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LETTER/OP-ED

Disproportionate Impact of COVID-19 on Lower-Income, Minority Populations

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At this writing, we have no cure, vaccine, or fully effective treatment for the pandemic caused by the novel coronavirus (SARS-CoV-2). Singapore, South Korea, China, Taiwan, and Hong Kong used a variety of technology-based contact tracing methods to mixed effect; these tools have not been widely applied in the United States due to resistance to government surveillance and an emphasis on personal privacy.[1] While heightened use of standard methods of contact tracing may have been helpful, the unusual extent to which asymptomatic individuals may transmit infection poses significant challenges to traditional approaches.[2] Currently, the major tool we have utilized to combat the pandemic has been mitigation, by limiting person-to-person transmission. While this tool is effective, it is a "blunt instrument" with disparate effects on higher-income versus lower-income populations (the latter disproportionately consisting of racial minorities). This disparity creates tension between the divergent interests of these groups, and raises important ethical concerns. Legal strategies for ameliorating these differential impacts are further complicated by conflicting government responses at the federal, state, and local levels.

Exposure to the novel coronavirus can occur in workplaces as well as in social and residential settings. Exposure may be reduced by eliminating travel and gatherings, closing schools and non-essential businesses, and enforcing the use of face masks. Many of the businesses that were shut down or permitted to operate only in a limited capacity, such as bars or restaurants, have operating models that involve close, indoor person-to-person interaction, the primary means by which the virus spreads. Closing or restricting these businesses, however, disproportionately affects lower-income individuals, who comprise the bulk of their employees.[3] Higher-income individuals are more likely to have jobs adaptable to distance work, which both enables those individuals to keep their jobs and reduces their risk of coronavirus exposure.[4]

This unequal impact creates difficult challenges for government officials striving simultaneously to preserve personal liberty, protect public health, and maintain a stable economy. These interests are interrelated and often in conflict. Governors and other state officials across the country have implemented emergency stay-at-home and shelter-in-place measures and now must decide whether to continue or to relax these orders.[5] As Rhode Island Governor Gina Raimondo said, "[There are] no good options. I'm choosing between bad option number one and bad option number two. And all of the work that we're doing is to make this a bit less bad for people: minimize death, minimize the virus, minimize economic hardship."[6] Although the federal government has only limited power to implement broad mandates, the White House has set out parameters for gradually ending social distancing measures; the president at times has been at odds with those recommendations.[7]

Moreover, many states, such as Georgia and Arizona, have opted to disregard these guidelines, choosing instead to reopen on a much broader scale in an attempt to revive businesses and reduce restrictions on individuals. Experts feared that large-scale reopenings would lead to more COVID-19 infections and possibly overload the health care system, concerns which to a significant degree have proven correct.[8] For lower-income workers, such reopenings may restore their livelihoods but endanger their lives, a dilemma faced primarily by lower-income, minority individuals, as evidenced by New York City data indicating that several neighborhoods with lowest median household incomes also have highest rates of COVID-19 infection.[9] According to census data, the residents of those neighborhoods are predominantly people of color. Nationally, Blacks have rates of infection 2.6 times higher than Whites, and Hispanics/Latinos have 2.8 times higher rates of infection than Whites. Both groups have rates of hospitalization almost 5 times higher than Whites.[10] Of the 945 cases and 27 deaths reported in Milwaukee County, Wisconsin, in early April 2020, al-

most half of the cases and 81% of the deaths involved Blacks, who comprise 26% of the county population.[11] This imbalance may be further exacerbated by hospital triage plans that deprioritize patients with "disproportionate burdens of pre-existing comorbidities."[7]

At the federal level, the Coronavirus Aid, Relief, and Economic Security (CARES) Act provided increased unemployment benefits and direct payments to ameliorate the pandemic's differential impact; in many cases, this support exceeded the income individuals otherwise would have received. While these strategies are well-intentioned and overall have had a positive impact, their implementation had several limitations. Low-income households may not have received CARES payments because they earned but did not report a cash income. Disabled individuals over 17 years of age were not eligible for direct payment, and their caretakers were ineligible to receive it on their behalf. The CARES Act also excluded payments for households without Social Security numbers, which renders ineligible the 800 000 "Dreamers" (young undocumented immigrants who were brought to the United States as children) and their families.[12] Notably, even if the federal government had emulated other countries and guaranteed at least a significant percentage of people's incomes, doing so may have helped small business employers and workers in the short term, but not over the longer term should those businesses fail due to pandemic restrictions.

The legal considerations regarding reopening businesses involve important overlap between the federal and state governments. The federal government is broadly empowered to regulate interstate commerce; federal agencies may issue influential guidance; and the president may declare national emergencies. In accordance with the Constitution's Tenth Amendment, non-enumerated powers, including police power, reside with the states. In a pandemic response, of necessity the federal government generally provides much of the funding, since states are required to balance their budgets. Although these entities ideally would coordinate their responses, such efforts are derailed when there is conflict between the federal government and states and localities, as in our current situation.[13] In the absence of a coordinated national response, states resorted to independently acquiring essential equipment and collaborating with neighboring states; while these state actions may have been necessary, they also created complications that perhaps could have been avoided with more robust national leadership.[7]

It is difficult to satisfactorily resolve the ethical dilemma of safeguarding people from medical harm, while neither stripping them of the ability to safely earn their living nor intensifying a global economic crisis. Addressing this problem is made even more challenging by the unequal effects of the pandemic on lower-income, minority individuals and households. Writer Joe Pinsker observed, "American inequality produces clusters of disadvantage."[3] Just as lower-income minority individuals are more at risk for contracting the novel coronavirus, their health disadvantage is compounded by the disproportionate effects of the pandemic on their livelihoods. With recent vaccine news enabling us finally to glimpse the possible end of the pandemic, we must also commit at that time to look back at the many different responses employed and their outcomes, so as to identify best practices for our society overall and for its most vulnerable communities.

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