No. 18-16375

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MARTIN CALVILLO MANRIQUEZ, JAMAL CORNELIUS, RTHWAN DOBASHI and JENNIFER CRAIG, on behalf of themselves and all others similarly situated

Plaintiffs-Appellees,

v.

ELISABETH DEVOS, in her official capacity as Secretary of the United States Department of Education and THE UNITED STATES DEPARTMENT OF EDUCATION,

Defendants-Appellants.

On Appeal from the United States District Court
for the Northern District of California
No. 17-cv-07210
Hon. Sallie Kim

AMICUS CURIAE **THE LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS-APPELLEES AND IN SUPPORT OF THE AFFIRMANCE OF THE DISTRICT COURT'S PRELIMINARY INJUNCTION**

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rules of Appellate Procedure 26.1 and 29(a)(4)(A), *amicus curiae* the Lawyers' Committee for Civil Rights Under Law certify that amicus is not a publicly held corporation, that amicus does not have parent corporations, and that no publicly held corporation owns ten percent or more of amicus' stock.

STATEMENT OF COUNSEL

Counsel for *amicus curiae* states that no counsel for a party has authored this brief in whole or in part, and no party or counsel for a party has made a monetary contribution intended to fund the preparation or submission of this brief. No person other than amicus or its counsel has made a monetary contribution to the preparation or submission of this brief. FED. R. APP. PRO. 29(a)(4)(E).

Dated: October 10, 2018

Respectfully submitted,

s/ Esha Bandyopadhyay
Esha Bandyopadhyay

Attorney of Record for *Amicus Curiae*

STATEMENT OF INTEREST OF *AMICUS CURIAE*

The Lawyers' Committee for Civil Rights Under Law ("Lawyers' Committee") is a tax-exempt, non-profit civil rights organization founded in 1963 at the request of President John F. Kennedy in order to mobilize the private bar in vindicating the civil rights of African-Americans and other racial and ethnic minorities. The Lawyers' Committee is dedicated to, among other goals, eradicating all forms of racial and ethnic discrimination in higher education.

As a leading racial justice organization, the Lawyers' Committee has a vested interest in challenging fraudulent practices that target racial and ethnic minorities and that deny them the educational and professional opportunities necessary to achieve economic security. Within the context of student debt, the Lawyers' Committee has served as *amicus curiae* in several cases to defend policies designed to relieve students of debt due to the deficient or deceptive practices of for-profit colleges or private loan servicers. These cases include *Commonwealth of Massachusetts v. Department of Education*,[1] *Bauer v. Department of Education,*[2]

[1] *Commonwealth of Mass. v. Department of Education*, No. 1:17-cv-01331-RDM, Dkt. 37-1 (D.D.C. Oct. 3, 2017).

[2] *Bauer v. Department of Education*, No. 1:17-cv-01330-RDM, Dkt. 20-1 (D.D.C. Oct. 3, 2017).

Nelson v. Great Lakes Educational Loan Services,[3] *and Student Loan Servicing Alliance v. Taylor, et al.*[4]

[3] *Nelson v. Great Lakes Educational Loan Services*, No. 18-1531, Dkt. 17 (7th Cir. Jul. 2, 2018).

[4] *Student Loan Servicing Alliance v. Taylor, et al.*, No. 1:18-cv-640, Dkt. 24 (D.D.C. Sep. 11, 2018).

INTRODUCTION AND SUMMARY OF ARGUMENT

For years, Corinthian Colleges, Inc. ("Corinthian") targeted vulnerable individuals, promising a better life by furthering their education but providing neither a legitimate education, nor the ability for these individuals to improve their professional opportunities. To right this wrong, the Department of Education ("Department") adopted and employed a broad debt-forgiveness rule (the "Corinthian Rule"). From 2015 to 2017, under the Corinthian Rule, the Department fully discharged the loans of, and returned any money paid by, certain students targeted and defrauded by Corinthian. Despite wide publication of the Corinthian Rule, in 2017, the Department abruptly changed course, implementing the Average Earnings Rule to calculate the relief to which student borrowers would be entitled. Under the Average Earnings Rule, the Department compares the earnings of Corinthian's students in a particular degree program, based on data from the Social Security Administration ("SSA"), to the average earnings of students who attended peer schools in a similar degree program. Instead of fully discharging Corinthian students' loans, under the new rule, the Department awards relief based on the ratio between those two figures. If a set of Corinthian students earned at least fifty percent of their peer's earnings, the Department denies full relief and shoulders those students with up to ninety percent of their student loans. *See* Appellee Br. at 18–21 (describing Average Earnings Rule's methodology). In May 2018, the district court preliminarily enjoined the Average Earnings Rule, finding that the Department's use of SSA data violated the Privacy Act, 5 U.S.C. § 552(a) (2012).

In deciding whether the district court abused its discretion in granting the preliminary injunction, this Court considers whether equity and the public interest support that injunction. *Winter v. NRDC, Inc.*, 555 U.S. 7, 20 (2008) (listing the elements for granting a preliminary injunction); *Feldman v. Ariz. Sec'y. of State's Office*, 842 F.3d 613, 627 (9th Cir. 2016) ("The balance of the equities and public interest preliminary injunction factors 'merge when the Government is the opposing party.'" (quoting *Nken v. Holder*, 556 U.S. 418, 435 (2009)). As part of that consideration, this Court is free to consider how vacating the district court's injunction would adversely affect people of color and other vulnerable, marginalized peoples. *Cf. Pena-Rodriguez v. Colorado*, 137 S. Ct. 855, 867–68 (2017) ("It must become the heritage of our Nation to rise above racial classifications that are so inconsistent with our commitment to the equal dignity of all persons."). As explained below, the Department's adoption of the Average Earnings Rule—which arbitrarily provides only partial relief to defrauded students—inflicts particular damage on borrowers of color. Section I, *infra*, provides an overview of how, due to the predatory tactics of for-profit institutions, African-American and Latino students are overrepresented at such institutions, including at Corinthian; correspondingly, African-American and Latino students are disproportionately harmed by the exploitative practices and poor outcomes of such institutions. Section II, *infra*, details how African-American and Latino borrowers experience greater levels of financial insecurity, making them especially vulnerable to the Average Earnings Rule's arbitrary reduction in financial relief. Section III, *infra*, highlights the opportunity losses that African-American and Latino borrowers disproportionately face from the reduction in relief as a result of the Average Earnings Rule, and the long-term effects of those losses. And Section IV, *infra*, explains how debt causes significant psychological and physical harm and how the Average Earnings Rule amplifies that harm, particularly for African-American and Latino borrowers. In sum, *amicus curiae* illustrates how the Average Earnings Rule seriously risks exacerbating the already significant racial disparity in education, wealth, and economic mobility.

The district court's preliminary injunction of the Average Earnings Rule forwards our Nation's commitment to the equal dignity of all persons. Reinstating the Average Earnings Rule, even for a short time, would disproportionately impact students of color—meting out financial, emotional, and physical hardship instead of the relief the Department previously promised. While the injunction should be upheld to prevent inflicting harm on all borrowers, the injunction is especially critical to protect borrowers of color. Thus, this Court should affirm the district court's preliminary injunction.

ARGUMENT

I. STUDENTS OF COLOR ARE DISPROPORTIONATELY HARMED BY FOR-PROFIT SCHOOLS' PREDATORY CONDUCT

While meaningful higher education provides disadvantaged students a pipeline to opportunity, many for-profit institutions deliver the opposite result. Extensive evidence has exposed how many for-profit institutions seek financial gain by aggressively targeting the most vulnerable cohorts of students for enrollment, including low-income students of color.[5] Once students enroll, these for-profit institutions deceptively encourage them to take on oversized debt while failing to adequately prepare them for meaningful employment.[6] This predatory conduct has disastrous educational and economic outcomes. Among other things, targeted students experience higher-than-average levels of debt and drop-out rates, but fewer

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[5] *See, e.g.,* Tressie McMillan Cottom, LOWER ED THE TROUBLING RISE OF FOR-PROFIT COLLEGES IN THE NEW ECONOMY 256 (The New Press 2017); Patrick F. Linehan, *Dreams Protected: A New Approach to Policing Proprietary Schools' Misrepresentations*, 89 GEO. L.J. 753, 762 (2001); *see* First Amended Complaint for Civil Penalties, Permanent Injunction, and Other Equitable Relief, *California v. Corinthian*, ¶ 2 (Cal. Sup. Ct., Case No. Case No. CGC-13-534793, filed Feb. 19, 2014) *available at* https://oag.ca.gov/sites/all/files/agweb/pdfs/consumers/first-amendedcomplaint.pdf.

[6] Leadership Conference on Civil & Human Rights, *Gainful Employment: A Civil Rights Perspective* 2 (Oct. 2014), *available at* http://www.protectstudentsandtaxpayers.org/wp-content/uploads/2014/10/Gainful-Employment-Civil-Rights- Perspective_WhitePaper_October2014.pdf [hereinafter *Gainful Employment*].

meaningful job prospects.[7]

Troublingly, the evidence also reveals that the predatory conduct of for-profit institutions has been racialized and has exacerbated existing racial disparities in educational outcomes and economic opportunity. Specifically, for-profit institutions "often target their predatory marketing efforts toward low-income and predominantly minority communities."[8] For example, one for-profit school directed an admissions officer as follows:

> Drive through large housing projects SLOWLY with door sign on. Best times are Friday afternoons and Sunday afternoons.
>
> Meet the managers of low-income and Government housing apartment. Give group presentations.
>
> [Provide] [c]ollege career days on black campuses. Food stamp offices-leave referral cards.
>
> Welfare office-leave referral cards.[9]

Unsurprisingly, these tactics influence student demographics within these programs: twenty-eight percent of African-American students and fifteen percent of Latino students attending four-year programs attend for-profit institutions, compared

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[7] *Id.*

[8] Patrick F. Linehan, *Dreams Protected: A New Approach to Policing Proprietary Schools' Misrepresentations*, 89 GEO. L.J. 753, 762 (2001).

[9] Hearings on Abuses in Federal Student Aid Programs Before the Permanent Subcomm. on Investigations of Senate Comm. on Gov't Affairs, 101st Cong. 64 (1990) (statement of David B. Buckley, Chief Investigator, Permanent Subcomm. on Investigations), quoted in Linehan, *supra* note 8, at 762-63.

to just ten percent of Caucasian students.[10] Similarly, a greater proportion of African-American and Latino students attend two-year for-profit institutions than Caucasian students.[11] Notably, African-American and Latino students constitute forty-one percent of students at for-profit colleges, but only twenty-one percent of all post-secondary enrollments.[12]

The disproportionate enrollment at these types of institutions means that the problematic trends associated with the for-profit education sector—greater debt, higher drop-out rates, and lower job prospects—are disproportionately shouldered by African-American and Latino students. On average, tuition costs are notably higher at for-profit colleges than at public institutions[13] or at private, non-profit institutions.[14] Accordingly, while African-American students take out federal student loans in higher proportions across all types of institutions,[15] African-

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[10] Peter Smith & Leslie Parrish, Center for Responsible Lending, *Do Students of Color Profit from For-Profit College? Poor Outcomes and High Debt Hamper Attendees' Futures,* CENTER FOR RESPONSIBLE LENDING 9 (Oct. 2014), *available at* http://www.responsiblelending.org/student-loans/research-policy/CRL-For-Profit-Univ-FINAL.pdf.

[11] *Id.*

[12] *Gainful Employment*, *supra* note 6.

[13] *Id.* at 10.

[14] *Id.* (showing that after taking grants and scholarships into consideration, four-year for-profit colleges are also more expensive than attending private, non-profit four-year schools).

[15] Mark Huelsman, *The Debt Divide: The Racial and Class Bias Behind the "New Normal" of Student Borrowing* (2015), DEMOS.ORG, at 8-10, 13*, available at*

Americans attending for-profit institutions take out loans at the highest rate (ninety-five percent).[16] And among all postsecondary students of color, African-American and Latino students attending for-profit colleges take out the highest amounts of debt.[17]

Perversely, while for-profit programs are more costly, such institutions tend to spend less on instruction.[18] In 2009, for example, for-profit institutions spent a billion dollars more on marketing than on instruction.[19] And according to a study focused on New York State: while seventy-eight percent of non-profit schools spend at least half of tuition revenue on student instruction, only twenty-nine percent of for-profit schools do so.[20]

In light of this lower instructional spending, it is unsurprising that African-

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http://www.demos.org/publication/debt-divide-racial-and-class-bias-behind-new-normal-student-borrowing.

[16] Ben Miller, *New Federal Data Show a Student Loan Crisis for African American Borrowers* (2017), Center for American Progress, *available at* https://www.americanprogress.org/issues/education-postsecondary/news/2017/10/16/440711/new-federal-data-show-student-loan-crisis-african-american-borrowers/.

[17] *Gainful Employment*, *supra* note 6.

[18] U.S. Senate Health, Educ., Labor and Pensions Comm., 112th Cong., *For-Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success* 81 (July 30, 2012).

[19] *Id.*, at 3, 6.

[20] Yan Cao, *Grading New York's Colleges* (2018), The Century Foundation, *available at* https://tcf.org/content/report/grading-new-yorks-colleges/?agreed=1.

Americans and Latinos attending for-profit colleges are far less likely to graduate than their peers at other schools, with merely twenty percent of African-Americans and thirty-four percent of Latino students successfully completing for-profit programs.[21] In contrast, studies have shown a completion rate of forty percent for African-American students and fifty percent for Latino students at public universities.[22] Even if students of color attending for-profit colleges graduate, they are more likely to face challenges obtaining gainful employment[23] and experience slower wage growth if they do find employment[24] because employers often believe that for-profit schools do not provide adequate training and preparation.[25]

Corinthian, the now defunct for-profit chain where the named Plaintiffs enrolled, was emblematic of these troubling racialized trends. Numerous investigations by state and federal agencies revealed that Corinthian relentlessly pursued students who had limited financial resources, who had fewer opportunities to pursue higher education, and who specifically sought advanced degrees as a path towards greater economic security—namely people of color, veterans, immigrants,

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[21] Smith & Parrish, *supra* note 10.

[22] *Gainful Employment*, *supra* note 6 at 4.

[23] Smith & Parrish, *supra* note 10.

[24] *Id.*

[25] *Id.* at 22.

single parents, and first-generation college students.[26] In fact, Corinthian deliberately targeted African-American communities: Plaintiffs' Amended Complaint notes how in one two-week period in 2014, Corinthian spent over $600,000 to purchase advertisements for its schools on Black Entertainment Television ("BET").[27] Indeed, this racial targeting was largely successful and was reflected in the demographics of Corinthian's student population. While African-American and Latino students comprised only thirty-nine percent of college students nationwide in 2014,[28] they represented fifty-three percent of Corinthian students.[29]

Due to their overrepresentation in Corinthian's programs, African-American and Latino students have disproportionately shouldered the harms associated with Corinthian's unfair, deceptive, and abusive conduct. Corinthian knowingly misled students by promising jobs and high earnings that its degrees simply did not come close to providing.[30] In exchange, Corinthian's students were charged exorbitantly

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[26] David Halperin, *Corinthian Colleges Files Show Big Fees to Google, BET, Lead Generators*, www.republicreport.org (Dec. 7, 2016), *available at* https://www.republicreport.org/2016/corinthian-colleges-files-show-big-fees-to-google-bet-lead-generators/.

[27] *Id.*

[28] Jennifer Ma, *Trends in Community Colleges: Enrollment, Prices, Student Debt, and Completion,* The College Board Research at 6 (April 2016), *available at* https://trends.collegeboard.org/sites/default/files/trends-in-community-colleges-research-brief.pdf.

[29] Dkt. 33 at 14.

[30] *Id.* at 13.

higher tuition costs. For example, the Medical Assistant diploma program at Corinthian's Heald College in Fresno, CA, cost $22,275.15; a comparable program at Fresno City College cost $1,650.15.[31] Ultimately, Corinthian's students—who are disproportionately students of color—now face crippling debt with no means of repayment.

II. THE AVERAGE EARNING RULE DISPROPORTIONATELY IMPARTS IMMEDIATE FINANCIAL HARM ON STUDENTS OF COLOR, WHO NEED RELIEF THE MOST

Because those affected by the predatory practices of for-profit institutions are disproportionately students of color, the Average Earnings Rule and its arbitrary reduction of debt forgiveness disproportionately affects students of color as well. Indeed, the rule denies much needed relief to the groups that, after generations of discriminatory and wealth-stripping policies, are least prepared for unaffordable and unfair student debt. Accordingly, although the Average Earnings Rule is race-neutral on its face, its implementation will disproportionately harm those who need debt forgiveness the most: low-income students of color.

Research shows that students of color face more barriers to repaying their student debt than other groups. For generations, government-sanctioned policies kept African-American families from accumulating wealth through practices such as redlining, restrictive covenants, lending discrimination, and encouraging

[31] *Id.* at 13-14.

neighborhood segregation.[32] In 2016, Caucasian families on average had seven times the wealth of African-American families and five times the wealth of Latino families.[33] It is estimated that African-Americans will need 228 years to acquire the amount of wealth that the average Caucasian-American possesses today.[34] With less wealth than their Caucasian peers, African-American students are more likely than other racial groups to borrow, and to borrow more, for their education.[35] In fact, the average African-American student graduates with about $7,400 more student loan debt than their Caucasian peers.[36]

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[32] *See, e.g.,* Amy Traub, Laura Sullivan, Tatjana Meschede, and Tom Shapiro, The Asset Value of Whiteness: Understanding the Racial Wealth Gap (2017), Demos*, available at* http://www.demos.org/publication/asset-value-whiteness-understanding-racial-wealth-gap; Katie Nodjimbadem, The Racial Segregation of American Cities Was Anything But Accidental (2017), Smithsonian.com, *available at* https://www.smithsonianmag.com/history/how-federal-government-intentionally-racially-segregated-american-cities-180963494/. These racial inequities in wealth persist today and have worsened in recent decades. A recent study noted that between 1983 and 2013, the median African-American household wealth declined from $6,800 to $1,700 and the median Latino household wealth declined from $4,000 to $2,000, while the median Caucasian household wealth increased from $102,000 to $116,800. Asante-Muhammad, D., Collins, C., Hoxie, J., & Nieves, E., The road to zero wealth: How the racial wealth divide is hollowing out America's middle class (September 2017), Institute of Policy Studies, *available at* https://ips-dc.org/wp-content/uploads/2017/09/The-Road-to-Zero-Wealth_FINAL.pdf.

[33] Lynnise E. Phillips Pantin, *The Wealth Gap and the Racial Disparities in the Startup Ecosystem*, 62 St. Louis U. L.J. 419, 421 (2018).

[34] *Id.*

[35] Huelsman, *supra* note 15.

[36] Scott-Clayton, J. & Li, J, Black-white disparity in student loan debt more than triples after graduation (October 2016), The Brookings Institute, *available at*

Moreover, additional barriers widen this gap post-graduation.[37] Once in the workforce, graduates of color have lower wages than their Caucasian peers, even when controlling for education level.[38] And, as discussed earlier, African-American and Latino students are overrepresented in high-cost, low-quality for-profit colleges and universities, causing the issues faced in the for-profit education sector (*e.g.*, higher than average loan balances, higher drop-out rates, and higher default rates) to have a greater impact on students of color.[39, 40]

The Average Earnings Rule exacerbates each of these barriers for students of color who fell prey to the predatory practices of the for-profits. The rule burdens these students with additional student debt that, combined with a lack of wealth and job opportunity, renders it much less likely that students of color will successfully

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https://www.brookings.edu/research/black-white-disparity-in-student-loan-debt-more-thantriples-after-graduation/.

[37] *Id*. at 37 (detailing how, four years after graduation, the debt disparity triples)

[38] Bureau of Labor Statistics data shows that median weekly earnings for Latino students with a Bachelor's degree are only 83 percent of what Caucasians earn. For African-American Bachelor's degree holders, their weekly median earnings are only 79 percent of what Caucasians earn. Bureau of Labor Statistics, Median weekly earnings by educational attainment in 2014 (published 2015), *available at* https://www.bls.gov/opub/ted/2015/median-weekly-earnings-by-education-gender-race-and-ethnicity-in-2014.htm.

[39] Gainful Employment, *supra* note 6.

[40] Smith & Parrish, *supra* note 10. *See also* Miller, *supra* note 16 ("Nowhere is the default problem worse than for individuals who attended a private for-profit college but didn't finish . . . . 12 years after first entering college, three-quarters of African American students who borrowed and dropped out of a private for-profit college had defaulted on a federal student loan.").

repay their loans. And, as stated above, these students are also less likely to have high paying jobs because of the for-profit institutions' high drop-out rate and documented failure to provide a meaningful education.[41] Accordingly, if the Average Earnings Rule stands, people of color will suffer immediate, disproportionate financial harm.

III. THE AVERAGE EARNINGS RULE DISPROPORTIONATELY FORECLOSES FUTURE OPPORTUNITY FOR ECONOMIC MOBILITY FOR STUDENTS OF COLOR

The Average Earnings Rule not only causes immediate harms to students of color, it also prevents those students from capitalizing on opportunities for economic mobility that would otherwise be available. As discussed above, African-American and Latinos are about twice as likely to have student debt as Caucasians.[42] ***Ninety-six*** percent of students of color who do graduate from for-profits leave owing money, and they typically carry twice the debt load of students from more traditional

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[41] Gainful Employment, *supra* note 6.

[42] Caroline Ratcliffe & Signe-Mary McKernan, Forever in Your Debt – Who Has Student Loan Debt, and Who's Worried? (2013), Urban Institute, *available at* https://www.urban.org/sites/default/files/publication/23736/412849-Forever-in-Your-Debt-Who-Has-Student-Loan-Debt-and-Who-s-Worried-.PDF; Miller, *supra* note 16.

schools.[43] And unlike other types of debt, it is almost impossible to discharge student loans through bankruptcy.[44]

The monetary resources allocated to loan repayment impact individuals' ability to make short-term savings and long-term investments, as well as the option to pursue further education and/or save for homeownership.[45] The reduction in debt forgiveness as a result of the Average Earnings Rule therefore renders it almost impossible for students of color to accumulate wealth,.[46] leaving these students even worse off than before: with piling debt that forecloses any future opportunity for economic mobility.

Because greater education is typically correlated with increased wealth,[47] the future is even more dire for those unable to graduate. Due to generations of

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[43] Astra Taylor and Hannah Appel, Subprime Students: How For-Profit Universities Make a Killing By Exploiting College Dreams, (2014), Mother Jones, *available at* https://www.motherjones.com/politics/2014/09/for-profit-university-subprime-student-poor-minority/.

[44] Brendan Baker, *Deeper Debt, Denial of Discharge: The Harsh Treatment of Student Loan Debt in Bankruptcy, Recent Developments, and Proposed Reforms*, 14 U. Pa. J. Bus. L. 1213 (2012).

[45] Tom Allison, Financial Health of Young America: Measuring Declines between Baby Boomers & Millennials (2017), Young Invincibles, *available at* http://younginvincibles.org/wp-content/uploads/2017/01/FHYA-Final2017-1.pdf.

[46] Rohit Chopra, Student Debt Domino Effect?, Consumer Financial Protection Bureau, (May 9, 2013), *available at* https://www.consumerfinance.gov/about-us/blog/student-debt-domino-effect/.

[47] Sourobh Das, The Connection Between Education and Wealth (2017), Iamwire, *available at* http://www.iamwire.com/2017/08/education-wealth-relation/156154.

discretionary practices, students of color are already more likely to be affected by poverty, violence, the effect of "toxic stress," and inadequate housing and transportation,[48] resulting in lower rates of graduation. In 2015, 36.2% of Caucasian students had completed four years of college, while only 22.5% of African-American students and 15.5% of Latino students had achieved the same.[49] As stated above, African-Americans and Latinos attending for-profit colleges are even less likely to graduate than their peers at other schools.[50] Because piling student debt as a result of the Average Earnings Rule makes it impossible to finance future education, the rule exacerbates the existing achievement gap between students of color and Caucasian students, and only serves to perpetuate the gap.

Statistics relating to home ownership are also indicative of racial disparity, and are also affected by the denial of debt forgiveness. Property ownership has long been a common way for Americans to build wealth: a down payment on a home early in one's life often results in paying off a mortgage earlier and saving for

[48] Annie E. Casey Found., *Race for Results: Building a Path to Opportunity for All Children, Kids Count Policy Report* 3 (2014), *available at* https://www.aecf.org/m/privy/Embargoed-2017RaceforResults-Sp.pdf.

[49] Mitchell Wellman, Report: The Race Gap in Higher Education is Very Real (2017), USA Today, *available at* https://www.usatoday.com/story/college/2017/03/07/report-the-race-gap-in-higher-education-is-very-real/37428635/.

[50] *See supra* § I.

retirement longer.[51] However, home-ownership rates of African-American and Latinos lag dramatically behind that of the Caucasians.[52] Years of discriminatory housing and lending policies, including the subprime mortgage lending crisis, have contributed to wide disparity in those able to own a home. Today, forty-one percent of African-American households own their homes, compared to seventy-one percent of Caucasian households.[53] The disparity in home ownership is significantly exacerbated when student debt is a factor. According to Pew Research Center and Rutgers University, twenty-five to forty percent of borrowers report postponing major purchases such as homes and cars.[54] Additionally, student debt can impede the ability to qualify for a mortgage, further limiting economic mobility.[55]

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[51] Sarah Holder, How Student Loans Are Killing Homeownership (2018), Citylab, *available at* https://www.citylab.com/equity/2018/01/student-loans-are-killing-homeownership/551300/.

[52] Gillian B. White, Why African-Americans and Hispanics Have Such Expensive Mortgages (2016), The Atlantic, *available at* https://www.theatlantic.com/business/archive/2016/02/blacks-hispanics-mortgages/471024/.

[53] Dedrick Asante-Muhammad, Chuck Collins, Josh Hoxie, and Emanuel Nieves, The Ever-Growing Gap: Without Change, African-American and Latino Families Won't Match White Wealth for Centuries (2016), CFED and the Institute for Policy Studies, *available at* https://ips-dc.org/wp-content/uploads/2016/08/The-Ever-Growing-Gap-CFED_IPS-Final-2.pdf.

[54] Virginia Myers, The high cost of living with student debt (2015), On Campus, Vol.35, No. 1, *available at* https://www.aft.org/sites/default/files/periodicals/oc_fall2015.pdf.

[55] Chopra, *supra* note 46.

Consequently, many students of color are left with substantial debt and without sufficient means for repayment. It is, therefore, not surprising that African-American and Latino student-borrowers experience higher rates of default than Caucasian borrowers.[56] Research by the Washington Center for Equitable Growth found that zip codes with higher delinquency rates of student loans also have higher shares of African-American or Latino households.[57] Indeed, four years after graduating with a bachelor's degree, Latino students are twice as likely to have defaulted on their loans, while African-American students are three and a half times more likely.[58] For the defaulters, their credit is damaged and the entire balance of their loan plus interest becomes immediately due.[59] The defaulters also lose eligibility for additional federal student aid and risk have their tax refunds, federal benefits, or wages seized.[60] These harsh consequences strip wealth from families and communities that are already economically disadvantaged and further limit any hope of future economic mobility.

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[56] Miller, *supra* note 16.

[57] Marshall Steinbaum and Kavya Vaghul, How the student debt crisis affects African Americans and Latinos, Washington Center for Equitable Growth (Feb. 17, 2016), *available at* http://equitablegrowth.org/how-the-student-debt-crisis-affects-african-americans-and-latinos/.

[58]Clayton, *supra* note 36.

[59] U.S. Department of Education, "What Are the Consequences of Default", *available at* https://studentaid.ed.gov/sa/repay-loans/default#consequences; Smith & Parrish, *supra* note 10.

[60] *Id.*

The Average Earnings Rule not only creates the immediate problem of unforgiven debt, but also forecloses the opportunity for economic mobility in the future. In other words, the Average Earnings Rule perpetuates a vicious cycle of racial wealth disparity, the very cycle students sought to escape by obtaining further education.

IV. THE AVERAGE EARNINGS RULE WILL LIKELY CAUSE DISPROPORTIONATE LONG-TERM EMOTIONAL AND PHYSICAL HARM TO STUDENTS OF COLOR

Beyond the financial impacts of the Average Earnings Rule, Corinthian's victims face long-term emotional and physical difficulties from the reduction in available relief. It is widely acknowledged that increased debt adversely affects mental and physical health. Because the Average Earnings Rule disproportionately increases the debt of students of color, those students disproportionately feel the related mental and physical harms associated with that debt as well.

It is unsurprising that debt is correlated with stress and anxiety. One study found that people with insurmountable debt have elevated rates of neurosis,[61]

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[61] Neurosis is "a psychological or behavioral disorder in which anxiety is the primary characteristic . . . ." *neurosis*, STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006).

psychosis,[62] alcohol dependence, and drug dependence.[63] Another study of 8,400 young adults found that "high financial debt relative to available assets is associated with higher perceived stress and depression."[64] In fact, "several empirical studies have found that financial strains such as personal debt and home foreclosures are strong predictors of depression, general psychological distress, mental disorders, and suicidal ideation and behavior."[65]

Psychiatrists routinely consider a history of financial problems when diagnosing several mental illnesses. The Diagnostic and Statistical Manual of Mental Illness, Fifth Edition ("DSM-5"), the authoritative text on clinical diagnosis of mental illness,[66] recommends that professionals consider financial hardship when diagnosing at least three illnesses: Major Depressive Disorder (MDD), Generalized

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[62] Psychosis is "a mental and behavioral disorder causing gross distortion or disorganization of a person's mental capacity, affective response, and capacity to recognize reality." *psychosis*, STEDMAN'S MEDICAL DICTIONARY (28th ed. 2006).

[63] Rachel Jenkins et al., *Debt, Income, and Mental Disorder in the General Population*, 38 PSYCHOL MED. 1485 (2008).

[64] Elizabeth Sweet et al., *The High Price of Debt: Household financial debt and its impact on mental and physical health*, 91 SOC. SCI. MED. 94 (2013).

[65] *Id.* at 95 (citing Sarah Bridges & Richard Disney, *Debt and depression*, 29 J. HEALTH ECON. 388 (2010); Sarah Brown et al., *Debt and distress: Evaluating the psychological cost of credit*, 26 J. OF ECON. PSY. 642 (2005); Jenkins, *supra* note 63.)

[66] AMERICAN PSYCHIATRIC ASSOCIATION, DIAGNOSTIC AND STATISTICAL MODEL OF MENTAL DISORDERS (5th ed. 2013), *available at* https://dsm.psychiatryonline.org/doi/book/10.1176/appi.books.9780890425596.

Anxiety Disorder (GAD), and Post-Traumatic Stress Disorder (PTSD).[67] In other words, individuals facing unrecoverable debt or financial ruin are more likely to face depression and anxiety, as well as lasting emotional effects.

The stress associated with substantial debt and economic instability is also correlated with physical health issues. Studies have found that debt is correlated with high blood pressure,[68] obesity,[69] and general illness.[70] And a survey of 1,546 debt charity clients found that a significant portion of those seeking debt assistance had suffered physical harm because of their debt.[71] Of those surveyed, seventy-one percent experienced insomnia, seventy percent experienced low energy, and sixty-five percent experienced headaches.[72] In fact, only four percent reported no physical

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[67] *Id.* at § II (discussing diagnostic criteria for various disorders)

[68] Sweet, *supra* note 64, at 94 ("[R]eporting high financial debt relative to available assets is associated with . . . higher diastolic blood pressure.").

[69] Matthias Keese & Hendrik Schmitz, *Broke, Ill, and Obese: The Causal Effect of Household Debts on Health*, RUHR ECON. PAPERS, No. 234 (2010) ("[A]ll debt measures [are] strongly correlated with health satisfaction, mental health, and obesity.")

[70] Melissa B. Jacoby, *II. Health, Law, and Everyday Life: Does Indebtedness Influence Health? A Preliminary Inquiry*, 30 J.L. MED. & ETHICS 560, 561 ("Both directly and indirectly, indebtedness may affect the debtor's access to preventive health care and the debtor's ability to make health-maximizing choices and to meet ongoing health needs.")

[71] STEPCHANGE, STATISTICS YEARBOOK: PERSONAL DEBT (2014), *available at* https://www.stepchange.org/Portals/0/documents/media/reports/statisticsyearbooks/StepChangeDebtCharityStatisticsYearbook2014.pdf.

[72] *Id.* at 24.

health symptoms as a result of such debt.[73] More alarmingly, these symptoms were not minor—over forty-seven percent of those surveyed sought medical treatment.[74]

People of color more acutely feel these mental and physical ramifications. African-American and Latino families are more likely to live in concentrated poverty and suffer from persistent economic insecurity.[75] Piling debt on these families only sharpens the negative effects of stress. Moreover, African-Americans already have an elevated risk of high blood pressure,[76] obesity,[77] and depression.[78] Any additional negative health effects suffered by students of color as a result of mounting debt are therefore on top of an already elevated base-line of health problems. In addition, parents of color will pass these harms down to their

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[73] *Id.* at 45.

[74] *Id.* at 46.

[75] Paul Jargowsky, *Concentration of Poverty in the New Millennium: Changes in Prevalence, Composition, and Location of High Poverty Neighborhoods*, THE CENTURY FOUNDATION AND RUTGERS CENTER FOR URBAN RESEARCH AND EDUCATION 5 (Dec. 2013*), available at* https://tcf.org/assets/downloads/Concentration_of_Poverty_in_the_New_Millennium.pdf; *see also supra* § II.

[76] Daniel T. Lackland, *Racial Differences in Hypertension: Implications for High Blood Pressure Management*, 348 AM. J. MED. SCI. 135, 135 (2014).

[77] Cassandra Arroyo-Johnson & Krista D. Mincey, *Obesity epidemiology trends by race/ethnicity, gender, and education: National Health Interview Survey, 1997–2012*, 45 GASTROENTEROL CLINICS OF N. AM. 571, 571 (2016).

[78] Dorothy D. Dunlop et al., *Racial/Ethnic Differences in Rates of Depression Among Preretirement Adults*, 93 AM. J. OF PUB. HEALTH 1945, 1945 (2003).

children.[79] Even if a parent can escape crippling debt before his or her child reaches adulthood, that child may be adversely affected for life.[80]

Corinthian's victims face more than financial hardship; they face psychological and physical difficulties as a result of Corinthian's predatory conduct. And because the Average Earnings Rule disproportionately affects students of color, the rule exacerbates the mental and physical harms suffered by students of color as a result of the debt. Indeed, the Average Earnings Rule's disproportionate financial effect on students of color, combined with the elevated base-line risk for psychological and physical harm among students of color, creates a perfect storm of debt-related illness.

CONCLUSION

The Average Earnings Rule disproportionately impacts students of color, causing them financial, emotional, and physical harm. Under the principles of equity and in light of the public interest—both of which eschew racial inequality—the district court's injunction should be upheld. For the foregoing reasons, amicus urges this Court to consider the racial implications of the Average Earnings Rule and uphold the preliminary injunction.

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[79] INSIGHT CENTER FOR COMMUNITY ECONOMIC DEVELOPMENT, DIVERGING PATHWAYS: HOW WEALTH SHAPES OPPORTUNITY FOR CHILDREN 6–9 (2011) (discussing the early impact of poverty on children).

[80] *Id.*

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CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of October, 2018, ***AMICUS CURIAE*** **THE LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS-APPELLEES AND IN SUPPORT OF THE AFFIRMANCE OF THE DISTRICT COURT'S PRELIMINARY INJUNCTION** was filed electronically with the Clerk of Court using the CM/ECF system, which shall send notice to all counsel of record.

s/ Esha Bandyopadhyay

Esha Bandyopadhyay

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Signature of Attorney or Unrepresented Litigant /s/ Esha Bandyopadhyay

Date 10/10/2018

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