in certain spaces or considered for hire.¹² If someone were darker than the paper bag, they would not be allowed access to these spaces.¹³

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

For me, my research was my lightbulb moment. Everything started to connect and make sense to all my “why” questions. This was very empowering to me—to know that colorism comes from somewhere; it was not just my feeling. Indeed, there are facts to support the issues that I was experiencing and to justify my assumptions. This empowerment allowed me to slowly rebuild my self-worth and self-esteem. This allowed me to grow more comfortable with who I was and the color of my skin.

Growing into a young adult, colorism morphed into more of a motivating factor than a debilitating one. I grew to find power in my skin and strength in my resilience. This allowed me to push forward through all the spaces and places I was not accepted. I also took pride in being able to be in places my ancestors were not allowed. Having a voice for the once voiceless made me feel revolutionary, even if it was on a small scale. When told that dark skin women were too tough and that the potential male suitors preferred fair-skinned women, I was no longer hurt. I no longer questioned why or wanted to change who I was to fit an image. I am the image; I am the blueprint; I am the tree of life in which all life stems. I understood that the problems people had with my skin were a reflection of them and not me or my worth. This was the fertilizer that allowed me to finally bloom into who I was intended to be.

I still get annoyed when I feel that my trauma is minimized or grouped in with fair-skinned women, because I truly feel that the experience that dark-skinned women face is more traumatic and more deeply rooted in everyday life.

III. BIRTH OF COLORISM

Racism and colorism were born out of European colonialism in the Americas and trafficking of Africans as slaves, which created a “white is right” culture in the United States.¹⁴ Racism and colorism are often intertwined, but they are very different.

¹⁴ MARGARET L. HUNTER, RACE, GENDER, AND THE POLITICS OF SKIN TONE 17 (2005); Meesala, *supra* note 4 (“The effects of colonization intermingled with the stereotypical notions of the caste system to give us unique and deeply rooted coloristic principles.”); *see generally* Jones, *supra* note 2, at 1487 (tracing the development of colorism from before the Civil War to the present); TONI MORRISON, *The Color Fetish*, in THE MATTER OF BLACK LIVES, 67 (Jelani Cobb and David Remnick, eds., 2021) (“I am determined to defang cheap racism, annihilate and discredit the routine, easy, available color fetish, which is reminiscent of slavery itself.”); *see also* WHO’S BLACK AND WHY?: A HIDDEN CHAPTER FROM THE EIGHTEENTH-CENTURY INVENTION OF RACE (Henry Louis Gates Jr. & Andrew S. Curran eds., 2022) (revealing never previously published documents from the 1739 Bordeaux’s Royal Academy of Sciences’ essay competition on the sources of “Blackness,” which shed light on the origins of anti-Black racism and colorism in the

Colorism differs from [racial] prejudice mainly by making distinctions within a nominal racial group instead of across groups. That is, for whatever reasons, light-skinned, and sometimes dark-skinned, people attribute higher status and grant more power and wealth to one group, typically those designated as White, and believe that that is the right thing to do; then for the same reasons, people attribute higher status and grant more power and wealth to people of one complexion, typically light skin, within the groups designated as non-white. More simply, colorism is “the tendency to perceive or behave toward members of a racial category based on the lightness or darkness of their skin tone.”¹⁵

In the United States, the color of skin is the foundation of race and racism for African Americans, but within the Black race are varying skin tones that provide the basis for another level of discrimination. Both race and skin tone have been used to determine the limits of freedom for African Americans in the United States. Those who favored lighter-skinned African Americans, especially white people, gave lighter-skinned African Americans preferential treatment over darker-skinned African Americans.¹⁶

[T]he longstanding preference for lighter-skinned black people had been laid out in 20th Century newspaper ads. I’ve begun to find those ads in the archives of old newspapers near the Pennsylvania factory town where I grew up. The skin-labeling was so common in the 40’s that black job seekers used it when advertising their skills.

West); Paul Finkelman, *The Origins of Colorism in Early American Law*, in *COLOR MATTERS* (Kimberly Jade Norwood ed., 2013) (“Colorism in the United States began in the colonial and early national period.”).

¹⁵ Hochschild & Weaver, *supra* note 4; *see also* Jones, *supra* note 2, at 1500-11.

¹⁶ Meesala, *supra* note 4; Hochschild & Weaver, *supra* note 4 (“In an experimental setting, White subjects acting as managers of a firm recommended hiring fair-skinned more than dark-skinned Black job applicants, despite identical credentials.”); *see e.g.*, LAILA HAIDARALI, *BROWN BEAUTY: COLOR, SEX, AND RACE FROM THE HARLEM RENAISSANCE TO WORLD WAR II* 94 (2018) (“Nothing was funny about the colorist practices in hiring that were not unfamiliar to those seeking employment in the 1920s entertainment industry. The Cotton Club was among the most notorious. The elite Harlem cabaret catered to white audiences by supplying a steady stream of African American talent, including chorus lines of women who were described as ‘tall, tan and terrific.’”); IBRAM X. KENDI, *HOW TO BE AN ANTIRACIST* 110 (2019) (“White people usually favor lighter-skinned politicians over darker-skinned ones.”); CLAUDIA ROTH PIERPONT, *THE MATTER OF BLACK LIVES* 369 (Jelani Cobb and David Remnick, eds., 2021) (quoting Zora Neale Hurston: “If it was so honorable and glorious to be black, why was it the yellow-skinned people among us had so much prestige?”).

In the “situations wanted” section, for example, cooks, chauffeurs and waitresses sometimes listed “light colored” as the primary qualification—ahead of experience, references, and the other important data.

They didn’t do this for a lark. They did it to improve their chances and to reassure white employers who, even though they hired African-Americans, found dark skin unpleasant or believed that their customers would.¹⁷

The range in skin color, hair texture, and facial features among most African Americans is largely due to the centuries of rape and sexual abuse upon enslaved African women perpetrated by slave owners and other white people in the dominate caste.¹⁸ This had two significant effects. Firstly, the existence of many racially-mixed offspring (often with Black mothers and white fathers); and secondly, the birth of a color hierarchy in which lighter-skinned African Americans were often privileged over darker-skinned African Americans.¹⁹ The latter, a form of secondary discrimination, is what has become coined “colorism”: “a discriminatory practice in which institutions or individuals treat those with lighter skin tones more favorably, upholding instead White, Eurocentric standards of beauty.”²⁰ “Within the

¹⁷ Staples, *supra* note 3; *see also* Hochschild & Weaver, *supra* note 4 (“Dark-skinned Blacks in the United States have lower socioeconomic status, more punitive relationships with the criminal justice system, diminished prestige, and less likelihood of holding elective office compared with their lighter counterparts.”).

¹⁸ ISABEL WILKERSON, *CASTE, THE ORIGINS OF OUR DISCONTENTS* 239 (2020); Monk, *Unceasing Significance*, *supra* note 3, at 78 (“Colorism in the United States dates back to slavery when lighter-skinned slaves were favored by slave owners and were predominantly given work as house slaves as opposed to field slaves. These Blacks tended to have direct kinship ties to Whites through the sexual violence by Whites that created this population of lighter-skinned Blacks in the first place. Working in the house as opposed to the fields dramatically increased the chance that lighter-skinned Blacks (or mulattos) would be literate and trained in a trade. Also, the vast majority of the free Black population was composed of lighter-skinned Blacks and mulattos.”); DANIEL BROOK, *THE ACCIDENT OF COLOR: A STORY OF RACE IN RECONSTRUCTION* 4 (2019) (“Slavery, with its rampant sexual exploitation, made race mixing more common, not less.”).

¹⁹ HUNTER, *supra* note 14, at 17-18. *But see* hephzibah v. strmic-pawl, et al., *Color in Context: Three Angles on Contemporary Colorism*, 7 SOCIO. OF RACE AND ETHNICITY 289 (2021) (“[S]kin tone did not change the status of “slave” and light(er) skinned women were often used for the sexual entertainment of house guests, a practice that indicates colorism has worked bidirectionally (disadvantages due to darker- and lighter-skin) for centuries.”).

²⁰ Meesala, *supra* note 4 (“With different skin tones came colorism that continues to perpetuate stereotypes, prejudices, and discriminatory actions.”); Monk, *Unceasing Significance*, *supra* note 3, at 77 (“Research shows that as darkness increases and Afrocentric appearance increases, so does the probability of being perceived as dangerous, incompetent, ugly, and much more.”); HUNTER, *supra* note 14, at 19-20 (“In the post-Civil War era, the growing class of light-skinned Freedman found itself poised to lead the now free African American population. . . . Many whites interpreted the emergence of this light-skinned African American leadership as confirmation that

Negro group every possible shade of color between jet black and creamy white exists; and variations occur even within the same shade.”²¹

However, colorism is not only a tool used by white people against darker-skinned Black people to create an intentional divide among Black people. It is also used intra-race by African Americans and within other cultures, including white people, as well.²² Commonly, colorism is associated with African Americans as a unique intraracial issue in America, but colorism is a global problem as well, and for years “[u]nfortunately, no one wants to acknowledge the issue, speak about it openly, or accept it publicly.”²³

white blood and lineage was superior to [B]lack . . . instead of the opportunity structure available to them as light-skinned descendants of Freedmen.”)

²¹ Monk, *Unceasing Significance*, *supra* note 3 at 77 (quoting HORTENSE POWDERMAKER, *AFTER FREEDOM: A CULTURAL STUDY OF THE DEEP SOUTH* (1939)).

²² HAIDARALI, *supra* note 16, at 4 (“In other places, color’s distinction was felt most acutely within one’s own community. [Zora Neale] Hurston, among the most radical of Harlem’s literati, wrote openly about the taboo topic of colorism, a long-standing and troublesome practice among some African American communities.”); Monk, *Unceasing Significance*, *supra* note 3, at 78 (“African Americans are not only stratified with respect to their ethnoracial category membership, but also intracategorically by the hue of their skin – the result of a practice referred to as colorism.”); Jones, *supra* note 2, at 1498-99, 1513 (“Although most whites were content to operate under the one-drop rule, there is evidence to suggest that, when forced to deal with Blacks, whites preferred Blacks with lighter skin tones.”); *id.* at 1487, 1513 n.9 (“Unfortunately, evidence of interracial colorism within the White community is not as well-documented as intraracial colorism within the Black community. The lack of extensive documentation, however, should not be interpreted to mean that interracial colorism is nonexistent or is not pervasive. Indeed, it would be illogical to conclude that Whites are immune from classification schemes that they initially developed and perpetuated for their own benefit.”).

²³ Neha Mishra, *India and Colorism: The Finer Nuances*, 14 WASH. U. GLOBAL STUD. L. REV. 725, 733 (2015) (“[T]here is a clear skin color prejudice [in India] irrespective of class or caste. Lighter skin makes acceptance more likely, and even more so for women.”); Meesala, *supra* note 4 (“[I]n a lot of Asian and colonized countries, race is not the primary indicator of how an individual will be treated. Instead, the color of a person’s skin on the wide range of the color spectrum will be the major determinant [T]he pervasiveness of a color hierarchy’ is the crucial factor in social and class mobility, not necessarily race.”); Joseph A. Saccomano, Jr., *Skin Color Bias is Growing as a Basis for Discrimination Claims*, JACKSONLEWIS (Apr. 7, 2004), <https://www.jacksonlewis.com/resources-publication/skin-color-bias-growing-basis-discrimination-claims#:~:text=By%20Joseph%20A.,Saccomano%2C%20Jr.&text=A%20slowly%20emerging%20form%20of,the%20courts%20and%20administrative%20agencies> [https://perma.cc/FXY4-494J] (“Skin tone bias is not unique among people of color; whites also can equate darker skin with a ‘negative cultural stereotype.’ Yet, there is a great deal of uncertainty over whether discrimination based on skin tone is even illegal, although the EEOC clearly takes the position it is.”); Kaitlyn Greenidge, *Why Black People Discriminate Among Ourselves: The Toxic Legacy of Colorism*, THE GUARDIAN (Apr. 9, 2019, 1:00 PM), <https://www.theguardian.com/lifeandstyle/2019/apr/09/colorism-racism-why-black-people-discriminate-among-ourselves> [https://perma.cc/3VJL-TJZY] (“Colorism is not just an American phenomenon. It’s global. Skin bleaching cream is sold in majority-black or people of color

[T]he 1995 Federal Glass Ceiling Commission found chances for professional promotion to be affected by “gradations of skin color”: “Color-based differences are inescapable but nobody likes to talk about them. . . . Though it is mostly covert, our society has developed an extremely sophisticated, and often denied, acceptability index based on gradations in skin color. . . . It is applied to

countries throughout the world. The most far-reaching conversations I’ve had about it have been with women of color.”); Summer Sewell, Dream McClinton & Jessica Reed, *Why We Asked 27 Black Women to Speak out on Taboo of Colorism*, THE GUARDIAN (Apr. 8, 2019, 1:00 PM), <https://www.theguardian.com/lifeandstyle/2019/apr/08/colorism-series-editors-note-why-we-asked-black-women-taboo> [<https://perma.cc/GS4P-Y9BA>] (“This subject remains taboo, as colorism is the result of centuries of white supremacy in America, where lightness of skin has associations with wealth and power. That so many Americans impacted by racism can also be impacted by colorism is an issue rarely discussed, but the impacts are profound.”); Associated Press, *supra* note 5 (“[Professor Ellis P.] Monk says the issue is prevalent in all communities of color and has been taboo in part because it’s uncomfortable to talk about internal strife while also fighting against broader discrimination based on race and ethnicity.”); *see generally* Cynthia E. Nance, *Colorable Claims: The Continuing Significance of Color Under Title VII Forty Years After Its Passage*, 26 BERKELEY J. OF EMPLOY. & LAB. LAW 435 (2005); Susan Emam, *Colorism Within Egypt*, WOMEN OF EGYPT MAG. (Jan. 19, 2021), <https://womenofegyptmag.com/2021/01/20/colorism-within-egypt-susan-emam/> [<https://perma.cc/5U75-RMEE>] (“It became clear to me that there was an accepted distinction between Egyptians with light skin and those that had dark skin. . . . While there is great diversity amongst Egyptian people, the majority tend to have darker skin tones and curly hair textures. Those with features that are Afrocentric leaning can expect to be looked upon unfavorably by society at large—from family members, teachers and future employers. . . . Within the last year, Egyptian women have also begun taking toxic chlorine baths . . . to achieve their desired skin tone.”); Monk, *Unceasing Significance*, *supra* note 3, at 84 (“Skin tone stratification, however, is not unique to African Americans. For instance, Mexican Americans of lighter skin tones earn substantially more than even medium-tone Mexican Americans. . . . Also, similar to what obtains among African Americans, studies report differences in educational attainment among Hispanics and Latinx as well: light skin is associated with better academic outcomes even after adjusting for socioeconomic status, family structure, immigrant status, and more. The same pattern holds with respect to the criminal justice system, too, where darker-skinned Hispanics and Latinx are significantly more likely to be stopped or arrested by police. In keeping with the patterns found among African Americans and Hispanics and Latinx, some studies report evidence of skin tone stratification among Asian Americans. . . . [S]kin tone is a key marker of social status in which darker tones are stigmatized; and researchers find robust relationships between skin tone and socioeconomic status: lighter skin among Asian Americans is associated with higher rates of completing a bachelor’s degree or more. In sum, there is reason to believe that skin tone may structure inequalities among Latinx and Asian Americans in the labor market, the education system, the criminal justice system, health, and much more just as it does among African Americans. . . . [E]vidence shows that immigrants of various backgrounds also experience skin tone stratification. While much evidence shows that most immigrants integrate well into U.S. society, skin tone discrimination and the stratification that results from this is a major barrier to their integration. . . . Colorism may also serve as a barrier to the integration of Black immigrants. . . . After all, the significance of color is not unique to the United States: skin tone stratification is best understood as a global phenomenon.”).

African Americans, to American Indians, to Asian and Pacific Islander Americans, and to Hispanic Americans.”²⁴

During the time of slavery in the U.S., the number of mixed-race children grew due to white sexual violence upon Black women, usually enslaved. As a result, white people enacted the “one-drop rule” or the “rule of hypodescent” to determine who was Black or not, increase the population of those who could legally be enslaved, limit access to resources, deny political power because mixed-race were labeled as Black and thus unable to vote effectively until 1965 (with some exceptions), and maintain white racial purity.²⁵

The United States would have been a “Majority Minority” long ago had it not redefined whiteness to maintain white supremacy.²⁶ A “Majority Minority” is a country “with sovereign control over immigration policy, where one constituency of people—defined by race, ethnicity, and/or religion—has lost its numerical advantage.”²⁷ The United States passed its “Majority Minority” benchmark long ago if we only consider what the majority meant in the 19th century: Anglo Protestants.²⁸ However, to maintain its white majority, the United States broadened the definition of “white” to include those who had been excluded before: “Irish, Italians,

²⁴ Hochschild & Weaver, *supra* note 4.

²⁵ HUNTER, *supra* note 14, at 18; Jones, *supra* note 2, at 1511-1514; BROOK, *supra* note 18 (“The one-drop rule—the concept that any trace of African Ancestry at all makes an American ‘a negro’—was not even conjured until the 1850s and was not widely accepted until the early twentieth century.”); CHIDEYA, *supra* note 1, at 45 (reporting that the one-drop rule made it easier for white slaveowners to hold onto their human property and that many slaves were more white than Black); KENDI, *supra* note 16, at 112 (“White people have historically employed the one-drop rule – that even one drop of Black blood makes you Black—to bar Light people from pure Whiteness.”).

²⁶ Blake, *supra* note 2 (reporting that white supremacy is “elastic” and has stretched to ensure whiteness rules; how the definition of whiteness was stretched to include Irish, Italian and Jewish people, groups that were once not considered white in the United States; that the future of whiteness may depend on Latinos because Latinos changed their race from “some other race” to “white” in the 2010 census, but that trend reversed in the 2020 census perhaps due to the Black Lives Matter movement; and that Latin countries “offer proof that a country can have a large and expanding population of Black, brown and multiracial people—and still be governed by the same racial hierarchy that gave us slavery and colonialism.”).

²⁷ Justin Gest, *Majority Minority: A Comparative Historical Analysis of Political Responses to Demographic Transformation*, J. ETHNIC & MIGRATION STUD. (July 22, 2020), <https://www.tandfonline.com/doi/full/10.1080/1369183X.2020.1774113> [<https://perma.cc/G8BP-Q2FW>].

²⁸ *Id.*; see generally CHIDEYA, *supra* note 1.

Portuguese, Greeks, Jews, Turks, Iranians, and Arabs, among others.”²⁹ This broadening of “whiteness” occurred in other countries as well.³⁰

There is little debate about how colorism began, and communities here in the United States and abroad are acknowledging the existence of colorism more readily. There is also general agreement that colorism has been taboo far too long and must be addressed, and that colorism will continue to move beyond the twenty-first century, even if there were no longer a white race.³¹

IV. COLORISM LAWS AND CASES

Increasingly, colorism is being challenged in court.³² Between 1992 to 2006, colorism lawsuits filed with the Equal Employment Opportunity Commission (EEOC) tripled, much of this is due to the “growing number

²⁹ Gest, *supra* note 27; *see also* WILKERSON, *supra* note 18, at 42 (reporting how in colonial Virginia, the “inadvertent birthmark” of African skin made Africans stand out from English and Irish indentured servants, who could escape into the general white population by blending in, thereby forming the beginning of a single caste); BROOK, *supra* note 18, at 5-6 (“Eventually whiteness—a category that grew to encompass ever more disparate ethnic groups from Europe, West Asia, and North Africa—would harden into a kind of inherited aristocratic status in America.”).

³⁰ Gest, *supra* note 27 (reporting that Canada, Australia, Belgium, France, and the Netherlands have done some version of broadening).

³¹ Cynthia Sims, *The Impact of African American Skin Tone Bias in the Workplace: Implications for Critical Human Resource Development*, ONLINE J. FOR WORKFORCE EDUC. & DEV. 3(4) (2009), <https://opensiuc.lib.siu.edu/cgi/viewcontent.cgi?article=1062&context=ojwed> [<https://perma.cc/QN3W-YEMB>] (“There is also an element of passive acceptance of skin tone bias among African Americans. Hooks (2003) supported this idea by stating, ‘Most black Americans, from slavery to the present day, along with white Americans and other nonblack folks, have passively accepted and condoned color caste’ (p. 38). The passive acceptance of skin tone bias coupled with the personal, often taboo, nature of the phenomenon, creates silence around this issue of privilege. Johnson (2001) called this silencing the path of least resistance and stated that too many times African Americans accept forms of power disparities, such as color caste hierarchies, when they do not challenge this social construct. Because it is easier to avoid conflict and not draw attention to oneself, people keep quiet.”); Staples, *supra* note 3; Greenidge, *supra* note 23.

³² JeffriAnne Wilder, *African Americans: Colorism in Morrow v. IRS Litigation*, AM. BEHAV. SCIENTIST 1978, 1980 (2018) (“Charges of color discrimination in the workplace have been, and continue to be, the smallest number of bias claims filed with the EEOC each year. More than two decades after the passage of the CRA, *Walker v. Secretary of Treasury, IRS* (1989) pushed color-based discrimination to the forefront of the law, forced clarity on the distinctions between race and color, and highlighted the significance of intraracial discrimination in the workplace.” (citation omitted)); Robert L. Reece, *The Gender of Colorism: Understanding the Intersection of Skin Tone and Gender Inequality*, 4 J. ECON. RACE & POL’Y 47, 47 (2021) (“Over the past two decades, the number of color discrimination claims filed with the Equal Employment Opportunity Commission (EEOC) has quadrupled even though the number of overall claims has remained relatively consistent. This signals a spike in public awareness and acknowledgement of color or skin tone discrimination.”).

of interracial marriages and families and increased immigration.”³³ The difficult nature of identifying and proving skin tone cases makes legal challenges arguably much harder than race cases. However, civil rights legislation has not been the panacea for colorism that it could have been or was expected to be when written.

A. COLORISM CASES UNDER CIVIL RIGHTS LEGISLATION

Title VII of the Civil Rights Act of 1964 was enacted to protect individuals against employment discrimination based on race and color. Section 2000e-2 reads:

(2) Employer practices

It shall be an unlawful employment practice for an employer to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s *race, color*, religion, sex, or national origin; or (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual’s *race, color*, religion, sex, or national origin.³⁴

The Equal Employment Opportunity Commission (EEOC), the agency “responsible for enforcing federal laws that make it illegal to discriminate against a job applicant or an employee because of the person’s race, color, religion, sex . . . , national origin, age (40 or older), disability or genetic information,” made clear the distinction between race and color.³⁵ The EEOC clarified that:

³³ *Facts About E-RACE*, U.S. EQUAL EMP. OPPORTUNITY COMM’N, <https://www.eeoc.gov/initiatives/e-race/facts-about-e-race> [<https://perma.cc/BJ23-4A6R>] (last visited Jan. 12, 2023) (“The most frequently filed claims with the EEOC are allegations of race discrimination, racial harassment, or retaliation arising from opposition to race discrimination. In fiscal year 2006, over 27,200 charges alleged race-based discrimination, accounting for 36% of all the charges filed. Since 1992, the annual number of charges alleging color-based discrimination has steadily risen. In fiscal year 1992, EEOC received 374 charges alleging discrimination based on color. By fiscal year 2006, that number had increased to 1,241 charges.”); *see also* Nance, *supra* note 23, at 474 (“Most interesting, however, is that the majority of the color discrimination cases have been brought by South-Asian employees.”).

³⁴ 42 U.S.C. § 2000e-2 (emphasis added).

³⁵ *Overview*, U.S. EQUAL EMP. OPPORTUNITY COMM’N, <https://www.eeoc.gov/overview> [<https://perma.cc/34UW-B5HY>] (last visited Jan. 12, 2023).

Even though *race and color* clearly overlap, they are not synonymous. Thus, color discrimination can occur between persons of different races or ethnicities, or between persons of the same race or ethnicity. Although Title VII does not define color, the courts and the Commission read color to have its commonly understood meaning[:] pigmentation, complexion, or skin shade or tone. Thus, color discrimination occurs when a person is discriminated against based on the lightness, darkness, or other color characteristic of the person. Title VII prohibits race/color discrimination against all persons, including Caucasians.³⁶

Over the past two decades, the EEOC was involved in seven key cases that provide insight on colorism lawsuits under Title VII.³⁷ The typical colorism case involves a lighter-skinned person (including a white person) discriminating against a darker-skinned person, and benefits flow to the lighter-skinned person rather than the darker-skinned person.³⁸ However, the seminal colorism case between African Americans was reversed: the darker-skinned Black supervisor allegedly discriminated against a lighter-skinned Black employee.³⁹ The case was *Walker v. Secretary of Treasury*,⁴⁰ which clarified the distinction between race and color as two separate categories and protected classes under Title VII, but noted that race and color still may be conflated.⁴¹

³⁶ *Facts About Race/Color Discrimination*, U.S. EQUAL EMP. OPPORTUNITY COMM'N, <https://www.eeoc.gov/fact-sheet/facts-about-racecolor-discrimination> [https://perma.cc/56TW-26YK] (last visited Jan. 12, 2023) (emphasis added).

³⁷ Significant EEO Race/Color Cases (Covering Private and Federal Sectors), U.S. EQUAL EMP. OPPORTUNITY COMM'N, <https://www.eeoc.gov/initiatives/e-race/significant-eeoc-racecolor-casescovering-private-and-federal-sectors#color> [https://perma.cc/4WPL-UG8M] (last visited Jan. 12, 2023).

³⁸ Banks, *supra* note 4, at 1709-10 (“[B]lacks with light brown skin tones, although clearly identified as black, may have some economic advantage over [B]lacks with darker skin tones, especially in workplace settings.”).

³⁹ *Id.* at 1722 (“ . . . [T]he existence of a light-skinned preference within the black community ‘does not prevent the expression of strong antagonisms to[ward] light-skinned persons by the rest of the group’”) (citing GUNNAR MYDRAL, AN AMERICAN DILEMMA 113-18 (1944)); Jones, *supra* note 2, at 1520 (“Colorism among Blacks does not operate uniformly in favor of persons with lighter skins. Indeed, some Blacks with darker skin pigmentation distrust and have expressed hostility towards Blacks with lighter skin tones.”).

⁴⁰ *Walker v. Sec’y of the Treasury*, I.R.S., 713 F. Supp. 403 (N.D. Ga. 1989).

⁴¹ See Jones, *supra* note 2, at 1543 (“ . . . *Walker* fails to articulate clearly the essence of a color claim and how it differs from a race claim. The key point that needs to be understood is that colorism and racism are distinct phenomena that sometime overlap. At times, racism will occur regardless of a person’s color. Thus, a person whose skin is White, but whose ancestors are known to be Black, may be classified as Black and subject to racist acts on that basis. At times, colorism

In *Walker*, Plaintiff Ms. Walker, a clerk typist at the Internal Revenue Service in Atlanta, Georgia, worked in an office with predominately Black employees. She filed *pro se*, alleging that she was discriminated against because her darker-skinned supervisor, Ms. Lewis, did not like the plaintiff because she was lighter-skinned than Ms. Lewis.⁴² Ms. Walker did not present evidence that her supervisor did not like light-skinned Black people, but there was evidence that her supervisor allegedly harbored resentment against white people, and thus the court inferred, perhaps absurdly, that perchance this extended to light-skinned Black people as well.⁴³

The main issue in this case, said the Court, is rather unique: “[D]oes a light-skinned black person have a cause of action pursuant to Title VII against a dark-skinned black person for an alleged discriminatory termination of employment?”⁴⁴ The defendant, the federal government, responded that: 1) under Title VII, race and color are interchangeable and mean the same thing, and 2) there can be no cause of action by a light-skinned Black person against a dark-skinned Black person.

Addressing the first issue, the court relied on a United States Supreme Court case, *Saint Francis College v. Al-Khazraji*⁴⁵ and the language Congress used in Title VII. The court found that race and color are not interchangeable and have their own distinct meanings:

[T]he statutes and case law repeatedly and distinctly refer to *race and color*. This court is left with no choice but to conclude, when Congress and the Supreme Court refer to race and color in the same phrase, that “race” is to mean “race”, and “color” is to mean “color”. To hold otherwise would mean that Congress and the Supreme Court have either mistakenly or purposefully overlooked an obvious redundancy.⁴⁶

The defendant relied upon *Felix v. Marquez*,⁴⁷ but the *Walker* court found that *Felix* supported Ms. Walker. In *Felix*, the court found:

will operate independently of race. Thus, two individuals within the same racial classification may be subject to different treatment because of their varying skin tones. In that situation, the basis for distinction is not their placement in a particular racial category but rather their color within that category.”).

⁴² *Walker v. Sec’y of the Treasury*, I.R.S., 713 F. Supp. 403, 404 (N.D. Ga. 1989).

⁴³ *Id.* at 404-05. *But see* Banks, *supra* note 4, at 1714 (“Because of her light skin color, Walker became a surrogate white woman in the eyes of the law.”).

⁴⁴ *Walker v. Sec’y of the Treasury*, I.R.S., 713 F. Supp. 403, 405 (N.D. Ga. 1989).

⁴⁵ *Saint Francis Coll. v. Al-Khazraji*, 481 U.S. 604 (1987).

⁴⁶ *Walker v. Sec’y of the Treasury*, I.R.S., 713 F. Supp. 403, 406 (N.D. Ga. 1989).

⁴⁷ *Felix v. Marquez*, No. 78-2314, 1980 WL 242, at *1 (D.C. Cir. Sept. 11, 1980).

[I]n spite of its inclusion in 42 U.S.C. § 2000e-2(a)(1)[,] the term “color” does not provide a claim upon which relief may be granted. In plaintiff’s persuasive opposition, we note that the defendant employer, formerly the Office of the Commonwealth of Puerto Rico, was so aware of the existence of color discrimination in Puerto Rico that the office proposed to study such discrimination. Color may be a rare claim, because color is usually mixed with or subordinated to claims of race discrimination, but considering the mixture of races and ancestral national origins in Puerto Rico, color may be the most practical claim to present.⁴⁸

The *Walker* court also found *Vigil v. City and County of Denver*⁴⁹ applicable. There, the court determined that color as opposed to race is actionable under another civil rights statute, 42 U.S.C. § 1981.⁵⁰

The key factor in determining whether § 1981 should apply is whether a motivation for the discrimination was the victim’s color. Plaintiff is a Mexican–American. Although skin color may vary significantly among those individuals who are considered Mexican–Americans, skin color may be a basis for discrimination against them. We note that skin color may vary significantly among individuals who are considered “blacks” or “whites”; both these groups are protected by § 1981, and § 1981 is properly asserted when discrimination on the basis of color is alleged. . . . A particular act of discrimination against a Mexican–American may be motivated exclusively on the basis of the victim’s national origin, rather than the victim’s color. It may also be true that in certain areas of the United States, Mexican–Americans are subject to discrimination on the basis of national origin, and not on the basis of color. However, we find that, at least in this area, Mexican–Americans are subject to color-based discrimination, and are within the coverage of § 1981.

⁴⁸ *Id.*

⁴⁹ *Vigil v. City and County of Denver*, No. 77-F-197, 1977 WL 41, *3 (D. Colo. May 23, 1977).

⁵⁰ “All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.” 42 U.S.C. § 1981(a).

In addressing the second issue, that a suit by a light-skinned Black person against a dark-skinned Black person is not feasible, the court also relied on *Saint Francis College v. Al-Khazraji*, in which a U.S. citizen born in Iraq sued his former employer in federal court for discrimination based upon his Arabian ancestry.⁵¹ *Walker v. Secretary of Treasury* stated:

In its analysis, the Supreme Court carefully considered the legislative history of § 1981. The court noted that Congress intended § 1981 to apply to all forms of discrimination including acts of discrimination against groups including Finns, gypsies, Basques, Hebrews, Swedes, Norwegians, Germans, Greeks, Finns, Italians, Spanish, Mongolians, Russians, Hungarians, Chinese, Irish and French. It would take an ethnocentric and naive world view to suggest that we can divide caucasians into many sub-groups but some how all blacks are part of the same sub-group. There are sharp and distinctive contrasts amongst native black African peoples (sub-Saharan) both in color and in physical characteristics.⁵²

Thus, the court found that Ms. Walker stated a cause of action and that the plaintiff, who is Black, alleged discrimination by another Black person was not controlling—that is, persons of the same race could discriminate against their own.⁵³ Nevertheless, these colorism claims have been difficult to prove.⁵⁴

The *Walker* case is quite significant for other colorism cases that followed.⁵⁵ In the coming of a browner America, colorism cases are likely to overtake the traditional race discrimination case. One scholar's prediction two decades ago is manifesting:

To the extent that discrimination laws seek to address impermissible treatment based on membership in a different racialized group, the reluctance of courts to view shades of color as a relevant criterion in discrimination claims by and against blacks is ill founded. The need for courts to pay attention to discrimination based on skin tone

⁵¹ *Saint Francis Coll. v. Al-Khazraji*, 481 U.S. 604 (1987).

⁵² *Walker v. Sec'y of the Treasury*, I.R.S., 713 F. Supp. 403, 407-08 (N.D. Ga. 1989).

⁵³ *Id.* at 408.

⁵⁴ Banks, *supra* note 4, at 1739-40.

⁵⁵ Jones, *supra* note 2, at 1541 (“*Walker* is critically important because it is the first case in which a court recognized that Title VII provides a remedy for intraracial color discrimination. In addition, the opinion offers the most detailed judicial analysis of skin color discrimination to date. Indeed, other courts have shown a greater willingness to recognize color discrimination claims under Title VII after *Walker*.”).

and phenotype is heightened by the changing demographics of American society. In the twenty-first century, discrimination cases are less likely to be of the traditional transracial type and more likely to be about gradations in physical characteristics among members of ostensibly the same racialized group.⁵⁶

B. COLORISM CASES UNDER A BATSON CHALLENGE

More recently, a criminal defendant brought a colorism case under a Batson challenge in the state of New York. In a Batson motion: 1) the moving party makes a prima facie that the totality of circumstances shows that a peremptory strike of a juror discriminated against a protected group; 2) the burden then shifts to the other party to provide a non-discriminatory reason for the peremptory strike; and 3) the court determines whether the strike was discriminatory and may either reseal the juror who was struck or start over with a new jury pool.⁵⁷

In *People v. Bridgeforth*,⁵⁸ a dark-skinned Black man, Joseph Bridgeforth, was criminally charged. During jury selection, the prosecutor struck five dark-skinned women from the jury pool.⁵⁹ The women, although all dark-skinned, were not all the same racial or ethnic background—one was Indian and the other four were African American.⁶⁰ The trial judge seated all but one of the women, and the defendant was convicted; he appealed and received a new trial by the state’s highest court.⁶¹

Writing the majority opinion, Judge Sheila Turner Abdus-Salaam, the first Black judge to serve on the court, agreed with the defendant: “dark skin color is a cognizable class and, indeed, must be one unless the established protections of Batson are to be eviscerated by allowing challenges based on

⁵⁶ Banks, *supra* note 4, at 1711-12, 1734 (“I expect future colorism claims that challenge employment practices favoring light- over dark-skinned members of the same race. In most cases, employers will be nonblack. These colorism claims will be interracial, between members of two different racialized groups. A potential defense to colorism claims is that the employer hires or promotes members of the plaintiff’s racial group, so there is no race-based discrimination.”).

⁵⁷ *Batson v. Kentucky*, 476 U.S. 79, 97-99 (1986) (creating a test for determining whether peremptory strikes were impermissibly based on race where prosecutors struck Black jurors in cases with Black defendants); *Edmonson v. Leesville Concrete Co., Inc.*, 500 U.S. 614, 631 (1991) (holding that *Batson* is applicable in civil trials); *People v. Bridgeforth*, 28 N.Y.3d 567, 577 (2016).

⁵⁸ *People v. Bridgeforth*, 28 N.Y.3d 567, 574 (2016).

⁵⁹ *Id.* at 574.

⁶⁰ *Id.* at 574, 579.

⁶¹ *Id.* at 570.

skin color to serve as a proxy for those based on race.”⁶² Relying on the state constitution⁶³ and civil rights laws, Judge Abdus-Salaam noted that each document lists “race” and “color” as distinct and separate, and thus, these two terms should be differential under a Batson challenge.⁶⁴ Citing to legal scholars on colorism, Judge Abdus-Salaam reasoned:

Our State Constitution and Civil Rights Law plainly acknowledge that color is a “status that implicates equal protection concerns” (*Luciano*, 10 NY3d at 503), and therefore a Batson challenge may be based on color. Discrimination on the basis of one’s skin color—or colorism—has been well researched and analyzed, demonstrating that “not all colors (or tones) are equal” (Trina Jones, *Shades of Brown: The Law of Skin Color*, 49 Duke LJ 1487, 1499 [2000]; see Taunya Lovell Banks, *Colorism Among South Asians: Title VII and Skin Tone Discrimination*, 14 Wash U Global Stud L Rev 665, 671-674 [2015]; Michael Hughes & Bradley R. Hertel, *The Significance of Color Remains: A Study of Life Chances, Mate Selection, and Ethnic Consciousness Among Black Americans*, 68 Soc Forces 1105, 1116 [1990]). Persons with similar skin tones are often perceived to be of a certain race and discriminated against as a result, even if they are of a different race or ethnicity. That is why color must be distinguished from race. Today, we acknowledge color as a classification separate from race for Batson purposes, as it has already been acknowledged by our State Constitution and Civil Rights Law. Making this distinction is necessary to serve the purpose of Batson, which recognized that discrimination in the selection of jurors violates “a defendant’s right to equal protection because it denies him [or her] the protection that a trial by jury is intended to secure” (476 US at 86). Where individuals are excluded from jury service on the basis of their skin color, the defendant is denied the right to a trial by a jury of his or her peers, which is meant to reflect the community in which the defendant lives. . . . We therefore extend the application of

⁶² *Id.* at 576.

⁶³ *Id.* at 572 (“The separation of ‘race’ and ‘color’ in the Clause indicates that ‘color’ is a distinct classification from ‘race.’”).

⁶⁴ *Id.* at 572 (“Similarly, section 13 of the Civil Rights Law, which prohibits disqualification of a state citizen from jury service on the basis of certain personal characteristics, lists ‘race’ and ‘color’ as distinct classes.”).

Batson to challenges based on color to ensure that the jury is not used as a tool to accomplish such discrimination.⁶⁵

Judge Garcia concurred with Judge Abdus-Salaam, but on other grounds related to mootness. He specifically stated: “It is therefore unnecessary to reach the issue of whether ‘skin color of a prospective juror is a cognizable classification’ for purposes of a Batson challenge.”⁶⁶ He went on to state why the majority’s decision to include “color” as a class for a Batson challenge was an unwelcome and significant departure from current jurisprudence:

Having disregarded our mootness doctrine, the majority dramatically expands our Batson jurisprudence beyond what any court has done before (*see e.g. People v Davis*, 46 Cal 4th 539, 583, 208 P3d 78, 116 [2009] [rejecting “(a) the outset” defendant’s claim that “people of color” can be a cognizable group]; *Gray v Brady*, 592 F3d 296, 302 [1st Cir 2010] [holding that “minorities” cannot constitute a cognizable group under *Batson*]). Indeed, only the Second Circuit has recognized that distinct racial and ethnic groups may be combined for Batson purposes, but notably, that court did not rule that “dark skinned” could be its own cognizable group (*see Green v Travis*, 414 F3d 288, 297 [2d Cir 2005]). In *People v Smith*, this Court “reject[ed] appellant’s argument that, regardless of race, ‘minorities’ in general constitute a cognizable racial group” (81 NY2d 875, 876 [1993]). The majority chooses this case—a case with a garbled record at a moot stage of the proceeding—to hold that “skin color” is a cognizable class for purposes of Batson. Such a monumental ruling should occur only after careful consideration, and on a record that properly presents the issue and contains a step one ruling for our review.⁶⁷

Judge Garcia claimed the majority failed to give lower courts guidance on how to apply “color” to a Batson charge, but Judge Abdus-Salaam was clear:

In cases where the People or a defendant make a Batson challenge on the basis of color, it is for the trial court, using the existing Batson protocol, to decide whether the individuals identified as part of that group share a similar

⁶⁵ *Id.* at 572-73.

⁶⁶ *Id.* at 577.

⁶⁷ *Id.* at 581.

skin color, in the same way the trial court makes determinations about race, gender, and ethnicity classifications. It is within this framework that we analyze the Batson challenge in the case before us.⁶⁸

Subsequent to *Bridgeforth*, the court decided *People v. Ortega*,⁶⁹ in which the defendant challenged the prosecutor's striking of "dark-complexioned male jurors."⁷⁰ The court denied the defendant's motion based on other reasons, but opined on *Bridgeforth*:

This case also illustrates, however, the practical issues which are sure to recur as trial courts struggle with the question of how skin color, as distinct from race or ethnicity, should be assessed in Batson challenges. The rationale for the *Bridgeforth* decision is compelling. How trial courts will be able to practically assess whether a party is discriminating against jurors by virtue of "similar skin color, for example, dark-colored" is less clear.⁷¹

As an example of the complexities of who is or is not dark-skinned or darker-skinned, the court set out the transcript of colloquy participants describing one juror:

"His complexion is mine, at least mine. He is middle complexion. His hair is even more coarse than mine."

"He looks pretty black to me, Judge."

"He's got darker skin, yes."

"His skin is at least darker than my client's."

"He's got darker skin than a Caucasian person, okay."

"I was thinking Hawaiian."⁷²

The court expressed its confusion as to how difficult it may be for someone's skin tone to be adequately light or dark to get into the Batson class.⁷³ The court believed race and ethnicity are much easier to deal with. The court then suggested that it may need new resources to deal with "color" as a class:

Our courts may need new tools and training to adequately address such issues. We will also need the courage to talk about the subject honestly, recognizing that lawyers and judges who have their every word recorded will have to be

⁶⁸ *Id.* at 574.

⁶⁹ *People v. Ortega*, 62 N.Y.S.3d 879 (N.Y. App. Div. 2017).

⁷⁰ *Id.* at 880.

⁷¹ *Id.*

⁷² *Id.* at 886.

⁷³ *Id.*

given some slack if they are unable to address the fraught issues of race, color and ethnicity on their feet in the heat of a courtroom battle with the optimal degree of sensitivity and cogence. In the absence of effective tools, the default may be the denial of Batson challenges. As the instant case illustrates, principled positions do not necessarily equate to clear records. To fulfill the aspirations of *Bridgeforth*, we may all need to think in new ways.⁷⁴

Judge Abdus-Salaam was correct in allowing color as a class under a Batson challenge. Colorism lawsuits will continue to increase as our society moves towards a browner landscape. A paradigm shift may need to happen for “color” to be taken seriously as a class of its own in policy and case law, but in reality, “colorism” is real, and those with darker skin tones and even variations of medium and lighter browns have been feeling the pain of colorism for centuries.

But colorism is not black and white like racism—there are many shades of gray with colorism. Much of the scholarship on colorism is spoken from the viewpoint of those with darker skin tones, and, like the student essay in Part II, they sometimes believe that no one else with a lighter skin tone has been a victim to or has experienced colorism. But the various shades of skin color coupled with location make the colorism conundrum complicated.

V. COMPLEXITIES OF COLORISM AND THE CIVIL RIGHTS MOVEMENT

Colorism is complex. One may be considered a dark-skinned Latina in Colombia or a dark-skinned Egyptian in Egypt or dark-skinned Indian in India, but a light-skinned person of color in the United States. One may be considered light-skinned for a Black person in the United States, but also be the darkest cousin in her Louisiana Creole family. One may be considered light-skinned in Africa, but dark-skinned in America. Classifying individuals in America, a country which has been multiracial since its birth, is complex.⁷⁵ Yet, although colorism may be complex broadly or globally, it is not necessarily so within a controlled group, such as a jury pool, office employees, or between a plaintiff and a defendant. Consequently, making a

⁷⁴ *Id.*; see generally Emily Rose Margolis, *Color as a Batson Class in California*, 106 CAL. L. REV. 2067 (2018) (engaging in a robust discussion on colorism and Batson challenges and advancing potential solutions for California to apply).

⁷⁵ CHIDEYA, *supra* note 1, at 3, 39 (reporting that by the time America was founded in 1776, it was blended with Indian Tribes, European settlers, and Africans and that how to classify Americans has been a “huge political headache for the Census Bureau”).

Batson challenge or suing an employer for being treated poorly by another employee allegedly because of skin tone should not be that challenging, contrary to the *Bridgeforth* concurrence or the *Ortega* court. In *Bridgeforth*, Judge Abdus-Salaam was correct—a colorism challenge can be treated similarly to how the courts treat race, gender, and ethnicity.⁷⁶

A. GENDER AND CLASS

However, colorism is complex for other reasons. It is hard to discuss colorism without also interposing gender and class. In a recent study, skin tone trumped gender in some groups, but dark-skinned persons, no matter their gender, remained at the bottom.

Light-skinned men unambiguously stand at the top of this intersectional hierarchy as they have higher incomes than every other group, in every analysis, even after accounting for a number of other factors. Below, light-skinned men is where the complexity lies. Seems as if there is little difference between light-skinned women, medium-skinned women, and medium-skinned men, even as they are disadvantaged relative to light-skinned men. Sitting at the bottom of the hierarchy are dark-skinned men and women.⁷⁷

Yet, in majority-Black academic settings, men earn more than women, suggesting that gender may trump color, assuming the faculty range in color is typical of the Black skin color spectrum.⁷⁸ Sexism continues to thrive

⁷⁶ *People v. Bridgeforth*, 28 N.Y.3d 567, 574 (2016); *People v. Ortega*, 62 N.Y.S.3d 879 (N.Y. App. Div. 2017) (detailing how Abdus-Salaam sets out how to challenge colorism).

⁷⁷ Reece, *supra* note 32, at 54.

⁷⁸ CHARLENE M. HOFFMAN ET. AL., *HISTORICALLY BLACK COLLEGES AND UNIVERSITIES*, 1976-1994, U.S. DEPT. OF EDUC. (1996) (noting a 12 percent pay gap between men and women at Black colleges which may suggest that gender trumps color); *see also* FLORIDA A&M UNIV. OFF. OF INSTITUTIONAL RSCH., *AN ANALYSIS OF INSTRUCTIONAL FACULTY SALARY EQUITY IN THE FLORIDA AGRICULTURAL AND MECHANICAL UNIVERSITY COLLEGE OF LAW 13* (Aug. 2015) (on file with author) (“Model 1 (Professors and Associate Professors) suggests that gender, years tenured, and rank played significant roles in determining salaries. With respect to gender, the model found that when controlling for other factors, on average female faculty in the study sample earned less than their male counterparts. . . . Focusing exclusively on College of Law faculty at the Professor rank, the results from Model 2 suggest that in general female faculty at the Professor rank in the FAMU of College earned less than their male counterparts. . . . Model 3 (Associates Professors) finds that on average females earn less than their male counterparts. . . . Focusing exclusively on College of Law faculty at the Professor rank, the results from Model 2 suggest that in general female faculty at the Professor rank in the FAMU of College earned less than their male counterparts. . . . Model 3 (Associates Professors) finds that on average females earn less than their male counterparts.”).

globally and remains ever present in the United States, and thus, a preference for a man over a woman, regardless of skin tone, is not unusual.⁷⁹

Class also complicates colorism. During and after slavery, when white fathers accepted their paternity and ensured their offspring were educated, these mixed-race children (light-skinned Black people) had an advantage as compared to the other freedmen who possessed a similar determination and ability but not the same financial stability or educational opportunities.⁸⁰ This economic head start led to better jobs, neighborhoods, and opportunities for light-skinned Black people.⁸¹ This formed the “colored aristocracy” in Washington, D.C. The members of this group were mostly light-skinned, but aristocracy was more than just being light-skinned—one’s whole person was considered in terms of one’s family (“Who are your people?”), whether one received a first-class education, and whether one had war heroes or abolitionists in their family. However, more often than not, those in the Black elite were light-skinned.⁸² A famous exception was Paul Lawrence Dunbar, whose skin, which was a “very dark color,” was overlooked by the Black elite.⁸³ His status—his class—carried his skin tone. Nevertheless, there was alleged an “uneasy relationship between racial loyalty and class division within African American communities” during that time.⁸⁴

In the late nineteenth century and early twentieth century, Black authors queried whether class mattered more than race and whether middle-class Black people could gain social equity with middle-class white

⁷⁹ *OHCHR and Women’s Human Rights and Gender Equality*, U. N. HUM. RTS. OFF. HIGH COMM’R, <https://www.ohchr.org/en/women> [<https://perma.cc/8NK2-CX4P>] (last visited February 15, 2023).

⁸⁰ ELIZABETH DOWLING TAYLOR, *THE ORIGINAL BLACK ELITE: DANIEL MURRAY AND THE STORY OF A FORGOTTEN ERA* 66-67 (2017).

⁸¹ *Id.* at 67.

⁸² *Id.*; see also *THE ELITE OF OUR PEOPLE: JOSEPH WILLSON’S SKETCHES OF BLACK UPPER-CLASS LIFE IN ANTEBELLUM PHILADELPHIA I* (Julie Winch ed., 2000) (“If the plight of the entire free community of color in antebellum America was an enviable one, what was it like to be a member of the nation’s ‘higher classes of colored society’? To have money and want the opportunity to make more? To aspire to enjoy the privileges that came with wealth? To have education and seek to use it? To want a role in the political process? To exert influence within the black community and expect to have that influence recognized by the white community? In short, to be acknowledged for what one had achieved instead of what one was in a society where to be of discernable African ancestry was to be forever excluded from the inner circles of power and prestige?”).

⁸³ *Id.* at 67-68.

⁸⁴ *WHISPERS OF CRUEL WRONGS: THE CORRESPONDENCE OF LOUISA JACOBS AND HER CIRCLE, 1879-1911*, at 163-64 (Mary Maillard ed., 2017) [hereinafter *WHISPERS*] (citing WILLARD B. GATEWOOD, *ARISTOCRATS OF COLOR* 38-86).

people.⁸⁵ Class anxiety, “the uneasiness over a potential loss of social status, over class disparities, or over a sudden change in condition, for better or for worse,”⁸⁶ remained high and arguably is as present today amongst all races as it was back then. Most people do not want to be considered in a lower social class, especially if they have some status that would raise them to an elevated class, such as education.⁸⁷ Plus, some Black people believed that drawing a distinction between Black people on a lower scale versus Black people on a higher plane “risked damaging the public image of black Americans, who need to appear unified in the cause of racial advancement.”⁸⁸ So, while often lighter-skinned Black people were middle-class because of the financial and educational opportunities that they may have been allotted due to having a white father or grandfather, these light-skinned Black people were committed to educating and mobilizing less privileged Black people for upward social and economic mobility. Those light-skinned Black people used their skin tone and their financial resources to advance the entire Black race.⁸⁹ Ultimately, class or social status proved to be of little value in the face of white supremacy.⁹⁰ No matter the social, economic or political success of Black people, whose social climb challenged the central tenets of white supremacy, disproved racial inferiority, and threatened white people, white people continued to “think negroes are all alike.”⁹¹

⁸⁵ ANDREÁ N. WILLIAMS, *DIVIDING LINES: CLASS ANXIETY AND POSTBELLUM BLACK FICTION* 2 (2013).

⁸⁶ *Id.* at 3.

⁸⁷ A recent short article by a young Black journalist, Julian Randall, associated gold teeth with Black people: “Grills [gold teeth] are more than adornment. They’re about Black agency. . . . Among Black folks, gold teeth have become as much a matter of community as of style.” However, numerous Black people would object to that association, find it offensive, and argue that gold teeth are associated with the rapper culture, irrespective of race, and within the Black race, gold teeth are associated with a minority (or even lower class) subculture – and there begins a discussion on class distinctions and Black folk. Julian Randall, *Gold Teeth are Beautiful on Their Own Terms*, *THE ATLANTIC* (Sept. 16, 2021), <https://www.theatlantic.com/culture/archive/2021/09/beauty-gold-teeth/619972/> [<https://perma.cc/9LWR-SCPF>].

⁸⁸ *See, e.g.*, WILLIAMS, *supra* note 85, at 1 (detailing a private letter written by Boston clubwoman Addie Hamilton Jewell in January 1900 objecting to the “contentious class relations among African Americans”).

⁸⁹ *Id.* (borrowing from W.E.B. DU BOIS, *THE TALENTED TENTH* (1903)).

⁹⁰ *Id.* at 182.

⁹¹ WILLIAMS, *supra* note 85, at 156.

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B. OPPOSITION TO RACE-BASED RIGHTS

In the late 1800s and after, it was not unusual to find Black leadership who thought moving towards a society not dominated by color but instead with more emphasis on education, family, and culture was the best solution for America's race problem.⁹² They did not want to categorize by race, have race-based rights or laws based on race, and instead preferred assimilation.⁹³ Born in 1842 to free people of color, Dr. Charles Purvis was usually identified as “a leading colored doctor” and despised that label. He would respond, “[w]e are all Americans, white, black, and colored.”⁹⁴ He and others believed they were American first and of a racial group second.

This was not an unusual idea, as the notion of race is truly endemic to the United States and the United Kingdom.

While white supremacy and racism have certainly altered societies all over the world through centuries of colonization, most non-white people outside of the U.S. do not live as minorities in white-dominant societies and do not lead racialized lives. Many people who come to the U.S. are often perplexed by why Americans are so “obsessed with race”. Race, racialization, and racism are not a daily lived experience for people who come from other societies.⁹⁵

Similarly, a renowned scholar recalled her conversation with a Nigerian-born playwright. The Nigerian woman said:

You know there are no black people in Africa. Africans are not black. They are Igbo and Yoruba, Ewe, Akan, Ndebele. They are not black. They are just themselves. They are humans on the land. That is how they see themselves, and that is who they are. They don't become black until they go

⁹² WHISPERS, *supra* note 84, at 163-64 (citing WILLARD B. GATEWOOD, *ARISTOCRATS OF COLOR* 38-86) (quoting an outsider to the Black community who alleged that “Washington elites were not a cohesive group but a stratified, fractured society made up of a number of cliques, differentiated by what historian Willard Gatewood calls ‘nuances and subtleties.’ What all the ‘sets’ had in common was their distance from, and sense of noblesse oblige toward, the black masses; a belief that their class would ultimately assimilate; and an emphasis on education, family pride, rules of conduct, and respectability. As the nineteenth century closed, interracial class distinctions hardened and reinforced . . . class anxiety, the fear of misclassification within black society.”).

⁹³ BROOK, *supra* note 18 (“For generations, New Orleans’s ‘Creoles of Color’ and Charleston’s ‘Browns’ had been resisting the imposition of race-based rights and challenging America’s black-or-white notion of race itself.”).

⁹⁴ TAYLOR, *supra* note 80, at 68.

⁹⁵ Daniel Lim, *I’m Embracing the Term ‘People of the Global Majority,’* MEDIUM (May 9, 2020), <https://regenerative.medium.com/im-embracing-the-term-people-of-the-global-majority-abd1c1251241> [https://perma.cc/P9W5-LZYB].

to America or come to the U.K. It is then that they become Black.⁹⁶

Thus, the “Black people sold Black people into slavery” mantra that seeks to shift the blame of racial slavery in the United States away from white people fails to acknowledge that there was not racialized slavery in Africa; instead, “warring political communities in the eighteenth and nineteenth centuries enslaved their enemies” and sold them.⁹⁷

Today in the United States, Americans continue to see themselves in black and white. “That our racial system is second nature to us but incomprehensible to the rest of the world—even to people from other New World societies that once practiced slavery but never instituted Jim Crow—should highlight for us how peculiar it is.”⁹⁸

The idea of a non-race-based society often assumes that lighter-skinned Black race advocates, such as Dr. W.E.B. Du Bois or Walter White, were almost hostile to darker-skinned Black people.⁹⁹ It is true that often lighter-skinned Black people had greater access to resources from their white fathers and their families as compared with darker-skinned Black people. But it is also true that lighter-skinned Black people largely used these resources, their time, their safety and their lives to educate the Black masses who usually did not have access to similar resources and opportunities. Even truer, all hues of Black people were working together to strategize to overcome race-based policies, and their perspectives changed as potential solutions failed or succeeded. Du Bois was a fierce race activist, and so was White. White, born with blond hair and blue eyes, used his white/pale color to infiltrate white hate groups and served as an investigator for the National Association for the Advancement of Colored People (NAACP). Both men, like many lighter-skinned Black people, found racism a worse problem than colorism, perhaps because colorism has not necessarily been perceived as a problem for lighter-skinned Black people.¹⁰⁰ Booker T. Washington, the son of a white father he never knew, was known to accommodate separatists as he secretly supported civil rights

⁹⁶ Wilkerson, *supra* note 18, at 52-53.

⁹⁷ Jackie Swift, *The Curious History of Slavery in Africa*, CORNELL RSCH. & INNOVATION (last visited Jan. 13, 2023), <https://research.cornell.edu/news-features/curious-history-slavery-west-africa> [<https://perma.cc/8QP9-SQQ3>].

⁹⁸ BROOK, *supra* note 18, at XVIII.

⁹⁹ See e.g., KENDI, *supra* note 16, at 117.

¹⁰⁰ *Id.* (alleging that W.E.B. Du Bois rebuffed the existence of colorism, and Walter White was an assimilationist who allegedly believed that “unmixed” [Black people] were “inferior”).

advancement, often clandestinely financing civil rights litigation.¹⁰¹ Strategies were different, but the goals were the same – full freedom and liberty for Black people, regardless of skin tone.¹⁰²

C. TOO DARK OR TOO LIGHT

Even among the Black leaders and the Black elite, “[c]omplexion was such a complex issue among African Americans that even as some were adjudged ‘too dark,’ others were ‘too light.’”¹⁰³ Historians recall the starkness of the NAACP leaders being predominately white or light-skinned in some offices in the early 1900s,¹⁰⁴ but there were also instances where Black people were denied leadership in Black organizations for being “too light.” “[Being too light] was the reason given from excluding Josephine Wilson Bruce from consideration as president of the National Association of Colored Women at its 1906 meeting.”¹⁰⁵ Bruce was the wife of United States Senator Blanche Bruce, a former slave whose White father owned his Black mother.¹⁰⁶ Like many lighter-skinned Black people, Senator Bruce, then a fugitive slave, returned to Missouri, where he was raised, to open a school for Black children.¹⁰⁷ Regardless of skin tone, African Americans were unified in the goal of educating their own and often obtained an education and returned to their communities to educate other Black people.

¹⁰¹ IBRAM X. KENDI, *THE BLACK CAMPUS MOVEMENT: BLACK STUDENTS AND THE RACIAL RECONSTITUTION OF HIGHER EDUCATION, 1965-1972*, at 17 (2012); *Booker T. Washington vs. W.E.B. DuBois*, PBS (Feb. 21, 2020), <https://www.pbs.org/video/booker-t-washington-vs-web-dubois-grmfaf/> [<https://perma.cc/Z8KX-VTAL>].

¹⁰² *Booker T. Washington vs. W.E.B. DuBois*, *supra* note 101 (discussing the different strategies of Du Bois and Washington but acknowledging their significant contributions to the advancement of Black people and the three times Washington extended an offer for Du Bois to teach at Tuskegee Institute and cautioning against pitting Black leaders against one another and their strategies in the movement).

¹⁰³ TAYLOR, *supra* note 80, at 258.

¹⁰⁴ Ibram X. Kendi, *Colorism as Racism: Garvey, Du Bois and the Other Color Line*, BLACK PERSPECTIVES (May 24, 2017), <http://www.aaihs.org/colorism-as-racism-garvey-du-bois-and-the-other-color-line/> [<https://perma.cc/K86F-MKCV>] (reporting on Marcus Garvey’s surprise when visiting W. E. B. Du Bois at the New York NAACP office and seeing all the white and light-skinned Black people; *Advancing Victims’ Rights Through Strategic Litigation: Taking a Page from History*, NAT’L CRIME VICTIM L. INST. (2005), <https://law.lclark.edu/live/files/21761-advancing-victims-rights-through-strategic> [<https://perma.cc/Z5BC-CWBE>] (“The National Association for the Advancement of Colored People (NAACP) was founded in 1909 by a multiracial group of activists. During its early years, the NAACP engaged in lobbying, public education, and ad hoc litigation. From 1925-30, the NAACP began to develop a plan for coordinated litigation to win social justice for African-Americans.”).

¹⁰⁵ TAYLOR, *supra* note 80, at 258-59.

¹⁰⁶ *Id.* at 65.

¹⁰⁷ *Id.*

There was a sense of “noblesse oblige,” or a sense of responsibility by the privileged to the less privileged—by the Black elite to the Black masses.¹⁰⁸ Colorism among African Americans has teetered both ways and continues to do so, though the brunt of colorism appears unequivocally borne by dark-skinned Black people.

Increasingly, however, there appears to be a growing divide between light-skinned and dark-skinned Black people. Much of this is fueled by intentional historical recounts that overlook history or by others, who could not possibly understand the complexities of colorism in the Black community, telling, assuming or reframing Black history.¹⁰⁹ One major historical recount that continues to circulate is about Claudette Colvin, the courageous teenager who was arrested for refusing to give up her seat on the bus: “Colorism explains why Claudette Colvin was not used as the face of the Montgomery bus boycott.”¹¹⁰ But that ignores some important facts, only reveals half the story, and ignores the significance of plaintiffs in civil rights cases, which have been brought to challenge policies and practices for the entire race of African Americans, regardless of skin tone.

1. Claudette Colvin

Ms. Colvin was far from the first to refuse to move from her seat on the bus.¹¹¹ One hundred years earlier in 1854, Elizabeth Jennings Graham, an African American teacher, refused to relinquish her seat on a horse-drawn trolley car, reserved for white people in New York City, where

¹⁰⁸ WHISPERS, *supra* note 84, at 163-64.

¹⁰⁹ See e.g., WILLARD B. GATEWOOD, *ARISTOCRATS OF COLOR, 1880-1920* (1990).

¹¹⁰ Maria Hamming, *Counting Color: Biracial Activism in the Black Lives Matter Era*, 21 *MCAIR SCHOLARS J.* 5, 6 (2017); Urana McCauley, *Rosa Parks Was My Aunt. It's Time to Set the Record Straight*, SHONDALAND (Feb. 4, 2019), <https://www.shondaland.com/inspire/a16022001/rosa-parks-was-my-aunt/> [<https://perma.cc/7MTC-GUXN>] (“Sometimes I struggle with social media because it seems there’s always somebody belittling Auntie Rosa. I recently saw someone post that my aunt wasn’t really black. Or people say that she was strategically placed on the bus in Montgomery because she was lighter skinned. It’s amazing to me that they would think that. Yes, our family ancestry is part African American, part white, and part Native American. Auntie Rosa considered herself black and was treated as black. We have a lot of work to do in this country regarding colorism, but whether you’re light or dark — and this is still true today — you are black in America and you’re going to be treated accordingly.”).

¹¹¹ Olivia B. Waxman, ‘I Was Not Going to Stand.’ Rosa Parks Predecessors Recall Their History-Making Acts of Resistance, *TIME*, (Mar. 2, 2020, 11:00 AM), <https://time.com/5786220/claurette-colvin-mary-louise-smith/> [<https://perma.cc/84R7-R9XY>] (“Colvin’s stand was part of a long history of African-American resistance, as acts of resistance on segregated transportation had been going on for more than century [sic].”).

slavery ended in 1827.¹¹² She sued and “won a significant victory in the civil rights struggle that eventually overturned the established pattern of segregation in New York City’s public transit system” in 1855.¹¹³ This unheralded, relatively unknown Black woman was “a bright, proud, cultured, feisty, middle class, nineteenth-century, African-American woman, who stimulated in New York City in 1855 what Mrs. Rosa Parks was to initiate in Montgomery, Alabama, a hundred years later.”¹¹⁴ Ten years later, Sojourner Truth successfully sued to abolish segregated streetcars after being violently thrown off and thus injured. Neither of these lawsuits resulted in a published opinion.¹¹⁵ In 1883, Ida B. Wells fought to maintain her first-class seat before she was thrown off by the conductor and three white male passengers.¹¹⁶ Frederick Douglass also resisted removal from the first-class car some forty years earlier.¹¹⁷ Much of United States’ slavery and resistance has been intentionally ignored or not documented. Both light-skinned and dark-skinned Black people forced the ball forward in the civil rights fight to gain freedom for all Black people.

From 1900 to 1907, Black people boycotted segregated streetcars in at least 27 cities, including Montgomery, Alabama.¹¹⁸ Some 15 years before Ms. Colvin protested segregated seating on public transportation, Rosa Parks had refused to comply several times with segregation rules on public transportation and was even ejected from a bus for her refusal to comply.¹¹⁹ Jo Ann Robinson, who helped plan the bus boycott, and many others before

¹¹² John H. Hewitt, *The Search for Elizabeth Jennings, Heroine of a Sunday Afternoon in New York City*, 71 N.Y. HIST. 386, 386, 398 (Oct. 1990), <https://www.jstor.org/stable/23175309> [<https://perma.cc/QX5L-2QZZ>].

¹¹³ *Id.* at 387.

¹¹⁴ *Id.* at 389.

¹¹⁵ Barbara Y. Welke, *When All the Women Were White, and All the Blacks Were Men: Gender, Class, Race, and the Road to Plessy, 1855-1914*, 13 L. & HIST. REV. 261, 267 n.15 (1995) (“[N]either Elizabeth Jennings’s successful suit against the Third Avenue Railroad Company in New York City in 1855, nor Sojourner Truth’s successful suit against streetcars in Washington, D.C., in 1865, resulted in published legal opinions.”); GEOFFREY M. HORN, *SOJOURNER TRUTH: SPEAKING UP FOR FREEDOM* 55 (2010); *see also* *Caroline LeCount (1846-1923)*, VILLANOVA UNIV.: FALVEY LIBR., <https://exhibits.library.villanova.edu/institute-colored-youth/graduates/caroline-lecount-bio> [<https://perma.cc/XPJ2-MNS6>] (last visited Mar. 8, 2023) (recalling activist, public speaker, and teacher, Caroline R. LeCount’s (1846-1923) activism on March 25, 1867, when she filed a complaint with the police after being ejected from a streetcar, and the policeman arrested and fined the conductor; LeCount’s activism ultimately forced eighteen Philadelphia streetcar companies to end the practice of segregation).

¹¹⁶ BLAIR L. M. KELLEY, *RIGHT TO RIDE: STREETCAR BOYCOTTS AND AFRICAN AMERICAN CITIZENSHIP IN THE ERA OF PLESSY V. FERGUSON* 35 (2010).

¹¹⁷ *Id.*

¹¹⁸ Randall Kennedy, *Martin Luther King’s Constitution: A Legal History of the Montgomery Bus Boycott*, 98 YALE L.J. 999, 1011 (1989).

¹¹⁹ *See e.g.*, ALDON D. MORRIS, *THE ORIGINS OF THE CIVIL RIGHTS MOVEMENT* 51 (1984).

them had already resisted and been treated poorly on the city bus in Montgomery before March 2, 1955 when Ms. Colvin courageously challenged the segregated public transportation system in Montgomery, Alabama.¹²⁰ In addition, Ms. Colvin was not ignored or disrespected by civil rights litigators; she was listed as one of five plaintiffs in the federal case titled *Browder v. Gayle*, along with Aurelia Eliscerea Shine Browder (who was listed first in the lawsuit because the other four included two teenagers), Ms. Colvin and Mary Louise Smith, and two senior citizens, Susie McDonald and Jeanetta Reese (who eventually dropped out, leaving the other four as plaintiffs).¹²¹ Mrs. Browder was 37 at the time and considered a good representation of all of the plaintiffs. When this landmark litigation was initiated and Mrs. Browder, who appears brown-skinned like Ms. Colvin, was selected as the lead plaintiff, she was an honors graduate from Alabama State Teacher's College, a member of the NAACP, the Southern Christian Leadership Conference (SCLS), the Women's Political Council (WPC), and the Montgomery Improvement Association (MIA).¹²² Fred D. Gray Sr., the young Black lawyer who filed the lawsuit, along with Charles D. Langford, strategically excluded Rosa Parks from the federal lawsuit to ensure that her additional charges of disorderly conduct would not interfere with the sole issue—the constitutionality of the segregation laws of public transportation.¹²³

¹²⁰ *Jo Ann Robinson: A Heroine of the Montgomery Bus Boycott*, NAT'L MUSEUM AFR. AM. HIST. & CULTURE, <https://nmaahc.si.edu/blog-post/jo-ann-robinson-heroine-montgomery-bus-boycott> [<https://perma.cc/54PB-4ALX>] (last visited Sept. 15, 2021) (“Soon after arriving in Montgomery [in 1949 to teach at Alabama State College], Robinson was verbally attacked by a public bus driver for sitting in the ‘whites only’ section of the bus. When she became the WPC’s president the following year, she made desegregating the city’s buses one of the organization’s top priorities.”); see also DAVID J. GARROW, ED., *THE WALKING CITY: THE MONTGOMERY BUS BOYCOTT, 1955-1956*, 607-08 (1989).

¹²¹ GARROW, *supra* note 120 (reporting that Mrs. Reese withdrew from the lawsuit and told the media that Mr. Gray added her to the lawsuit without her permission, and thus, he was indicted for malpractice and “unlawful appearance as an attorney,” but these charges were dismissed because the state had no jurisdiction and the federal prosecutor decline to press charges, but Mr. Gray maintained that Mrs. Reese withdrew because she was afraid of the police).

¹²² Gwendolyn M. Patton, *Biographical Sketch of Aurelia Eliseera Shine Browder (Coleman)*, TRENHOLM STATE TECH. COLL. ARCHIVES, <https://www.crmvet.org/info/mbbbios.htm> [<https://perma.cc/5JL7-WZNY>] (last visited Oct. 7, 2021).

¹²³ Jeff Welty, *Was Rosa Parks Convicted?*, UNIV. NORTH CAROLINA: NORTH CAROLINA CRIM. L. (Dec. 1, 2015), <https://nccriminallaw.sog.unc.edu/was-rosa-parks-convicted/> [<https://perma.cc/QTZ9-F8AL>] (concluding that the disorderly conduct charge must have been included after Mrs. Parks’ arrest); *Bowder v. Gayle*, 352 U.S. 903, MARTIN LUTHER KING, JR. RSCH. & EDUC. INST., <https://kinginstitute.stanford.edu/encyclopedia/browder-v-gayle-352-us-903> [<https://perma.cc/J7KB-VDGW>] (last visited Oct. 7, 2021) (“Gray made the decision not to include Rosa Parks in the case to avoid the perception that they were seeking to circumvent her

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The civil rights leadership opted not to use Mrs. Browder as the face of the movement because they feared she would not hold up under courtroom cross-examination.¹²⁴ Perhaps because she was older, the leadership also did not use Susie McDonald, an elderly, well-to-do, very fair-skinned widow with straight hair and blue eyes who was often mistaken for being white and loved to tell white people who mistook her for being white that she was a “member of the darker race.”¹²⁵ Her near-white appearance, however, also did not make her the best candidate for the face of the movement. Mary Louise Smith, a teenager like Ms. Colvin, was also not selected because Smith was known to be very shy and did not like publicity.¹²⁶ Regarding Ms. Colvin, the WPC supported her, and she was being considered for the face of the movement, but civil rights leadership felt that she would not be able to withstand the pressure.

[E. D.] Nixon arranged an interview with Miss Colvin and talked with her family. He decided, however, that she was not the sort of person who could best withstand the pressures sure to be exerted on any central figure in protest, and left the matter alone.¹²⁷

prosecution on other charges. Gray ‘wanted the court to have only one issue to decide—the constitutionality of the laws requiring segregation on the buses.’”); Patton, *supra* note 122 (“On February 01, 1956, at 12:45 p.m., Aurelia S. Browder, Claudette Colvin, Mary Louise Smith, Susie McDonald, and Jeanette Reese filed the Lawsuit in Federal Court and with the exception of Jeanette Reese, who withdrew from the case due to intimidation from white community [sic], testified before a three (3) Federal Judge Panel: Frank M. Johnson, Richard T. Rives and Seyborne Lynn on May 11, 1956 of their mistreatments and arrest on the Montgomery City Line buses on the respective dates of March 02, April 29, October 16, and October 21, 1955, which caused them to file this lawsuit. They were energized by the arrest of Rosa Parks, who was arrested on December 01, 1955, for the same infraction thus were determined to put an end to segregated busing and second class citizenship for Negroes in the City of Montgomery, Alabama. . . . Claudette is one of the unsung heroes in the Civil Rights Movement. Nine months before Rosa Parks arrest, Claudette was arrested on March 2, 1955 for a similar act of resistance. She was one of the four plaintiffs who filed a lawsuit against segregated bus seating. The presiding attorney was Fred D. Gray. The case was successful. It was a jubilant day in the history of the city of Montgomery.”); GARROW, *supra* note 120, at 339, 439 (noting that Colvin’s attorney was Fred Gray, a twenty-four-year-old attorney and one of the only two Black lawyers in Montgomery).

¹²⁴ Paul Hendrickson, *The Ladies Before Rosa: Let Us Now Praise Unfamous Women*, 8 RHETORIC & PUB. AFFS., 287, 291 (2005).

¹²⁵ *Id.* at 293.

¹²⁶ *Id.* at 294.

¹²⁷ GARROW, *supra* note 120, at 206; *but see* Hendrickson, *supra* note 124, at 298 (“E. D. Nixon, in an oral history years later, said that Colvin was pregnant out of wedlock and could not be backed. She was a ‘brilliant student,’ though too unstable. Colvin acknowledges that she got pregnant, but she says it didn’t happen until later in 1955. By then she’d felt rejected by her community. People were mocking her in school. ‘There’s that crazy girl off the bus.’ From Jo Ann Robinson’s memoir: ‘She had remained calm all during the days of her waiting period and during the trial, but when she was found guilty, Claudette’s agonized sobs penetrated the atmosphere of the courthouse.’ After the verdict, blacks were ‘as near a breaking point as they had ever been.’”).

However, Ms. Colvin's arrest was the catalyst for the civil rights leaders to reconsider the bus problem through political channels.¹²⁸ All four of these courageous women are remembered, along with Rosa Parks, for their participation in the federal lawsuit.¹²⁹

When asked about Rosa Parks being the face of the bus boycott, Ms. Colvin replied:

I have nothing against her. I understand why they didn't want me. They had to find a symbol to draw them out. She was the right person. She was soft-spoken. You know Barbara Jordan? I think I would have had to be a cross between Barbara Jordan and Angela Davis.¹³⁰

2. Rosa Parks

The myth that Mrs. Parks was a tired elderly lady who did not feel like giving up her seat on the bus was inconsistent with her lifelong activism for civil rights.¹³¹ Mrs. Parks had served as the secretary for the local NAACP since 1943 and was still serving in 1955 when she was arrested for refusing to give her bus seat to a white man in defiance of the local segregation laws.¹³² She had also organized the local NAACP Youth Council in the 1940s and reorganized it in 1954-55 and acted as its adult adviser.¹³³ In the 1950s before the bus boycott, the youth in the Youth Council would routinely defy the local segregation laws and returned to record their acts of defiance to Mrs. Parks.¹³⁴

Mrs. Parks had already established herself as a fierce advocate for civil rights. What has often been left out of this historical recount is that before the bus boycott, Mrs. Parks was a sexual assault investigator for the NAACP, courageously working to protect Black people.

One part of this [her job] was protecting Black men from false accusations and lynchings; the other was ensuring that Black people who had been sexually assaulted by white

¹²⁸ GARROW, *supra* note 120, at 340 (“Miss Colvin’s arrest had moved the city’s black leaders to make one more effort to deal with the bus problem through the political mechanism.”).

¹²⁹ Waxman, *supra* note 111 (“On Dec. 1[, 2019], a statue of Rosa Parks was unveiled in Montgomery, Ala., for the 64th anniversary of her refusal to give up her seat to a white passenger, along with granite markers honoring Colvin and the other plaintiffs on the federal lawsuit that ruled segregated buses unconstitutional.”).

¹³⁰ Hendrickson, *supra* note 124, at 298.

¹³¹ MORRIS, *supra* note 119, at 149.

¹³² *Id.* at 51.

¹³³ *Id.*

¹³⁴ *Id.* at 51-52.

people could get their day in court. This particular issue was close to Parks' heart as in 1931 a white male neighbor had attempted to assault her.¹³⁵

In 1944, Mrs. Parks traveled to Abbeville, Alabama to investigate the rape of Recy Taylor, a darker-skinned Black young woman. Intimidated, harassed, and threatened by the sheriff, who demanded that Mrs. Parks leave the town, she continued her work and quickly launched the Committee for Equal Justice for the Rights of Mrs. Recy Taylor, and within days, Recy's case received national attention.¹³⁶ When a grand jury refused to indict the defendants, Mrs. Parks wrote Alabama's governor, demanding he not "fail to let the people of Alabama know that there is equal justice for all of our citizens."¹³⁷ Nearly seventy years later in 2011, after Mrs. Parks had died in 2005, the state apologized to Mrs. Taylor, who died in 2017 at the age of ninety-seven.¹³⁸

Mr. E. D. Nixon, a longtime resident of Montgomery and with whom Mrs. Parks had a longstanding organizational relationship through the local NAACP, and the members of the WPC, led by Jo Ann Robinson, who was an English teacher at Alabama State College and had her own run-ins with local segregation laws on buses,¹³⁹ were the ones to plan the boycott (not Dr. Martin Luther King, Jr., the spokesperson for the boycott). Mrs. Parks was so integrated in Black protest movements and the local community that she was a natural for the bus boycott. She was also perceived as unblemished. She was known as a modest, middle-aged, untainted seamstress, a civil rights activist and youth leader.¹⁴⁰ She was "deeply rooted in the [B]lack protest tradition,"¹⁴¹ and had been courageously protesting the public transportation system since the 1940s.¹⁴² The driver that ejected her in the 1940s was the same one who had her arrested on December 1, 1955 that began the bus boycott.¹⁴³ Dr. King, who was selected to lead the Montgomery Bus Boycott through the organization called the Montgomery

¹³⁵ Ryan Mattimore, *Before the Bus, Rosa Parks Was a Sexual Assault Investigator*, HISTORY (Dec. 8, 2017), <https://www.history.com/news/before-the-bus-rosa-parks-was-a-sexual-assault-investigator> [<https://perma.cc/R9XU-7CK2>]; see generally DANIELLE L. MCGUIRE, *AT THE DARK END OF THE STREET* (2010) (discussing Rosa Parks's and Recy Taylor's stories).

¹³⁶ Mattimore, *supra* note 135.

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ WHISPERS, *supra* note 84.

¹⁴⁰ Hendrickson, *supra* note 124, at 287-88.

¹⁴¹ MORRIS, *supra* note 119, at 51.

¹⁴² WHISPERS, *supra* note 84.

¹⁴³ MORRIS, *supra* note 119, at 51.

Improvement Association (MIA) created on December 5, 1955,¹⁴⁴ elaborated on Mrs. Parks’s integrity, character, and Christianity:

Rosa Parks had long been active in civil rights activity and was known, respected, and liked by many within the [B]lack community. King used her standing within the community as further evidence of the intolerable nature of existing practices. “Just the other day,” he reminded the congregation that ratified the call for a general boycott of the buses, “one of the finest citizens in Montgomery—not one of the finest Negro citizens but one of the finest citizens in Montgomery—was taken from a bus and carried to jail and arrested because she refused to get up to give her seat to a white person. . . . Mrs. Rosa Parks is a fine person. And since it had to happen, I’m happy it happened to a person like Mrs. Parks, for nobody can doubt the boundless outreach of her integrity. Nobody can doubt the height of her character, nobody can doubt the depth of her Christian commitment. . . .”¹⁴⁵

Thus, Mrs. Parks’s arrest ignited the mass movement not only because she was a “quiet, dignified woman of high morals,” but also because “she was an integral member of those organizational forces capable of mobilizing a social movement.”¹⁴⁶ The lead plaintiff needed to be strong, proven and courageous—Mrs. Parks had already demonstrated all of these traits with her prior civil rights activities. This movement was extremely important to the freedom and advancement of Black America—no unproven plaintiff would do.

The boycott officially ended on December 20, 1956, after the United States Supreme Court, relying upon *Brown v. Board of Education* and two other Supreme Court cases,¹⁴⁷ rejected city and state appeals for reconsideration of its decision in *Browder v. Gayle* and issued an order for integrated buses, which was the ultimate death knell to *Plessy v. Ferguson*,

¹⁴⁴ William R. Harvey, *Hampton University and Mrs. Rosa Parks: A Little Known History Fact*, HAMPTON UNIV., https://www.hamptonu.edu/news/hm/2013_02_rosa_parks.cfm [<https://perma.cc/WNP9-VBQZ>] (last visited Jan. 13, 2021); *Montgomery Improvement Association (MIA)*, MARTIN LUTHER KING, JR. RSCH. & EDU. INST., <https://kinginstitute.stanford.edu/encyclopedia/montgomery-improvement-association-mia> [<https://perma.cc/SE4M-MZCM>] (last visited Oct. 7, 2021).

¹⁴⁵ Kennedy, *supra* note 118, at 1016 n.108.

¹⁴⁶ MORRIS, *supra* note 119, at 52.

¹⁴⁷ *Brown v. Board of Educ.*, 347 U.S. 483 (1954); *Baltimore City v. Dawson*, 350 U.S. 877 (1955); *Holmes v. Atlanta*, 350 U.S. 879 (1955).

decided 60 years earlier.¹⁴⁸ On that day, the MIA voted to end the 381-day bus boycott, and buses were integrated the next day.¹⁴⁹ In Dr. King's memoir, he concluded that because of the bus boycott, "the Negro citizen in Montgomery is respected in a way he never was before."¹⁵⁰ The Negro citizen—both dark-skinned and light-skinned.

During and after the boycott, Mrs. Parks and her family experienced great hostility and intimidation, including that she and her husband were fired from their jobs, causing them to relocate to her home in Detroit.¹⁵¹ Nine months after the boycott that officially ended on December 20, 1956, Hampton University's president, Alonzo G. Moron, the University's first Black president, offered Mrs. Parks employment at the University, then called Hampton Institute.¹⁵² For a year, Mrs. Parks, the Mother of the Civil Rights Movement, served as the hostess at the Holly Tree Inn on the campus of the University, then returned home to Detroit where she lived until she died in 2005 at the age of 92.¹⁵³

D. STRATEGIC LITIGATION

Generally underdiscussed is that civil rights litigation from *Plessy v. Ferguson* to *Brown v. Board of Education* and beyond were strategic, well-thought and planned litigation strategies, often with hand-picked plaintiffs.

To bring about true change, the rights provided by law must be implemented and enforced in practice; to do that most effectively requires the movement to engage in strategic litigation. . . . The United States Supreme Court's decision in *Brown v. Board of Education* . . . is a commonly recognized moment of strategic litigation.¹⁵⁴

This is why Homer Plessy, who could pass for white, was specifically chosen to challenge segregated seating in 1892. Because of his background,

¹⁴⁸ *Gayle v. Browder*, 352 U.S. 903 (1956); *Plessy v. Ferguson*, 163 U.S. 537 (1896); GARROW, *supra* note 120.

¹⁴⁹ *Montgomery Improvement Association (MIA)*, *supra* note 144.

¹⁵⁰ *Id.*

¹⁵¹ Harvey, *supra* note 144; *see also* Waxman, *supra* note 111 ("Unable to get a job after the case, Colvin moved to New York City in 1958 and worked as a nurse until her retirement, after which the now-80-year-old moved back to Alabama to be closer to family; she has been living in Birmingham for the past four months.").

¹⁵² *Moron, Alonzo Graseano*, HAMPTON UNIV. ARCHIVES, <https://hamptonarchives.org/content/moron-alonzo-graseano> [https://perma.cc/57TH-5BPP]; Harvey, *supra* note 144.

¹⁵³ Harvey, *supra* note 144.

¹⁵⁴ *Advancing Victims' Rights Through Strategic Litigation: Taking a Page from History*, *supra* note 104.

he was considered to be the “proper person to lodge the test case by leading members of his community.”¹⁵⁵ Albion Tourgée, a prominent white lawyer who volunteered to challenge Jim Crow railcars, believed Plessy being “phenotypically white” made him the ideal plaintiff to challenge.¹⁵⁶ Tourgée was adamant that “a light-skinned subject would highlight the difficulty of defining race in a society where not all people of color were easily identifiable.”¹⁵⁷

The Montgomery Bus Boycott was also strategic litigation. The thought process that went into finally deciding to select Mrs. Parks rather than Ms. Colvin was not done lightly. The future of the entire Black race, both light-skinned and dark-skinned, rested upon choosing the best representative for the case. The skin hues of the many Black citizens who participated in the bus boycott as leaders or participants ranged from coal to cream. But colorism was not why Ms. Colvin, a courageous teenager, was not the lead in the bus boycott.

Nixon and Mrs. Robinson, thinking that Colvin’s case might supply an opportunity for a court challenge to the constitutionality of Montgomery’s bus seating practices, interviewed the young woman, but concluded that her personal situation and the particulars of the arrest precluded using the incident as a test case. . . . Colvin was quickly convicted for both assault and battery and violating the segregation statute at a March 18 trial . . . [However,] the prosecutor indicated that he would pursue only the assault and battery charge, not the segregation issue [after Gray filed an appeal, thus taking the segregation issue off the table].¹⁵⁸

The state prosecutor’s strategic pursuit of only the criminal charges against Ms. Colvin, as a defendant, and not the segregation issue, took the segregation issue off the table for a court case, which was why Ms. Colvin was included as a plaintiff in the federal court case *Browder v. Gayle*, which resulted in a winning verdict. However, if Black leadership believed that using a lighter-skinned Black, who white people presumably favored, would benefit the whole Black race, that would have been strategic as well.

¹⁵⁵ KELLEY, *supra* note 116.

¹⁵⁶ *Id.* at 56, 73-74.

¹⁵⁷ *Id.* at 76.

¹⁵⁸ GARROW, *supra* note 120.

Choosing the right lead plaintiff remains a strategy used by lawyers.¹⁵⁹ While color or skin tone should never be dismissed outright, there were so many other clear reasons that Rosa Parks was selected as the face of the Civil Rights Movement.

E. PASSING

With the recent release of the movie *Passing*, directed by Rebecca Hall and based off of the 1929 novel by Nella Larsen, there appears to be more interest in discussing colorism and the concept of passing for white. The movie focused on the reunion of two light-skinned women who had not seen each other since childhood. In order to live with greater privileges, one of the women had been passing for white for years and married a white man who had no idea that his wife was Black. Charles Spurgeon Johnson, Ph.D., a sociologist who was a graduate of historically Black Virginia Union University and the first Black president of historically Black Fisk University, deduced that 355,000 Black people passed for White between 1900 and 1910:¹⁶⁰

Mixed bloods, they are suspended between two races, — mulattoes, quadroons, musters, mustafinas, cabres, griffies, zambis, quatravis, tresalvis, coyotes, saltatras, albarassados, cambusos, — neither white nor black, but Negroes. Within them runs the full scale of color. They

¹⁵⁹ THE REBELLIOUS LIFE OF MRS. ROSA PARKS (Peacock, 2022) (recalling how civil rights activists believed that the best plaintiff to challenge segregated busing would be a woman because she would likely garner more sympathy than a man, would need to be above reproach, and must have done nothing more than refuse to relinquish her bus seat; and documenting that Claudette Colvin was very active in the NAACP youth group division led by Mrs. Parks', but there was a concern that Colvin would not be reliable as a plaintiff, and the plaintiff had to be someone who was a winner; see also Debra Cassens Weiss, *Why Otis McDonald Is Lead Plaintiff in High Court Gun Rights Case*, ABA JOURNAL, (Feb. 1, 2010, 12:00 PM), https://www.abajournal.com/news/article/why_otis_mcdonald_is_lead_plaintiff_in_supreme_court_gun_rights_case [<https://perma.cc/D6B8-4XC3>]. The lawyers in *McDonald v. City of Chicago*, a gun rights case decided in 2010, were very strategic about selecting the lead plaintiff, Otis McDonald. He was a 76-year-old retired maintenance engineer, selected after the lawyers interviewed over a dozen potential plaintiffs. He was the only Black person and also a Democrat; the others were white. McDonald questioned why he was selected as lead. The article opined: "McDonald is an important symbol of the history of the 14th Amendment, adopted after the Civil War to protect slaves from state laws infringing their rights." A lawyer plotting strategy in the case said: "We wanted to be able to present the best face not just to the court but also to the media . . . We didn't want some Montana militia man as the poster boy for the Second Amendment."

¹⁶⁰ *The Vanishing Mulatto*, 3 OPPORTUNITY: JOURNAL OF NEGRO LIFE 291 (1925) (" . . . [I]t appears that the disappearance during that same decade of 355,000 Negroes can be accounted for only by some sort of migration out of the country. As everyone knows, native Negro emigration is practically negligible, except to Canada and possibly Mexico. Make the most liberal allowance for emigration and a grave margin remains.").

may marry among themselves, but the proportion of blood is not changed. But it is also left to them to return to the race of either parent. What the census takers cannot note is the wide diffusion of shades between black and mulatto. The mulattoes fuse into the blacks, that is certain. But they also fade into the great white multitude.¹⁶¹

Thus, it was not uncommon for Black people to pass as white. This passing so infuriated Walter Plecker, a white public health segregationist and Virginia's first registrar of the newly created Bureau of Vital Statistics established in 1912, when he noticed the decreasing number of people with both Black and white ancestry, that he along with two others drafted the Racial Integrity Act of 1924, which the state passed.¹⁶² The law recognized only two races—"white" and "colored" (Black and Native American).¹⁶³ Plecker also officially classified all American Indians as "colored" and essentially defined them out of existence.¹⁶⁴ In 1967, the U.S. Supreme Court decided *Loving v. Virginia*, which ruled the Racial Integrity Act unconstitutional and overruled Virginia's ban on interracial marriage.¹⁶⁵

Nevertheless, there have been plenty of instances in which light-skinned Black people passed or used their lighter skin color for the advancement of the Black race. It was not uncommon for lighter-skinned Black people, who knew their color was favorable to white people, to persuade white people to embrace them, and with them came the rest of the Black race, dark and light, for greater freedom and liberties.

Miriam Zinter, a light-skinned Black woman often mistaken for being white, described her great-aunt, Annie Mother, "who would pass as white to purchase properties and then sell or rent them to Black family members and other Black families who could not find decent, affordable housing."¹⁶⁶ As mentioned earlier, there is the remarkable story of Walter White, a civil rights investigator for the NAACP, who used his blond hair and blue eyes to infiltrate white organizations or to escape racially hostile situations by

¹⁶¹ *Id.*

¹⁶² Tori Talbot, *Walter Ashby Plecker (1861-1947)*, ENCYCLOPEDIA VA., <https://encyclopediavirginia.org/entries/plecker-walter-ashby-1861-1947/> [<https://perma.cc/ZW2X-6RNT>] (last visited Jan. 14, 2023).

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ *Loving v. Virginia*, 388 U.S. 1, 12 (1967).

¹⁶⁶ Miriam Zinter, *I'm Black But Look White. Here Are the Horrible Things White People Feel Safe Telling Me.*, HUFFPOST (Dec. 9, 2021, 9:00 AM), https://www.huffpost.com/entry/black-woman-white-privilege-racism_n_61ae133ee4b07fe2012a3f67?d_id=2928240&ref=bffbhuffpost&ncid_tag=fcbklnkushpmg00000063&utm_medium=Social&utm_source=Facebook&utm_campaign=us_main [<https://perma.cc/VZK2-GLRR>].

blending in, and his efforts were instrumental in advancing the Black race.¹⁶⁷ There are also stories of Black people passing for white to gain access to places where Black people were prohibited entry. For example, a Louisiana family history includes a Black nephew passing for white to purchase refreshments at Audubon Park for relatives waiting outside, because the zoo prohibited Black people from entering the refreshment area.¹⁶⁸

Elizabeth Jennings Graham, Sojourner Truth, Rosa Parks, Claudette Colvin, and so many other African Americans of all hues are significant in the fight for civil rights in public accommodations for African Americans. Instead of fueling colorism by false historical accounts pitting a darker-skinned Black woman, Ms. Colvin, against a lighter-skinned Black woman, Mrs. Parks, recount the story of how a light-skinned Black woman, Mrs. Parks, investigated, supported, and risked her life to help a darker-skinned Black woman, Ms. Taylor.

F. HISTORICAL ACCURACY

When historical narratives are recreated to fit personal agendas, such as advancing a colorism agenda where there simply may not be one and pitting skin tones against each other, there is a mockery of historical accuracy that cruelly fuels the fire of colorism—the real agenda of colonization and white supremacy. Historical equivocations also deny the authentic sacrifices and contributions of light-skinned civil rights martyrs who were race activists who paved the way for all African Americans, like Du Bois, who graduated from Fisk, a historically black college (HBCU), and then Harvard, and fought for racial advancements for all Black people his entire life;¹⁶⁹ Pinckney Benton Stewart [P.B.S.] Pinchback, the son of a white planter and Black slave mother and described by Du Bois as a “well-educated, well-to-do, congenial white man with but a few drops of Negro blood” who “did not stoop to deny” he had a Black mother “as so many of his fellow whites did” and worked for the advancement of racial equality as a Black man;¹⁷⁰ Mary Peake, a light-skinned Black teacher whose father was

¹⁶⁷ WALTER WHITE, *A MAN CALLED WHITE: THE AUTOBIOGRAPHY OF WALTER WHITE* (1948).

¹⁶⁸ Oral family history of Dianne Saulney Gaines.

¹⁶⁹ *W.E.B. DuBois Graduates from Fisk University*, HIST. ENGINE, <https://historyengine.richmond.edu/episodes/view/1609> [<https://perma.cc/F5JT-V3XN>] (last visited Jan. 14, 2023).

¹⁷⁰ Henry Louis Gates, Jr., *The Black Governor Who Was Almost A Senator*, PBS, <https://www.pbs.org/wnet/african-americans-many-rivers-to-cross/history/the-black-governor-who-was-almost-a-senator/> [<https://perma.cc/N9FN-PNCG>] (last visited March 29, 2023)

an Englishman, who secretly taught free and enslaved Black people in 1861 under what is now known as the Emancipation Oak on the campus of Hampton University, an HBCU;¹⁷¹ Booker T. Washington, a Hampton University graduate, born to a white man and an enslaved Black woman, who dedicated his life to educating Black people and was a founder of Tuskegee University, an HBCU;¹⁷² and so many others.

Historical equivocations also deny the partnerships, unions, and mentor relationships between light-skinned and dark-skinned Black people, such as Marcus Garvey and Elijah Muhammad;¹⁷³ Lewis Adams, who helped found Tuskegee University, and his wife, Sarah Green, the daughter of a white slave owner and enslaved mother;¹⁷⁴ and Aretha Franklin and Angela Davis, when Franklin offered to bail Davis out of jail in 1970 because Franklin said about Davis: “I’m going to see her free . . . because she’s a Black woman and she wants freedom for Black people.”¹⁷⁵

In addition, historical equivocations deny the racism that light-skinned Black people experienced when attending predominately white institutions, such as Du Bois and Irving Linwood Peddrew III,¹⁷⁶ or the colorism experienced by Mrs. Bruce for being “too light” to run for the president of a Black women’s organization. In addition, many light-skinned Black people, such as E. Arnold Bertonneau and Jean Baptiste Roudanez, who could have passed for white, adamantly refused to do so and went to the White House as representatives for Black America,¹⁷⁷ or were social activists like Homer Plessy for the advancement of Black people.¹⁷⁸ The

(originally posted on The Root); Jennifer M. Smith & Elliot O. Jackson, *Historically Black Colleges & Universities: A Model for American Education*, 14 FLA. A&M U. L. REV. 103, 219 n. 375 (2021).

¹⁷¹ Smith & Jackson, *supra* note 170, at 173 n.227.

¹⁷² *Dr. Booker Taliaferro Washington*, TUSKEGEE UNIV., <https://www.tuskegee.edu/discover-tu-presidents/booker-t-washington> [<https://perma.cc/TS3R-QYXJ>] (last visited Jan. 14, 2023).

¹⁷³ See generally Milfred C. Fierce, *Economic Aspects of the Marcus Garvey Movement*, 3 THE BLACK SCHOLAR 50 (1972).

¹⁷⁴ *Lewis Adams Biography*, MACON HIST., <http://maconhistory.weebly.com/lewis-adams-bio.html> [<https://perma.cc/4J2V-5HNN>]; Smith & Jackson, *supra* note 170, at 144 n.102.

¹⁷⁵ Alanna Vagianos, *Aretha Franklin Offered to Post Angela Davis’ Bail in 1970*, HUFFPOST (Aug. 17, 2018, 9:54 AM), https://www.huffpost.com/entry/aretha-franklin-offered-to-post-angela-davis-bail-in-1970_n_5b76c12de4b0a5b1feba759c [<https://perma.cc/6L8G-3F4F>].

¹⁷⁶ Smith & Jackson, *supra* note 170, at 129 n.50 (discussing Irving Linwood Peddrew III, who was the first Black student to attend Virginia Tech . . . “At Virginia Tech he majored in electrical engineering and was a member of the Virginia Tech Corps of Cadets. Among 3,322 students, he was not permitted to live on campus or eat in the cafeteria. He eventually left the school before graduating.”).

¹⁷⁷ BROOK, *supra* note 18.

¹⁷⁸ *Homer Plessy*, BIOGRAPHY, (Apr. 2, 2014), <https://www.biography.com/activist/homer-plessy> [<https://perma.cc/Z4MT-54C8>].

toxicity of colonialism where white people mistreated Black people and white people favored lighter-skinned Black people, who were often the progeny of white male abuse of Black women's bodies, intentionally caused dissension among African Americans during slavery and beyond.¹⁷⁹ Yet, the manner in which light-skinned and dark-skinned Black people have worked together to build historically Black institutions and America while fighting for civil rights is the true narrative that must be proclaimed. That is the real history and the glue to the continuity of unity for civil rights activism for all Black people, regardless of hue.

VI. THE CONUNDRUM OF COLORISM AND POTENTIAL SOLUTIONS

One thing that makes colorism so unique from racism and why colorism is not discussed as much as it should be is that the very people who have suffered under racism are participants in colorism one way or another and have the ability to significantly curb and potentially eradicate colorism. Unlike racism in America, where white people were the architects of racism and colorism, acknowledging colorism requires African Americans to confront their own internalized racial biases. Implicit bias tests have even shown African Americans that their implicit biases favor Eurocentric features, but that is due to the destruction of colonization.¹⁸⁰ One Black woman author brave enough to discuss colorism admitted that she sent a text to another women of color that read: "What makes this all so hard to talk about is the internalized white supremacy. If white people disappeared from the planet tomorrow, colorism would still exist in our communities, and that is maybe the most painful part. Why people would rather say it isn't real."¹⁸¹ So, we must be brave enough to have the conversations on colorism

¹⁷⁹ Andrea L. Dennis, *A Snitch in Time: An Historical Sketch of Black Informing During Slavery*, 97 MARQ. L. REV. 279, 328 (2013) ("Whites intentionally sought to divide slaves and develop a cadre of informants by, among other means, favoring some slaves over others, rewarding the provision of information, and using Black religious leaders to detect slave misconduct."); see also HUNTER, *supra* note 14.

¹⁸⁰ The author has offered her students the opportunity to take implicit bias tests when teaching about jury trials, and often the Black students were embarrassed to know their results indicated a bias towards white features. See also PROJECT IMPLICIT, <https://www.projectimplicit.net> [<https://perma.cc/ZD7T-PC87>] (last visited Oct. 7, 2021); Luca Guido Valla & Davide Rivolta, *Stereotypical Biases in Black People Toward Black People*, SOC'Y FOR PERSONALITY & SOC. PSYCH. (May 28, 2019), <https://spsp.org/news-center/character-context-blog/stereotypical-biases-black-people-toward-black-people> [<https://perma.cc/332X-NZHM>].

¹⁸¹ Greenidge, *supra* note 23; see also Vinciane Ngoms, *Kendrick Sampson Says He Was Ridiculed for Being Attracted to Dark-Skinned Girls*, BLAVITY (Mar. 26, 2019, 12:48 PM), <https://blavity.com/kendrick-sampson-says-he-was-ridiculed-for-being-attracted-to-dark->

and understand each other’s perspectives, because the law already provides for protection like it does for racism and sexism.

Legal solutions for issues of poor treatment based on physical characteristics in the public and private arenas may not always be the best avenue. With all the civil rights laws that were passed, from the Civil Rights Act of 1866 to the Thirteenth, Fourteenth, and Fifteenth Amendments to the Civil Rights Act of 1964 to the Voting Rights Act of 1965 to the Fair Housing Act of 1968 to the Voting Rights Act of 2006, African Americans and other people of color struggle daily with unequal treatment on the job, inequitable pay in employment, voter suppression, police brutality, fair housing, and so many other issues.¹⁸²

New forms of discrimination are constantly being invented.¹⁸³ But colorism is one in which people of color have a significant say. As America and the world move towards a browner country, colorism needs to be closely examined to ensure that it does not become the “new racism.” Increasingly, colorism is taking its rightful place in public and private conversation squares. Now, the question is: how can we get ahead of fueling colorism as America and the world browns before colorism grows bigger and worse?

skinned-girls?category1=news [https://perma.cc/LK8P-YU9Q] (“Sampson, who says being biracial did afford him certain privileges, revealed colorism still affected him. ‘Essentially, it is white supremacy forcing itself into our communities even when no white people are present,’ Sampson said. ‘I was taught not to like dark skin girls and was made fun of for liking and dating them.’ Sampson, whose mother is white and father Black, continued speaking about problems he encountered because of his lighter complexion. ‘I was told I look better because I have lighter skin, but then lighter skin is seen as weaker and less threatening in our culture, so I ran into a lot of problems with that. It teaches us to hate ourselves and each other.’”).

¹⁸² Lim, *supra* note 95 (criticizing the term “people of color” because it “situates non-white people’s existence in strict relation to whiteness, rather than liberate them from it” and embracing the term “people of the global majority” or “PGM” (preferably “global majority people” or “GMP”) because it dissociates non-white people’s identities and is inclusive of all non-white people around the world).

¹⁸³ See, e.g., Elliot O. P. Jackson, *Velvet Rope Racism: When Discriminatory Dress Code Policies Go Too Far*, 15 S.J. POL’Y & JUST. 23, 26-27 (2022), (“Velvet rope racism is a form of proxy or associational discrimination, where a business prohibits patrons from wearing certain garments — commonly associated with African Americans or other minority groups — to effectively reduce the number of patrons from those minority groups from entering the public establishment. While most dress codes appear facially neutral, they operate as costumes or veils to disguise a business’ true desire, which is to exclude people of color (“POC”).”); *Voting Laws Roundup: July 2021*, BRENNAN CTR. FOR JUST. (July 22, 2021), https://www.brennancenter.org/our-work/research-reports/voting-laws-roundup-july-2021 [https://perma.cc/7TQS-P239] (“Between January 1 and July 14, 2021, at least 18 states enacted 30 laws that restrict access to the vote. These laws make mail voting and early voting more difficult, impose harsher voter ID requirements, and make faulty voter purges more likely, among other things. More than 400 bills with provisions that restrict voting access have been introduced in 49 states in the 2021 legislative sessions.”).

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There are no easy solutions for colorism. Neither litigation nor policy will eradicate colorism.¹⁸⁴ People must do the work in themselves, and in their families, organizations, and communities—both people of the global majority/people of color and white people.¹⁸⁵ Most people of color who reside in the United States know well what white supremacy in its various forms feels like and how it feels to be discriminated against, traversing obstacle after obstacle to succeed. On their own, people of color can radically alter the trajectory of colorism in the United States and abroad by shunning the color hierarchy birthed out of this nation's virulent history, decrying every instance of color privilege, truly living free of the white gaze,¹⁸⁶ and truly embracing each other as brothers and sisters without regard to the color, shade, or complexion of skin. That is the charge.

¹⁸⁴ Monk, *Unceasing Significance*, *supra* note 3; Staples, *supra* note 3.

¹⁸⁵ Lim, *supra* note 95 (describing the phrase “people of the global majority”).

¹⁸⁶ Susan Kelley, *Morrison Speaks on Evil, Language, and ‘The White Gaze’*, CORNELL CHRON. (Mar. 11, 2013), <https://news.cornell.edu/stories/2013/03/morrison-speaks-evil-language-and-white-gaze> [<https://perma.cc/GF6B-6X5X>] (“When [Toni Morrison] began writing in the 1950s, much of African-American literature and poetry were responding to what Morrison called ‘the white gaze’ – the idea of the white oppressor.”).