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# **Color in Line: Discrimination Against People of Color at the Deposit Window**

MARK B. GREENLEE\*

## **I. INTRODUCTION**

Far too often, people of color standing in line in a bank lobby experience discriminatory treatment when they arrive at the deposit window. This article analyzes consumer complaints filed with the Consumer Financial Protection Bureau (“CFPB”) alleging discrimination on the basis of race, color, ethnicity, and national origin involving checking and savings accounts, check cashing, and money services. The article reviews current law and proposed legislation and calls for hearings to craft an Equal Deposit Opportunity Act to prohibit discrimination in checking, savings, check cashing, and money service transactions.

This article highlights evidence of racial discrimination in three types of interactions at banking institutions: core services, extra services, and manner of service. Core services involve account holders opening or closing accounts, withdrawing money from accounts, or making payments to a third party. Core services also include non-account holders engaging in check cashing transactions. Extra services involve discretionary actions by a banking institution, such as waiving overdraft fees, imposing or lifting holds on checks, re-crediting accounts for charges, or providing notary or signature guarantee services. The manner of service is the way in which service is provided by a banking institution—the words used, body language, tone, attitude, and speed of the bank representative who processes a transaction. Racial discrimination can creep into all three types of interactions at banking institutions.

This article expands upon the article *Banking While Black: It is Past Time for an Equal Deposit Opportunity Act*, published in

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2023.<sup>1</sup> That article proposed federal legislation that would make it unlawful for a federally-insured depository institution or state-licensed check casher to discriminate against any person on the basis of race, color, ethnicity, national origin, citizenship, or immigration status when providing deposit, check, or currency services.<sup>2</sup> The proposal included authorization of a private right of action with a monetary penalty of up to \$10,000 per violation.<sup>3</sup> The passage of such legislation would remedy a gap in federal law. While there is federal anti-discrimination law on the lending side of the banking business, federal law provides woefully inadequate redress for racial discrimination on the deposit side of the banking business. Congress should remedy this situation.

This article proceeds as follows. Part II touches on social media posts and civil rights litigation alleging racial discrimination involving deposit and check cashing services since the publication of *Banking While Black Part I*. Part III covers bank statements made in response to specific allegations of racial discrimination and general bank policies, statements, and announcements that address racial discrimination. Part IV reviews current federal law, as well as legislation which has been proposed to address the lack of federal anti-discrimination law applicable to deposit and other financial services. Part V analyzes complaints filed with the CFPB alleging racial discrimination by depository institutions involving checking or savings accounts, check cashing, and other money services. Part VI deals with the authority of the CFPB to prohibit racial discrimination involving deposit services under its authority to prohibit unfair, deceptive, or abusive acts or practices. Part VII addresses the false assumption that online banking will guarantee racial neutrality in banking transactions. Part VIII calls upon Congress to conduct hearings with testimony by CFPB and other bank regulatory officials about complaints filed with the agency alleging racial discrimination involving deposit, check cashing, and other money services. Part IX recommends parameters for an Equal Deposit Opportunity Act, which would specifically prohibit racial discrimination in the provision of deposit, check cashing, and money services.

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1. Mark B. Greenlee, *Banking While Black: It Is Past Time for an Equal Deposit Opportunity Act – Part I*, 140 BANKING L. J. 3 (2023) [hereinafter *Banking While Black Part I*]; Mark B. Greenlee, *Banking While Black: It Is Past Time for an Equal Deposit Opportunity Act – Part II*, 140 BANKING L. J. 67 (2023) [hereinafter *Banking While Black Part II*].

2. *Id.* at 76–78.

3. *Id.* at 82.

## II. RECENT SOCIAL MEDIA POSTS AND CIVIL RIGHTS LITIGATION

Recent social media posts and civil rights litigation describe tellers, sales associates, and managers discriminating against people of color who attempt to engage in legitimate deposit, check, and money transactions at banking institutions.

### A. Recent Social Media Posts

The experience of racial discrimination of bank customers may be observed through some social media posts. The article *Banking While Black Part I* described newspaper and social media posts from 2020 to 2022, alleging racial discrimination by banks engaged in deposit, check cashing, and currency transactions.<sup>4</sup> These stories involved high-profile people, such as Ryan Coogler, director of the Black Panther movies, and Baby Storme, a Black musician with over one million TikTok followers,<sup>5</sup> as well as ordinary people, such as Jabari Bennett and Joe Morrow.<sup>6</sup> A few examples from 2023 and 2024 appear in the following screenshots of posts from Instagram, Facebook, and YouTube. The posts describe

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4. *Banking While Black Part I*, *supra* note 1 *passim*.

5. See, e.g., Johnny Diaz & Michael Levenson, 'Black Panther' Director Ryan Coogler Mistaken for Bank Robber in Atlanta, N.Y. TIMES (Mar. 9, 2022), <https://www.nytimes.com/2022/03/09/arts/ryan-coogler-bank-america.html> [<https://perma.cc/U93G-MHGZ>] (describing how bank employees called the police when Coogler attempted to withdraw cash from his account); TMZ, 'Black Panther' Director Ryan Coogler Bank Incident on Police Body Cam Video, YOUTUBE (Mar. 9, 2022), <https://www.youtube.com/watch?v=s8wOnkEbWyl> [<https://perma.cc/ESZ5-LHMH>] (showing the police handcuffing and detaining Coogler); The Shade Room, Citibank Called Police on Black Singer over \$30K Check from Her Father! | TSR Investigates, YOUTUBE (Mar. 29, 2022), <https://www.youtube.com/watch?v=LC46J6djSg> [<https://perma.cc/NA64-TFTC>] (describing the experience of Baby Storme when bank refused to deposit check, confiscated the check, and called the police).

6. See, e.g., Emily Flitter, 'Banking While Black': How Cashing a Check Can Be a Minefield, N.Y. TIMES (June 18, 2020), <https://www.nytimes.com/2020/06/18/business/banks-black-customers-racism.html> [<https://perma.cc/6YRK-FX2H>] (detailing how a bank manager threatened to call the police when Jabari Bennett tried to withdraw money to purchase a car); Eric Rasmussen, 'Banking While Black': Police Video Shows How Cashing a Paycheck Led to Handcuffs, KSTP NEWS (Jan. 10, 2022, 1:22 PM) <https://kstp.com/kstp-news/top-news/banking-while-black-police-video-shows-how-cashing-a-paycheck-led-to-handcuffs/> [<https://perma.cc/QSQ2-DXGK>] (describing arrest of Joe Morrow as he tried to cash his paycheck); Eric Rasmussen, U.S. Bank CEO Issues Apology After 5 INVESTIGATES 'Banking While Black' Report, KSTP NEWS (Jan. 10, 2022, 12:23 PM), <https://kstp.com/kstp-news/top-news/us-bank-ceo-issues-apology-after-5-investigates-quotbanking-while-black-quot-report/> [<https://perma.cc/7K94-9GN9>] (describing 2021 U.S. Bank settlement and apology to the community).

interactions with bank tellers and managers who are alleged to have treated Black customers with suspicion, refused to provide services, and, often, called the police when the customers attempted to engage in legitimate deposit and check cashing transactions.

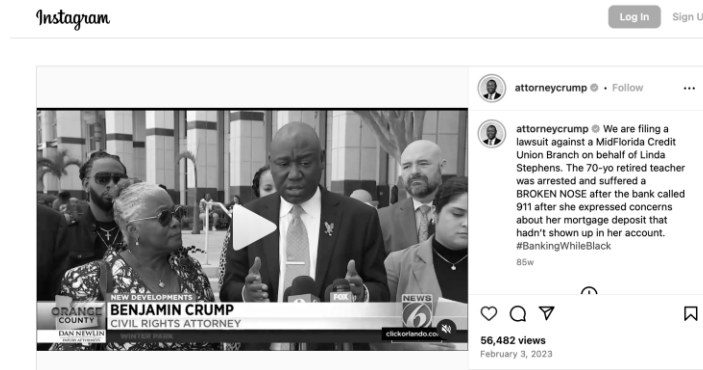


FIGURE 1: Instagram post concerning Linda Stephens and MidFlorida Credit Union<sup>7</sup>

The Instagram post provides local news coverage about the filing of a lawsuit on behalf of retired teacher Linda Stephens.<sup>8</sup> Standing with Ms. Stephens outside the courthouse, Attorney Ben Crump said, “this is a Black grandmother who was a victim of banking while Black. We have to fight racism and discrimination wherever it rears its ugly head.”<sup>9</sup>

The legal complaint alleged that Ms. Stephens deposited \$600 at the ATM of MidFlorida Credit Union and received a receipt reflecting the deposit. The next day, she noticed that the deposit had not been posted to her account. Ms. Stephens immediately went to the bank with her receipt. She was told that the ATM was broken. She also was told that the deposit would be posted within a few hours; if not, she could return to fill out a dispute form to resolve the matter. As instructed, she returned a few hours later to complete a dispute form, which she was told would result in the funds posting to her account in a few hours. Ms. Stephens waited the rest of that day and the next morning, anxiously checking her account without seeing the \$600 deposit. In her courthouse steps remarks, Ms.

7. Ben Crump (@attorneycrump), *Linda Stephens at MidFlorida Credit Union*, INSTAGRAM (Feb. 3, 2023), [https://www.instagram.com/reel/CoNP6kzPy0S/?img\\_index=attorneycrump](https://www.instagram.com/reel/CoNP6kzPy0S/?img_index=attorneycrump) [https://perma.cc/7CEB-J6QM] (alleging an incident of racism in banking on April 13, 2021).

8. *Id.*

9. *Id.*

Stephens said, “I waited all day, checking my account online. There was NOTHING indicating that they had placed that money, credited the money to my account.”<sup>10</sup>

According to her complaint, Ms. Stephens returned to the MidFlorida office the next day and demanded her money, and a MidFlorida employee confirmed with the ATM maintenance man that he had found her \$600 in the machine.<sup>11</sup>

Ms. Stephens’s complaint further stated:

Ms. Stephens was very distraught and vocally concerned about the status of her \$600 as she was relying on that money to pay her mortgage. The branch manager then came into the office and demanded that Ms. Stephens calm down. Ms. Stephens again pleaded with MidFlorida employees, requesting access to the money she deposited. Instead of assisting her with the transaction, the branch manager called the police on Ms. Stephens.

Within minutes, a Bartow Police officer arrived on the scene and stood silently behind Ms. Stephens. After a few moments, another Bartow Police officer rushed into the office with his hand on his gun, stating that he thought somebody on the phone said somebody had a gun. At this point, Ms. Stephens was afraid for her life. Ms. Stephens told the officers that she just wanted access to her funds which she deposited into the ATM two days prior. Ms. Stephens also explained that she did not have a gun, never owned a gun, and had never even fired a gun. A few moments later, the police officer placed Ms. Stephens under arrest and led her out to his car. She was kept in the hot police car in 90-degree heat for 20 minutes while the officers met outside. While all of this was going on, none of the MidFlorida employees said a word in Ms.

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10. *Id.*

11. *See* Complaint & Jury Demand at 3–4, *Stephens v. MidFlorida Credit Union*, No. 2023-CA-000910-O (Fla. 9th Cir. Ct. Feb. 2, 2023) [hereinafter *Stephens Complaint*] [<https://perma.cc/J6ZF-69KU>] (describing the sequence of events).

Stephens' defense or tried to explain the situation to the police officers.<sup>12</sup>

The responding officers drove Ms. Stephens to the Bartow Police Department. Later that day, she was transported to the Sheriff's Department, where it is alleged that officers broke her nose, stripped her naked, and left her nude on a cement floor for the night. The next day, she was released from jail. Later, the state attorney dismissed the criminal charges against Ms. Stephens.

On the courthouse steps, Ms. Stephens said, "All because I wanted my money I was traumatized, humiliated, and dehumanized."<sup>13</sup> The lawsuit appears to remain pending.



FIGURE 2: Facebook post concerning Charlotte Warren and Bank of America<sup>14</sup>

12. *Id.* at 4–11 (claiming discrimination in place of public accommodation, intentional infliction of emotional distress, negligence, conversion, and fraud).

13. Ben Crump (@attorneycrump), *Linda Stephens at MidFlorida Credit Union*, INSTAGRAM (Feb. 3, 2023) [https://www.instagram.com/reel/CoNP6kzPy0S/?img\\_index=attorneycrump](https://www.instagram.com/reel/CoNP6kzPy0S/?img_index=attorneycrump) [https://perma.cc/7CEB-J6QM] (alleging an incident of racism in banking on April 13, 2021).

14. Ben Crump (@attorneycrump), *Charlotte Warren Attempted to Deposit Her \$24K Check From the U.S. Treasury at Bank of America – but They Wrongly Held it for 50 Days & Closed Her Account!*, FACEBOOK (July 13, 2023) <https://www.facebook.com/attorneycrump/videos/charlotte-warren-attempted-to-deposit-her-24k-check-from-the-us-treasury-at-bank/1348008805777734/> [https://perma.cc/JVQ8-L4S8] (showing an incident alleged to have occurred on Apr. 17, 2023).

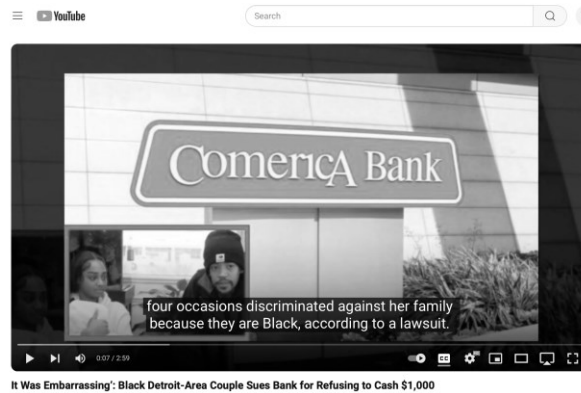


FIGURE 3: YouTube post concerning Shanquese Jones, Bryan Craft, and Comerica Bank<sup>15</sup>

The Facebook post presents a local news story concerning a lawsuit filed by Charlotte Warren against Bank of America, alleging intentional racial discrimination involving the opening of a checking account, the hold placed on a check deposited to the new account, and the bank's subsequent refusal to return the check or funds.<sup>16</sup> The controversy involved a check for \$24,158 issued to Ms. Warren by the U.S. Treasury as partial payment for Social Security disability benefits. Pursuant to federal law and Bank of America policy, funds from a Treasury check are usually available no later than the first business day after the day of deposit.<sup>17</sup> The day after Ms. Warren deposited the check into her checking account, she went to the branch office with her daughter to ask why the funds were not available. The bank staff said it was investigating and explained that holds were placed on accounts when the bank suspects the funds stemmed from illegal drug activities. In the local news interview, Ms. Warren said a bank manager told her a possible reason for the hold on her funds: "The biggest one that got me was [when the manager said,] 'sometimes they have drug deals.'" Her daughter added, "[o]r criminal activities linked to large amounts."<sup>18</sup>

15. Atlanta Black Star, *It Was Embarrassing': Black Detroit-Area Couple Sues Bank for Refusing to Cash \$1,000*, YOUTUBE (Feb. 27, 2024), <https://www.youtube.com/watch?v=HxGsXLWYkV0> [https://perma.cc/R CJ4-BPEQ] (alleging incidents to have occurred from Nov. 21, 2023 through Jan. 12, 2024).

16. Ben Crump, *supra* note 14.

17. Expedited Funds Availability Act § 603(2)(A), 12 U.S.C. § 4002(a)(2)(A); Regulation CC, 12 C.F.R. § 229.10; BANK OF AM., *Deposit Agreement and Disclosures* 30 (Aug. 16, 2024), <https://www.bankofamerica.com/salesservices/deposits/resources/deposit-agreements/> [https://perma.cc/LVY9-XRP7].

18. Atlanta Black Star, *supra* note 15.



Ms. Warren's legal complaint alleged:

There was no objective basis for BofA to presume that the Check issued to Plaintiff by the United States Treasury was related to any illegal drug dealing or any other illicit activity . . . . BofA instead based its decision to investigate Plaintiff's Check on harmful racial stereotypes.

BofA routinely permits withdrawals of funds deposited by check for white account holders without incident or delay, including checks from the United States Treasury.

Plaintiff's Social Security counsel has never had a white or Asian client have any problem accessing Social Security Disability funds deposited at BofA. Nor have any of Social Security counsel's white or Asian clients been subjected to an investigation before being able to access their funds.

On information and belief, BofA's account hold policies have a disparate impact on African American depositors.<sup>19</sup>

The bank held the funds for 50 days, releasing them only after the filing of a lawsuit and the local news inquiry. In the local news interview, Ms. Warren's daughter said, "it's so frustrating being Black in America just trying to do simple things."<sup>20</sup> The news report concluded with a statement from Bank of America which said its actions were consistent with regulatory funds availability requirements, that it regrets the time it took for Ms. Warren to receive her funds, and that analytics flagged her account which are in place to fight fraud.<sup>21</sup>

The YouTube video also tells the story of Shanquese Jones and Bryan Craft Jr., who attempted to cash a \$1,000 insurance settlement check drawn upon Comerica Bank on four separate occasions at a branch

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19. Complaint at 5, 7–9, *Warren v. Bank of Am.*, No. 1:23-cv-03254 (N.D. Ill. May 23, 2023) [hereinafter *Warren Complaint*] [<https://perma.cc/BR8A-73L4>] (alleging violations of 42 U.S.C. § 1981, breach of contract, and conversion).

20. Atlanta Black Star, *supra* note 15.

21. *Id.*

office of the bank.<sup>22</sup> According to the legal complaint, Ms. Jones first went to a Comerica Bank branch with a settlement check, intending to “cash the check and/or open an account to deposit the check into [a] newly created account.”<sup>23</sup> Ms. Jones provided her identification, signed the check, and provided the requested thumbprint and written signatures. The complaint continued, “much to her surprise, the Comerica bank employee advised Ms. Jones that they refused to cash the check or otherwise honor the check. The bank employee told her to contact the insurance company to get the check reissued.” A similar scenario played out on two more visits to the branch with newly issued settlement checks from her insurance company. On the fourth visit to the branch with yet another newly issued check, the complaint alleges that Comerica Bank employees refused to cash the check for Ms. Jones and Mr. Craft, to otherwise honor the check, or to open a bank account for them. The lawsuit also alleges the employees then accused them of committing fraud, and they confiscated the check because there would be a fraud investigation.

In an interview with WDIV-TV, Ms. Jones said that while she had heard of “banking while Black,” she never thought it would happen to her. “I never got racially profiled before, so I walked outside and I was crying. It was embarrassing.”<sup>24</sup> In the same story, the couple’s lawyer, Brandon McNeal, said he tested whether the same issue would happen with a customer who was not Black: “we sent a white customer to the exact same Comerica Bank branch location, and they had a settlement check for \$1,000. It was drafted on a Comerica Bank account, and that white customer had none of the same issues.”

The legal complaint states that the white customer did not have an account with Comerica Bank but was allowed to cash the check on the first visit without issue after a bank employee called the issuer of the check to verify its legitimacy and charged the white customer the standard

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22. *Id.*

23. Complaint & Jury Demand at 3, *Craft v. Comerica Bank & Trust*, No. 2:24-cv-10399 (E.D. Mich. Feb. 16, 2024) [hereinafter *Craft Complaint*]. *Craft*’s first count alleged that Comerica Bank committed racial discrimination in the making of a contract in violation of 42 U.S.C. § 1981. *Id.* at 7–9. *Craft*’s second count alleged racial discrimination by Comerica Bank as a place of public accommodation in violation of the Michigan Elliot-Larsen Civil Rights Act, MICH. COMP. LAWS § 37.2301. *Id.* at 9–10.

24. Atlanta Black Star, *supra* note 15.

\$10 check-cashing fee.<sup>25</sup> In a statement to the *Atlanta Black Star*, Comerica Bank said

We take all allegations of discrimination regarding anyone visiting or working in our locations very seriously. As reinforced through Comerica's Core Values, our respect for diversity and inclusion permeates everything we do. Treating all colleagues, customers, and suppliers fairly, with dignity and respect is core to our behaviors and any variance is not tolerated.<sup>26</sup>

*B. Recent Civil Rights Litigation*

The social media accounts of the incidents summarized in Section II. A. above led to Section 1981 civil rights litigation under the Civil Rights Act of 1866,<sup>27</sup> and/or state anti-discrimination law applicable to places of public accommodation.<sup>28</sup> The article *Banking While Black Part I* described fourteen representative cases litigated from 2006 to 2022 alleging violation of Section 1981 by banks engaged in deposit, check cashing, and currency transactions.<sup>29</sup> In six of these cases, the courts

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25. Craft Complaint, *supra* note 23, at 6.

26. Atlanta Black Star, *supra* note 15.

27. See Civil Rights Act of 1866 § 1, 42 U.S.C. § 1981 (guaranteeing all persons equal rights to make and enforce contracts).

28. See, e.g., Stephens Complaint, *supra* note 11, at 4 (describing arrest of Linda Stephens arising from a dispute over ATM deposit); Warren Complaint, *supra* note 19, at 2–4 (describing bank's fifty-day hold on check after deposit into a new checking account); Craft Complaint, *supra* note 23, at 2–7 (describing plaintiff's attempts to cash checks and bank's allegation of fraud).

29. Middleton v. Wells Fargo Bank, 474 F. Supp. 3d 1290 (N.D. Ga. 2020) (denying bank's motion to dismiss followed by stipulated dismissal); Brown v. Harford Bank, No. ELH-21-0096 (D. Md. 2022) (denying bank's motion to dismiss followed by stipulated dismissal); Carroll v. Wells Fargo Bank, No. 0:18-cv-61646 (S.D. Fla. July 18, 2018) (showing dismissal pursuant to stipulation Sept. 14, 2018); Watson v. Wells Fargo Bank, No. 8:20-cv-01283 (M.D. Fla. Sep. 8, 2020) (showing stipulation dismissing the action with prejudice Mar. 9, 2021); Denson v. PNC Bank, No. 8:19-cv-02157 (M.D. Fla. Aug. 28, 2020) (showing joint stipulation for dismissal with prejudice Feb. 6, 2020); Mitchell-Stewart v. JP Morgan Chase & Co., No. 4:22-cv-00341 (S.D. Tex. Feb. 2, 2022) (stipulated dismissal July 30, 2022); Valery v. Wells Fargo & Co., No. 3:20-cv-08874-VC (N.D. Cal. 2021) (transferred to S.D.N.Y., 1:21-cv-05464); Valery v. Wells Fargo & Co., No. 1:21-cv-05464 (S.D.N.Y. 2024) (showing settlement and dismissal pursuant to stipulation Jan. 10, 2024); Taylor v. JPMorgan Chase Bank, 3:13-cv-24 (E.D. Ky. Jan. 8, 2014) (bank's motion to dismiss granted); Pullins v. Hancock Whitney Bank, 512 F. Supp. 3d 647 (M.D. La. 2021) (bank's motion to dismiss granted); York v. JPMorgan Chase Bank, No. CV-18-0439-PHX-SPL (S.D.N.Y. Aug. 12, 2019) (bank's motion to dismiss granted); Banks v. Bank of Am., 505

dismissed the cases or entered summary judgment for the banks. In four cases, the courts denied motions to dismiss by the banks. In all of the cases denying a motion to dismiss, the parties joined in voluntary dismissals that probably flowed from favorable settlements with plaintiffs. The parties also reached settlements in four more of the fourteen cases. A few more recent examples of litigation alleging violation of Section 1981, in addition to those mentioned in Section II.A. above and covered in *Banking While Black Part I*, are summarized below.

In 2023, Tamica Branscumb, an African American woman, filed a lawsuit against Horizon Bancorp (“Horizon”), alleging racial discrimination in violation of Section 1981.<sup>30</sup> According to the complaint, Ms. Branscumb had a checking and savings account with Horizon. In 2022, she visited the Horizon branch in St. Joseph, Michigan to deposit a \$27,616 check, representing proceeds from the settlement of a lawsuit. The white clerk to whom she presented the check for deposit questioned its authenticity and source. After explaining where the check came from, the clerk said, “[i]f the check came in the mail, it’s probably not real.”<sup>31</sup> After Branscumb deposited the check, the clerk said she could access \$5,000 from it the following day. However, when Branscumb tried to withdraw \$5,000 at Horizon’s Benton Harbor branch three days later, there was a problem. The white teller alerted the African American branch manager, who glared at Ms. Branscumb and asked her name, despite holding and looking at her driver’s license and debit card. The branch manager said the check looked “suspicious” and declared in front of at least two other people that “I can’t give you the money because this check is fraudulent.”<sup>32</sup> The bank’s employees didn’t try to verify the check’s authenticity by contacting the bank upon which the check was

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F.Supp. 2d 159 (D.D.C. 2007) (bank’s motion to dismiss Section 1981 claim denied); Mekuria v. Bank of Am., No. 1:10-cv-1325 (D. D.C. Sep. 23, 2011) (bank’s motion to dismiss granted); Lowe v. Viewpoint Bank, 972 F. Supp. 2d 947 (N.D. Tex. 2013) (showing how the court granted bank’s motion for summary judgment); JM Adjustment Servs., LLC v. J.P. Morgan Chase Bank, No. 2:16-cv-10630 (E.D. Mich. Feb. 16, 2018) (showing how the court granted bank’s motion for summary judgment); Barfield v. Com. Bank, No. 05-cv-2218-MLB (D. Kan. Jan. 30, 2006) (showing how the court granted bank’s motion to dismiss); Barfield v. Com. Bank, 484 F.3d 1276, 1280 (10th Cir. 2007) (showing how the appellate court reversed motion to dismiss); Barfield v. Com. Bank, No. 05-cv-2218-MLB (D. Kan. Feb. 25, 2008) (showing a stipulated dismissal).

30. Complaint at 1–2, 8, Branscumb v. Horizon Bancorp, Inc., No. 1:23-cv-00053 (W.D. Mich. Jan. 12, 2023) [hereinafter Branscumb Complaint] (describing the allegations).

31. *Id.* at 3.

32. *Id.*

drawn. Branscumb left and called the St. Joseph branch to explain the problem. The clerk—whom Branscumb had dealt with three days earlier—said Branscumb had “never deposited a check this large.”<sup>33</sup> Shortly after Ms. Branscumb left the Benton Harbor branch, Horizon froze her account and disabled her debit card. Subsequently, Branscumb’s lawyer contacted Horizon and the bank then let the check clear. However, Branscumb’s debit card was still disabled and remained so until at least eight days after the check had cleared. Branscumb closed her Horizon account later that month.<sup>34</sup>

Horizon moved to dismiss the complaint for failure to state a claim upon which relief can be granted. The judge denied the motion based primarily upon specific allegations of the hostility of Horizon’s employees toward Ms. Branscumb, such as glaring at her, questioning her identity, accusing her of trying to cash a fraudulent check, and delaying release of her funds for eight days after they had cleared. These allegations supported the inference that Horizon’s employees acted with discriminatory intent.<sup>35</sup> Subsequently, the court granted Horizon’s motion for summary judgment based upon the statement of a teller who said she saw a fraud alert related to the settlement check.<sup>36</sup> Ms. Branscumb appealed.<sup>37</sup> On January 6, 2025, the Sixth Circuit affirmed the district court’s grant of summary judgment to Horizon, holding that a reasonable jury could not infer that the bank had racially discriminated against Ms. Branscumb.<sup>38</sup>

In 2019, Jeriel Alexander, a Black man, filed a lawsuit against JP Morgan Chase Bank, alleging discrimination against him because of his racial identity. The *pro se* complaint alleged that Mr. Alexander entered a branch of the bank to withdraw \$3,330 from his checking account. After requesting multiple forms of identification, delaying the transaction, and telling Mr. Alexander that she had to run a criminal background check on him before completing the withdrawal, the Chase

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33. *Id.* at 4.

34. *Id.* at 2–5.

35. *Id.* at 2–7 (citations omitted) (showing the discriminatory conduct of the bank).

36. *Branscumb v. Horizon Bancorp, Inc.*, No. 1:23-cv-53, 2024 WL 1171244, at \*6,\*8 (W.D. Mich. Mar. 19, 2024).

37. Brief of Plaintiff-Appellant at 20–22, *Branscumb v. Horizon Bancorp, Inc.*, No. 24-1357 (Sept. 3, 2024) (summarizing argument to reverse the district court summary judgment order).

38. *Branscumb v. Horizon Bank*, No. 24-1357, 2025 WL 48106, at \*5 (6th Cir. Jan. 8, 2025).

teller informed him that she would not process the withdrawal “because [you are] black.”<sup>39</sup> After bringing evidence of this discriminatory treatment to the attention of the branch manager, Mr. Alexander received the money that he had initially sought to withdraw.

In his legal complaint, Mr. Alexander cited 42 U.S.C. § 2000a, which is part of Title II of the Civil Rights Act of 1964, as the basis for his claim for relief for racial discrimination under federal law.<sup>40</sup> The bank moved to dismiss the complaint. The court granted the motion because the actions alleged in the complaint did not occur in a place of public accommodation. The court said:

A bank, although a place in which the public is allowed, is not considered a place of public accommodation under the statutory definition of 42 U.S.C. § 2000a(b)(1-4). Because § 2000a(b)(1-4) is an exhaustive list, rather than an illustrative one, a bank cannot be considered a place of public accommodation for the purposes of establishing a Title II claim.<sup>41</sup>

The court noted that racial profiling and discrimination by banking institutions is a serious concern and that legislation had been introduced in both houses of Congress to address the gap in federal anti-discrimination laws applicable to financial institutions: the Fair Access to Financial Services Act.<sup>42</sup>

The court also construed the allegations in the complaint as a Section 1981 claim, but found that Mr. Alexander failed to allege that he was ultimately prevented from completing a transaction or forced to complete a transaction on different terms from non-minority customers.<sup>43</sup> The court relied upon precedent that dismissed Section 1981 claims

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39. Complaint at 5, *Alexander v. JP Morgan Chase Bank*, No. 1:19-cv-10811 (S.D.N.Y. Nov. 20, 2019).

40. 42 U.S.C. § 2000a; *id.* at 2. The complaint also alleged violations of state law.

41. *Alexander v. JP Morgan Chase Bank*, No. 1:19-CV-10811, 2021 WL 1061833, at \*3 (S.D.N.Y. Mar. 8, 2021). The district court further noted that “courts have expressly concluded that banks are not places of public accommodation within the meaning of [42 U.S.C. § 2000a].” *Id.* (citing *Akyar v. TD Bank US Holding Co.*, No. 18-CV-379, 2018 WL 4356734, at \*5 (S.D.N.Y. Sept. 12, 2018)).

42. *Alexander*, 2021 WL 1061833, at \*3 n.4; see H.R. 8867, 116th Cong. (2020); S. 4801, 116th Cong. (2020).

43. *Alexander*, 2021 WL 1061833, at \*4 (finding Mr. Alexander did not show he was prevented rather than delayed from completing the transaction).

where plaintiffs were able to complete their transaction, albeit after delay and mistreatment based on race.<sup>44</sup> Therefore, the court dismissed the Section 1981 claim without prejudice with leave to file an amended complaint.<sup>45</sup>

After Mr. Alexander filed an Amended Complaint, the court once again considered a motion to dismiss. In 2023, the court dismissed the Section 1981 claim, finding that:

Plaintiff pleads that he was asked for additional identification and subjected to a delay . . . . [However,] Plaintiff's contract with Defendant was enforced and performed when he received the money he sought to withdraw . . . . Other than a conclusory statement that he was "denied equal treatment," Plaintiff does not plead any facts that he was forced to complete his withdrawal on different terms from non-minority customers.<sup>46</sup>

In short, because Mr. Alexander received that to which he was entitled under the terms of his contract with the bank, the court dismissed the complaint.

In 2023, Stacy Hillery, an African American woman, filed a lawsuit against Genisys Credit Union alleging racial discrimination in violation of Section 1981.<sup>47</sup> According to the legal complaint, she was a regular member of the credit union who often made deposits of \$10,000 or more into her account without issues, including withdrawing cash from the deposited funds without issue. In 2021, while on her way home from a business conference, she stopped at a branch of Genisys in Fenton, Michigan. After presenting verified identification and proof of account ownership, she attempted to deposit roughly \$10,000 in valid checks from the state of Michigan into her account and then withdraw \$2,000 in cash.

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44. *Id.* (citing *Jackson v. Cititrends Utica*, No. 6:20-cv-14, 2020 WL 3035577, at \*1 (N.D.N.Y. June 5, 2020)); *Benzinger v. NYSARC, Inc.* N.Y.C. Chapter, 385 F. Supp. 3d 224, 234 (S.D.N.Y. 2019); *Rogers v. Elliot*, 135 F. Supp. 2d 1312, 1315 (N.D. Ga. 2001); *Nevin v. Citibank*, 107 F. Supp. 2d 333, 349 (S.D.N.Y. 2000); *Joseph v. N.Y. Yankees P'ship*, No. 00-cv-2275, 2000 WL 1559019, at \*3 (S.D.N.Y. 2000).

45. *Alexander*, 2021 WL 1061833, at \*4.

46. *Alexander v. JPMorgan Chase Bank*, No. 19-cv-10811, 2023 WL 5016603, at \*2 (S.D.N.Y. Aug. 7, 2023) (citations omitted).

47. Plaintiff's Complaint & Jury Demand at 7, *Hillery v. Genisys Credit Union*, No. 2:23-cv-11452 (E.D. Mich. June 20, 2023).

The teller denied Ms. Hillery immediate access to her money and suggested that she go to the bank upon which the checks were drawn to cash them. After speaking to the branch manager, the teller informed Ms. Hillery that checks could be deposited with Genisys subject to a hold of at least one week before she could withdraw the funds. Then, the branch manager informed Ms. Hillery that she did not know her and therefore was unable to cash the checks. Ms. Hillery became upset due to what she felt was racist and disrespectful treatment during her visit, as she was the only African American in the branch and the only customer experiencing this treatment. She left after being denied the banking transactions she had visited the branch to complete.

The next day, Ms. Hillery went to Public Service Credit Union in Detroit, Michigan, “which is not a Genisys Credit Union branch, but accepts transactions from Genisys customers” pursuant to an affiliation agreement.<sup>48</sup> Detroit is a city with a predominantly African American population. While at Public Service Credit Union, Ms. Hillery received a phone call from the Genisys area manager for the Fenton region. The manager informed Ms. Hillery “that the Fenton branch was unable to cash her checks because the branch received an alert from its check verification system to hold the check.”<sup>49</sup> Still in the process of conducting her financial transactions at Public Service Credit Union, Ms. Hillery asked the Public Service teller what check verification system Public Service utilized. She was “informed that it uses the same check verification system as the Genisys branch in Fenton.”<sup>50</sup> Despite the credit union using the same check verification system, the teller at Public Service Credit Union found no alerts to hold checks, and deposited roughly \$6,000 into Ms. Hillery’s savings account, and approximately \$2,000 into her checking account, without holds, and distributed the remaining balance to her in cash.

In response to the legal complaint, Genisys Credit Union filed a motion to compel arbitration or dismiss the complaint. With respect to arbitration, Genisys argued that Ms. Hillery was required to arbitrate any dispute concerning her credit union membership and deposit accounts, rather than litigating them in court, because of language in its deposit

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48. *Id.* at 4.

49. *Id.* at 5.

50. *Id.*



agreement allowing either party to elect arbitration of any disputes.<sup>51</sup> In response to the motion to compel arbitration, Ms. Hillery argued that Congress intended to preclude a waiver of judicial remedies for violation of Section 1981. In the context of a review of the legislative history of the Civil Rights Act of 1866 and the continuing experience of racial discrimination against African Americans by financial institutions, Ms. Hillery argued:

In the enactment of Section 1981, Congress clearly intended for African Americans the guaranteed right to not only make and enforce contracts, but also the personal rights to sue and give evidence in judicial proceedings. This historical origin of the Act and its purpose cannot be overlooked or understated, nor is it irrelevant in our current time . . . . In this regard, Congressional intent clearly establishes judicial remedies (personal rights to sue) as appropriate and necessary, giving no thought to arbitration[.]<sup>52</sup>

With respect to Section 1981, Genisys moved to dismiss, arguing that Ms. Hillery failed to allege interference with any contractual interest as required for a valid claim of violation of Section 1981: “To be clear, Plaintiff does not plead that she was completely denied services . . . or that she was denied the opportunity to deposit a check . . . [but] only pleads that she was not permitted to receive cash from the deposit of a check immediately because a hold was placed.”<sup>53</sup> Furthermore, Genisys argued that Ms. Hillery failed to allege that race was the but-for cause of her injury.<sup>54</sup> Citing the Supreme Court’s 2020 decision in *Comcast Corp. v. National Association of African American-Owned Media*, the district court found:

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51. See Defendant’s Motion to Compel Arbitration or Dismiss Complaint at 6–10, Hillery v. Genisys Credit Union, No. 2:23-cv-11452 (E.D. Mich. July 26, 2023) (arguing that Ms. Hillery was required to arbitrate her claims).

52. Brief in Support of Plaintiff’s Objection to Motion to Compel Arbitration or Dismiss at 18–19, Hillery v. Genisys Credit Union, No. 2:23-cv-11452 (E.D. Mich. Aug. 15, 2023).

53. Brief in Support of Defendant’s Motion to Compel Arbitration or Dismiss Complaint at 12, Hillery v. Genisys Credit Union, No. 2:23-cv-11452 (E.D. Mich. July 26, 2023).

54. See *id.* at 13 (“Plaintiff alleges that Genisys refused to cash her check without a hold, but she does not allege that it did so because of her race.”).

Here, Plaintiff has failed to plausibly allege causation in support of her §1981 claim. Specifically, Plaintiff alleges that Genisys refused to cash her check without a hold, but she does not allege that it did so because of her race. At most, Plaintiff makes vague and conclusory allegations that she felt that she was treated differently on account of her race.<sup>55</sup>

Under *Comcast*, a plaintiff cannot merely show that their race was a “motivating factor” in the events giving rise to their injury but instead must show that race was the but-for cause of their treatment by the defendant.<sup>56</sup>

Ms. Hillery responded to both arguments. With respect to interference with contractual interest, Ms. Hillery argued that the bank would have denied her immediate access to cash from the checks she wanted to deposit and such denial was based on her race: “[a]t no other time prior to her lone visit to the branch in Fenton, a 94 percent white community, where she was the only Black person in the building, was a hold required that denied check cashing abilities, or did an alleged fraud alert come up to deny her receiving cash from checks she intended to deposit in those previous transactions.”<sup>57</sup>

With respect to causation, Ms. Hillery responded:

[The] intention to discriminate, using the . . . “but for” standard, has been demonstrated by the fact that Mrs. Hillery, the lone Black person in the entire branch of the predominantly White city that day, was given multiple, conflicting reasons why her transaction could not be completed that day. This intent was exacerbated by the White branch manager, Jill Coleman, who told Mrs. Hillery that she would be unable to cash the checks because she did not know her.<sup>58</sup>

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55. *Id.*

56. *Comcast Corp. v. Nat’l Ass’n of Afr. Am.-Owned Media*, 589 U.S. 327, 332 (2020).

57. Brief in Support of Plaintiff’s Objection, *supra* note 52, at 14.

58. Brief in Support of Plaintiff’s Objection, *supra* note 52, at 12.

In reply to Ms. Hillery’s argument about congressional intent to preclude a waiver of judicial remedies for violation of Section 1981, Genisys argued: “[C]ontrary to Plaintiff’s arguments, Congress has made explicit that it intended § 1981 claims to be subject to binding arbitration when it amended § 1981 in 1991.”<sup>59</sup> With respect to interference with a contractual interest, Genisys argued, “[p]laintiff alleges a violation of her right to performance of a contract . . . . Plaintiff has not, however, alleged that she had a contractual right to immediate access to the funds deposited . . . . Plaintiff [thus] has not alleged interference with a contractual interest.”<sup>60</sup>

Rather than dismiss the case, the court granted the motion to compel arbitration and stayed the litigation pending arbitration.<sup>61</sup> The court found no authority to support Ms. Hillery’s claim that Section 1981 claims are exempt from arbitration.<sup>62</sup> The stay remains in place as of January 31, 2025.

In 2023, Jeanetta Vaughn, a Black woman, filed a lawsuit against JP Morgan Chase alleging that the manager of one its branches violated Section 1981, violated Colorado anti-discrimination law, inflicted emotional distress, and made defamatory statements.<sup>63</sup> The beginning of the complaint placed the incident in the context of the history of racial segregation:

It is no trivial matter to call the police on a Black person, falsely accusing him or her of criminal misconduct, merely for engaging in routine and mundane chores the rest of us do daily. Inherent in such actions is the very real threat of arrest and physical violence; and doing so

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59. Reply Brief in Support of Defendant Genisys Credit Union’s Motion to Compel Arbitration or Dismiss Complaint at 3, *Hillery v. Genisys Credit Union*, No. 2:23-cv-11452 (E.D. Mich. Aug. 28, 2023).

60. *Id.* at 7.

61. *Hillery v. Genisys Credit Union*, No. 23-11452, 2023 WL 6627969, at \*2 (E.D. Mich. Oct. 11, 2023).

62. *Id.*

63. Complaint & Jury Demand at 3, *Vaughn v. JP Morgan Chase and Co.*, No. 1:23-cv-02266-NRN (D. Colo. Sept. 15, 2023) [hereinafter *Vaughn Complaint*] (making statutory civil rights claims under 42 U.S.C. § 1981 and the Colorado Anti-Discrimination Act, COLO. REV. STAT. § 24-34-601, and tort claims of negligent infliction of emotional distress and defamation); see also @iam\_janicej, *Banking While Black*, TIKTOK (Aug. 12, 2023), [https://www.tiktok.com/@iam\\_janicej/video/7266437330674797867](https://www.tiktok.com/@iam_janicej/video/7266437330674797867) [https://perma.cc/VXT4-VMLG] (describing how Jeanette Vaughn was racially profiled at a Chase Bank branch on June 9, 2022).

invokes the ghosts of segregation not long past when White citizens frequently exploited law enforcement to relegate Black citizens to second-class status, entrenching racist hierarchies and weaponizing the police to exclude Black citizens from the public sphere. Such discrimination must no longer be condoned.<sup>64</sup>

According to the complaint, Ms. Vaughn was a customer of Chase who entered the bank's lobby, where she sat down to unlock the card on the Chase mobile app on her phone. Trina Pelech, the branch manager, approached her within 90 seconds after she sat down. The legal complaint alleged Ms. Pelech treated Ms. Vaughn with hostility, threatened to call the police, ordered her to leave the premises, and then called the police. Two police officers arrived within 10 minutes. The officers spoke with Ms. Vaughn. Then, one officer spoke with Ms. Pelech in a back office. Ms. Pelech claimed that Ms. Vaughn was "rude" and that Ms. Pelech told Ms. Vaughn, "You're not welcome here." The officer informed Ms. Pelech, "Being rude in the bank is not a matter for law enforcement." The officers did not arrest or remove Ms. Vaughn. The officers left the office and waited in their patrol car until Ms. Vaughn's husband arrived. Then Mr. and Mrs. Vaughn left the premises.

Chase's lawyers filed a motion to compel arbitration based upon the bank's deposit account agreement, which contained the following arbitration provision:

You and we agree that upon election of either of us, any dispute relating in any way to your account or transactions will be resolved by binding arbitration as discussed below. And not through litigation in any court (except for matters in small claims court) . . . .

Claims or disputes between you and us about your deposit account, transactions involving your deposit account, safe deposit box, and any related services with us are subject to arbitration. Any claims or disputes from or relating to this agreement, any prior account agreements between us,

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64. Vaughn Complaint, *supra* note 63, at 3.

or the advertising, the application for, or the approval or establishment of your account are also included.<sup>65</sup>

The district court agreed with Ms. Vaughan that none of her claims arose out of the deposit account agreement, and denied the motion to compel arbitration, reasoning:

[T]he basis of the claims asserted in Plaintiff's Complaint—racial discrimination, defamation, and negligent infliction of emotional distress—have little or nothing to do with Plaintiff's Chase account, the terms of the Deposit Account Agreement, or the parties' relationship . . . . Defendants have not directed the Court to a single case involving an arbitration provision that required a similarly situated plaintiff to arbitrate claims of racial discrimination . . . .

[T]he arbitration provision at issue contains limiting language that supports the Court's conclusion that Plaintiff's claims are outside the scope. For example, under the Deposit Account Agreement's header labelled "What claims or disputes are subject to arbitration?," the Deposit Account Agreement provides that "[c]laims or disputes between you and us about your *deposit account, transactions involving your deposit account, safe deposit box, and any related service* with us are subject to arbitration." This limiting language indicates that disputes about Plaintiff's deposit account are subject to arbitration, not claims of racial discrimination—which are claims wholly independent from her account . . . .

Without any evidence that Chase intended to include Plaintiff's claims within the purview of the arbitration provision, the plain text of the Deposit Account Agreement governs. Defendants do not provide any evidence that Chase intended to sweep racial discrimination claims under the arbitration provision. The

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65. Motion to Compel Arbitration and Stay Proceedings at 9, Vaughn v. JP Morgan Chase & Co., No. 23-cv-02266 (D. Colo. Oct. 11, 2023).

Court finds the absence of this evidence compelling. Had Chase intended to include such claims within the purview of its arbitration provision, it could have done so. It chose not to.

A court cannot compel arbitration over a dispute that the parties did not agree to arbitrate. Despite the broad language of the arbitration provision at issue, Plaintiff's claims do not arise from or relate to the Deposit Account Agreement. Accordingly, Defendants' Motion to Compel Arbitration is denied.<sup>66</sup>

The district court's decision has been appealed to the Tenth Circuit Court of Appeals.<sup>67</sup> Oral arguments were heard on November 20, 2024. A decision remains pending as of January 31, 2025.

#### *D. Summary of Recent Civil Rights Litigation*

Recent social media posts and civil rights litigation show that racial discrimination by banking institutions remains a persistent problem.<sup>68</sup> In particular, the recent litigation highlights: (i) the unavailability of Title II of the Civil Rights Act of 1964 as a basis for a racial discrimination claim against a banking organization;<sup>69</sup> and (ii) the difficulty in sustaining a Section 1981 claim because of the narrow judicial interpretation of the law. In order to sustain a Section 1981 against a banking organization, the courts require proof of intentional racial discrimination, complete refusal to provide a service, and a "but-for" cause of injury.<sup>70</sup> A plaintiff cannot merely show that their race was a "motivating factor" in the events giving rise to their injury but instead must show that race was the determinative factor in their treatment by the defendant.

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66. *Vaughn v. JP Morgan Chase & Co.*, 707 F. Supp. 3d 1042, 1051, 1053–54, 1055 (D. Colo. 2023) (citations omitted).

67. Defendant JPMorgan Chase Bank N.A. and Trina Pelech's Notice of Appeal and Mandatory Stay, *Vaughn v. JP Morgan Chase & Co.*, No. 24-1016 (10th Cir. Jan. 12, 2024).

68. *See supra* Part II.

69. *See supra* notes 40–42 and accompanying text.

70. *See supra* note 53–56 and accompanying text.

## III. ANTI-DISCRIMINATION EFFORTS BY BANKING ORGANIZATIONS

Notwithstanding the conduct described above in Part II, banking organizations are working to increase access to banking services for underserved populations and many banking organizations have issued statements supportive of greater banking inclusion, as well as incident-specific and general statements condemning racism. This current part provides a brief overview of these efforts.

*A. Banking Inclusion*

According to FDIC surveys, the number of unbanked and underbanked households is decreasing. In 2011, the National Survey of Unbanked and Underbanked Households found that 8.2% of U.S. households were unbanked, meaning that no one in the household had a checking or savings account at a bank or credit union. This proportion represented approximately 9.9 million U.S. households.<sup>71</sup> The survey also found that 20.1% of U.S. households were underbanked, meaning the household had an account with a bank or credit union in the past 12 months but also used services of a nonbank institution, such as money orders, check cashing, and payday or title loan services. This proportion represents approximately 21.7 million U.S. households.<sup>72</sup> The FDIC's 2011 survey found that minority households were disproportionately unbanked: 21.4% of Black households and 20.1% of Hispanic households were unbanked, relative to 4.0% of white households.<sup>73</sup> Among unbanked households, the most common reason for not owning a bank account was not having enough money for an account. The second most common reason was not needing or wanting an account.<sup>74</sup>

Despite the racial challenges, the most recent FDIC survey of unbanked and underbanked households shows depository institutions are making progress on banking inclusion for both minority and white

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71. FED. DEPOSIT INS. CORP., 2011 FDIC NATIONAL SURVEY OF UNBANKED AND UNDERBANKED HOUSEHOLDS 10 (Sept. 2012) [hereinafter 2011 FDIC SURVEY], <https://www.fdic.gov/analysis/household-survey/2011/2011-unbankedreport.pdf> [<https://perma.cc/RA3T-VSZZ>] (explaining that households were “banked” if at least one member of the household had a checking or savings account).

72. *Id.*

73. *Id.* at 14.

74. *Id.* at 27 (stating that the fourth most common reason for being unbanked was “Don’t like dealing with and/or don’t trust banks.”).

households. The FDIC's 2023 National Survey of Unbanked and Underbanked Households found that 4.2% of U.S. households were unbanked, representing approximately 5.6 million U.S. households.<sup>75</sup> The survey also found that 14.2% of U.S. households were underbanked. This proportion represents approximately 19 million U.S. households.<sup>76</sup> Minority households remain disproportionately underbanked. Black and Hispanic households constitute 23.8% and 21.7% of underbanked households, relative to 10.1% of white households.<sup>77</sup> Minority households also remain disproportionately unbanked. Black and Hispanic households constituted 10.6% and 9.5%, respectively, of unbanked households, relative to 1.9% of white households.<sup>78</sup> Among unbanked households, the most common reason for not owning a bank account was not having enough money to meet minimum balance requirements. The second most common reason was distrust of banks.<sup>79</sup>

Distrust of banks is often rooted in racial discrimination. The wariness can stem from personal experience with racism in the banking system, such as discriminatory treatment when attempting to engage in bank transactions, redlining practices denying minority communities access to bank loans, failures of Black banks caused by white investors leading to the loss of depositors' money, and feeling that banks only want

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75. FED. DEPOSIT INS. CORP, 2023 FDIC NATIONAL SURVEY OF UNBANKED AND UNDERBANKED HOUSEHOLDS 1 (Nov. 2024), <https://www.fdic.gov/household-survey/2023-fdic-national-survey-unbanked-and-underbanked-households-report> [<https://perma.cc/U9PY-D2SY>] (explaining that households were "banked" if at least one member of the household had a checking or savings account at a bank or credit union).

76. *Id.* at 65.

77. *Id.* at 66.

78. *Id.* at 2.

79. *Id.* at 3.



white customers.<sup>80</sup> There are many reasons people do not have a bank account.<sup>81</sup> Racism should not be one of them.

One reason banking organizations are making progress on improving access to checking and saving accounts is the Bank On Movement, launched by the Cities for Financial Empowerment Fund in 2012.<sup>82</sup> The Bank On national initiative consists of locally led partnerships among city, state, and federal agencies, financial institutions, and community organizations that seek to expand access to banking services, including through the Bank On National Account Standards. The standards identify product features, such as low costs, no overdraft fees, and bill payment, which are attractive to low- and moderate-income households.<sup>83</sup> According to the Cities for Financial Empowerment Fund, as of October 2024, there are over 474 Bank On nationally certified accounts offered by banks and credit unions available at over 46,350

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80. Samantha Masunaga & Jackeline Luna, *Big Banks Want Communities of Color to Trust Them. But It's Not So Simple*, LA TIMES (June 19, 2021, 5:00 AM), <https://www.latimes.com/business/story/2021-06-19/big-banks-banks-community-people-of-color-trust> [<https://perma.cc/5VL7-UH2E>] (“Communities of color have many reasons to distrust large national banks. In some cases, the wariness stems from racist practices in the financial system, such as redlining, or from past bank failures. In others, it arose from a lack of transparency about fees or a feeling that national banks want only certain kinds of customers.”); Kai Ryssdal & Richard Cunningham, *How a Bank Failure 150 Years Ago Still Shapes Many Black Americans' Relationships to Financial Institutions*, MARKETPLACE (Feb. 15, 2024) <https://www.marketplace.org/2024/02/15/how-a-bank-failure-150-years-ago-still-shapes-many-black-americans-relationships-to-financial-institutions> [<https://perma.cc/9KD5-AEMJ>] (“I have heard . . . the idea of saving money not in banks, but underneath the mattress. In many ways, I think that these kind of memories of the [failure of the Freedman’s Bank], [are still] there, which is why the history of this bank is so important.”); MEHRSA BARADARAN, *THE COLOR OF MONEY: BLACK BANKS AND THE RACIAL WEALTH GAP* 31 (2017) (“Not only did blacks lose confidence in the United States government; they lost faith in banks in general . . . . The [failure of the Freedmen’s Bank] caused financial ruin for many blacks who had been diligently saving their money to purchase a home, and those who were not ruined internalized a warning about banking.”).

81. 2011 FDIC SURVEY, *supra* note 71, at 3 (giving reasons people do not get bank accounts, such as not having enough money to meet minimum requirements, not trusting banks, and privacy concerns, among others).

82. *About Us*, BANK ON, <https://cfefund.org/about/> [<https://perma.cc/7ZSW-PUF4>] (last visited Feb. 8, 2025).

83. *National Account Standards (2023-2024)*, BANK ON <https://joinbankon.org/wp-content/uploads/2022/08/Bank-On-National-Account-Standards-2023-2024.pdf> [<https://perma.cc/SU6K-2DJA>] (last visited Nov. 5, 2024).

branch offices across the United States.<sup>84</sup> Seven of the ten largest U.S. banking organizations offer a Bank On certified account.<sup>85</sup>

*B. Response from Banks to Specific Incidents*

Banking organizations often issue public statements in response to specific allegations of racial discrimination that gain public attention. For example, as quoted above, in 2024, Comerica responded to allegations of racial discrimination by Shanquese Jones and Bryan Craft as follows:

We take all allegations of discrimination regarding anyone visiting or working in our locations very seriously. As reinforced through Comerica's Core Values, our respect for diversity and inclusion permeates everything we do. Treating all colleagues, customers and suppliers fairly, with dignity and respect is core to our behaviors and any variance is not tolerated.<sup>86</sup>

In 2019, after a New York Times report detailed instances of discrimination at the bank's branches,<sup>87</sup> Jamie Dimon, Chief Executive Officer of JPMorgan Chase, said the following in a memorandum to employees:

I am disgusted by racism and hate in any form. Any such behavior — explicit or veiled, deliberate or unconscious — is unacceptable and does not reflect who we are as a company and how we serve our clients and communities every day. We must make sure that the culture we aspire

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84. *Banks and Credit Unions Across the Country Are Joining the Bank On Movement*, BANK ON, <https://joinbankon.org/accounts/> [<https://perma.cc/T6KU-XERS>] (last visited Feb. 5, 2025).

85. *Id.* The list of institutions with Bank On certified accounts includes Bank of America Safe Balance Banking, Capital One 360 Checking Account, PNC Bank Foundation Checking, TD Bank TD Essential Banking, Truist Confidence Account, U.S. Bank Debit Account, and Wells Fargo Clear Access Banking.

86. *See supra* notes 23–26 and accompanying text.

87. *See* Emily Flitter, *This Is What Racism Sounds Like in the Banking Industry*, N.Y. TIMES (Dec. 11, 2019), <https://www.nytimes.com/2019/12/11/business/jpmorgan-banking-racism.html> [<https://perma.cc/94MF-55PQ>] (reporting on racial discrimination against Black customers and employees at J.P. Morgan branches in Phoenix).

to reaches every corner of our company. We have done some great work on diversity and inclusion, but it's not enough. We must be absolutely relentless on doing more . . . . Racism has existed for too long – in our country, in our communities – and unfortunately, at times, even at our company. But this is not who we are. We want all of you to be active in making needed progress.<sup>88</sup>

### C. *General Statements from Banking Organizations*

Banking organizations also issue general anti-discrimination policies, statements, and announcements condemning discrimination based on race, color, ethnicity, national origin, and other protected characteristics. Most issuances reflect laws prohibiting discrimination in employment and lending.<sup>89</sup> However, some issuances cover services offered to customers. For example, Citigroup issued a Human Rights statement that included a statement about preventing discrimination against customers: “We take seriously our responsibility to not deny customers access to finance based on race, religion, gender, sexual orientation, or socio-economic status.”<sup>90</sup> Similarly, U.S. Bank issued an employee code of ethics that included a statement about protecting customers: “[y]ou play a critical role in maintaining our strong ethical culture. [This role includes] protecting our customers from harm [and] protecting them from unlawful discrimination and unfair, deceptive or

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88. Hugh Son, *Jamie Dimon Says He's 'Disgusted by Racism' and Progress Is Needed at JP Morgan After Report*, CNBC (Dec. 13, 2019, 4:46 PM), <https://www.cnbc.com/2019/12/13/jamie-dimon-says-hes-disgusted-by-racism-and-progress-is-needed-at-jp-morgan-after-report.html> [<https://perma.cc/69R9-NT6P>].

89. See, e.g., *Code of Conduct*, WELLS FARGO 18 (Apr. 2023), <https://www08.wellsfargomedia.com/assets/pdf/about/corporate/code-of-conduct.pdf> [<https://perma.cc/3CW6-QE4M>] (“Wells Fargo is dedicated to providing a workplace free from harassment and discrimination based on an individual’s race, ethnicity, age, gender, or other protected characteristics.”); HSBC, US VERSION OF GLOBAL CODE OF CONDUCT 27 (Oct. 2023), <https://www.about.us.hsbc.com/-/media/us/en/investor-relations/hsbc-usa/231031-us-version-of-the-global-code-of-conduct.pdf> [<https://perma.cc/26H3-ZB6T>] (“HSBC is committed to compliance with The Equal Credit Opportunity Act . . . which require[s] . . . unbiased treatment to all customers during all phases of the credit life cycle without regard to any basis prohibited by law [including, *inter alia*, age, color, disability, status, marital status, national origin, race, religion, and sex.]”).

90. CITIGROUP, STATEMENT ON HUMAN RIGHTS 5 (last updated 2025), [https://www.citigroup.com/rcs/citigpa/akpublic/storage/public/citi\\_statement\\_on\\_human\\_rights.pdf](https://www.citigroup.com/rcs/citigpa/akpublic/storage/public/citi_statement_on_human_rights.pdf) [<https://perma.cc/A85R-FRFD>].

abusive acts or practices.”<sup>91</sup> JPMorgan Chase also issued a statement that covers customers: “[d]iscrimination, harassment, or inappropriate conduct is not tolerated by or against employees, customers, vendors, contractors or any other individuals who conduct business with JPMorgan Chase.”<sup>92</sup>

In the wake of George Floyd’s murder by a Minneapolis police officer, many banking organizations also announced initiatives to address racism. For example, in June 2020, PNC announced a commitment of more than \$1 billion to help end systemic racism and support economic empowerment of African Americans and low- and moderate-income communities:

We are living in one of the most important civil rights movements of our time. Each of us has a role to play in combatting racism and discrimination, and PNC is committed to driving real change in areas in which we can make the greatest impact,” said Chairman, President and Chief Executive Officer William S. Demchak . . . . We have a responsibility to act – a responsibility to each other, our clients, communities and shareholders. We need to seize this moment and use our voices, our influence and our resources to address racism, discrimination, bigotry, bias and economic and health disparities that plague our country.<sup>93</sup>

Similarly, in 2020, Greg Carmichael, then the Chairman and CEO of Fifth Third Bank, issued the following statement shortly after the murder of George Floyd:

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91. U.S. BANK, CODE OF ETHICS AND BUSINESS CONDUCT 9 (July 2021), <https://www.usbank.com/dam/documents/pdf/coe/coeHandbook2021.pdf> [https://perma.cc/5PLE-LDAK].

92. *Equal Opportunity, Anti-Discrimination and Anti-Harassment Statement*, JPMORGAN CHASE, <https://www.jpmorganchase.com/about/governance/equal-opportunity-anti-discrimination-and-anti-harassment-statement> [https://perma.cc/CTG2-EPPC] (last visited Feb. 8, 2025).

93. Press Release, PNC, PNC Commits More Than \$1 Billion To Help End Systemic Racism and Support Economic Empowerment of African Americans and Low- And Moderate-Income Communities (June 18, 2020), <https://pnc.mediaroom.com/2020-06-18-PNC-Commits-More-Than-1-Billion-To-Help-End-Systemic-Racism-And-Support-Economic-Empowerment-Of-African-Americans-And-Low-And-Moderate-Income-Communities> [https://perma.cc/KM57-JQNG].

Let me be perfectly clear: at Fifth Third, racism and discrimination in any form is not tolerated. These last few months have been difficult for our customers, difficult for us personally and professionally, and difficult for our community members. Like many of you, I've been disturbed and deeply saddened by the inequities that have been highlighted during the pandemic and in recent incidents across the country. Let me be perfectly clear: at Fifth Third, racism and discrimination in any form is not tolerated.<sup>94</sup>

In September 2020, Citigroup announced they would invest more than \$1 billion in strategic initiatives to help close the racial wealth gap in America:

Citi and the Citi Foundation today announced more than \$1 billion in strategic initiatives to help close the racial wealth gap and increase economic mobility in the United States. Citi's *Action for Racial Equity* is a comprehensive approach to 1) providing greater access to banking and credit in communities of color, 2) increasing investment in Black-owned businesses, 3) expanding homeownership among Black Americans, and 4) advancing anti-racist practices in the financial services industry.<sup>95</sup>

The specific and general statements mentioned above represent only a small fraction of the policies, statements, and announcements

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94. Greg D. Carmichael, *Our Responsibility for Inclusion, Diversity and Equality*, LINKEDIN (June 20, 2020), <https://www.linkedin.com/pulse/our-responsibility-inclusion-diversity-equality-greg-d-carmichael/> [<https://perma.cc/2W2Y-EYYB>].

95. Press Release, Citigroup, Citi Launches More Than \$1 Billion in Strategic Initiatives to Help Close the Racial Wealth Gap (Sept. 23, 2020), <https://www.citigroup.com/global/news/press-release/2020/citi-launches-more-than-1-billion-in-strategic-initiatives-to-help-close-the-racial-wealth-gap> [<https://perma.cc/D47N-6Z8Z>]; see also Edward Skyler, *What's Next: Citi's Approach to Addressing the Racial Wealth Gap in the U.S.*, CITIGROUP (Apr. 2, 2024), <https://www.citigroup.com/global/news/perspective/2024/whats-next-citis-approach-addressing-racial-wealth-gap-us> [<https://perma.cc/APK7-L7AP>] (“While [Citigroup] has met and exceeded our initial three-year, \$1 billion commitment, we know our work to help close the racial wealth gap is not over.”).

issued by banking organizations condemning racism and racial discrimination.<sup>96</sup>

#### IV. GAP IN CURRENT FEDERAL LAW

Bank policy, statements, and announcements can make an important contribution to fighting racism and discrimination given the gap in current federal law with respect to deposit, check, and money services. Unfortunately, banking organizations have not advocated for new laws to fill the gap. While there is federal anti-discrimination law on the lending side of the banking business, federal law provides little redress for racial discrimination on the deposit side of the banking business. Furthermore, federal law protects the right to adjudicate discrimination and other claims in court related to lending transactions . . . but not deposit services.

##### A. *Federal Lending Law*

There are federal laws seeking to protect racial minorities against discrimination by creditors. Specifically, the Equal Credit Opportunity Act (“ECOA”) makes it unlawful for a creditor to discriminate against any applicant on the basis of race, color, or national origin, and the Fair Housing Act (“FHA”) prohibits discrimination on the basis of race, color, and national original in residential real estate-related transactions such as home mortgage loans.<sup>97</sup> In addition, the Home Mortgage Disclosure Act (“HMDA”) requires many financial institutions to maintain, report, and publicly disclose loan-level information about home mortgage loans.<sup>98</sup>

Furthermore, it should be noted that the Truth in Lending Act prohibits lenders from requiring that borrowers agree ahead of time to arbitrate or otherwise waive their ability to pursue certain claims in court.<sup>99</sup> There is, however, no federal statute prohibiting banks from requiring that depositors agree ahead of time to arbitrate or otherwise waive their ability to pursue certain claims in court. Required arbitration

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96. For an illustrative example, see JPMORGAN CHASE, *supra* notes 88, 92 and accompanying text.

97. Equal Credit Opportunity Act § 701(a)(1), 15 U.S.C. § 1691(a)(1); Fair Housing Act §§ 804(a)–(b), 805(a), 42 U.S.C. §§ 3604(a)–(b), 3605(a).

98. Home Mortgage Disclosure Act § 304(a), 12 U.S.C. § 2803(a).

99. Truth in Lending Act § 129C(e), 15 U.S.C. § 1639c(e).

for depositor complaints is at issue in the two cases reviewed above. In *Hillery v. Genisys Credit Union*, congressional intent is at issue with respect to the applicability of the arbitration provision in the credit union's deposit agreement.<sup>100</sup> In *Vaughn v. JP Morgan Chase*, the district court ruled that racial discrimination claims were outside the scope of the language in the bank's deposit agreement. However, the ruling is being appealed.<sup>101</sup>

Moreover, there is no specific prohibition on banking institutions discriminating on the basis of race, color, ethnicity, or national origin on the deposit side of the banking business. The only general federal law that provides some protection against discrimination involving deposit transactions is Section 1981 of the Civil Rights Act of 1866, which is a statutory basis for the lawsuits described in Part II.<sup>102</sup>

#### B. *The Civil Rights Act of 1866*

Section 1 of the Civil Rights Act of 1866 provided all individuals within every United States state and territory with the same rights to "make and enforce contracts . . . as enjoyed by white citizens . . . ."<sup>103</sup> This provision is now codified as Section 1981.<sup>104</sup> Section 1981 protects against intentional discrimination on the basis of race, color, and ethnicity.<sup>105</sup> It applies not only to state actors but also to private persons.<sup>106</sup> To prevail on a Section 1981 claim, a plaintiff must prove facts in support of the following elements: (1) the plaintiff is a member

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100. See *supra* notes 51–52 and accompanying text.

101. See *supra* note 67 and accompanying text.

102. 42 U.S.C. § 1981(a).

103. Act of April 9, 1866, ch. 31, § 1, 14 Stat. 27, 27. The provision was re-enacted in 1870. Act of May 31, 1870, ch. 114, § 16, 16 Stat. 140, 144. In 1991, Congress defined the meaning of the right to "make and enforce contracts" as "making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship." Civil Rights Act of 1991, Pub. L. No. 102-166, § 101, 105 Stat. 1071, 1071–72 (codified at 42 U.S.C. § 1981(b)).

104. 42 U.S.C. § 1981(a).

105. *Saint Francis Coll. v. Al-Khazraji*, 481 U.S. 604, 613 (1987) ("Based on the history of § 1981, we have little trouble in concluding that Congress intended to protect from discrimination identifiable classes of persons who are subjected to intentional discrimination solely because of their ancestry or ethnic characteristics."); see also *Bhandari v. First Nat'l Bank of Com.*, 829 F.2d 1343, 1345 (5th Cir. 1987) (en banc) (affirming the judgment of the lower court that the statute does not apply to alienage discrimination).

106. *Runyon v. McCrary*, 427 U.S. 160, 168 (1976) ("It is now well established that § 1 of the Civil Rights Act of 1866, 14 Stat. 27, 42 U.S.C. § 1981, prohibits racial discrimination in the making and enforcement of private contracts.").

of a racial minority; (2) an intent to discriminate on the basis of race by the defendant; and (3) the discrimination concerns the making or enforcement of a private contract.<sup>107</sup> General allegations based on race are not sufficient.<sup>108</sup> Specific proof of the race of the plaintiff, defendant's discriminatory conduct, and interference with contractual relationship are required. In this effort, courts often use *prima facie* elements to gauge the adequacy of the factual allegations in reviewing motions to dismiss.<sup>109</sup>

In order to sustain a Section 1981 against a banking organization, the courts require proof of intentional racial discrimination, complete refusal to provide a service, and a "but for" cause of injury. With respect to intention, a Section 1981 claim may proceed based on direct evidence of racial motivation, such as the use of a racial epithet or slur. In addition, a Section 1981 claim may proceed based on indirect evidence of racial motivation. Here, the plaintiff presents evidence to support an inference of racial discrimination, such as denying service to a Black person while providing the same services to a white person or delivery of services to a Black person in a markedly hostile manner.<sup>110</sup> With respect to refusal to

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107. *Jarvis v. Wells Fargo Bank*, No. DLB-21-687, 2022 WL 1663568, at \*3 (D.Md. May 25, 2022). *But see* *Anderson v. Wachovia Mortg. Corp.*, 621 F.3d 261, 271 (3d Cir. 2010); *Banks v. Bank of Am.*, 505 F. Supp. 2d 159, 167 (D.D.C. 2007); *York v. JPMorgan Chase Bank*, No. CV-18-04039 2019 WL 3802535, at \*2 (D. Ariz. Aug. 13, 2019) (reflecting that some courts have used a different test for section 1981 claims, the court notes that "[for] Section 1981 claim[s], the plaintiff must show that '(1) [she] is a member of a protected class, (2) [she] attempted to contract for certain services, (3) [she] was denied the right to contract for those services, and (4) such services remained available to similarly-situated individuals who were not members of the plaintiff's protected class.'").

108. *See, e.g., Jarvis*, 2022 WL 1663568, at \*5, \*8 (D.Md. May 25, 2022) ("Jarvis also has not alleged facts from which the Court could infer . . . that Well Fargo's denial of banking services would not have happened but for his race.")

109. *See, e.g., Brown v. Harford Bank*, No. ELH-21-0096, 2022 WL 657564, at \*9, \*17 (D. Md. Mar. 4, 2022) ("At the motion to dismiss stage, a plaintiff need not establish a *prima facie* case of discrimination. Nonetheless, reference to the elements of a *prima facie* claim helps to gauge the adequacy of the factual allegations in terms of plausibility.").

110. *See, e.g., JM Adjustment Servs., LLC v. J.P. Morgan Chase Bank*, No. 16-10630, 2018 WL 1168940, at \*5, \*10-11 (E.D. Mich. Mar. 6, 2018) ("[To find Chase] 'markedly hostile,' the Court should consider whether it was: '(1) so profoundly contrary to the manifest interests of the merchant and/or her employees; (2) so far outside of widely-accepted business norms; and (3) so arbitrary on its face, that the conduct supports a rational inference of discrimination.'" (citation omitted)); *Pancic v. JPMorgan Chase Bank*, No. 23-cv-00002, 2023 WL 4640958, at \*7, \*10 (D. Or. July 20, 2023) ("[A] plaintiff can allege intentional discrimination in one of two ways: 'that (a) plaintiff was deprived of services while similarly situated persons outside the protected class were not and/or (b) plaintiff received services in a markedly hostile manner and in a manner which a reasonable person would find objectively discriminatory.' . . . Plaintiff does not allege treatment that can plausibly be viewed as



provide service, plaintiffs must usually demonstrate outright refusal by banks to provide services to sustain a Section 1981 claim.<sup>111</sup> Plaintiff claims have not survived motions to dismiss if the banking institution eventually provided the services.<sup>112</sup> In other words, a delay in providing banking services is not sufficient to establish a Section 1981 claim.<sup>113</sup> With respect to causation, a plaintiff alleging racial discrimination under Section 1981 must prove that their race was the “but for” cause of their injury. In other words, a Section 1981 plaintiff cannot merely show that their race was a “motivating factor” in the events giving rise to their injury but instead had to show it was the determinative factor in their treatment by the defendant.

C. *The Civil Rights Act of 1964*

While Title II of the Civil Rights Act of 1964 (“Title II”) prohibits discrimination in certain places of public accommodation, such as hotels and restaurants, it does not cover banking institutions.<sup>114</sup> Title II provides that “[a]ll persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, as defined in this section, without discrimination or segregation on the ground of race, color, religion, or

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markedly hostile, and she does not allege that she was treated in a manner different from similarly situated individuals who are not Croatian. Instead, she argues that the Court should infer the existence of comparators based on her experience and the allegation of Defendant’s ‘pattern and practice’ of discrimination. There are insufficient facts for the Court to reasonably make that inference.” (citation omitted)).

111. *See, e.g., Middleton v. Wells Fargo Bank*, 474 F. Supp. 3d 1290, 1296–97 (N.D. Ga. 2020) (finding that a customer stated a Section 1981 claim because the branch refused to contract with the plaintiff, forced the plaintiff to leave the branch, called the police, and only allowed the plaintiff to return to cash her check once law enforcement deemed it not fraudulent); *Watson v. Wells Fargo Bank*, No. 20-cv-01283, 2020 WL 7054701, at \*3 (M.D. Fla. Dec. 2, 2020) (finding that a bank customer stated a Section 1981 claim where three bank employees refused to allow customer to open an account and customer felt “he had no choice but to leave” the branch).

112. *See, e.g., Alexander v. JP Morgan Chase Bank*, No. 1:19-CV-10811, 2021 WL 1061833, at \*4, \*8 (S.D.N.Y. Mar. 8, 2021) (“[T]he weight of authority requires plaintiffs to allege that they were actually prevented (rather than delayed) from completing a transaction, or at least forced to complete the transaction on different terms from non-minority customers.”); *York*, 2019 WL 3802535 at \*2–\*3, \*7, \*10 (finding that a bank customer did not state a section 1981 claim where the customer was ultimately able to withdraw funds: “[a]lthough she alleges delay and mistreatment due to her race, she ultimately received all that she was entitled under her contractual relationship with Chase.”).

113. *See Banking While Black Part I*, *supra* note 1, at 9–13.

114. *See generally* Civil Rights Act of 1964, 42 U.S.C. § 2000a.

national origin.”<sup>115</sup> Banks are not defined as establishments that constitute public accommodations under Title II.<sup>116</sup> Furthermore, courts have held that banks are not public accommodations under Title II.<sup>117</sup>

*D. Proposed Legislation: Fair Access to Financial Services Act*

Recognizing the gap in federal law, members of Congress introduced the Fair Access to Financial Services Act (“FAFSA”). The legislation was initially introduced in 2020.<sup>118</sup> It was referred to committees without further action. It was re-introduced in 2022.<sup>119</sup> The legislation responded to incidents of “banking while Black” and the limited redress available under existing federal law. FAFSA would require financial institutions to treat all people equally and prohibit discrimination in the provision of financial services:

(a) All persons shall be entitled to the full enjoyment of the goods, services, facilities, privileges, and accommodations of any financial institution . . . without discrimination on the ground of race, color, religion, national origin, and sex (including sexual orientation and gender identity).

(b)(1) Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice prohibited by subsection (a), a civil action for preventive relief, including an

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115. 42 U.S.C. § 2000a(a).

116. *Id.* § 2000a(b).

117. *See, e.g.*, *Hatcher v. Servis First Bank*, No. 16-cv-01362, 2016 WL 7336403, at \*3, \*6 (N.D. Ala. Dec. 19, 2016) (“Title II only prohibits discrimination on the basis of race or color in ‘place[s] of public accommodation,’ and banks are not included in Title II’s comprehensive list of public accommodations.”); *Akyar v. TD Bank US Holding Co.*, No. 18-CV-379, 2018 WL 4356734, at \*5, \*11 (S.D.N.Y. Sept. 12, 2018) (“[C]ourts have expressly concluded that banks are not places of public accommodation within the meaning of the provision.”); *Alexander*, 2021 WL 1061833, at \*3, \*6 (“[A] bank cannot be considered a place of public accommodation for the purposes of establishing a Title II claim.”); *Ajuluchuku v. Wachovia Corp.*, No. 05CV532, 2006 WL 406602, at \*3, \*5 (W.D.N.C. Feb. 17, 2006) (“[T]he courts that have considered whether to expand Title II ‘public accommodation’ status to establishments other than those listed in § 2000a(b) have decided those issues in the negative.”).

118. Fair Access to Financial Services Act, S. 4801, 116th Cong. § 2 (2020); Fair Access to Financial Services Act, H.R. 8667, 116th Cong. § 2 (2020).

119. Fair Access to Financial Services Act, S. 4619, 117th Cong. § 1 (2022).

application for a permanent or temporary injunction, restraining order, or other order, may be instituted by the person aggrieved.<sup>120</sup>

During the Senate Banking Committee's hearing entitled "Annual Oversight of the Nation's Largest Banks" on September 22, 2022, Senator Sherrod Brown asked the chief executive officers of seven of the largest banking organizations in the United States whether they supported FAFSA. Generally, they all supported banks fighting racial discrimination but six demurred on support for FAFSA based on lack of knowledge of the specifics of the legislation, and one objected to the legislation. A transcript of the interaction is provided below:

Senator Brown:	Raise your hands if you are committed to fighting against discrimination. [all hands up]
Senator Brown:	Thank you. Thus, therefore, I think I can count on your support, right, for the Fair Access to Financial Services Act, which would prohibit banks and other financial institutions from discriminating on the basis of race, color, religion, national origin, or sex. The Fair Access to Financial Services Act, Mr. Scharf, will you support it?
Mr. Scharf, CEO and President, Wells Fargo & Company:	I don't know the specifics of it but the things you mentioned absolutely.
Senator Brown:	Mr. Moynihan?
Mr. Moynihan, Chairman and CEO, Bank of America:	The principles we're already regulated to but I don't know the specifics of the act.
Sen. Brown:	Mr. Dimon?
Mr. Dimon, Chairman and CEO, JPMorgan Chase & Co.:	Exactly the same position.
Senator Brown:	Ms. Fraser?

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120. *Id.* § 2.

Ms. Fraser, CEO, Citigroup	Yes, the same position. We don't know the specifics but endorse the principles.
Senator Brown:	Mr. Rogers?
Mr. Rogers, Chairman and CEO, Truist Financial Corporation:	We endorse the principles you just outlined but are not for the specifics of that act.
Mr. Cecere, Chairman, President, and CEO, U.S. Bancorp:	Mr. Chairman we endorse the principles as well, but I do not know the specifics.
Senator Brown:	Mr. Demchak?
Mr. Demchak, Chairman, President, And CEO, The PNC Financial Services Group:	The same.
Senator Brown	I think you all have really good staff and I would have thought that you would know about an act like that before you come in front of the committee but we will follow up. <sup>121</sup>

## V. CFPB COMPLAINTS

Since 2011, consumers have had the option to lodge complaints related to consumer financial products and services with the CFPB. The CFPB began accepting online complaints in 2015. This section provides an overview of the CFPB consumer complaint process and looks at allegations of racial discrimination made in complaints filed with the CFPB since 2015 related to checking or savings accounts, check cashing, and other money services.

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121. *Annual Oversight of the Nation's Largest Banks: Hearing Before the S. Comm. on Banking, Housing, & Urban Affs. Hearing*, 117th Cong. at 1:08:10–1:09:08 (Sept. 22, 2022), <https://www.banking.senate.gov/hearings/annual-oversight-of-the-nations-largest-banks> [<https://perma.cc/L6D6-KCMX>].

*A. CFPB Complaint Process*

The CFPB accepts complaints from consumers through its website, by telephone, and by mail. The CFPB encourages consumers to submit complaints through its website. During 2023, it received 97% of complaints through its website.<sup>122</sup> When consumers submit complaints, the CFPB asks them to identify the consumer financial product or service with which they have a problem, the issue that best describes the problem, and the company to which they want to direct their complaint. The online form allows consumers to describe what happened and their desired resolution in a free-form text field. Consumers also have the option to provide demographic information, such as their age, sex, race, servicemember status, household size, and combined annual household income. In addition, the online complaint form also allows consumers to attach supporting documentation, which often helps companies address issues raised by consumers.<sup>123</sup> The CFPB routes consumers' complaints about financial products and services directly to financial companies and works to get consumers timely responses.<sup>124</sup> The CFPB also shares consumer complaint information with prudential regulators and other federal and state agencies where appropriate.<sup>125</sup>

The CFPB monitors consumer complaints and company responses to determine the types of challenges consumers are experiencing with financial products and services and how companies are responding to consumers' concerns. The CFPB also uses this information to monitor risk in financial markets, assess risk at companies, and prioritize agency action.<sup>126</sup>

The CFPB makes a subset of complaint data publicly available in the Consumer Complaint Database on its website.<sup>127</sup> While the CFPB considered the request of several consumer groups to include in the subset of public information protected group information such as race, ethnicity, and national origin, the CFPB decided not to do so because of its potential

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122. CFPB, CONSUMER RESPONSE ANNUAL REPORT JAN. 1 – DEC. 31, 2023 at 5 (Mar. 2024) [hereinafter CFPB 2023 Report], [https://files.consumerfinance.gov/f/documents/cfpb\\_cr-annual-report\\_2023-03.pdf](https://files.consumerfinance.gov/f/documents/cfpb_cr-annual-report_2023-03.pdf) [https://perma.cc/9U9A-VU44].

123. *Id.* at 6.

124. *Id.*

125. *Id.* at 7.

126. *Id.*

127. *Id.*

to lead to re-identification of specific persons from such information.<sup>128</sup> Therefore, the public database does not include demographic information fields. Furthermore, the CFPB redacts information from narrative descriptions of complaints that refer to the race of the person filing the complaint.

*B. CFPB Annual Reports Concerning Consumer Complaints*

The CFPB provides Congress with an annual report concerning the complaints received in the prior year, with information and analysis of complaint numbers, types, and resolutions. The CFPB reported it received approximately 1,657,600 consumer complaints in 2023.<sup>129</sup> Of those complaints, 64,500 are pertinent to the activities addressed by this article because they involved checking and savings accounts.<sup>130</sup>

The CFPB's Report to Congress for 2020 described complaints about financial institutions placing holds on deposited funds without notice and extension of holds longer than what the consumer had been informed.<sup>131</sup> Depositories generally responded that suspicious account activity triggered security concerns and that they restricted accounts to prevent potential fraud and losses to consumers and companies. Additionally, account holders expressed concern when their deposit accounts were closed without them receiving notice or being given a reason for the closure. Depositories generally responded by referencing deposit account agreements, which typically allow the closure of accounts at any time and for any reason.<sup>132</sup>

The CFPB's Annual Report for 2021 also mentioned complaints about deposit accounts being closed without consumers receiving notice or being given a reason for the closure.<sup>133</sup> Companies generally responded

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128. Disclosure of Consumer Complaint Narrative Data, 80 Fed. Reg. 15572, 15579, 15583 (Mar. 24, 2015).

129. See CFPB 2023 Report, *supra* note 122, at 9.

130. *Id.* at 11.

131. CONSUMER FIN. PROT. BUREAU, CONSUMER RESPONSE ANNUAL REPORT JAN. 1 – DEC. 21, 2020 at 46–47 (Mar. 2021) [hereinafter CFPB 2020 Report], [https://files.consumerfinance.gov/f/documents/cfpb\\_2020-consumer-response-annual-report\\_03-2021.pdf](https://files.consumerfinance.gov/f/documents/cfpb_2020-consumer-response-annual-report_03-2021.pdf) [<https://perma.cc/3GK5-8S3V>].

132. *Id.* at 33.

133. CONSUMER FIN. PROT. BUREAU, CONSUMER RESPONSE ANNUAL REPORT JAN. 1 – DEC. 21, 2021 at 33 (Mar. 2022) [hereinafter CFPB 2021 Report], [https://files.consumerfinance.gov/f/documents/cfpb\\_2021-consumer-response-annual-report\\_2022-03.pdf](https://files.consumerfinance.gov/f/documents/cfpb_2021-consumer-response-annual-report_2022-03.pdf) [<https://perma.cc/6LH9-RJ6W>].

once again by referencing deposit account agreements, which typically allow the closure of accounts at any time and for any reason. Furthermore, consumers complained that they were unable to reach representatives by phone, email, or in person. When they did make contact, consumers reported representatives were unhelpful, rude, provided misinformation, or placed them on hold for long periods of time before disconnecting the call.<sup>134</sup> Depositories generally responded that higher than average call volume resulted in longer hold times.

The CFPB's Annual Report for 2023 stated that complaints involving checking and savings accounts increased dramatically in 2023 compared to 2022.<sup>135</sup> The increase manifested in an increased number of complaints related to opening, managing, and closing accounts. The complaints largely echoed those noted in the 2021 and 2022 reports. However, the 2023 report summarized additional complaints. First, the CFPB noted that consumers most frequently complained that funds were taken from their accounts through unauthorized or fraudulent transactions with companies often denying that transactions were unauthorized or fraudulent. Second, consumers expressed frustration with their inability to access account funds due to holds on large deposits and wire transfers, locks on accounts based on concerns about fraudulent or suspicious activity, or accounts being frozen without notice or explanation. Companies typically responded that restrictions arose because account activity was outside an acceptable level of risk or not in compliance with internal policies and account agreements. Finally, some consumers complained they had to wait weeks for funds to be refunded following the closure of an account.<sup>136</sup>

Remarkably, nowhere within the annual reports published by the CFPB in 2021, 2022, or 2023 did the CFPB mention consumer complaints of racial discrimination involving checking or savings accounts, check cashing, or money services. This is particularly surprising given the changes to the CFPB's examination manual in 2022, defining racial discrimination as "unfair" under its authority to prevent a covered person from engaging in an unfair, deceptive, or abusive act or practice, which is discussed in Section VI.B. below.

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134. *Id.* at 30–35.

135. See CFPB 2023 Report, *supra* note 122, at 11 (noting 64,500 complaints received about checking or savings accounts in 2023 was 15,800 more than 2022, or a 33% increase).

136. *Id.* at 39–40.

C. *Complaints Alleging Discrimination Related to Deposit, Check Cashing, and Other Money Service Transactions*

1. Search Results

This author conducted searches of consumer complaints filed against depository institutions with the CFPB with narrative descriptions from 2015 to 2024 in three categories: (1) checking or savings account, (2) banking account or service, and (3) money transfer, virtual currency, or money service.<sup>137</sup> The first group of searches used one or more of the terms: race, racial, racism, racist, racial profiling, racial bias, prejudice, discrimination, discriminate, discriminatory, skin color, color of skin, people of color, person of color, banking while, minority, minorities, ethnicity, ancestry, and/or national origin.<sup>138</sup> These searches located 531 complaints alleging some form of racial, ethnic, minority, or national origin discrimination in connection with checking or savings accounts, check cashing, or money service transactions. These search results can be divided as follows:

Explicit mention of race or color 413 (78%)<sup>139</sup>

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137. The first complaints in the CFPB's online public database are dated March 19, 2015. CONSUMER FIN. PROT. BUREAU, CONSUMER COMPLAINT DATABASE, <https://www.consumerfinance.gov/data-research/consumer-complaints/> [<https://perma.cc/KZF6-V77S>] (last visited Nov. 4, 2024).

138. *Id.*

139. *See, e.g., Complaint No. 8926170*, CONSUMER FIN. PROT. BUREAU (May 3, 2024), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/8926170> [<https://perma.cc/F66A-DDA5>] ("Teller didn't follow the due diligence and flagged my account . . . I believe I was treated differently and discriminated due to my race."); *Complaint No. 8850560*, CONSUMER FIN. PROT. BUREAU (Apr. 24, 2024), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/8850560> [<https://perma.cc/47H2-J3F4>] ("THEY SENT ME A LETTER STATING THEY WOULD HOLD THE DEPOSIT LONGER THAN USUAL BECAUSE THEY HAD SECRET INFORMATION THAT MY CHECK WOULD BOUNCE AND WOULD NOT BE PAID . . . I FEEL MY [] RACE WAS A FACTOR AND THEY WERE CALLING ME A 'THIEF.'"); *Complaint No. 7820187*, CONSUMER FIN. PROT. BUREAU (Nov. 8, 2023), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/7820187> [<https://perma.cc/45V8-7PMZ>] (In a complaint about delay in obtaining access to funds in checking account, the consumer stated: "Arvest did not provide their customers with a written disclosure stating a cash transfer from [bank] will delay the customer in withdrawing the funds from the bank . . . I also feel like Arvest highly discriminated against me because of the color of my skin and I'm being retaliated against by reacting to their unethical practices."); *Complaint No. 7696330*, CONSUMER FIN. PROT. BUREAU (Oct. 14, 2023) <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/7696330> [<https://perma.cc/DQ6Q-X87U>] ("I went to the Chase



Explicit mention of minority status 55 (10%)<sup>140</sup>

Explicit mention of national origin 54 (10%)<sup>141</sup>

branch . . . for notary services . . . I don't expect much from Chase branches considering the bankers are racists to start with. But these kind of ludicrous and unreasonable work practices by Chase bankers validates it further. I am not white . . .").

140. See, e.g., *Complaint No. 8601330*, CONSUMER FIN. PROT. BUREAU (Mar. 21, 2024), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/8601330> [<https://perma.cc/2F9U-AYHY>] ("KEYBANK . . . [allowed merchants] to retrieve funds from my account wrongfully . . . KEYBANK [denies] minorities liberties including loans and access to fair treatment as a bank client [and] indulges in denying minorities the proper treatment involving banking disputes . . ."); *Complaint No. 4443261*, CONSUMER FIN. PROT. BUREAU (June 8, 2021), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/4443261> [<https://perma.cc/95D6-SY99>] ("I told her I wanted to open an account . . . [and] she began to act very disoriented towards me as a young XXXX female XXXX XXXX minority, [she] made structural racism remark to me with an under tone . . ."); *Complaint No. 2323940*, CONSUMER FIN. PROT. BUREAU (Feb. 2, 2017), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/2323940> [<https://perma.cc/QYT6-M643>] ("I am XXXX and a minority. I came into the branch to open an account and the woman took an hour and asked for additional forms of ID other than my state ID . . . She asked a number of strange questions, too . . . At this point, I am going to seek legal counsel and make a discrimination complaint.").

141. See, e.g., *Complaint No. 9134554*, CONSUMER FIN. PROT. BUREAU (May 30, 2024), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/9134554> [<https://perma.cc/TMW5-XYPA>] ("I made a call to Chase and spoke to a customer service rep who did confirm the wire was received, however it was put into a hold status . . . I truly believe that something nefarious is going on here and that Chase either profiled me because of my nationality and name."); *Complaint No. 6194494*, CONSUMER FIN. PROT. BUREAU (Nov. 12, 2022), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/6194494> [<https://perma.cc/U477-2TJC>] ("The bank is charging my account an Excessive number of overdraft fees . . . for a disputed and cancelled transactions that they have decided in the merchant favor . . . The bank was biased against me and discriminated me on the basis of National origin, Gender, age, and Ethnicity."); *Complaint No. 7958400*, CONSUMER FIN. PROT. BUREAU (Dec. 7, 2023), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/7958400> [<https://perma.cc/NE66-HG6G>] ("[Capital One] decides to close my account or accounts at that moment, telling me that Capital One did not want to take risks with me [sending my international family money,] and that it was breaking off relations with me. Is Capital One a XXXX bank? Are you discriminating against me because of my nationality?"); *Complaint No. 7960259*, CONSUMER FIN. PROT. BUREAU (Dec. 6, 2023), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/7960259> [<https://perma.cc/B529-SX95>] ("[M]y new account is being closed because I allegedly made a transfer or had sent money to a country that was forbidden or that my money transfer was suspicious and unauthorized for me to send in the first place. . . This is complete and obvious discrimination by the bank . . . [T]hey are discriminating against me because I have an XXXX XXXX middle name and sur name."); *Complaint No. 9056452*, CONSUMER FIN. PROT. BUREAU (May 20, 2024), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/9056452> [<https://perma.cc/47JP-WS86>] ("I tried opening a Personal Checking Account with Capital One . . . [and was told] to visit a Capital One branch . . . I figured this might be another case of '[a representative] simply doesn't like that my passport

Explicit mention of ethnicity or ancestry 32 (6%)<sup>142</sup>

Complaints sometimes mentioned more than one type of discrimination. While 413 results were returned for queries using variants of race or color, it seems that these terms were sometimes redacted, which results in undercounting of complaints alleging discrimination on the basis of race or color. Many more complaints generally allege “discrimination” without identifying the type of discrimination. They may allege discrimination based on race, color, age, disability, or other legally protected characteristics. The total of 531 responsive complaints does not include general complaints about discrimination without explicit mention of race or color.<sup>143</sup>

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was issued in XXXX’ which is the case most of the time.”) This reflects that the total number of responsive complaints also includes complaints that generally allege discrimination based on national origin when the allegation of discrimination is tied to a non-U.S. passport.

142. See, e.g., *Complaint No. 3539936*, CONSUMER FIN. PROT. BUREAU (Feb. 2, 2020), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/3539936> [<https://perma.cc/T77N-5HC5>] (“[A]ll [utility] payments were rejected by the bank . . . [and] [I] was informed that there is a freeze on my account . . . [T]he bank manager . . . refused to disclose any information to me, treating me like a criminal for no reason other than being Arabic and a female.”); *Complaint No. 3265182*, CONSUMER FIN. PROT. BUREAU (June 5, 2019), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/3265182> [<https://perma.cc/NR9K-QHHB>] (“Wells Fargo is refusing to investigate a fraud complaint I filed against several bars for over {\$500.00} in charges for one night, as well as {\$140.00} in unauthorized activity two days later . . . I am also being discriminated against because of XXXX ancestry.”).

143. Additionally, the total of responsive complaints does not include complaints with redacted text that may include a racial identity such as “I am XXXX,” “They do XXXX people wrong,” “I’m a young XXXX man,” “Mistreating XXXX American customers,” “I am an XXXX-American,” and “I am an XXXX American Male.” See, e.g., *Complaint No. 6925402*, CONSUMER FIN. PROT. BUREAU (May 4, 2023), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/6925402/> [<https://perma.cc/633A-H98F>] (“Bank Of America stole the content of my account on XX/XX/XXXX in the amount of XXXX . . . “[M]aybe it’s a prejudice thing where they are XXXX and I am XXXX and they are simply messing with me.”); *Complaint No. 6456749*, CONSUMER FIN. PROT. BUREAU (Jan. 19, 2023), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/6456749> [<https://perma.cc/G9K3-MJZQ>] (“Wells Fargo is prejudice and they do XXXX folk wrong. They take our money with those ridiculous charges.”); *Complaint No. 4761395*, CONSUMER FIN. PROT. BUREAU (Sept. 28, 2021), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/4761395> [<https://perma.cc/F4K4-ZNNU>] (“I’m a young XXXX man . . . I called and they won’t provide any info as to why I can’t have a checking account. If there’s no reason, it’s obviously racism.”); *Complaint No. 9719221*, CONSUMER FIN. PROT. BUREAU (Aug. 6, 2024), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/9719221> [<https://perma.cc/2R6P-93YE>] (“[I] was told that my account is being closed[] after calling the bank about and fraudulent deposit into my checking account. I feel that I was discriminated against because I am a XXXX man.”); *Complaint No. 9350648*, CONSUMER FIN. PROT. BUREAU (June 26, 2024),

However, the total of responsive search results does include complaints that allege general discrimination where the text strongly supports an inference of racial discrimination. For example, complaints are included that have very likely redacted the term “Black” from the phrase “banking while XXXX”<sup>144</sup> and “color” from the phrase “people

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<https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/9350648> [<https://perma.cc/7DDP-6BHN>] (“I believe my bank accounts are being wrongfully closed due to retaliation & discrimination for complaining to your agency recently and over the years . . . . This bank has a long history of mistreating XXXX American customers.”); *Complaint No. 7851604*, CONSUMER FIN. PROT. BUREAU (Nov. 14, 2023), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/7851604> [<https://perma.cc/CS83-YBVX>] (“Earlier this year, Citibank . . . closed my long-standing checking and savings account. Around the same time, Citibank also closed my mother’s checking and savings account . . . . I am an XXXX-American, and so is my mom . . . . I believe my mom and I were discriminated against because of our ethnicity.”); CONSUMER FIN. PROT. BUREAU, *Complaint No. 4208050*, JPMorgan Chase & Co. (Mar. 12, 2021), *Complaint No. 4208050*, CONSUMER FIN. PROT. BUREAU (Mar. 12, 2021), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/4208050> [<https://perma.cc/53SS-6AFC>] (“Chase Bank has discriminated against me because I am an XXXX American Male . . . . The[y] Froze my account with all my personal money and Direct deposit from work.”); *Complaint No. 7010833*, CONSUMER FIN. PROT. BUREAU (May 22, 2023), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/7010833> [<https://perma.cc/SB9S-C9N8>] (“I received a letter stating that all my personal accounts, business accounts, and credit cards with US Bank stating they are cancelling all the above accounts . . . . I feel like this was targeted because I am a XXXX American Male.”).

144. See, e.g., *Complaint No. 7095443*, CONSUMER FIN. PROT. BUREAU (Jun 9, 2023), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/7095443> [<https://perma.cc/8ZSR-58LD>] (“They kept assessing late fees which made it hard to pay my bill, and would not allow me to enter into a repayment plan. [I] had never been late on [my] credit card payment in the nine years [I have] had [my] credit card with Chase, and has damaged credit as a result of their bad faith, and malicious [sic] retaliation for complaining about discrimination (‘banking while XXXX’), at their branch by their VP . . . .”); *Complaint No. 6060570*, CONSUMER FIN. PROT. BUREAU (Oct. 7, 2022), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/6060570> [<https://perma.cc/ZRG5-M784>] (“Wells Fargo has failed me in a case that is clearly fraud to the police and all banking personnel I speak to in person with both Wells Fargo and XXXX. THIS IS A CASE OF BANKING WHILE XXXX AT WELLS FARGO.”); *Complaint No. 5946806*, CONSUMER FIN. PROT. BUREAU (Sept. 3, 2022), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/5946806> [<https://perma.cc/QY2W-NWY7>] (“I informed XXXX XXXX I requested the funds to be deposited into savings for tax purposes. He inquired if the check was “income “. Although this was no business of his, I told him it was not income. . . . This is another perfect example of the hazards of ‘Banking While XXXX.’”); *Complaint No. 5920320*, CONSUMER FIN. PROT. BUREAU (Aug. 26, 2022), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/5920320> [<https://perma.cc/FV5Y-VB6K>] (“This was a case of Banking While XXXX . . . . I went to open an account for my business, however, the banking manager has different plans . . . .”); *Complaint No. 5690981*, CONSUMER FIN. PROT. BUREAU

of XXXX.”<sup>145</sup> Additionally, complaints that generally allege discrimination in combination with an allegation of “redlining” are included because of the historical connection of redlining with racial discrimination.<sup>146</sup> Furthermore, the total of responsive search results

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(June 21, 2022), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/5690981> [<https://perma.cc/37TT-PTBC>] (“On two separate occasions I experienced differential treatment that I believe was racially motivated. . . . # [hashtag] Banking While XXXX.”); *Complaint No. 5261366*, CONSUMER FIN. PROT. BUREAU (Feb. 25, 2022), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/5261366> [<https://perma.cc/5GCU-YXDE>] (“I download the Chase app, logged in, and got the message, ‘We locked your account due to suspicious activity[.]’ with a phone number to call . . . she noted XXXX ‘s surname and commented, ‘he probably was flagged because of his name[.]’ . . . . Banking while XXXX?”); *Complaint No. 4614421*, CONSUMER FIN. PROT. BUREAU (Aug. 9, 2021), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/4614421> [<https://perma.cc/52TY-9JHF>] (“Banking while XXXX went to the counter to do a transaction bank tell was making false Statements that would regard as being XXXX Asking XXXX questions.”).

145. See, e.g., *Complaint No. 5501737*, CONSUMER FIN. PROT. BUREAU (Apr. 27, 2022), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/5501737> [<https://perma.cc/R6EF-KATE>] (“Another 5 minutes went by, in which XXXX XXXX returned [and said] ‘You are going to need to have this reissued, as I am not able to cash this check. You have a history of having items returned on your account.’ . . . I believe I fell victim to one of your employees’ biases toward people of XXXX.”); *Complaint No. 6565751*, CONSUMER FIN. PROT. BUREAU (Feb. 13, 2023), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/6565751> [<https://perma.cc/4UUA-6EDE>] (“So its [sic] still a year and Half and Bank of America is just now telling me that my account money is in a hold harmless account . . . . Because I’m a man of XXXX[,] they feel that I didn’t earn my money the proper way and its really feeling like a XXXX discrimination situation in this case.”).

146. For examples of complaints that allege discrimination and redlining, see *Complaint No. 9794363*, CONSUMER FIN. PROT. BUREAU (Aug. 15, 2024), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/9794363> [<https://perma.cc/29M7-SXZK>] (“From that initial application . . . I was deliberately given the ‘run around’” allegedly [sic] based upon numerous corrections that needed to be made upon my application. . . . I will provide these overly-invasive questions . . . which demonstrate a clearly biased-redlining and discriminatory behavior communicating the obvious preference to ‘find a reason’ to NOT open the requested Business Account.”); *Complaint No. 8895053*, CONSUMER FIN. PROT. BUREAU (Apr. 30, 2024), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/8895053> [<https://perma.cc/8GZC-UU9C>] (“[T]hat all checks that are deposited that are over {\$10000.00} are automatically held until funds can clear . . . is tantamount to redlining.”); *Complaint No. 8364138*, CONSUMER FIN. PROT. BUREAU (Feb. 17, 2024), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/8364138> [<https://perma.cc/JQ84-85M5>] (“[Wells Fargo] told me that because I had already opened an account in my personal name, I could not open a business bank account due to a fraud hold . . . . My statement was that it will be considered XXXX discrimination. Redlining, which is an illegal discriminatory practice of denying people access to credit . . . .”); *Complaint No. 7405696*, CONSUMER FIN. PROT. BUREAU (Aug. 15, 2023), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/7405696> [<https://perma.cc/9LCK-3T6S>] (“[C]iti bank is redlining me. Period. This is the third time going to the site and doing this and that and will not

includes complaints where allegations of general discrimination are tied to the “Civil Rights Act of 1964” because that act specifically prohibits discrimination on the basis of race, color, and national origin.<sup>147</sup>

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open!”); *Complaint No. 6882010*, CONSUMER FIN. PROT. BUREAU (Apr. 24, 2023), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/6882010> [<https://perma.cc/4B9R-EDE7>] (“A few months back, USAA mysteriously removed my access to my account. . . . As a minority who has done well for himself, but had to go through a lot of discrimination, this reeks of ‘we like him/her and don’t like him/her.’ This is redlining at its worst.”); *Complaint No. 6758927*, CONSUMER FIN. PROT. BUREAU (Mar. 29, 2023), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/6758927> [<https://perma.cc/6YFS-TDJN>] (“I received a letter from the bank closing my account without any explanation . . . . This reminds me of the redlining the banks were doing in the 60s and 70s.”); *Complaint No. 6149341*, CONSUMER FIN. PROT. BUREAU (Oct. 31, 2022), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/6149341> [<https://perma.cc/4B4B-SRGX>] (“A . . . person in charge of customer service . . . claimed my telephone number . . . rendered [me] ineligible for an online account . . . . Wells Fargo was indeed practicing a form of redlining by claiming my phone number was ineligible for online banking . . . . [T]he area code of my phone number corresponds to a city with large population of XXXX Americans . . . .”); *Complaint No. 3978082*, CONSUMER FIN. PROT. BUREAU, (Nov. 27, 2020), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/3978082> [<https://perma.cc/YN7L-HNHE>] (“Now, I re-opened under XXXX and again the account was opened, and accepted, and at the point of funding, yet there seemed to be some challenge in logging in. . . . It is absolutely XXXX, and ‘red-lining’ to prematurely close, after opening, and providing the opportunity to fund, and seemingly retaliatory, and discriminatory.”); *Complaint No. 3920022*, CONSUMER FIN. PROT. BUREAU (Oct. 26, 2020), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/3920022> [<https://perma.cc/UG25-5BV7>] (“[E]trade XXXX closed my accounts without any written or email notifications per their customer agreement . . . . I have been discriminated against . . . . They were also redlining the use of my card and account before this denying certain transactions and would not approve them when the funds were available in my account.”); *Complaint No. 3471398*, CONSUMER FIN. PROT. BUREAU (Dec. 18, 2019), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/3471398> [<https://perma.cc/G8TV-HTFD>] (In a complaint about a refusal to cash a check, the consumer stated: “First Midwest Bank . . . is discriminating against me for being a XXXX . . . . They would not allow me to cash . . . my . . . check . . . . I feel that First Midwest Bank is Redlining me for being perceived as an inferior XXXX minority.”).

147. See, e.g., *Complaint No. 8080919*, CONSUMER FIN. PROT. BUREAU (Dec. 29, 2023), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/8080919> [<https://perma.cc/799U-FCWR>] (“I opened an online savings account with Citizens Access Bank. Approximately XXXX hours later, the account was closed without my knowledge or consent . . . . I look forward to my government actively enforcing the Civil Rights Act of 1964 upon Citizens Access Bank and putting an end to their discriminatory actions towards me.”); *Complaint No. 7724942*, CONSUMER FIN. PROT. BUREAU (Oct. 19, 2023), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/7724942> [<https://perma.cc/4EJZ-HS54>] (“My name is XXXX XXXX with an Iranian Passport . . . . Me and my wife opened an account at a Chase . . . . [B]ecause my country of nationality is XXXX they are closing my account. This is illegal and inhumane due to section XXXX of the Civil Rights Act of 1964, no person should be discriminated against due to country o[r] nationality.”).

It should also be noted that the CFPB likely possesses many more race-related complaints against depository institutions than can be identified through the public version of its complaint database. As currently designed, persons filing a complaint have the option to choose a race in a demographic field. For example, a person filing a complaint may check the African American box. However, this demographic information is not made available to the public. Thus, the correlation between general allegations of discrimination and race cannot be discovered when one of the two variables appears only in the non-public demographic field. Still, the CFPB has the ability to do searches based on the racial demographic field and consumer narratives that generally allege discrimination. The ability to do so would likely uncover additional race-related complaints.

A second group of searches was conducted using terms indicating a specific racial identity: Black, African American, Hispanic, Latino, Latina, or Asian. The searches using a specific racial identity returned only four results: two complaints by persons who self-identified as African American<sup>148</sup> and two complaints by persons who self-identified as Black.<sup>149</sup> The lack of race-specific results is consistent with the

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148. *Complaint No. 8631463*, CONSUMER FIN. PROT. BUREAU (Mar. 26, 2024), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/8631463> [<https://perma.cc/ST36-KVDN>] (“The . . . embezzlement/gaming strategies included Wells Fargo using my son and Is [sic] existing customer identities without our consent to open checking and savings, debit card, credit card, bill pay accounts . . . I also believe Wells Fargo’s predatory identification of certain patrons as, vulnerable customers, was racially motivated, and based on the fact that I am an African-American . . .”); *Complaint No. 3067284*, CONSUMER FIN. PROT. BUREAU (Nov. 6, 2018), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/3067284> [<https://perma.cc/7GNE-GUM3>] (“Mr. XXXX made me as a consumer feel that I was not welcomed or valued. although I am not an account holder of PNC, the check was drawn on an account holder of PNC Bank. This kind of behavior was not only inexcusable, but as an African-American, it appeared to be stereotypical and made me feel that Mr. XXXX was racial profiling me.”).

149. *Complaint No. 3355732*, CONSUMER FIN. PROT. BUREAU (Aug. 27, 2019), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/3355732> [<https://perma.cc/ED45-JWQ7>] (In a complaint alleging a problem related to depositing a check, the consumer stated: “[My daughter] was simply trying to deposit a check into her checking account . . . I asked ‘what’s the problem?’ . . . ‘is it because we are black?’ . . . She . . . no longer wanted to have a conversation on what transpired . . . If she didn’t think this was racially motivated, why [did she] get offended?”). *Complaint No. 7782182*, CONSUMER FIN. PROT. BUREAU (Oct. 31, 2023), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/7782182> [<https://perma.cc/B259-7WKM>] (“The account was opened with my international passport and I am verified each time I call, the debit card bears my name and the company name and suddenly because there is a substantial amount of money

intention expressed by the CFPB to exclude protected group information from information available in its public complaint database (e.g., race, color, ethnicity, or national origin).<sup>150</sup> This means, however, that the total of 531 responsive search results undercounts complaints that allege discrimination on the basis of racial identity. In other words, the CFPB's redaction of the terms "Black," "African American," "Hispanic," "Latino," and "Asian" from its public database masks the full extent of allegations of racial discrimination.

## 2. General Trends

### a. Number of Responsive Complaints from 2015 to 2024

An analysis of the responsive search results shows an increasing frequency of complaints alleging racial, ethnic, minority, and national origin discrimination from 2015 to 2024.

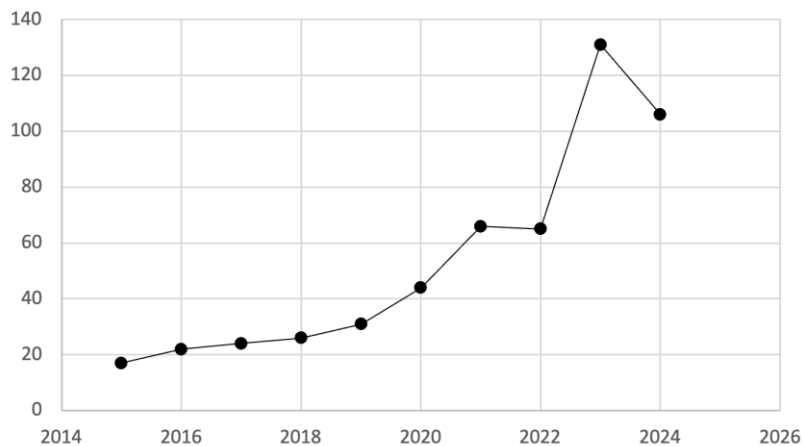


FIGURE 4: Number of Responsive Complaints 2015-2024

### b. General Subject of Complaints

The most frequent allegations of racial, ethnic, minority, and national origin discrimination involved holds on funds in accounts and

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in the account it is no longer mine because a black woman is not supposed to have a certain amount of money sitting in their account? How insulting!!! . . . . They don't have to spell it out but clearly this is racist and hateful.").

150. See *supra* note 128 and accompanying text.

the closing of accounts. The general subjects of responsive complaints are listed below in order of frequency with complaints sometimes mentioning more than one service.

<b>Number</b>	<b>Subject of Complaint</b>
141	Checking or savings account closed
122	Hold on funds or lack of access to funds in checking or savings account
77	Other service (e.g., notary, trust, and access to premises)
75	Dispute over charges to checking or savings account
64	Unable to open checking or savings account
25	Money transfer service – domestic or international
22	Withdrawal from checking or savings account
17	Issue with checking or savings account
13	Check cashing by non-account holder
9	Refusal to accept deposit to checking or savings account
2	Investment service

c. Frequency of Complaints Against Large Banking Organizations

Of the total of 531 responsive search results, 366 (70%) are attributable to the ten largest domestic banking organizations:<sup>151</sup>

<b>Asset Size Rank</b>	<b>Name</b>	<b>Number of Complaints</b>	<b>Responsive Complaints Rank</b>
1	JPMorgan Chase Bank	99	1
2	Bank of America	73	2
3	Wells Fargo Bank	67	3
4	Citibank	32	4
5	U.S. Bank	20	6
6	PNC Bank	25	5

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151. See FED. RSRV., *Federal Reserve Statistical Release, Large Commercial Banks* (Sept. 30, 2023), <https://www.federalreserve.gov/releases/lbr/20230930/default.htm> [https://perma.cc/VR48-UXZU] (ranking U.S.-chartered commercial banks by consolidated assets).



2025]	<i>COLOR IN LINE</i>		149
7	Truist Bank <sup>152</sup>	16	8
8	Capital One	18	7
9	Goldman Sachs Bank	2	10
10	TD Bank	14	9
Total		366	

### 3. Specific Complaints

Excerpts from many responsive complaints are provided below. They are grouped based on three types of interaction at banking institutions: core services,<sup>153</sup> extra services, and manner of service. While reading these complaints, be advised that the publicly available information is usually limited to the consumer’s side of the story. Generally, companies only respond to the consumer and the CFPB and do not provide a public response. If companies choose to inform the public about its response, they do so by selecting from a pre-set list of options, for example, “Company believes complaint is the result of an isolated error.”<sup>154</sup> In only 26 of the 531 responsive complaints did the company provide a public explanation. Additional information about company responses is limited to a categorical response: “Closed with explanation,” “Closed with non-monetary relief,” or “Closed with monetary relief.” For responsive complaints, only 38 complaints were closed with monetary relief and only 37 with non-monetary relief. The specific explanation provided to the consumer and CFPB is not available in the public version of the CFPB’s complaint database.

#### a. Core Services

Core services involve an account holder opening or closing an account, withdrawing money from an account, or making a payment to a third party. Core services also include a non-account holder engaging in a check-cashing transaction. The following complaints are typical of

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152. The calculation of complaints against Truist Bank includes complaints against its legal predecessors, BB&T and SunTrust.

153. This category reflects the definition of a branch from the National Banking Act – deposits received, checks cashed, and money lent. 12 U.S.C. § 36(j).

154. *Field Reference*, CONSUMER FIN. PROT. BUREAU, <https://cfpb.github.io/api/ccdb/fields.html> [<https://perma.cc/6UW6-K7AK>] (last visited Nov. 4, 2024).

racial discrimination claims filed with the CFPB involving core services.<sup>155</sup>

In April 2024, a customer of Capital One Bank filed a complaint about the length of hold on a check:

The deposit . . . was a cashier's check from a black-owned bank. It is noteworthy to mention that in my 20 years of banking, I have never had a cashier's check held for seven days. What is particularly distressing is not only the prolonged hold on these funds but also the complete inability to access any funds in the account . . . . As a person of color, I cannot ignore the possibility that these actions may constitute a civil rights violation, especially considering similar experiences I have heard from other customers of color. It is deeply troubling to think that such discriminatory practices may be occurring within our banking system.<sup>156</sup>

In March 2024, another Capital One customer filed a complaint arising from the bank placing holds on two checks based upon suspicion of fraud:

It is evident that the alleged suspicious activity and accusations of check fraud from Capital One Bank are rooted in racial profiling. They seem to hold the belief that an XXXX XXXX young man cannot legitimately deposit {\$6300.00} into his account. Despite my extensive tenure as a Capital One customer, my flawless history of transactions, and the absence of any prior fraudulent activity, there exists no legal justification for Capital One to treat me as a common criminal solely based on my skin color . . . . However, due to discriminatory practices, they have frozen all funds in all my accounts. Even accounts unrelated to this matter have

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155. Complaints are reproduced largely as written but misspellings have been corrected and some punctuation and bracketed words have been added to aid in reading.

156. *Complaint No. 8705996*, CONSUMER FIN. PROT. BUREAU (Apr. 5, 2024), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/8705996> [<https://perma.cc/N3SF-ZFUB>].

been frozen because they perceive me as a criminal and bank fraudster simply because I, as a young XXXX XXXX man, deposited checks totaling {\$6300.00} . . . . These are prejudiced, biased, racist, and discriminatory bank practices originating from the notion that an XXXX XXXX man can't have high deposits.<sup>157</sup>

In April 2024, a customer of JPMorgan Chase filed a complaint arising from denial of a request for a cashier's check:

I visited the Chase Bank branch to obtain a cashier's check, having deposited a check from my retirement company the day before, which had cleared and was shown as available funds in my account. The purpose of this transaction was to purchase a car. Despite my funds being available, the XXXX delayed the process, resulting in a false claim of potential fraud without substantiation . . . . The XXXX, without any reasonable cause, involved the police, claiming a threat where there was none. This action was not only baseless but also humiliating and distressing for my family and me . . . . Subsequently, my account was locked, and a fraud alert was placed, preventing me from accessing my funds . . . . I was profiled by race, gender, age, and appearance . . . .<sup>158</sup>

In November 2023, a customer of Citizens Bank filed a complaint alleging differential treatment when cashing a check based on skin color:

My husband has visited the Citizens Bank located at XXXX . . . and each time he visits he [is met] with discrimination and differential treatment because of his skin color! My husband has his own accounts with Citizens Bank and he has been banking with them for over 18 years. I sent my husband to cash a check that I

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157. *Complaint No. 8652557*, CONSUMER FIN. PROT. BUREAU (Mar. 29, 2024), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/8652557> [<https://perma.cc/5SJW-75FB>].

158. *Complaint No. 8880143*, CONSUMER FIN. PROT. BUREAU (Apr. 28, 2024), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/8880143> [<https://perma.cc/XK76-TDDE>].

wrote to him from my account to pay the contractors working on our home and each and every time he [has] visited the branch he [is] told he can't cash the check without coming into the branch. Whenever I go to the branch to cash a check through drive thru I have no issues . . . . I've witnessed other people cash checks for similar amounts I've written and they never seem to have a problem in drive thru at the XXXX location. The difference between them and my husband is skin color! That is clear!<sup>159</sup>

In May 2023, a customer of U.S. Bank filed a complaint alleging that racist motives led to the closing of their checking account:

This is regarding the closure of my checking account without adequate reasons. I strongly believe that the reason for the closure appears to be discriminatory and racist. On XX/XX/XXXX, I received a notification stating that my checking account with U.S. Bank had been closed. However, the notification did not provide any clear reason for the closure except that [it was] in accordance with the . . . deposit agreement and general terms and conditions disclosure . . . . I am shocked and dismayed by the sudden closure of my account without any explanation. Furthermore, I cannot help but feel that the closure was based on discriminatory and racist motives. As a person of XXXX origin, I have often faced discrimination and prejudice in various aspects of my life. I strongly believe that the closure of my checking account is another instance of such discrimination.<sup>160</sup>

In March 2023, a minority person filed a complaint against Truist Bank based on its refusal to open a checking account accompanied by racial slurs:

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159. *Complaint No. 7929270*, CONSUMER FIN. PROT. BUREAU (Nov. 30, 2023), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/7929270> [<https://perma.cc/EX2D-RV5E>].

160. *Complaint No. 6949573*, CONSUMER FIN. PROT. BUREAU (May 8, 2023), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/6949573> [<https://perma.cc/E6KB-RRTZ>].

It was deeply concerning and alarming that a bank would deny me the opportunity to open an account based on my XXXX XXXXXXXX. Unfortunately, discrimination based on race is still prevalent in society, and it was completely unacceptable. It was appalling to imagine that I would have been subjected to such hurtful language and denied a basic service simply because of their XXXX XXXX . . . . Denying me access to banking services based on my race is illegal under federal law, and Truist [B]ank engaged in such discriminatory practices and should face serious legal consequences. Moreover, being called racial slurs is an act of racism that is causing me deep emotional pain and distress. I feel hurt, angry, and disappointed that I was treated unfairly and differently than other consumers. It was the bank's management XXXX XXXX that called me out of my name using the word ( XXXX ) and had me removed by authorities unlawfully.<sup>161</sup>

In August 2022, a potential customer of Truist Bank filed a complaint alleging refusal to open a checking account because the customer was Black:

This was a case of Banking While XXXX. I entered the Truist location [at] XXXX, Tx. I went to open an account for my business, however, the banking manager [had] different plans, he [first] asked for the documents for my business like normal, then upon review, he tells me my office is showing up on XXXX as a different business. Well this is because it's a shared space . . . . [The banker] refused to open the account at that moment, stating my address isn't valid . . . . Very rude, extremely combative, I work 50% from home and 50% in [the] office. Even if this were the case where my business address can't be used to open the account, I should still be able to open the

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161. *Complaint No. 6627221*, CONSUMER FIN. PROT. BUREAU (Mar. 1, 2023), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/6627221> [<https://perma.cc/R9RY-2GNM>].

account using my home address. However, this option was never presented. This is illegal to not present all options and against their policy. I believe I was discriminated against simply because [of] the XXXX of my XXXX.<sup>162</sup>

In September 2018, a person without an account at Bank of America filed a complaint alleging the bank's refusal to cash a check was motivated by racism:

I was cashing my paycheck, as always been the case, with Bank of America branch. I have [had] no problem before until now. An XXXX Manager of Bank of America at XXXX, CA, refused to cash my check. I showed them my paystub and the check but I was met with racism, arrogance and when I said I was going to complain for the treatment, and when I asked for his name, I was shouted [at] which the whole branch [could] hear literally. I was met with sarcasm and threat! This person is XXXX XXXX. He mocked my XXXX and belittled me.<sup>163</sup>

In September 2015, a Capital One customer filed a complaint alleging that the bank's decision not to transfer money into his checking account arose from a subtle form of racial discrimination:

On Friday XXXX XXXX, 2015, I spoke to a representative name XXXX at Capital One Investing (on-line) about money I desperately needed to [withdraw] from a Roth IRA. Long story short, XXXX verified all information and finally advised the funds would be available and transferred into my linked checking account today. I went on-line today to check status and transaction was for lessor amount discussed. But the big kicker is: THE TRANSACTION WAS CANCELLED. Capital

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162. *Complaint No. 5920320*, CONSUMER FIN. PROT. BUREAU (Aug. 26, 2022), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/5920320> [<https://perma.cc/8WEH-EMLT>].

163. *Complaint No. 3009674*, CONSUMER FIN. PROT. BUREAU (Sept. 4, 2018), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/3009674> [<https://perma.cc/27Z7-MWF6>].

One Investing said it was because of suspected fraud on my account. I suspect it was because of the type of racial discrimination that is subtle, but deliberate and artful today.<sup>164</sup>

The above examples allege racial discrimination in a variety of core service situations. The transactions cover the opening and closing of accounts, holds placed on funds, and refusal to issue a cashier's check from available funds. One complaint alleged use of a racial slur in denying the person an opportunity to open an account. One complaint alleged differential treatment of white and other customers at the drive thru based on skin color. Two complaints alleged the presence of racist assumptions leading to the denial of service. One of the complaints stated that the bank called the police when the consumer requested a cashier's check.

b. Extra Services

"Extra services" involve discretionary actions by a banking institution, such as re-crediting an account for unauthorized charges, waiving overdraft fees, imposing or lifting a hold on a check, and providing notary or signature guarantee services. The following complaints are typical of racial discrimination claims filed with the CFPB involving extra services.

In 2024, a customer of Regions Bank filed a complaint about charges to a checking account:

[C]onsidering the past few months, I am going to be honest about my experience with Regions of racism and discriminatory treatment . . . . I informed and filed many complaints about the fraudulent transaction that was being processed. I called and repeatedly emailed Regions the evidence that they requested. Regions['] fraud department has repeatedly denied receiving the evidence that they required . . . . All the disputes were ignored

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164. *Complaint No. 1546941*, CONSUMER FIN. PROT. BUREAU (Sept. 1, 2015), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/1546941> [<https://perma.cc/T7Y2-MPLJ>].

[except] for [three] of them and Regions Bank discrimination behavior was the reason why . . . .<sup>165</sup>

Disputes over unauthorized transactions can also result in the imposition of bank fees and denials of requests for refund of fees. In 2024, a customer of TD Bank complained:

Despite assurances from your fraud department that we would not be held responsible for the disputed transactions, TD Bank continued to allow XXXX fees to accrue . . . . We demand an immediate refund of the erroneous XXXX fees totaling {\$630.00}, along with the removal of these charges from the account balance to reflect the correct amount owed. Additionally, I must express my dismay at the racial targeting evident in TD Bank's handling of this matter . . . .<sup>166</sup>

A complaint filed against Truist Bank in 2023 illustrates the potential for abuse of discretion in a bank refusing to lift a hold on funds deposited into a checking account:

While I understand that checks may be subject to a reasonable hold period for security reasons . . . , I am concerned about the excessive delays imposed by Truist Bank. The initial 14-day hold was within the bounds of the XXXX XXXX; however, my account was subsequently held for an additional period . . . . I believe there were instances of discrimination and racial profiling during my interaction with one of the bank's employees.

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165. *Complaint No. 9316416*, CONSUMER FIN. PROT. BUREAU (June 21, 2024), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/9316416> [<https://perma.cc/C9KF-NYAN>]; see also *Complaint No. 8767321*, CONSUMER FIN. PROT. BUREAU (Apr. 14, 2024), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/8767321> [<https://perma.cc/V6VK-56NE>] (“As stated in my other complaint, around {\$50000.00} were unauthorized transfer and withdrawn from my Chase accounts . . . . Chase credited {\$9000.00} . . . . I believe the . . . [actions of] Chase and the Chase manager are solely based on my minority racial identity and female gender.”).

166. *Complaint No. 9210956*, CONSUMER FIN. PROT. BUREAU (June 7, 2024), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/9210956> [<https://perma.cc/2WS2-D6JB>].



Upon depositing my tax refund check of {\$44000.00} on XX/XX/2023, I was subjected to inappropriate and intrusive questioning by a Truist Bank employee. The employee asked me personal questions about the source of my funds, implying that I should not have such money based on my age and race. Specifically, I was told that being XXXX XXXX XXXXXXXXXX, I shouldn't have this amount of money and that I needed guidance on how to use it properly. This line of questioning not only violated my privacy but also subjected me to racial profiling and discriminatory assumptions.<sup>167</sup>

A complaint filed by a customer of Chase Bank in 2024 provides an example of an allegation of racial discrimination arising from extra services. Specifically, the customer alleged the bank refused to provide signature guarantee service related to a securities transaction:

I attempted to have a medallion stamp for my private placement security issued from XXXX and was refused service . . . . I received a phone call from Chase on which they said they would not be providing me with this service and they would be denying my request to have their policies regarding signature guarantee in writing . . . . I believe these decisions are racially motivated as there is no lawful reason why my request for service, or my request for their signature guarantee policy is being denied.<sup>168</sup>

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167. *Complaint No. 7947915*, CONSUMER FIN. PROT. BUREAU (Dec. 4, 2023), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/7947915> [<https://perma.cc/9BTC-DQHQ>].

168. *Complaint No. 8395440*, CONSUMER FIN. PROT. BUREAU (Feb. 22, 2024), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/8395440> [<https://perma.cc/CP6B-26AU>]; *see also Complaint No. 7696330*, CONSUMER FIN. PROT. BUREAU (Oct. 14, 2023), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/7696330> [<https://perma.cc/B6GT-5F2Y>] (alleging racial discrimination in Chase's "refusal" to provide notary services); *Complaint No. 7956613*, CONSUMER FIN. PROT. BUREAU (Dec. 6, 2023), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/7956613> [<https://perma.cc/MQ28-482Y>] (alleging racial discrimination in M&T's "refusal" to provide medallion signature guarantee).

## c. Manner of Service

The manner of service involves the way in which service is provided by a banking institution—the words used, body language, tone, attitude, and speed of the bank representative processing a transaction. For example, consumers filed three complaints which alleged use of a racial slur and two complaints in which redacted text likely referred to a racial slur.<sup>169</sup>

In August 2022, a potential customer of SouthState Bank filed a complaint alleging racial discrimination as the reason the bank refused to open a new account, as evidenced by the aggressive, sharp, and loud tone of the bank’s representative:

[The banker] rudely explained that “a customer like you is in the XXXX percentile of an ideal customer at XXXX Bank! [”] . . . which he then followed by saying in an aggressive sharp loud tone “You are just NOT a good fit for this bank! Try XXXX, XXXX or XXXX!” I questioned as to why he was discriminating me as a potential customer, and I said that I believed my race was the reason (I am a XXXX woman) as I had just witnessed

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169. See *Complaint No. 6627221*, CONSUMER FIN. PROT. BUREAU (Mar. 3, 2023), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/6627221> [<https://perma.cc/4YBH-UMUH>] (“It was deeply concerning and alarming that a bank would deny me the opportunity to open an account . . . . Moreover, being called racial slurs is an act of racism that is causing me deep emotional pain and distress.”); *Complaint No. 3299468*, CONSUMER FIN. PROT. BUREAU (July 8, 2019), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/3299468> [<https://perma.cc/7BD8-JSZ4>] (“I went for an appointment scheduled at PNC BANK to receive a service provided to have some documents signed with a medallion stamp . . . . During the appointment the woman who was supposed to stamp my documents after verifying who I was began making racial slurs about my hair.”); *Complaint No. 4371023*, CONSUMER FIN. PROT. BUREAU (May 12, 2023), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/4371023> [<https://perma.cc/Z8T3-GAR5>] (“Mr. XXXX ordered me off the premise. . . . I could not [believe] that I was being called a XXXX.”); *Complaint No. 6615885*, CONSUMER FIN. PROT. BUREAU (Feb. 25, 2023), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/6615885> [<https://perma.cc/J28H-MENY>] (“She also use the racial slur against me.”); *Complaint No. 7877064*, CONSUMER FIN. PROT. BUREAU (Nov. 19, 2023), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/7877064> [<https://perma.cc/4WEA-Z93Q>] (“I was told . . . by the white teller that due to the color of my skin and me being a XXXX educated woman. I WAS also called a XXXX and unfortunately XXXX can not [sic] open any accounts.”).

him providing an exception to a (white woman) that under his own admission he wasn't allowed to do, as it went against the bank's policy and procedures. I explained that I have been given push back from the moment I walked in. I provided everything that I was asked to provide, and he didn't respond. I then asked for his direct reporting Manager's information, and he replied, "You're not getting it, call customer service![""] [after] which he immediately dismissed me and walked away. I am requesting follow up on this overall negative disturbing experience. I do believe my race was the reason I was denied an account with XXXX Bank.<sup>170</sup>

In October 2019, a customer of TD Bank filed a complaint alleging that tellers repeatedly delayed the processing of transactions for minority customers at the drive-through window:

My husband and I are both minorities and have been loyal customers to TD bank for a number of years. The branch on XXXX . . . in XXXX, PA has always shown some form of discrimination against us whenever we use the drive through services. On every single encounter, we are not served in the order we arrive, we are always asked for extra verification and information that isn't required of neighboring clients that arrive after us (that happen to be XXXX), and our wait time is always between 15-20 mins for simple transactions. We never have issues at any of the other branches we go to. This branch needs to

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170. *Complaint No. 5830193*, CONSUMER FIN. PROT. BUREAU (Aug. 2, 2022), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/5830193> [<https://perma.cc/UK77-U94D>]; *see also Complaint No. 5501737*, CONSUMER FIN. PROT. BUREAU (Apr. 27, 2022), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/5501737> [<https://perma.cc/XJT2-LZNH>] ("Based on the connotation and tone in her voice[,] it was similar to a parent scolding a child or her imputing her disdain for me being in her presence. To be clear, she made me feel uncomfortable and unsafe . . ."); *Complaint No. 6581520*, CONSUMER FIN. PROT. BUREAU (Feb. 16, 2023), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/6581520> [<https://perma.cc/C4HB-XH89>] ("We showed up at XXXX location, trying to talk to somebody to help us solve the problem. They all pretended to be busy and put their faces and eyes down.").

seriously reevaluate its employees and review its discrimination policies, especially to those who work the drive through area.<sup>171</sup>

#### 4. Retaliation

A number of CFPB complaints include allegations that bank employees retaliated against customers for lodging complaints about discrimination on the basis of race, color, or ethnicity. In 2024, a customer of Fifth Third Bank filed a complaint alleging that racial discrimination resulted in the closing of accounts:

I believe my bank accounts are being wrongfully closed due to retaliation & discrimination for complaining to your agency recently and over the years. In addition, I was misled this morning that I was in good standing and then to be told by another rep that they are closing my accounts. She said that after I had filed my complaint against their branch employee regarding being treated poorly due to my race, on XX/XX/XXXX, the bank made its decision to close my account on XX/XX/XXXX. That's retaliatory.<sup>172</sup>

In 2023, a customer of Arvest filed a complaint alleging delay in obtaining access to funds in checking account: "I am XXXX XXXX . . . . I also feel like Arvest highly discriminated against me because of the color of my skin and I'm being retaliated against by reacting to their unethical practices."<sup>173</sup>

In 2021, a customer of First Midwest Bank filed a complaint alleging the closing of an account was based on racial discrimination:

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171. *Complaint No. 3404797*, CONSUMER FIN. PROT. BUREAU (Oct. 14, 2019), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/3404797> [<https://perma.cc/D8AQ-D5FK>].

172. *Complaint No. 9350648*, CONSUMER FIN. PROT. BUREAU (June 26, 2024), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/9350648> [<https://perma.cc/HH6D-WVXQ>insert permalink].

173. *Complaint No. 7820187*, CONSUMER FIN. PROT. BUREAU (Nov. 8, 2023), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/7820187> [<https://perma.cc/45V8-7PMZ>].

I believe that XXXX and his boss XXXX XXXX are retaliating against me because I filed a complaint due to the poor customer service I was receiving . . . . He heard that I called 1st Midwest XXXX racist. I did not. I just asked XXXX when is he going to start hiring people that look like me? He retorted. “They don’t apply.” . . . Why would XXXX XXXX bring up race and use it as a weapon to close out my accounts?<sup>174</sup>

In 2020, a BBVA customer filed a complaint alleging that a hold was placed on an account as retaliation for giving a bank employee a poor rating: “[the] branch [put a] hold on my account for no substantive reason. I believe I was profiled because of my race/ethnicity and retaliated against for giving the teller, who was the branch manager who placed the hold on my account, a bad rating.”<sup>175</sup> Additional complaints alleged retaliatory action arising from the lodging of complaints about discrimination on the basis of race and minority status.<sup>176</sup>

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174. *Complaint No. 4662765*, CONSUMER FIN. PROT. BUREAU (Aug. 24, 2021), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/4662765> [<https://perma.cc/YW9H-BEDL>].

175. *Complaint No. 3505879*, CONSUMER FIN. PROT. BUREAU (Jan. 23, 2020), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/3505879> [<https://perma.cc/UHB4-TQ2A>].

176. *See, e.g., Complaint No. 6995304*, CONSUMER FIN. PROT. BUREAU (May 18, 2024), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/6995304> [<https://perma.cc/QX7M-AXBZ>] (“However, due to a malfunction, the ATM failed to credit my account and retained my cash. . . . [T]he bank’s staff, consisting entirely of white, middle-aged individuals, did not include a single person of color . . . . Upon hearing my complaints about the bank’s staff, XXXX abruptly interrupted and instructed me to leave the premises . . . .”); *Complaint No. 7095443*, CONSUMER FIN. PROT. BUREAU (June 9, 2023), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/7095443> [<https://perma.cc/2CFD-MXWJ>] (“I . . . [discovered] my credit card account was closed and I was unable to get funds from my account at the bank, that they were closing all of my accounts . . . . Chase . . . has damaged credit as a result of their bad faith, and malicious retaliation for complaining about discrimination (‘banking while XXXX’) . . . .”); *Complaint No. 6763947*, CONSUMER FIN. PROT. BUREAU (Mar. 28, 2023), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/6763947> [<https://perma.cc/5HHU-66FN>] (“I filed a complaint . . . on XX/XX/2023, the Bank of the West now BMO retaliated and closed my business account. This was done because of my race and retaliation for me filing a complaint.”); *Complaint No. 4087681*, CONSUMER FIN. PROT. BUREAU (Jan. 23, 2021), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/4087681> [<https://perma.cc/56Z2-QTW5>] (“Optum Bank . . . ha[s] . . . mishandled setting up our covid uninsured reimbursement account for over 6 weeks, by . . . failing to set up . . . ACH. They are retaliating against me for my complaints against Optum Bank-Optum Pay and XXXX, and or that I am a minority owned medical practice,

## 5. Police Involvement

Many CFPB complaints include allegations of calls to police or threats to call police arising from people of color attempting to engage in legitimate deposit and check cashing transactions. The allegations that bank employees weaponized police to intimidate customers of color are particularly disturbing when contrasted with banking organizations condemning racial discrimination in their policies and public statements.<sup>177</sup>

In 2022, a Chase customer filed a complaint alleging he was racially profiled when attempting to open an additional business checking account:

I listed my accounts but she became visibly aggravated. She started raising her voice and had a condescending attitude . . . . After that I asked to speak with the Branch Manager but she refused and asked us to leave. I refused to leave and I stated I am a customer and I refuse to be treated this way. She got very angry at that point and started threatening to call the police if I don't leave . . . . I later found out ALL MY ACCOUNTS (Business and Personal) had been closed by Chase . . . . I strongly believe I was discriminated and racially profiled based on my national origin and race.<sup>178</sup>

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serving minorities as well as undocumented persons in my community.”); *Complaint No. 3978082*, CONSUMER FIN. PROT. BUREAU (Nov. 27, 2020), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/3978082> [<https://perma.cc/ZC4C-LK6B>] (“It is absolutely XXXX, and ‘red-lining’ to prematurely close, after opening, and providing the opportunity to fund, and seemingly retaliatory, and discriminatory.”); *Complaint No. 2580166*, CONSUMER FIN. PROT. BUREAU (July 20, 2017), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/2580166> [<https://perma.cc/65F6-SUL6>] (“I am on a list that she has personally target[ed] due to the fact of my race, age and XXXX. She has benefited from not waving fees that she knows that should not be on my checking account . . . . Was it true she gave out instruction on my file for no one to touch my account pass all calls to her personally . . . . This is a true form of retaliation!”).

177. See *supra* Part III.

178. *Complaint No. 5462730*, CONSUMER FIN. PROT. BUREAU (Apr. 18, 2022), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/5462730> [<https://perma.cc/VS9Y-7QM8>].

In 2017, a customer of BB&T filed a complaint that alleged the bank's refusal to cash two deposit interest checks was "racially motivated."<sup>179</sup> After experiencing a delay of thirty to forty-five minutes and being called a liar, the customer stated: "At that point I threw the XXXX cent [check] in the air and expressed my feeling that had I been XXXX I would not have been subjected to this kind of treatment . . . . XXXX XXXX then told me to get out of the bank or she would call the police and have me arrested."<sup>180</sup>

Many more complaints allege that racial bias caused bank employees to call the police on customers,<sup>181</sup> but three examples will

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179. *Complaint No. 2719749*, CONSUMER FIN. PROT. BUREAU (Nov. 3, 2017) <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/2719749> [<https://perma.cc/2FB8-DGFJ>].

180. *Id.*; see also *Complaint No. 7707519*, CONSUMER FIN. PROT. BUREAU (Oct. 16, 2023), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/7707519> [<https://perma.cc/YM28-S7HQ>] ("I am mortified by what I see . . . they threaten this girl with police for filming but she felt uncomfortable [with] her ID being [taken] into a different room. She felt discrimination."); *Complaint No. 7630237*, CONSUMER FIN. PROT. BUREAU (Sept. 29, 2023), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/7630237> [<https://perma.cc/A2UY-DC8W>] ("I reported in person at a Citi bank that my card and my IDs and phones had been stolen. Because everything had been stolen, the bank threatened to call police on me . . . ."); *Complaint No. 8444043*, CONSUMER FIN. PROT. BUREAU (Feb. 28, 2024), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/8444043> [<https://perma.cc/UAZ8-N9HH>] ("I felt the teller . . . was being prejudiced towards me and being discriminatory, so I turned on the camera of my phone. The teller then threatened to call the Police on me because I had activated the camera on my phone and demanded I show her my phone to see that the filming is off.").

181. See, e.g., *Complaint No. 8131596*, CONSUMER FIN. PROT. BUREAU (Jan. 9, 2024), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/8131596> [<https://perma.cc/54TK-9Q9N>] ("This sequence of events strongly suggests that I was targeted and profiled based on my race or appearance, which is deeply troubling and unacceptable. Furthermore, . . . [XXXX] called the XXXX Police department, citing concern about a XXXX male in a XXXX XXXX XXXX appearing suspicious."); *Complaint No. 7398620*, CONSUMER FIN. PROT. BUREAU (Aug. 14, 2023), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/7398620> [<https://perma.cc/8DHF-RYEJ>] ("[S]omeone called the police and said that I threaten to . . . XXXXXXXX. Is this revenge because the police did nothing??? I am XXXX XXXX XXXX, really. This is TD Bank just messing with a XXXX XXXX XXXX because someone thinks that they can do this and not get in trouble."); *Complaint No. 3476330*, CONSUMER FIN. PROT. BUREAU (Dec. 23, 2019), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/3476330> [<https://perma.cc/N9RS-Q7S9>] ("I did not know that this was an invalid check. [T]he Bank Manager immediately contacted the authorities . . . I was immediately treated as a criminal as the bank Wells Fargo was setting me up to be arrested by the XXXX County Police Officer XXXX."); *Complaint No. 3381427*, CONSUMER FIN. PROT. BUREAU (Sept. 20, 2019), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/3381427> [<https://perma.cc/P9QR-NCJV>] ("I am sitting down,

suffice to illustrate the role of race in bank employees actually calling the police on customers.

First, a customer of PNC Bank alleged that the bank closed his checking account and denied him access to the funds in the account based on racism:

They have repeatedly played games, lied, and withheld my money. This is completely unprofessional and I believe it's due to racism. The day when I went to the bank after talking to XXXX XXXX they wouldn't release my money and notified the police when I was calmly waiting for them to reach someone.<sup>182</sup>

Second, a customer of TD Bank alleged racial discrimination when bank employees took his check and called the call police, falsely accusing him of fraud:

The teller and another female bank employee took my check, shut the window down, refused to provide me receipt for check deposit and called in police by providing falsified information that I have been trying to deposit fraudulent check . . . . The bank employees continued to

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closing my accounts, and she calls the police. The police! She had absolutely no reason to do that, no laws were broken. Why do XXXX people always call the cops on minorities!"); *Complaint No. 2776266*, CONSUMER FIN. PROT. BUREAU (Jan. 10, 2018), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/2776266> [<https://perma.cc/276Q-WJRA>] ("He was yelling at me that my behavior had been so awful that I had to be escorted out of the XXXX branch by police. He was yelling at me that I had been asked to leave and refused so the police had been called."); *Complaint No. 2723388*, CONSUMER FIN. PROT. BUREAU (Nov. 17, 2017) <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/2723388> [<https://perma.cc/9GG7-HBCW>] ("I would also like to know if it is PNC bank's policy to contact law enforcement every time a customer . . . makes a withdrawal of {\$5000.00}, how many other customers have received the same treatment as I . . . , and how many of those customers are people of colour.").

182. *Complaint No. 9195310*, CONSUMER FIN. PROT. BUREAU (June 6, 2024) <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/9195310> [<https://perma.cc/8LZ4-CHYX>]. See also *Complaint No. 8880143*, CONSUMER FIN. PROT. BUREAU (Apr. 28, 2024), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/8880143> [<https://perma.cc/9H6C-24VS>] ("Despite my funds being available, the XXXX delayed the process, resulting in a false claim of potential fraud without substantiation. The XXXX, without any reasonable cause, involved the police, claiming a threat where there was none.").



provide wrong information to the law enforcement with an evil intent that could have caused severe physical damage and harm like that of “XXXX XXXX” of XXXX, MN. The bank practiced an imminently disgusting racial discrimination by using law enforcement as tool and confiscated my check by force, refused to provide me official receipt with seal and stamp . . . . Later, I found out that the check was “QUIETLY” cleared and deposited without my consent and knowledge into my account.<sup>183</sup>

The customer’s concern with “severe physical damage and harm like that of ‘XXXX XXXX’ of XXXX, MN” very likely refers to George Floyd.<sup>184</sup> In 2020, George Floyd was murdered by a white police officer in Minneapolis who was responding to a call that Floyd had attempted to use a counterfeit \$20 bill to make a purchase at a store.<sup>185</sup>

Finally, a customer of Center State Bank filed a complaint in 2021 alleging that the bank weaponized the police against her when she attempted to conduct a banking transaction.<sup>186</sup> She arrived before the office opened and parked her car in the bank’s lot.<sup>187</sup> A man ordered her to leave the premises because the bank wasn’t yet open. She moved her car next door.<sup>188</sup> Later, when she approached the front door of the office on foot, she was once again ordered to leave the premises. Relating the events in her complaint to the CFPB, the person reported:

Mr. XXXX . . . called men with XXXX on me and my child. This was traumatic to me and devastating to my child. My child started to cry. He immediately went into anxiety once he saw the police with his XXXX. The

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183. *Complaint No. 4098977*, CONSUMER FIN. PROT. BUREAU (Jan. 27, 2021), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/4098977> [<https://perma.cc/5W6F-G48K>].

184. *Id.*

185. Chris McGreal et al., *Derek Chauvin Found Guilty of Murder of George Floyd*, THE GUARDIAN (Apr. 21, 2021, 3:42 PM), <https://www.theguardian.com/us-news/2021/apr/20/derek-chauvin-verdict-guilty-murder-george-floyd> [<https://perma.cc/DEY4-GMFZ>].

186. *Complaint No. 4371023*, CONSUMER FIN. PROT. BUREAU (May 12, 2021), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/4371023> [<https://perma.cc/S8VD-NFQZ>].

187. *Id.*

188. *Id.*

question is, since it was XXXX by this time and since the bank was open via drive through, and since Mr. XXXX XXXX knew my purpose there was to conduct business, why call the police? Why not direct me to the drive through where he could provide me the card and complete my transaction . . . . He did NOT do so because he knew what he had said and done to me. So, to obfuscate the issue, he used his privilege as a white man and weaponized the police against me and my child. This was done to cover up his bigotry. This is abuse of the police system.<sup>189</sup>

These examples of bank employees involving the police in legitimate banking transactions highlight the ways police can be used as a means of intimidation against people of color. They raise the specter of Jim Crow laws used to oppress Black citizens in the nineteenth and twentieth centuries.<sup>190</sup> Effective legal remedies should be in place to provide redress when police are weaponized to marginalize people of color in the banking system of the twenty-first century.

## VI. CFPB AUTHORITY

### A. *Unfair, Deceptive, or Abusive Acts or Practices*

The Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) provides the CFPB with the authority to prevent a covered person or service provider from committing or engaging in an unfair, deceptive, or abusive act or practice (“UDAAP”) in connection with any transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service.<sup>191</sup> The Dodd-Frank Act also authorizes the CFPB to prescribe rules applicable

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189. *Id.*

190. David Pilgrim, *See What Was Jim Crow*, JIM CROW MUSEUM, <https://jimcrowmuseum.ferris.edu/what.htm> [https://perma.cc/C4AX-YTKW] (2012) (last visited Feb. 8, 2025).

191. *See* Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) § 1031(a), 12 U.S.C. § 5531(a) (2018) (granting CFPB authority to prevent covered entities from engaging in UDAAPs); CONSUMER FIN. PROT. BUREAU, UNFAIR, DECEPTIVE, OR ABUSIVE ACTS OR PRACTICES 1–2 (Oct. 2012), [https://files.consumerfinance.gov/f/documents/cfpb\\_unfair-deceptive-abusive-acts-practices-udaaps\\_procedures\\_2023-09.pdf](https://files.consumerfinance.gov/f/documents/cfpb_unfair-deceptive-abusive-acts-practices-udaaps_procedures_2023-09.pdf) [https://perma.cc/U874-653F].

to a covered person or service provider “identifying as unlawful” any act or practice that is “unfair, deceptive, or abusive.”<sup>192</sup>

*B. Bank Examination Procedures*

On March 16, 2022, the CFPB published an updated examination manual with revisions to its UDAAP section that provides guidance to examiners in determining whether an act or practice is unfair.<sup>193</sup> The manual instructs examiners to determine whether an examined entity has a process to prevent discrimination in relation to all aspects of consumer financial products or services offered or provided by the entity, including deposit products and services.<sup>194</sup> The manual also notes that a transaction in compliance with other federal or state laws, such as the ECOA, may nevertheless violate the prohibition against UDAAPs: “[f]or example, not allowing African-American consumers to open deposit accounts, or subjecting African-American consumers to different requirements to open deposit accounts, may be an unfair practice even in those instances when ECOA does not apply to this type of transaction.”<sup>195</sup> In a press release accompanying publication of the manual, CFPB Director Rohit Chopra said, “[w]hen a person is denied access to a bank account because of their religion or race, this is unambiguously unfair.”<sup>196</sup>

*C. U.S. Chamber of Commerce v. CFPB*

On September 28, 2022, the U.S. Chamber of Commerce, the American Bankers Association, and other industry groups filed suit against the CFPB in the U.S. District Court for the Eastern District of Texas.<sup>197</sup> The lawsuit challenged the CFPB’s update to the UDAAP

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192. Dodd-Frank § 1031(b), 12 U.S.C. § 5531(b).

193. CONSUMER FIN. PROT. BUREAU, UNFAIR, DECEPTIVE OR ABUSIVE ACTS OR PRACTICES EXAMINATION MANUAL, No. 6:22-cv-00381 (Mar. 2022) [<https://perma.cc/6RUJ-XKQG>].

194. *Id.* at 1.

195. *Id.* at 10.

196. Press Release, Consumer Fin. Prot. Bureau, CFPB Targets Unfair Discrimination in Consumer Finance (Mar. 16, 2022), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-targets-unfair-discrimination-in-consumer-finance/> [<https://perma.cc/2A2Q-6RCC>].

197. Complaint, Chamber of Com. of U.S. v. Consumer Fin. Prot. Bureau, No. 6:22-cv-00381 (E.D. Tex. Sept. 28, 2022) [<https://perma.cc/L49E-76D9>].

section of its examination manual and sought declaratory and injunctive relief under the Administrative Procedure Act (“APA”).

On September 8, 2023, the district court denied the CFPB’s motions to dismiss and for summary judgment.<sup>198</sup> The court granted the plaintiffs’ motion for summary judgment, holding that the CFPB’s adoption of the March 2022 manual update was (1) beyond the agency’s constitutional authority based on an Appropriations Clause violation and (2) beyond the agency’s statutory authority to regulate “unfair” acts or practices under the Dodd–Frank Act.<sup>199</sup> The court justified the latter holding based on its reading of the statute as treating “discrimination and unfairness as distinct concepts”<sup>200</sup> and based on the major questions doctrine, which says that Congress has to be clear if it intends to give significant power to federal agencies.<sup>201</sup> Therefore, the court vacated the CFPB’s manual update and issued a permanent injunction against the CFPB.<sup>202</sup>

In September 2023, the CFPB updated the UDAAP section of its examination manual to remove the changes it made in March 2022, which provided that unfair acts and practices included discriminatory conduct.<sup>203</sup> This action implemented the district court’s order vacating the March 2022 changes.

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198. Chamber of Com. of U.S. v. Consumer Fin. Prot. Bureau, 691 F. Supp. 3d 730, 746 (E.D. Tex. Sept. 8, 2023).

199. *See id.* at 739–44 (discussing plaintiffs’ claims that the CFPB exceeded its statutory authority under Dodd–Frank and its constitutional authority under the Appropriations Clause).

200. *Id.* at 741.

201. *Id.* at 740–41.

202. Final Judgment at 1, Chamber of Com. of U.S. v. Consumer Fin. Prot. Bureau, No. 6:22-cv-00381 (E.D. Tex. Sept. 8, 2023) [<https://perma.cc/D9RH-TW8U>].

203. *See* CONSUMER FIN. PROT. BUREAU, CFPB SUPERVISION AND EXAMINATION MANUAL (Sept. 2023), [https://files.consumerfinance.gov/f/documents/cfpb\\_supervision-and-examination-manual\\_2023-09.pdf](https://files.consumerfinance.gov/f/documents/cfpb_supervision-and-examination-manual_2023-09.pdf) [<https://perma.cc/6VZA-DLUV>]; *see also* Alan Kaplinsky et al., *Consumer Finance Monitor*, *CFPB Removes Changes Regarding Discrimination As an Unfair Practice from UDAAP Exam Manual but Appeals from District Court Order Vacating Changes*, BALLARD SPAHR (Nov. 13, 2023), <https://www.consumerfinancemonitor.com/2023/11/13/cfpb-removes-changes-regarding-discrimination-as-an-unfair-practice-from-udaap-exam-manual-but-appeals-from-district-court-order-vacating-changes/> [<https://perma.cc/M375-XPSJ>] (reporting on update to CFPB manual and expressing the opinion that said update was intended only to implement the Texas district court’s order without a change in CFPB’s opinion that unfairness can encompass discrimination).

On November 6, 2023, the CFPB appealed the district court's final judgment to the Fifth Circuit.<sup>204</sup> The CFPB challenged the district court's holding that the CFPB's funding violates the Appropriations Clause,<sup>205</sup> and its holding that the CFPB lacks the statutory authority to treat discriminatory acts or practices as unfair under the Dodd-Frank Act.<sup>206</sup> With respect to the Appropriations Clause, the CFPB argued that the district court relied upon the Fifth Circuit's 2022 decision in *Community Financial Services Association of America v. CFPB*, which was reversed by the Supreme Court in 2024.<sup>207</sup> In that decision, the Supreme Court upheld the constitutionality of the CFPB's funding structure, which allows the agency to draw money from the Federal Reserve without violating the Appropriations Clause.<sup>208</sup>

With respect to its statutory authority, the CFPB argued that the district court's holding is flawed. First, the CFPB argued that the Dodd-Frank Act clearly authorizes the CFPB to treat discrimination as unfair. The CFPB relied upon the broad language of its authority under Section 5531 to declare an act or practice as unfair.<sup>209</sup> The CFPB also objected to the district court's treatment of discrimination and unfairness as distinct concepts.<sup>210</sup> In support of its view, the CFPB pointed to the history of federal agency interpretation of unfairness as encompassing discrimination.<sup>211</sup> Second, the CFPB argued that the district court misapplied the major questions doctrine in reaching its conclusion that the CFPB exceeded its statutory authority.

In its opinion, the district court stated:

[T]he Supreme Court recognizes that sweeping grants of regulatory authority are rarely accomplished through

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204. Notice of Appeal, Chamber of Com. of U.S. v. Consumer Fin. Prot. Bureau, No. 6:22-cv-00381 (5th Cir. Nov. 6, 2023).

205. Brief of Appellants at 29–30, 79, Chamber of Com. of U.S. v. Consumer Fin. Prot. Bureau, No. 23-40650 (5th Cir. Aug. 7, 2024) (discussing appellants' Appropriations Clause arguments).

206. *Id.* at 29, 57–66 (discussing appellants' statutory authority arguments).

207. *Id.* at 65 (discussing Cmty. Fin. Servs. Ass'n. of Am., Ltd. v. Consumer Fin. Prot. Bureau, 51 F.4th 616 (5th Cir. 2022), *rev'd and remanded*, 601 U.S. 416 (2024), and *reinstated in part* by 104 F.4th 930 (5th Cir. 2024)).

208. *Consumer Fin. Prot. Bureau v. Cmty. Fin. Servs. Ass'n. of Am., Ltd.*, 601 U.S. 416 (2024).

209. Brief of Appellants, *supra* note 205, at 59.

210. *Id.* at 63–65.

211. *Id.* at 51–52.

“vague terms” or “subtle device[s].” Courts must “presume that Congress intends to make major policy decisions itself, not leave those decisions to agencies.” If that major-questions canon applies, “something more than a merely plausible textual basis for the agency action is necessary. The agency instead must point to clear congressional authorization for the power it claims.”

The major-questions canon applies here. The choice whether the CFPB has authority to police the financial-services industry for discrimination against any group that the agency deems protected, or for lack of introspection about statistical disparities concerning any such group, is a question of major economic and political significance.<sup>212</sup>

The CFPB began its criticism of the district court’s application of the major questions doctrine by arguing that it can stand only if all applications of Section 5531’s unfairness test to discrimination acts or practices raise a major question. The CFPB argued that this is not the case:

[W]hether applying § 5531 to a discriminatory act or practice would trigger the major questions doctrine does not lend itself to a one-size-fits-all solution. And many assertions of authority related to the application of unfairness to discriminatory conduct come nowhere close to implicating the doctrine. Thus, the district court’s holding that the Bureau lacks the statutory authority to ever assess whether discrimination is unfair is wrong.<sup>213</sup>

The CFPB continued its criticism of the district court’s application of the major questions doctrine by contending that the CFPB’s application of Section 5531 to discrimination does not raise questions of vast economic or political significance. First, the CFPB argued that the court overestimated the economic costs of including

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212. Chamber of Com. of U.S. v. Consumer Fin. Prot. Bureau, 691 F.Supp.3d 730, 740 (E.D. Tex. Sept. 8, 2023) (footnotes omitted).

213. Brief of Appellants, *supra* note 205, at 70.

discriminatory acts and practices within the ambit of unfairness under Section 5531:

Plaintiffs and the court lump together all possible, theoretical agency assertions of discriminatory-unfairness authority together when considering economic costs. This flawed approach overestimates the relevant compliance costs. Under the major questions doctrine, the question is whether a specific challenged assertion of authority presents a major question, not whether all similar possible assertions considered together do. It was wrong therefore for the district court to bar the Bureau from, among other things, bringing any supervisory or enforcement action under § 5531 for intentional racial or religious discrimination based on the district court's concern about the costs of hypothetical assertions of agency authority involving disparate impact.<sup>214</sup>

Second, the CFPB argued that the court overestimated the political significance of including discriminatory acts and practices within the ambit of unfairness of under § 5531:

[T]he application of § 5531 to discrimination does not invariably raise questions of great political significance. For example, there is no “earnest and profound debate across the country,” about whether banks should be allowed to intentionally discriminate on the basis of race or religion. Instead, there is broad agreement, from across the political spectrum, that such discrimination is improper. The financial institutions agree with this consensus, as demonstrated by their anti-discrimination policies. And Congress has made its judgment clear by outlawing discrimination in many forms over decades. To say, that there is a profound debate about the propriety of long-repudiated forms of intentional discrimination is simply implausible. Thus, Plaintiffs cannot show that

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214. *Id.* at 70–71.

there are no valid applications of § 5531 to discrimination.<sup>215</sup>

The plaintiffs filed their response brief on October 7, 2024.<sup>216</sup> The new presidential administration removed the previous director of the CFPB and directed the agency to pause the litigation.<sup>217</sup> The status of the case is unclear as of February 8, 2025.

## VII. ONLINE BANKING DOES NOT GUARANTEE RACIAL NEUTRALITY

It is commonly assumed that online banking will automatically eliminate racial discrimination in banking transactions.<sup>218</sup> The assumption of racial neutrality is appealing, but there are many opportunities for racial discrimination to creep into technology systems used by banking organizations.<sup>219</sup> Banking online does not guarantee racial neutrality.

Technology plays a growing role in the delivery of banking services. While, historically, most banks operate brick-and-mortar offices, ATMs, and, more recently, online banking platforms, a growing number of companies operate exclusively through online banking. Online banking is conducted virtually, either through a website or mobile app, without the option of going to a brick-and-mortar branch. The companies providing online only banking services include Ally Bank, Chime, First Internet Bank, SoFi, and Synchrony Bank.

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215. *Id.* at 76–76 (citations omitted).

216. Appellee’s Brief, Chamber of Com. of U.S. v. Consumer Fin. Prot. Bureau, No. 23-40650 (5th Cir. Oct. 7, 2024).

217. Emergency Notice, Chamber of Com. of U.S. v. Consumer Fin. Prot. Bureau, No. 23-40650 (5th Cir. Feb. 3, 2025) (“The President removed the prior Director of the CFPB from his position. Counsel for the CFPB has been instructed not to make any appearances in litigation except to seek a pause in proceedings.”).

218. *See, e.g.*, Eytan Bensoussan, *The Legacy of Racism in the Banking Industry*, NORTH ONE, <https://www.northone.com/blog/northone/the-legacy-of-racism-in-the-banking-industry> [<https://perma.cc/A8D6-YMTT>] (last visited Feb. 7, 2025) (“We see online banking as an opportunity to democratize access to the financial system by making banking easier and more accessible for everyone.”).

219. *See, e.g.*, *Racist Everyday Technologies*, KELLER CTR. AT PRINCETON UNIV., <https://kellercenter.princeton.edu/people/startups-teams/racist-everyday-technologies> [<https://perma.cc/A7R7-NRCJ>] (last visited Feb. 8, 2025) (“Technology is biased. From infrared soap dispensers that are unable to detect darker skin to digital cameras that ask the question ‘did someone blink?’ . . . society has continued to design and deploy tools that perpetrate different kinds of bias.”).



Exclusive operation in cyberspace has not eliminated allegations of racial discrimination from customers, and, in fact, the CFPB's public database includes such complaints. A customer of Ally Financial filed a complaint alleging discrimination in refusing to open an account online: "Ally Financial is discriminating against me by denying me . . . an opportunity to open up a checking account online. Ally Financial is also discriminating against me because of my race, me being XXXX American ( XXXX )."<sup>220</sup> A customer of SoFi filed a complaint alleging discrimination in declining a transaction and locking an account completely: "This is textbook bank fraud and I feel racially discriminated against."<sup>221</sup> A customer of Chime filed a complaint alleging discrimination in the investigation of disputes: "I firmly believe that I have been discriminated against as a XXXX American customer, and that Chime has failed to conduct a proper investigation into my disputes."<sup>222</sup>

These complaints are quite general. A deeper dive into the components of decision-making by algorithms is required to see the potential for racial discrimination embedded in the models used by banking organizations to make decisions about consumer transactions. Artificial intelligence ("AI") and machine learning ("ML") models can be used to make decisions about consumer transactions, including whether to open or close accounts, waive fees, flag suspicious

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220. *Complaint No. 4073977*, CONSUMER FIN. PROT. BUREAU (Jan. 17, 2021), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/4073977> [<https://perma.cc/2SFC-97ZB>]; see also *Complaint No. 2717860*, CONSUMER FIN. PROT. BUREAU (Nov. 1, 2017), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/2717860> [<https://perma.cc/BS9M-N675>] ("I have been denied the right to open an account with . . . Ally Bank. The reason given is because the suffix 'XXXX' does not appear on my social security card . . . . The process applied against this applicant is . . . a pretext for racial discrimination.").

221. *Complaint No. 9636425*, CONSUMER FIN. PROT. BUREAU (July 27, 2024), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/9636425> [<https://perma.cc/VV9K-M9CS>].

222. *Complaint No. 8769867*, CONSUMER FIN. PROT. BUREAU (Apr. 14, 2024), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/8769867> [<https://perma.cc/9K3Y-A6WG>]; see also *Complaint No. 5075824*, CONSUMER FIN. PROT. BUREAU (Jan. 5, 2022), <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/5075824> [<https://perma.cc/5VYV-8F7L>] ("I tried to deposit a cashier's check in the amount of [\$500.00] [and] [t]he person who gifted it to me wrote 'Merry XXXX' in the memo line and per the [bank] associate, [they] can't accept that in the memo line. Chime Bank refused to accept and deposit it. This is discrimination.").

transactions, release holds on funds in accounts, and reimburse customers for unauthorized transactions.<sup>223</sup>

Banking organizations possess a great deal of information about potential and existing customers. During the identity verification process, banking organizations obtain the customer's name, date of birth, address, and tax identification number.<sup>224</sup> For applications taken at a branch, the bank may scan and retain a copy of identification documents such as a driver's license or passport.<sup>225</sup> For online applications, the bank may scan and temporarily retain identification documents, destroying them after a reasonable time.<sup>226</sup> After opening an account, banks retain information about account transactions: type of transactions, amount of transaction, source of deposits, recipient of payments, and transactions flagged as suspicious. All of this information can become inputs in AI and ML decision-making models.

Racial bias can be embedded in AI and ML models through the data used to train the models and through the weighting of data inputs in the design process. Training data may import racial bias because the data reflects historical bias. For example, the use of ZIP codes can cause unintentional discrimination because of the history of residential segregation in the United States. If a bank model factors ZIP code into its decisions about fees, withdrawals, and risk of fraud, those decisions may perpetuate racial discrimination. Focusing on risk of fraud, the use of historical data on transactions flagged as suspicious by tellers to train its risk assessment model, rather than data on actually verified fraud events, will incorporate the racial bias of those tellers into decision-making by that model.

In sum, it is naïve to assume that technology will automatically deliver more objective decisions than humans. Human choices stand behind the machines. Racial bias that colors human interactions at the deposit window can also color decisions by technology systems.

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223. *Using AI and Machine Learning in Transaction Monitoring*, FINEKSUS, <https://fineksus.com/using-ai-and-machine-learning-in-transaction-monitoring/> [https://perma.cc/7MZE-KLLT] (last visited Feb. 8, 2025).

224. 31 C.F.R. § 103.121(b)(2)(1)-(3).

225. 31 C.F.R. § 1020.220(a)(2)(ii)(A)(i).

226. 12 U.S.C. § 1829(b)(1) (describing how one must destroy copies of ID obtained during the opening of online accounts).

## VIII. CALL FOR CONGRESSIONAL HEARINGS

Congress should conduct hearings about racial discrimination by banking organizations while providing checking or savings accounts, check cashing, and other money services. It should include testimony from CFPB and other bank regulatory officials about complaints received about organizations under their jurisdiction. The CFPB is primarily responsible for requiring reports, conducting examinations, and enforcement of consumer laws and regulations for insured depository institutions with more than \$10 billion in total assets.<sup>227</sup> For smaller institutions, the appropriate prudential regulator assesses and enforces compliance with federal consumer financial law.<sup>228</sup>

*A. CFPB Testimony*

## 1. Complaints

The CFPB should be called to testify before congressional committees about allegations of racial discrimination contained in complaints based on its review of all information available in complaints. They should testify based on full consumer narratives without redaction. Narratives referring to specific racial identities or mentioning use of racial epithets and slurs would be particularly important. Furthermore, the CFPB should testify about complaints alleging racial discrimination using information available to it through the demographic field in which consumers may identify their race, color, ethnicity, or national origin.

## 2. Existing Authority and Opportunities for Clarification and Expansion

The CFPB should also be asked to opine about its authority to treat racial discrimination as unfair under its UDAAP authority and opportunities to clarify and expand its authority in new legislation. This might include a request for clear authority to prohibit policies and procedures, which though facially neutral, exert a disparate impact on

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227. Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) § 1025(a), 12 U.S.C. § 5515(a) (2018).

228. Dodd-Frank § 1026(c)(1), 12 U.S.C. § 5516(c)(1).

minorities. This authority would incentivize covered institutions to more deeply examine their policies and procedures for unintended consequences for their minority clients. It would also enable the CFPB to conduct examinations of and take enforcement action against covered institutions who persist in use of such policies and procedures.

*B. Other Banking Regulators*

Congressional committees also should summon officials of the Comptroller of the Currency, Federal Deposit Insurance Corporation, Federal Reserve Board, and National Credit Union Administration to testify about allegations of racial discrimination contained in consumer complaints concerning checking or savings accounts, check cashing, and other money services provided by depository institutions with \$10 billion or less in total assets. The scope of testimony should be similar to that of the CFPB.

## IX. CONCLUSION

As evidenced by social media, CFPB complaints, and civil rights litigation covered in the preceding pages, it is clear that racial discrimination is a persistent problem as banking organizations provide deposit, check cashing, and other money services.<sup>229</sup> Furthermore, this is currently a problem without an adequate remedy, because there is a gap in current federal law when it comes to protecting consumers from racial discrimination arising from deposit, check cashing, and other money services.<sup>230</sup> The only federal law clearly available to address racial discrimination involving these services is Section 1981. However, judicial interpretation of this statute makes sustaining a claim against a banking organization for racial discrimination very difficult. In order to sustain a Section 1981 against a banking organization, the courts require proof of intentional racial discrimination, complete refusal to provide a service, and a “but for” cause of injury.<sup>231</sup> Furthermore, it remains to be seen whether the CFPB possesses the regulatory authority to define racial

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229. *See supra* Part II.

230. *See supra* Part IV.

231. *See supra* Section IV.B.

discrimination in the provision of deposit and check cashing services as unfair under its UDAAP authority.<sup>232</sup>

It is recommended that Congress address the gap in federal law by clearly prohibiting racial and other discrimination when depository institutions and state-licensed check cashers provide deposit, check cashing, and other money services. On the way to doing so, Congressional committees should hold hearings that include testimony by CFPB and other bank regulatory officials about racial discrimination by banking organizations when providing checking or savings accounts, check cashing, and other money services.<sup>233</sup> These hearings should include testimony about the CFPB's existing authority and opportunities for clarification and expansion through new legislation.<sup>234</sup>

While the enactment of FAFSA would fill the gap in federal law in a significant way, this author advocates the adoption of legislation that would move beyond the injunctive relief set forth in FAFSA<sup>235</sup> to the authorization of civil lawsuits for damages. The article *Banking While Black Part II* recommended enactment of an Equal Deposit Opportunity Act with a civil damage provision within the following parameters:

- Make it unlawful for an insured depository institution or state-licensed check casher to discriminate against any person in any way on the basis of race, color, ethnicity, national origin, citizenship, or immigration status when providing deposit, check, or money services.
- Define unlawful conduct as denying or delivering covered goods, services, facilities, privileges, or accommodations in a markedly hostile manner.
- Establish a motivating factor standard for causation in determining whether an act or practice is unlawful.
- Require collection of racial and other demographic data about deposit, check cashing, and money service customers.
- Require notice of adverse action for refusing to open an account, closing an account, denying a request to cash a check in whole or part, or refusing to deliver a money service.

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232. See *supra* Section VI.C.

233. See *supra* Part VIII.

234. *Id.*

235. See *supra* Section IV.D.

- Require an institution denying service to provide customers and non-customers with a copy of any credit report obtained by the institution in connection with a notice of adverse action.
- Impose an obligation on federally-insured depository institutions to cash a properly payable check drawn on the institution and presented at the institution by a non-customer payee with adequate identification who also provides any information necessary for the institution to meet any recordkeeping or reporting requirements.
- Authorize the issuance of implementing regulations to accomplish the purposes of the act, prevent circumvention or evasion, and facilitate compliance.
- Require record retention, reporting, and publication of select information.
- Authorize administrative enforcement and civil lawsuits by persons harmed imposing liability for actual damages plus punitive damages up to \$10,000 per violation.<sup>236</sup>

The analysis provided in this current article about racial discrimination against people of color in line at the deposit window reinforces the need for new federal legislation and points to the need for two additional parameters for new legislation:

- Prohibit agreements ahead of time to arbitrate or otherwise waive the ability to pursue Equal Deposit Opportunity Act claims in court through deposit and other agreements.<sup>237</sup>

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236. See *Banking While Black Part II*, *supra* note 1, at 67, 75–85 (setting forth a detailed explanation of these proposals).

237. See *supra* notes 47–62 and 99–101 and accompanying text. See also Dodd-Frank § 1028(b), 12 U.S.C. § 5518(b) (providing CFPB authority to prohibit or “impose conditions or limitations on the use of an agreement between a covered person and a consumer for a consumer financial product or service providing for arbitration of any future dispute between the parties[.]”)

On July 19, 2017, the CFPB established arbitration rules that became effective on September 18, 2017. 12 C.F.R. § 1040. However, on Nov. 22, 2017, the CFPB published a notice removing its Arbitration Agreements rule from the Code of Federal Regulations, pursuant to a joint resolution of Congress disapproving the rule under the Congressional Review Act. See Letter from Sen. Elizabeth Warren et al. to Rohit Chopra, CFPB Director (Dec. 13, 2023), <https://hankjohnson.house.gov/sites/evo-subsites/hankjohnson.house.gov/files/evo-media-document/letter-to-cfpb-on-forced-arbitration-rule.pdf> [<https://perma.cc/GUK8-RJ7D>].

- Prohibit retaliation against a customer for lodging a complaint about discrimination (e.g., placing a hold on an account, refusing to provide service, or closing an account).<sup>238</sup>
- Require non-account holders be provided with a receipt for any check cashing transaction with the date, time, amount of the transaction, and whether completed or declined.<sup>239</sup>

The specific language of the legislation would need to be crafted with input from banking organizations. Banking organizations have made many statements generally opposing racial discrimination.<sup>240</sup> Some banks prohibit racial discrimination against customers in codes of conduct, human rights statements, and/or anti-discrimination policies.<sup>241</sup> Before the U.S. Chamber of Commerce, American Bankers Association, and other banking associations filed suit challenging the CFPB's authority to define racial discrimination as a UDAAP,<sup>242</sup> the U.S. Chamber of Commerce, American Bankers Association, Consumer Bankers Association, and Independent Community Bankers Association issued a white paper outlining their objections to the CFPB's action.<sup>243</sup> The white paper concluded:

The CFPB may well wish to “fill gaps” it perceives in federal antidiscrimination law. But Congress has simply not authorized the CFPB to fill those gaps. If the CFPB believes it requires additional authority to address alleged discriminatory conduct, it must obtain that authority from Congress, not take the law into its own hands. The Associations and our members stand ready to work with Congress and the CFPB to ensure the just administration of the law.<sup>244</sup>

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238. *See supra* notes 174–78 and accompanying text.

239. *See supra* note 185 and accompanying text.

240. *See supra* Section III.B.

241. *See supra* notes 89–91 and accompanying text.

242. Chamber of Com. of U.S. v. Consumer Fin. Prot. Bureau, 691 F. Supp. 3d 730 (E.D. Tex. 2023).

243. AM. BANKERS ASS'N, ET AL., UNFAIRNESS AND DISCRIMINATION: EXAMINING THE CFPB'S CONFLATION OF DISTINCT STATUTORY CONCEPTS (2022), <https://www.aba.com/-/media/documents/white-paper/aba-udaap-white-paper.pdf> [<https://perma.cc/5GWR-7V3V>].

244. *Id.* at 21.

Whatever the merits or flaws of the arguments made in the white paper and subsequent lawsuit, this author believes that clear statutory direction prohibiting racial discrimination by banking institutions on the deposit side of the banking business would be preferable to regulatory interpretation. It is past time to take these institutions at their word and, working with Congress, craft new legislation that protects every person who steps up to the deposit window from discrimination.

In sum, social media posts, CFPB complaints, and civil rights litigation reviewed in the preceding pages make clear that racial discrimination is a persistent problem at banking organizations providing deposits, check cashing, and other money services. Legal redress for these grievances is not adequate under current federal law. Therefore, it is recommended that Congress enact an Equal Deposit Opportunity Act.