

No. 23-13138

**IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

AMERICAN ALLIANCE FOR EQUAL RIGHTS,

Plaintiff-Appellant,

v.

FEARLESS FUND MANAGEMENT, LLC et al.,

Defendants-Appellees.

On Appeal from the United States District Court
for the Northern District of Georgia
No. 1:23-CV-3424-TWT

**BRIEF OF BLACK ECONOMIC ALLIANCE FOUNDATION; THE
EXECUTIVE LEADERSHIP COUNCIL; NATIONAL BANKERS
ASSOCIATION; U.S. BLACK CHAMBERS, INC.; AND NATIONAL
ASSOCIATION OF INVESTMENT COMPANIES AS AMICI CURIAE IN
SUPPORT OF DEFENDANTS-APPELLEES AND AFFIRMANCE**

Joyce Gist Lewis
KREVOLIN & HORST, LLC
One Atlantic Center
1201 West Peachtree Street, NW,
Suite 3250
Atlanta, Georgia 30309
(404) 888-9700
jlewis@khlawfirm.com

Jonathan P. Hawley
ELIAS LAW GROUP LLP
1700 Seventh Avenue,
Suite 2100
Seattle, Washington 98101
(206) 656-0179
jhawley@elias.law

Aria C. Branch
Meaghan E. Mixon
ELIAS LAW GROUP LLP
250 Massachusetts Avenue NW,
Suite 400
Washington, D.C. 20001
(202) 968-4490
abranche@elias.law
mmixon@elias.law

Counsel for Amici Curiae

American Alliance for Equal Rights v. Fearless Fund Management, LLC,
No. 23-13138

**CERTIFICATE OF INTERESTED PERSONS AND CORPORATE
DISCLOSURE STATEMENT**

Amici Curiae Black Economic Alliance Foundation; the Executive Leadership Council; National Bankers Association; U.S. Black Chambers, Inc.; and National Association of Investment Companies certify that the following persons and entities, in addition to those already listed by the parties and any other amici curiae, have an interest in the outcome of this appeal:

1. Black Economic Alliance Foundation, *Amicus Curiae*
2. Branch, Aria C., *Counsel for Amici Curiae*
3. Elias Law Group LLP, *Counsel for Amici Curiae*
4. The Executive Leadership Council, *Amicus Curiae*
5. Hawley, Jonathan P., *Counsel for Amici Curiae*
6. Krevolin & Horst, LLC, *Counsel for Amici Curiae*
7. Lewis, Joyce Gist, *Counsel for Amici Curiae*
8. Mixon, Meaghan E., *Counsel for Amici Curiae*
9. National Association of Investment Companies, *Amicus Curiae*
10. National Bankers Association, *Amicus Curiae*
11. U.S. Black Chambers, Inc., *Amicus Curiae*

The Black Economic Alliance Foundation is a nonprofit corporation exempt from income tax under section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. § 501(c)(3). The Executive Leadership Council is a nonprofit corporation exempt from income tax under section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. § 501(c)(3). The National Bankers Association is a nonprofit corporation exempt from income tax under section 501(c)(6) of the Internal Revenue Code, 26 U.S.C. § 501(c)(6). The U.S. Black Chambers, Inc. is a nonprofit corporation exempt from income tax under section 501(c)(6) of the Internal Revenue Code, 26 U.S.C. § 501(c)(6). The National Association of Investment Companies is a nonprofit corporation exempt from income tax under section 501(c)(6) of the Internal Revenue Code, 26 U.S.C. § 501(c)(6).

None of the Amici Curiae has a parent corporation, nor does any publicly held corporation have a 10% or greater ownership interest in any Amicus Curiae.

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TABLE OF AUTHORITIES

Page(s)

Other Authorities

2022 Annual Report, Nat’l Women’s Bus. Council (Dec. 20, 2022),
<https://www.nwbc.gov/annual-reports/2022> 11

Amber Paranick, *Madam C.J. Walker*, Libr. of Cong. (May 29, 2020),
<https://blogs.loc.gov/headlinesandheroes/2020/05/madam-c-j-walker> 15, 16

Anne Kniggendorf, *The Barriers to Funding Equality Persist for Black Women*, Kauffman Found. (May 2, 2019), <https://www.kauffman.org/currents/barriers-to-funding-equality-persist-for-black-women>..... 13

April Joyner & Arriana McLymore, *For Black Founders*, *Venture Funding Remains Elusive Despite New Funds*, Reuters (Feb. 22, 2021)..... 8, 9

Barries to Capital Flow for Black Female Entrepreneurs, Foreign, Commonwealth & Dev. Off. (Apr. 2021), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1001956/Barriers-to-Capital-Flow-for-BFEs.pdf 12, 15

Carolina Milanesi, *Black Women Entrepreneurs Need Funding Not Mentoring*, Forbes (Nov. 22, 2021), <https://www.forbes.com/sites/carolinamilanesi/2021/11/22/black-women-entrepreneurs-need-funding-not-mentoring>.....7, 12, 13

Christine Michel Carter, *Black Female-Founded Companies Need Funding, Not Accelerators or Incubators*, Forbes (June 18, 2021), <https://www.forbes.com/sites/christinecarter/2021/06/18/black-female-founded-companies-need-funding-not-accelerators-or-incubators>15

Daan Struyven et al., *Black Womenomics: Investing in the Underinvested*, Goldman Sachs (Mar. 9, 2021), <https://www.goldmansachs.com/intelligence/pages/black-womenomics-f/black-womenomics-report.pdf>11

The Four Most Common Challenges Facing Black Women Entrepreneurs, Stearns Bank (Feb. 28, 2023), <https://www.stearnsbank.com/resources/blog/the-four-most-common-challenges-facing-black-women-entrepreneurs>.....7, 13, 14

Gabrielle Fonrouge, *Venture Capital for Black Entrepreneurs Plummeted 45% in 2022, Data Shows*, CNBC (Feb. 2, 2023), <https://www.cnbc.com/2023/02/02/venture-capital-black-founders-plummeted.html>7, 9, 11, 16

Gizelle George-Joseph & Daniel Milo, *Black Womenomics: Equalizing Entrepreneurship*, Goldman Sachs (Feb. 9, 2022), <https://www.goldmansachs.com/intelligence/pages/goldman-research/black-womenomics-equalizing-entrepreneurship/report.pdf>.....5, 8

James Norman, *A VC’s Guide to Investing in Black Founders*, Harv. Bus. Rev. (June 19, 2020), <https://hbr.org/2020/06/a-vcs-guide-to-investing-in-black-founders>17, 18

Janice Gassam Asare, *How Hair Discrimination Affects Black Women at Work*, Harv. Bus. Rev. (May 10, 2023), <https://hbr.org/2023/05/how-hair-discrimination-affects-black-women-at-work>13

Katherine Inman, *Women’s Resources in Business Start-up: A Study of Black and White Women Entrepreneurs* (1997) (Ph.D. dissertation, University of Georgia) (ProQuest)5, 6, 14, 17

Kimberly Weisul, *Why It’s So Difficult for Black Women Entrepreneurs to Get Funded*, Inc. (Oct. 5, 2016), <https://www.inc.com/kimberly-weisul/why-its-so-hard-for-black-women-entrepreneurs-to-get-funded.html>10

The Legacy, Nat’l Bus. League, <https://nationalbusinessleague.org/the-legacy> (last visited Dec. 1, 2023).3

Maggie McGrath & Margherita Beale, *Why America’s First Black Female Bank Founder Is Still Owed a Great Debt*, Forbes (Mar. 20, 2021), <https://www.forbes.com/sites/maggiemcgrath/2021/03/20/why-americas-first-black-female-bank-founder-is-still-owed-a-great-debt/?sh=26e37f5b7fd3>4

Nina Banks, *Black Women’s Labor Market History Reveals Deep-Seated Race and Gender Discrimination*, Econ. Pol’y Inst. (Feb. 19, 2019), <https://www.epi.org/blog/black-womens-labor-market-history-reveals-deep-seated-race-and-gender-discrimination>.....3

Ronald D. White, *Black, Latinx and Female Entrepreneurs Are Still Ignored by Most Venture Capitalists*, L.A. Times (June 5, 2021), <https://www.latimes.com/business/story/2021-06-05/black-latinx-and-female-entrepreneurs-are-still-ignored-by-most-venture-capitalists>9

Sarah Lynch, *How Black Women Entrepreneurs Overcome the Odds*, Inc.
(Feb. 1, 2023), <https://www.inc.com/sarah-lynch-/how-black-women-entrepreneurs-overcome-odds.html>8

Saran Nurse, *Black Women Entrepreneurs: An Exploration of the Structural Factors Driving the Financial Capital Access Gap*, in *Sustainability and the Future of Work and Entrepreneurship for the Underserved* (Joann Denise Rolle & Micah Crump eds., 2022)2, 6, 8, 10, 11

Small Business Credit Survey: 2021 Report on Firms Owned by People of Color, U.S. Fed. Rsrv., <https://www.fedsmallbusiness.org/survey/2021/2021-report-on-firms-owned-by-people-of-color> (last visited Dec. 1, 2023)9

The State of Access to Capital for Entrepreneurs: From Barriers to Potential, Kauffman Found. (Feb. 5, 2019), https://www.kauffman.org/wp-content/uploads/2019/12/capital_access_lab_exec_summary_FINAL.pdf10

Taylor M. Jackson & Paromita Sanyal, *Struggles and Strategies of Black Women Business Owners in the U.S.*, 8 J. Bus. Anthropology 228 (2019).....2, 5, 7, 13

AMICI CURIAE’S IDENTITIES AND INTERESTS

Pursuant to Federal Rule of Appellate Procedure 29(a)(2), Amici Curiae Black Economic Alliance Foundation; the Executive Leadership Council; National Bankers Association; U.S. Black Chambers, Inc.; and National Association of Investment Companies file this brief in support of Defendants-Appellees and affirmance.¹

The Black Economic Alliance Foundation (the “BEA Foundation”) is the nation’s leading 501(c)(3) nonprofit organization harnessing the collective expertise and influence of Black business leaders to build economic prosperity for the Black community, with a focus on work, wages, and wealth. It partners with leaders across the public, private, and social sectors to champion policy reimagination, develop investment and philanthropic programs, commission research, and elevate national understanding of the inextricable link between the health of the Black economy and the entire American economy. Recognizing that studies have shown that successful business ownership is a path to economic security and wealth creation, the BEA Foundation also works with Black entrepreneurs to provide support and advance policy changes to expand access to capital.

¹ All parties have consented to the filing of this amicus brief by Amici Curiae. *See* Fed. R. App. P. 29(a)(2).

The Executive Leadership Council (the “ELC”) is a membership organization of Black executives that aims to improve the performance of corporations and markets by expanding opportunities for people who are in or wish to become a part of the corporate sector. The ELC works with Black executives throughout the world, adding value to their development, leadership, and philanthropic endeavors throughout their careers and thus strengthening their companies, organizations, communities, and economies. The ELC has seen firsthand the business benefits of increased diversity among owners, boards, managers, and employees.

The National Bankers Association (the “NBA”) is the leading trade association for the country’s Minority Depository Institutions (“MDIs”). The NBA’s mission is to champion the vital role MDIs play in eliminating the racial wealth gap. The NBA’s members include Black-, Hispanic-, Asian-, Pacific Islander-, Native American-, and women-owned and operated banks across the country that are on the front lines of closing the racial wealth gap by providing access to credit to low-and-moderate income, minority, and underserved communities.

The U.S. Black Chambers, Inc. (“USBC”) is an association of over 100 Black chambers of commerce and small-business associations nationwide that provides visionary leadership and advocacy for the realization of economic empowerment. Through the creation of resources and initiatives, USBC supports Black chambers of commerce and business organizations in their work of developing and growing

Black enterprises. As a leading voice of Black business owners in the nation, USBC stands on five pillars of service to foster entrepreneurial growth and wealth creation within the Black community: advocacy, access to capital, contracting, entrepreneur training, and chamber development.

The National Association of Investment Companies (“NAIC”) is the country’s largest network of diverse-owned alternative asset managers, consisting of a broad spectrum of over 180 minority-owned firms. Through education, advocacy, and industry events, NAIC focuses on increasing the flow of capital to high-performing diverse investment managers often underutilized by institutional investors. For more than 52 years, NAIC has contributed to the success of its member firms by advocating on their behalf for increased capital investment. As such, NAIC has played an integral role in increasing the pipeline of women and diverse professionals in the alternative asset management industry.

Given their collective missions of increasing opportunities for Black entrepreneurs, Amici Curiae have a clear interest in this litigation, which seeks to limit the ability of organizations to provide capital to increase Black economic mobility and business ownership.

FRAP 29(a)(4)(E) STATEMENT

Amici Curiae certify that no party's counsel authored this brief in whole or in part; that no party or party's counsel contributed money that was intended to fund preparing or submitting the brief; and that no person other than Amici Curiae, their members, or their counsel contributed money that was intended to fund preparing or submitting the brief.

SUMMARY OF THE ARGUMENT

The purpose of the Fearless Strivers Grant Contest operated by Defendants-Appellees Fearless Fund Management, LLC; Fearless Fund II, GP, LLC; Fearless Fund II, LP; and Fearless Foundation Inc. (collectively, “Fearless Fund”) is to “bridg[e] the gap in venture capital funding for women of color founders building scalable, growth aggressive companies.”² Fearless Fund’s efforts on behalf of Black women entrepreneurs serve to remedy severe economic disparities that exist as a result of a long, sordid history of race and gender discrimination in this country, a legacy of inequity anchored in disenfranchisement and the exclusion of Black women from participation in the formal economy. These inequalities persist today, limiting the opportunities for Black women to start and grow their own businesses.

By increasing access to capital for Black women entrepreneurs, Fearless Fund is not merely redressing centuries of marginalization—it is providing a much-needed foundation for growth and innovation that has been ignored for far too long.

² R.2-1 at 3 (quoting Declaration of Gilbert Dickey, Exhibit D at 2, *Am. All. for Equal Rts. v. Fearless Fund Mgmt., LLC*, No. 1:23-CV-3424-TWT (N.D. Ga. Aug. 2, 2023), ECF No. 1-7).

ARGUMENT

I. Historic discrimination and systemic inequities have limited opportunities for Black entrepreneurs—especially Black women.

“America’s racist history has negatively impacted African Americans’ opportunities for generational wealth. From slavery to Jim Crow, formal institutional barriers and discrimination have made it difficult for African Americans to gain upward economic mobility.”³ Contrary to outmoded and prejudiced notions that Black Americans “have lower levels of wealth because of poor decisions or a culture of poverty,” recent scholarship proves that “racial wealth inequality has been structured over many generations through systematic barriers that have hampered Blacks throughout history—slavery, Jim Crow, so called de jure discrimination, and institutionalized racism.”⁴ At the same time, “historical government policies have helped Whites acquire the assets which are the source of today’s racial wealth gap.”⁵

Closing that racial wealth gap has always been dependent on Black Americans’ ability to establish their own economic power and drive commerce from within their community. Booker T. Washington founded the National Negro

³ Taylor M. Jackson & Paromita Sanyal, *Struggles and Strategies of Black Women Business Owners in the U.S.*, 8 J. Bus. Anthropology 228, 230 (2019).

⁴ Saran Nurse, *Black Women Entrepreneurs: An Exploration of the Structural Factors Driving the Financial Capital Access Gap*, in *Sustainability and the Future of Work and Entrepreneurship for the Underserved* 131, 137 (Joann Denise Rolle & Micah Crump eds., 2022).

⁵ *Id.*

Business League to do just that. Since its founding in 1900, the League “served as a powerful platform for Black entrepreneurs.”⁶ But although the League was comprised of successful Black men and women alike, on the whole, Black women were rarely afforded the same opportunities as their male counterparts.

Black women have long been unrecognized and underappreciated pillars within the American economy, relegated first to the fields, kitchens, and nurseries of white homes and then to the least-favorable low-wage, labor-intensive positions in the broader economy.⁷ Whether producing crops to be sold for profit or children to be sold as chattel, the considerable financial contributions of Black women historically did little to improve their financial or labor-market position.⁸ Even in times of purported equality, Black women—constrained by both racism and sexism—have been excluded from better-paying positions that offered upward mobility and equity.⁹ Their exclusion from these positions exacerbated the wage and wealth gap for Black women and made assistance from within their community integral to their ability to overcome barriers to economic stability and independence.

⁶ *The Legacy*, Nat’l Bus. League, <https://nationalbusinessleague.org/the-legacy> (last visited Dec. 1, 2023).

⁷ Nina Banks, *Black Women’s Labor Market History Reveals Deep-Seated Race and Gender Discrimination*, Econ. Pol’y Inst. (Feb. 19, 2019), <https://www.epi.org/blog/black-womens-labor-market-history-reveals-deep-seated-race-and-gender-discrimination>.

⁸ *Id.*

⁹ *Id.*

Maggie L. Walker provides a compelling example of this phenomenon. In a 1901 speech, Walker, the daughter of a slave and the first American woman of any race to own a bank, asked, “Who is so helpless as the Negro woman? Who is so circumscribed and hemmed in, in the race of life, in the struggle for bread, meat, and clothing, as the Negro woman?”¹⁰ As Black women were being systematically excluded from the workforce, Walker took action to address these inequities by helping them start their own businesses. In 1903, she opened St. Luke Penny Savings Bank and offered Black women entrepreneurs investment capital at significantly lower rates than the oppressive rates white-owned banks offered.¹¹ Access to the economic capital Walker provided created entrepreneurial opportunities for Black women that were long denied and allowed them to begin to confront institutional obstacles and gain their footing within the American economy.

The contributions of Washington and Walker underscore the historic tradition of Black Americans—including Black women—starting their own businesses to circumvent the obstacles related to access, education, and experience needed to succeed in the formal economy. But notwithstanding the assistance provided by Black business leaders, entrepreneurship has imposed, and continues to impose,

¹⁰ Maggie McGarth & Margherita Beale, *Why America’s First Black Female Bank Founder Is Still Owed a Great Debt*, Forbes (Mar. 20, 2021), <https://www.forbes.com/sites/maggiemcgrath/2021/03/20/why-americas-first-black-female-bank-founder-is-still-owed-a-great-debt/?sh=26e37f5b7fd3>

¹¹ *Id.*

significant hurdles and inequities: “Black business owners usually lack key advantages that some White business owners enjoy,” including education, startup funds, and familial connections.¹²

Black women seeking to own and operate businesses suffer not only from the disadvantages borne by Black entrepreneurs generally, but also obstacles unique to women.¹³ These hurdles might include lack of managerial and business experience, limited access to startup capital, and family and household responsibilities.¹⁴ Although all business owners, men and women alike, face challenges just to keep their ventures operating, the ability of women to own viable businesses has been further constrained by their marginalized status within the broader economy and a fundamentally segregated society.¹⁵ For Black women looking to start their own businesses, these systemic and structural disadvantages—including wealth

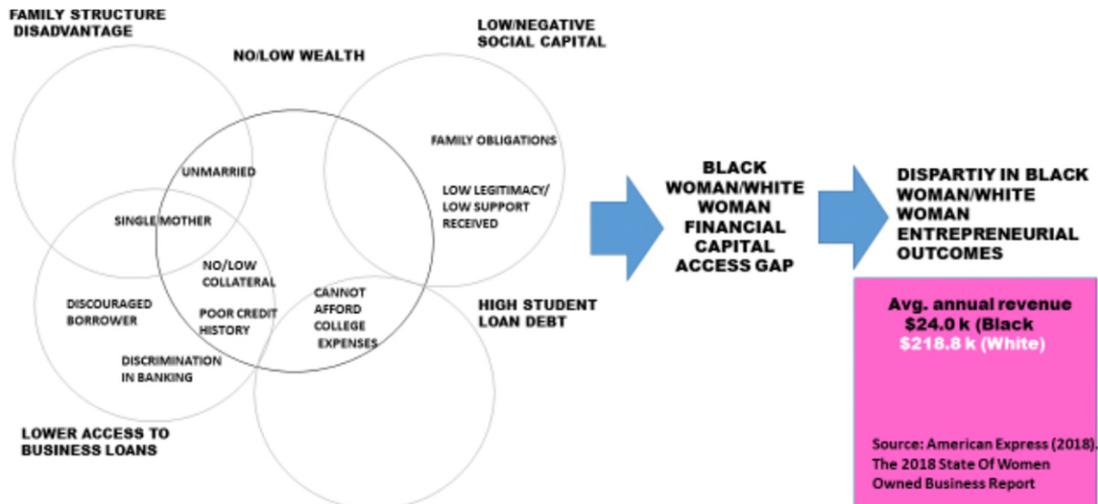
¹² Jackson & Sanyal, *supra*, at 230.

¹³ *Id.* at 231; see also Gizelle George-Joseph & Daniel Milo, *Black Womenomics: Equalizing Entrepreneurship*, Goldman Sachs 5 (Feb. 9, 2022), <https://www.goldmansachs.com/intelligence/pages/gs-research/black-womenomics-equalizing-entrepreneurship/report.pdf> (“Black women make less in the labor market and face job-related economic disadvantages driven by systemic and individual discrimination that are compounded by the intersectionality of gender.”).

¹⁴ Jackson & Sanyal, *supra*, at 231–32; see also Katherine Inman, *Women’s Resources in Business Start-up: A Study of Black and White Women Entrepreneurs* 9 (1997) (Ph.D. dissertation, University of Georgia) (ProQuest) (“[S]tudies find that women’s inadequate training and limited access to male business networks contribute[] to their lack of access to commercial financing, indicating a connection between skills, financing, and network opportunities.”).

¹⁵ Jackson & Sanyal, *supra*, at 232.

disparities, discrimination by lenders and financial institutions, credit history, and debt—conspire to deny them equal access to capital accumulation:¹⁶



Ultimately, Black women suffer the inequities experienced by both Black *and* women business owners. As academics Taylor M. Jackson and Dr. Paromita Sanyal found after interviewing 20 Black women business owners (including two in Atlanta),

Black women business owners faced double disadvantages stemming from their intersectional identities. They did not fit the stereotypical image of an entrepreneur or a business-owner. Deviating from these stereotypes led to their marginalization from mainstream discourses and also to public misconceptions. Added to this, their intersectional identity of being a Black woman triggered socially held negative images and perceptions among their clientele and associates. These stereotypes affected the ways Black women were viewed by others and

¹⁶ Inman, *supra*, at 261 (“Disadvantages built into segregated systems of education and employment sometimes result in inadequate cultural capital accumulation by black women to take full advantage of available business and economic opportunities.”); Nurse, *supra*, at 136–42.

influenced their self-identity as business owners as well as their business practices.¹⁷

II. Black women entrepreneurs continue to suffer from economic disadvantages and are disproportionately shut off from access to capital.

The discrimination and marginalization experienced by Black business owners—and Black women in particular—have persisted to this day. Historic inequities create a vicious cycle that perpetuates deprivation. As one observer explained, “[t]o many firms, investing in founders from diverse backgrounds is considered a riskier bet because the entrepreneurs differ from the norm they’ve become accustomed to.”¹⁸ Given the importance of startup capital—perhaps the

¹⁷ Jackson & Sanyal, *supra*, at 233, 235–36. This marginalization extends beyond entrepreneurship to the management of American companies:

The U.S. Bureau of Labor Statistics shows that although women represent more than 50% of the available talent pool and occupy 52% of all management- and professional-level jobs, fewer than 21% of c-suite executives in the U.S. are women, and women represent just 5% of CEOs at major corporations. Furthermore, just 1% of c-suite executives in the U.S. are women of Color.

Carolina Milanesi, *Black Women Entrepreneurs Need Funding Not Mentoring*, Forbes (Nov. 22, 2021), <https://www.forbes.com/sites/carolinamilanesi/2021/11/22/black-women-entrepreneurs-need-funding-not-mentoring>. And “[b]ecause there aren’t enough minority women in leadership positions, Black women entrepreneurs struggle to find [] critical mentorship.” *The Four Most Common Challenges Facing Black Women Entrepreneurs*, Stearns Bank (Feb. 28, 2023), <https://www.stearnsbank.com/resources/blog/the-four-most-common-challenges-facing-black-women-entrepreneurs>.

¹⁸ Gabrielle Fonrouge, *Venture Capital for Black Entrepreneurs Plummeted 45% in 2022, Data Shows*, CNBC (Feb. 2, 2023), <https://www.cnbc.com/2023/02/02/venture-capital-black-founders-plummeted.html>.

most important factor in the establishment and expansion of businesses¹⁹—the exclusion of Black women entrepreneurs from this critical resource further pushes them outside the mainstream of American business owners and erects additional hurdles to future capital acquisition. Indeed, a striking “entrepreneurship gap” exists, such that only 0.5% of single Black women own their own businesses—a rate that is *24 times lower* than for single white men.²⁰

Statistics readily demonstrate the struggles Black business owners face when securing capital. Reuters reported that

[t]he share of U.S. venture capital going to Black-founded companies stood at just over 3% of the \$147.6 billion of 2020’s overall deal volume, the data shows. In the past six years, that percentage has not budged above 5%, even though about 10% of U.S. companies are Black-owned, according to U.S. Census data.²¹

¹⁹ Nurse, *supra*, at 136.

²⁰ George-Joseph & Milo, *supra*, at 6.

²¹ April Joyner & Arriana McLymore, *For Black Founders, Venture Funding Remains Elusive Despite New Funds*, Reuters (Feb. 22, 2021), <https://www.reuters.com/article/venture-capital-funding-diversity/analysis-for-black-founders-venture-funding-remains-elusive-despite-new-funds-idINKBN2AM12X>; *see also, e.g.*, Sarah Lynch, *How Black Women Entrepreneurs Overcome the Odds*, Inc. (Feb. 1, 2023), <https://www.inc.com/sarah-lynch-/how-black-women-entrepreneurs-overcome-odds.html> (reporting that Black business owners “are rejected for funding at three times the rate of white business owners,” with “female-founders[] secur[ing] just 2 percent of VC funding in 2022”).

Although the precise amount of Black venture-capital funding varies,²² the reported percentage remains steadily in the low single digits—and has decreased in recent years.²³ Indeed, “[w]hile overall VC funding dropped by 36% in 2022 as inflation and interest rates surged, financing for Black businesses saw a steeper drop of 45% That drop is the largest year-over-year decrease Black entrepreneurs have seen over the past decade.”²⁴

The lack of capital for Black entrepreneurs is reflected not only in the amount of money they receive, but in the number of Black businesses that receive the funding: “Only 16 firms out of hundreds of venture capital firms participated in 10 or more early-stage funding rounds for Black-founded or Black-led companies between 2015 and 2020.”²⁵ These discrepancies are not attributable to economic performance or indicators alone, since even minority-owned firms with good credit scores are less likely than white-owned firms to receive the funding they need.²⁶

²² See, e.g., Ronald D. White, *Black, Latinx and Female Entrepreneurs Are Still Ignored by Most Venture Capitalists*, L.A. Times (June 5, 2021), <https://www.latimes.com/business/story/2021-06-05/black-latinx-and-female-entrepreneurs-are-still-ignored-by-most-venture-capitalists> (“Black-owned U.S. companies received \$1 billion in venture funding during 2020, . . . just 0.6% . . . of a total pool of \$161.4 billion.”).

²³ See Fonrouge, *supra*.

²⁴ *Id.*

²⁵ Joyner & McLymore, *supra*.

²⁶ See *Small Business Credit Survey: 2021 Report on Firms Owned by People of Color*, U.S. Fed. Rsrv. iii, 32, <https://www.fedsmallbusiness.org/survey/2021/2021->

Identifying and rejecting incorrect explanations for the disparities in capital access is particularly important; as one academic has explained, “mainstream and orthodox economists have attributed racial and ethnic disparities to the fault of the group that is subjected to those disparities and inequalities” rather than explore “how structural conditions that are the legacies of past discrimination, as well as current discriminatory practices, manifest in [] lower access to financial capital.”²⁷

Black women suffer disproportionately from this economic deprivation. Notably, Black women are the fastest-growing segment of new entrepreneurs, with the COVID-19 pandemic *accelerating* the pace of entry of Black women into entrepreneurship even as “[t]he pandemic has added to the long history of disruption and separation within Black families.”²⁸ Scholars have found several explanations for this upward trend, including joblessness and—since Black women are more

report-on-firms-owned-by-people-of-color (last visited Dec. 1, 2023); *The State of Access to Capital for Entrepreneurs: From Barriers to Potential*, Kauffman Found. 2 (Feb. 5, 2019), https://www.kauffman.org/wp-content/uploads/2019/12/capital_access_lab_exec_summary_FINAL.pdf (“Black entrepreneur’s loan requests are three times less likely to be approved than white entrepreneurs. This difference persists even after accounting for credit scores and net worth of founders.” (footnote omitted)); Kimberly Weisul, *Why It’s So Difficult for Black Women Entrepreneurs to Get Funded*, Inc. (Oct. 5, 2016), <https://www.inc.com/kimberly-weisul/why-its-so-hard-for-black-women-entrepreneurs-to-get-funded.html> (“A 2013 report from the Small Business Administration found that even when the type of business, business structure, and credit score were the same, women- and minority-owned businesses were less likely to get approved for loans.”).

²⁷ Nurse, *supra*, at 135.

²⁸ *Id.* at 132–33, 143.

likely to be single mothers²⁹—the unique financial pressures of being the primary providers for their families and the need for greater flexibility in their schedules.³⁰

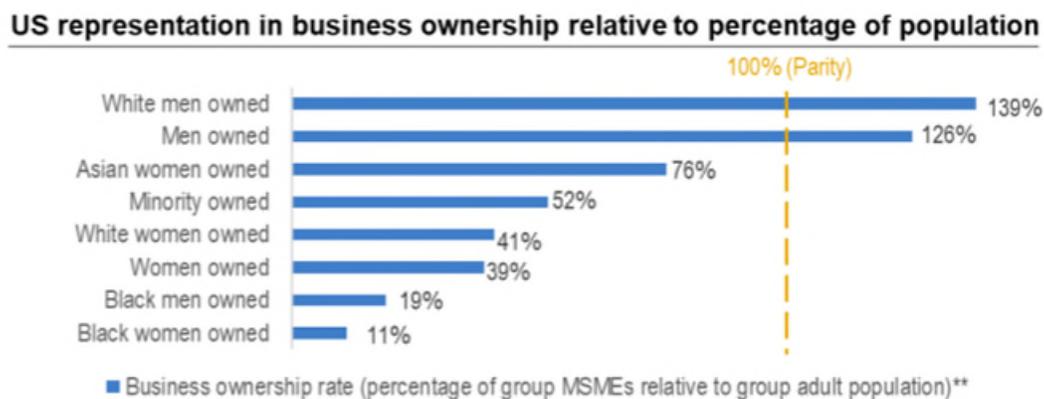
Despite the increasing number of Black women entrepreneurs, they still struggle to secure access to capital, even more than their male counterparts. While Black entrepreneurs typically receive less than 2% of all venture-capital dollars each year, companies led by Black women receive *less than 1%*.³¹ A 2021 report commissioned by the United Kingdom’s Foreign, Commonwealth & Development Office estimated that the gap between capital sought by Black women entrepreneurs in the United States and the investments actually made to them is widest in comparison to other peer groups (like women business owners and minority business owners)—supply constituted less than 15% of Black women entrepreneur’s capital

²⁹ Specifically, around one-third of Black women aged 25 to 54 are single with children in their households, and more than 80% of Black mothers are breadwinners (as opposed to only 50% of white women). Daan Struyven et al., *Black Womenomics: Investing in the Underinvested*, Goldman Sachs 6 (Mar. 9, 2021), <https://www.goldmansachs.com/intelligence/pages/black-womenomics-f/black-womenomics-report.pdf>.

³⁰ Nurse, *supra*, at 133.

³¹ Fonrouge, *supra*; see also, e.g., 2022 Annual Report, Nat’l Women’s Bus. Council (Dec. 20, 2022), <https://www.nwbc.gov/annual-reports/2022> (“Women of color founders account for only 0.6 percent of all VC funding.”); George-Joseph & Milo, *supra*, at 6–7 (“Black women-founded companies raised over \$700mn in funding from 2018-2019[,] which accounts for 0.27% of funds for that period[.]”).

need.³² The U.K. study attributed this gap to both demand-side obstacles (Black women entrepreneurs lack access to existing investment instruments and critical early-stage capital) and supply-side obstacles (investors do not view Black women-owned businesses as investable).³³ Overall, only about 40 Black women in the United States have raised more than \$1 million for their ventures,³⁴ and while Black women constitute about 7% of the adult U.S. population, businesses owned by Black women account for only 0.77% of small- and medium-sized enterprises (“MSMEs”)—an 11% business-ownership rate.³⁵



While business-ownership rates among Black women are already well below parity, the rate of venture-capital funding is even more striking: In 2019, the

³² *Barriers to Capital Flow for Black Female Entrepreneurs*, Foreign, Commonwealth & Dev. Off. 5 (Apr. 2021), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1001956/Barriers-to-Capital-Flow-for-BFEs.pdf.

³³ *Id.* at 5–6.

³⁴ Milanesi, *supra*.

³⁵ *Barriers to Capital Flow*, *supra*, at 10.

Kauffman Foundation reported that “firms started by Black women received only .0006% of VC funding raised by startups between 2009 and 2017.”³⁶ And even where funding *is* available to Black women entrepreneurs, other systemic issues present hurdles to business growth.

The reasons for this sustained inequality are myriad, ranging from the historical and societal³⁷ to the decidedly personal and even cosmetic—Black women’s names, personalities, and hair have been cited as obstacles to capital accumulation.³⁸ Whatever the causes, the results cannot be denied: Black women business owners who apply for funding face a rejection rate that is *three times higher* than that of white business owners.³⁹ They face obstacles confronted by both Black *and* women business owners, and “[t]he intersectionality of these obstacles makes it

³⁶ Anne Kniggendorf, *The Barriers to Funding Equality Persist for Black Women*, Kauffman Found. (May 2, 2019), <https://www.kauffman.org/currents/barriers-to-funding-equality-persist-for-black-women>.

³⁷ *See supra* at 4–9.

³⁸ *See, e.g.*, Milanesi, *supra* (Black businesswoman described being “denied a small business loan on several occasions and for reasons ranging from having a name deemed ‘too ethnic’ to a lack of understanding of her business model”); Janice Gassam Asare, *How Hair Discrimination Affects Black Women at Work*, Harv. Bus. Rev. (May 10, 2023), <https://hbr.org/2023/05/how-hair-discrimination-affects-black-women-at-work> (“Black women’s hair was two-and-a-half times more likely to be perceived as unprofessional. . . . A quarter of the Black women surveyed believe they were denied a job because of their hair.”); Jackson & Sanyal, *supra*, at 243 (“Black women’s tone of voice, style of dress, hairstyles, and demeanor can be read as threatening or unprofessional.”).

³⁹ *Four Most Common Challenges, supra*.

that much more difficult for a Black woman entrepreneur to obtain critical funding.”⁴⁰

III. Organizations like Fearless Fund play a critical role in closing the entrepreneurship gap and ensuring equity for Black women business owners.

Fearless Fund and other organizations that promote minority businesses serve to remedy this historic and persistent inequality and, in so doing, create new avenues for economic growth and innovation. Indeed, the advantages of entrepreneurial opportunities for Black women extend not only to the recipients of funding—as one academic has noted, “[b]usiness ownership has allowed African American and other minority women to avoid discrimination on the job and to achieve occupational mobility”⁴¹—but also to the economy and society at large.

The potential upsides of expanded opportunities for Black women entrepreneurs were apparent in the years following the 2008 financial crisis. As *Forbes* recounted:

During the 2008 Great Recession, the number of companies Black women started from then to 2018 shot up 163%—10 times the growth for nonminority women-owned companies. . . . [M]inority and women-owned businesses were massive job creators and stabilizers of the economy following the 2008-2009 recession, adding 1.8 million jobs in 2007-12.

Although enterprises owned by women or people of color were more likely to shutter during the Great Recession of 2007-09, they helped

⁴⁰ *Id.*

⁴¹ Inman, *supra*, at 8.

stabilize the economy during the subsequent recovery, adding 1.8 million jobs in 2007-12. In other words, Black female entrepreneurs helped stimulate America's economy during a time of financial crisis.⁴²

The 2021 U.K. report echoed these sentiments, noting that equal participation in the entrepreneurial sphere by both men *and* women would raise the global GDP by up to 6%.⁴³ And it is not just the global economy that would benefit from such participation: “When women work, they invest 90% of their income back into their families, compared with 35% for men.”⁴⁴

The example of Madam C.J. Walker provides a valuable illustration of the economic ingenuity of Black women entrepreneurs—and their ability to promote opportunities for future Black business owners. Walker, born into a Louisiana sharecropper family in 1867 and orphaned at age seven, was inspired to create her own line of Black haircare products after working as a commission agent for another cosmetics company.⁴⁵ Employing aggressive marketing in Black newspapers, her Madam C.J. Walker Manufacturing Company flourished, making her the first

⁴² Christine Michel Carter, *Black Female-Founded Companies Need Funding, Not Accelerators or Incubators*, Forbes (June 18, 2021), <https://www.forbes.com/sites/christinecarter/2021/06/18/black-female-founded-companies-need-funding-not-accelerators-or-incubators>.

⁴³ *Barriers to Capital Flow*, *supra*, at 7.

⁴⁴ *Id.*

⁴⁵ Amber Paranick, *Madam C.J. Walker*, Libr. of Cong. (May 29, 2020), <https://blogs.loc.gov/headlinesandheroes/2020/05/madam-c-j-walker>.

American woman to become a self-made millionaire.⁴⁶ Hoping to promote Black economic opportunity, Walker “empowered women to become independent sales agents of her product line and opened opportunities for African American women to engage in business for themselves.”⁴⁷

Walker’s spiritual descendants can be found in the ranks of contemporary Black entrepreneurs—including those who received funding from organizations dedicated to increasing opportunities for Black women. Beatrice Dixon, CEO and co-founder of a wellness brand that began in her Atlanta home, secured a deal with Target in 2016.⁴⁸ Faced with the “impossible” task of rapidly scaling up and launching in more than one-thousand retail stores, Dixon

managed to secure that crucial round of financing from the New Voices Foundation, a fund led by Richelieu Dennis that’s devoted to supporting women entrepreneurs of color. Using that financing, and some funding from family and friends, Dixon was able to quit her job, move operations out of her kitchen and launch in Target stores nationwide by 2017. Some six years later, Dixon’s products are a staple in retailers across the country.⁴⁹

Contemporary entrepreneurs like Dixon are the exception, however, as Black women continue to be excluded from the entrepreneurial sphere—and therefore

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ Fonrouge, *supra*.

⁴⁹ *Id.*

constitute an untapped source of new businesses and new ideas. In the words of Black entrepreneur James Norman, investors

are unequivocally missing out on tremendous opportunity by not knowing where Black founders are and not funding them. . . . If you’ve only spent 1% of VC dollars, if we can only find 227 venture-backed Black companies (while more than 9,000 companies were funded in 2018), you can be sure that you have not even funded the best of us yet.⁵⁰

Organizations like Fearless Fund continue the tradition of solidarity and investment pioneered by Booker T. Washington, Maggie L. Walker, and Madam C.J. Walker, bridging the opportunity gap for Black women and ensuring that new sources of economic growth and innovation are no longer ignored. While exploring the differing experiences of Black and white women business owners, one academic cited “access to minority loan programs and minority advocacy organizations” as advantages for the former.⁵¹ But this access has not always been sufficient to meet the need. Writing a quarter-century ago, this same academic explained that, “[c]ompared to modern, voluntary immigrants, African Americans have fewer resources to pool in support of community-based businesses”—an historic detriment that “may be changing with inputs of wealth from successful new business started

⁵⁰ James Norman, *A VC’s Guide to Investing in Black Founders*, Harv. Bus. Rev. (June 19, 2020), <https://hbr.org/2020/06/a-vcs-guide-to-investing-in-black-founders>.

⁵¹ Inman, *supra*, at 13.

by blacks.”⁵² Fearless Fund, Amici Curiae, and other likeminded organizations are vindicating this promise, closing the historic gap between Black and white entrepreneurs and expanding opportunities for new Black businesses.

CONCLUSION

Given that Fearless Fund is currently playing a vital role in remedying historic discrimination by allowing Black women to access entrepreneurial and business opportunities—and thus ensuring that the economy will benefit and grow as a result of this untapped pool of skill and innovation—Amici Curiae respectfully urge the Court to affirm.

⁵² *Id.* at 253.

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By /s/ Joyce Gist Lewis

Joyce Gist Lewis

KREVOLIN & HORST, LLC

One Atlantic Center

1201 West Peachtree Street, NW,

Suite 3250

Atlanta, Georgia 30309

(404) 888-9700

jlewis@khlawfirm.com

Respectfully submitted,

Aria C. Branch

Meaghan E. Mixon

ELIAS LAW GROUP LLP

250 Massachusetts Avenue NW,

Suite 400

Washington, D.C. 20001

(202) 968-4490

abran@elias.law

mmixon@elias.law

Jonathan P. Hawley

ELIAS LAW GROUP LLP

1700 Seventh Avenue,

Suite 2100

Seattle, Washington 98101

(206) 656-0179

jhawley@elias.law

Counsel for Amici Curiae

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitations of Fed. R. App. P. 29(a)(5), as the brief contains 4,450 words, excluding those parts exempted by 11th Cir. Local R. 32-4.

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/s/ Joyce Gist Lewis
Counsel for Amici Curiae