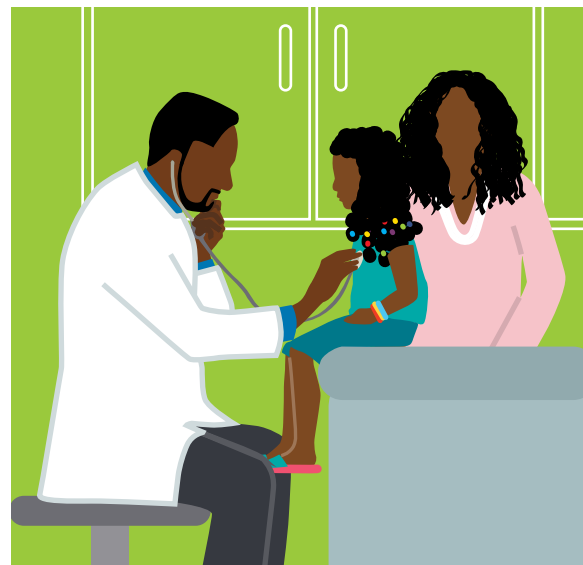


# Legal Primer for Policymaking to Advance Health & Racial Equity



# Contents

<b>Introduction</b>	<b>3</b>
Policymaking to Advance Health & Racial Equity Is More Relevant Than Ever	3
How to Use this Resource	4
<b>Why Is Policymaking to Advance Racial Equity Important for Health?</b>	<b>5</b>
<b>What Is the Legal Landscape for Policymaking to Advance Racial Equity?</b>	<b>7</b>
Longstanding Protections Against Discrimination	7
Race-Based & Race-Neutral Policies	8
Challenges to Policymaking to Advance Racial Equity	9
Reverse Discrimination Lawsuits	9
Narrowing Protections: Anti-DEIA Efforts & Weak Civil Rights Enforcement	10
Navigating Legal Risks	11
<b>What Legal Concepts Should Changemakers Be Aware of When Using Policy to Advance Racial Equity?</b>	<b>13</b>
<b>Federal Laws</b>	<b>14</b>
The Equal Protection Clause	14
Federal Nondiscrimination Statutes	17
<b>State Laws</b>	<b>19</b>
State Equal Protection Provisions	19
State Bans on Affirmative Action	19
State Nondiscrimination Laws	20
<b>Local Nondiscrimination Laws</b>	<b>20</b>
<b>Additional Laws Requiring Consideration of Race</b>	<b>21</b>
<b>How Can Changemakers Apply Relevant Legal Concepts When Using Policy to Advance Racial Equity?</b>	<b>23</b>
<b>How Can Changemakers Put Policymaking to Advance Racial Equity Into Action?</b>	<b>26</b>
1. Establishing an Evidence Base	26
2. Building a Coalition & Community Support	27
3. Selecting & Designing a Policy	28
4. Developing the Record to Support a Policy	30
5. Implementing, Enforcing & Evaluating a Policy	32
6. Defending a Policy	32
<b>Conclusion</b>	<b>34</b>
<b>Glossary</b>	<b>35</b>
<b>Acknowledgments</b>	<b>36</b>
<b>Resources</b>	<b>37</b>
<b>References</b>	<b>38</b>

# Introduction

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## Policymaking to Advance Health & Racial Equity Is More Relevant Than Ever

Improving health at the population level requires ensuring that everyone has a fair opportunity to be as healthy as possible.<sup>1,2</sup> However, racism often prevents minoritized racial and ethnic groups from achieving good health by creating stark differences in the social determinants of health – the conditions in which we live, work, and play. For too long, laws and policies have perpetuated and reinforced social systems that devalue, disempower, and differentially allocate resources to individuals and groups because of their race, ethnicity, and other dimensions of identity.<sup>i</sup>

Because racism is a fundamental driver of unjust health disparities,<sup>3,4,5</sup> policymaking that addresses past and ongoing racial discrimination and advances racial equity is essential to achieving better health for all.

There has been heightened attention on policymaking to advance racial equity in the aftermath of the Supreme Court’s 2023 decision striking down the use of affirmative action<sup>ii</sup> in admissions programs at two institutions of higher education.<sup>6,7,8</sup> Although this decision was narrow in scope, opponents have invoked the Court’s reasoning to broadly attack racial equity-related policies across a range of sectors – including health care and public health – using tactics such as lawsuits, policy changes, enforcement actions, and messaging designed to chill lawful activities and sow confusion.<sup>9,10,11</sup> These actions pose powerful threats to the fundamental values of nondiscrimination and equality under the law, which are enshrined in the U.S. Constitution, and have real impacts on people’s health, educational opportunities, livelihoods, and communities.<sup>12,13,14,15,16</sup> Against this backdrop, it is critical to understand how to apply legal frameworks to support the use of policy to advance racial equity.

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### A Note on Terminology

In this resource, we use the terms *policy* and *policymaking* broadly. They encompass public policies that are formally adopted into law by government entities (e.g., statutes, ordinances, regulations), as well as practices and programmatic decisions carried out by organizations in both the public and private sectors (e.g., programs that may fall under the umbrella of diversity, equity, inclusion, and accessibility [DEIA]<sup>iii</sup>).

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i This primer focuses on addressing structural racism. However, we note that the same systems of power that perpetuate structural racism also create unequal opportunities to achieve good health based on social factors such as gender, sexual orientation, disability status, or language, often impacting health in intersecting and compounding ways.

ii Affirmative action refers to policies and practices to create equal opportunities for individuals or groups based on race or other protected characteristics in contexts such as education, employment, and public contracting. Affirmative action is typically intended to remove barriers to opportunity or remedy the effects of past discrimination.

iii We use the term DEIA to acknowledge the importance of accessibility, but we note that DEIA is often called diversity, equity, and inclusion (DEI). There is no generally accepted or legal definition of either of these terms, and they can encompass a broad range of programs, practices, and activities.

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## How to Use this Resource

This primer provides legal and practical information to help *changemakers* – including policymakers, governmental practitioners, and their community partners – use policy to address past and ongoing racial discrimination and health disparities based on race. Such information can support changemakers in thinking strategically about how to adhere to their values while accounting for their organizational and community contexts, as well as their tolerance for legal risk. The primer comprises a set of questions you may have about policymaking to advance health and racial equity. While you can read the primer from beginning to end, each section also can stand on its own. Thus, you can start with the question that is most relevant to you right now, using the links and descriptions below.

[Why Is Policymaking to Advance Racial Equity Important for Health?](#) includes background information for changemakers on the interplay between racism and other forms of discrimination and the social determinants of health. It uses the examples of HIV decriminalization and Medicaid coverage of doula care to illustrate how policy can be used to either perpetuate racism or advance racial equity.

[What Is the Legal Landscape For Policymaking to Advance Racial Equity?](#) provides an overview of civil rights law, including rights and protections that stem from federal and state constitutional and statutory provisions. It also discusses race-based versus race-neutral policies, the current legal landscape, and a framework for thinking about and approaching risk.

[What Legal Concepts Should Changemakers Be Aware of When Using Policy to Advance Racial Equity?](#) goes into detail on the legal analyses courts use when evaluating challenges to policies that advance racial equity. It provides an overview of the three levels of scrutiny (strict, intermediate, and rational basis review) that apply in Equal Protection cases and outlines federal statutory protections and state constitutional and statutory provisions that may be relevant.

[How Can Changemakers Apply Relevant Legal Concepts When Using Policy to Advance Racial Equity?](#) provides key takeaways for changemakers. It emphasizes that policymaking to advance racial equity is permissible and that the level of risk posed by various approaches depends on how a policy is designed as well as on its intent and impact.

[How Can Changemakers Put Policymaking to Advance Racial Equity Into Action?](#) includes specific, practical advice on utilizing the concepts outlined in the primer at each step in the policymaking process, from building an evidence base to expanding community support to selecting and designing a policy, developing a policymaking record, and implementing, evaluating, and defending the policy.

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*This primer provides legal and practical information to help changemakers use policy to address past and ongoing racial discrimination and health disparities based on race.*

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# Why Is Policymaking to Advance Racial Equity Important for Health?

Public health practitioners across the political spectrum have increasingly recognized that improving health at the population level requires ensuring that everyone has a fair and just opportunity to be as healthy as possible.<sup>17,18</sup> However, social conditions outside an individual's control – such as access to good jobs, quality education and health care, and safe housing – often prevent people from becoming or staying healthy.<sup>19</sup> These factors, known as the [social determinants of health](#), have been associated with [health disparities](#) for individuals and populations. Looking further upstream, the health disparities experienced by people from marginalized racial and ethnic groups can often be traced to structural factors such as [racism](#) and other forms of discrimination that contribute to the unequal distribution of the social determinants of health.<sup>20,21,22,23,24</sup> The public health impacts of structural racism and other forms of discrimination can range from preventing communities and individuals from exercising their political rights or achieving economic gains; to increasing exposure to health-harming conditions while simultaneously decreasing access to health-promoting opportunities; to driving chronic stress, anxiety, and other adverse health outcomes through repeated exposure to interpersonal and institutional racism.<sup>25,26</sup>

Although racial discrimination is legally prohibited under most circumstances, structural racism remains prevalent in the United States and is often perpetuated and reinforced by laws and policies (e.g., statutes, regulations, guidance, budgets, processes used to implement and enforce laws).<sup>27,28,29</sup> For this reason, many public health scholars and advocates have identified law and policy as drivers of unjust health disparities.<sup>30,31,32,33,34,35</sup> Given this context, “colorblind” approaches to policymaking – which ignore or deny the existence of structural racism – will do little, if anything, to redress the racist legacy of the United States and the unjust health disparities that flow from it.<sup>36,37,38,39,40</sup> By contrast, policies that advance racial equity can improve health for all while also reducing health disparities based on race.<sup>41,42,43</sup>

Consider laws that criminalize certain actions of people with HIV who do not disclose their HIV-positive status. Such laws, which existed in nearly three-fourths (35) of U.S. states as of 2021, are not aligned with current scientific evidence regarding HIV transmission risk and reinforce structural racism and other forms of discrimination.<sup>44</sup> Not only does HIV disproportionately affect Black, Hispanic, and LGBTQ+ populations, but HIV criminalization laws are often disproportionately enforced against these same populations.<sup>45,46,47,48</sup> In addition to negatively impacting public health by reinforcing stigma against people with HIV and exposing them to health risks associated with the criminal legal system,<sup>49,50</sup> HIV criminalization laws are also ineffective at reducing disease transmission. In fact, research has found that such laws are associated with an *increased* incidence of HIV for the general, Black, and Hispanic populations.<sup>51</sup> Changemakers can advance racial equity by repealing<sup>52,53</sup> or reforming<sup>54,55</sup> HIV

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*Approaches to policymaking that ignore or deny the existence of structural racism will do little, if anything, to redress the racist legacy of the United States and the unjust health disparities that flow from it. By contrast, policies that advance racial equity can improve health for all while also reducing health disparities based on race.*

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criminalization laws. Such policy changes have the potential to reduce HIV incidence in the general population and to shrink HIV-related health disparities among people who are Black, Hispanic, and LGBTQ+.

State Medicaid policies that either limit or facilitate access to doula care for birthing people offer another illustrative example. One study found that “birthing women of all races who received doula care had 52.9 percent lower odds of C-sections and 57.5 percent lower odds of postpartum depression and anxiety. Benefits were larger for women with pregnancy complications (such as gestational diabetes), a group in which women of color are overrepresented.”<sup>56</sup> Medicaid is a major source of coverage for people with low income, many of whom are people of color, and covers more than two-thirds of births to women who are Black or American Indian or Alaska Native (AIAN).<sup>57,58</sup> These same populations disproportionately experience negative maternal and infant health outcomes, which are linked in part to disparities in access to and quality of care rooted in racism and discrimination.<sup>59</sup> For example, Black women are more than three times as likely to die due to pregnancy-related causes as compared to white women, and one in five Black women report being treated unfairly by a provider or staff because of their racial or ethnic background, including higher rates of cesarean sections and mistreatment, such as scolding or refusing requests for help.<sup>60,61</sup> Medicaid is a promising policy lever to address racial disparities in maternal health given its significant role as a payer of maternity care for people of color. However, states differ in how they implement their Medicaid programs, with some approaches ignoring the racism experienced by birthing people of color and others directly addressing it. For example, as of 2026, just over half (26) of U.S. states were actively reimbursing for Medicaid coverage of doula care, which can improve maternal outcomes for all birthing people and reduce maternal health disparities based on race.<sup>62</sup>



# What Is the Legal Landscape for Policymaking to Advance Racial Equity?

Policies that advance racial equity aren't new. To the contrary, considering racial discrimination and racial disparities "has been routine in American public and private life – socially and politically encouraged, and sometimes legally required – for decades."<sup>63</sup> Yet, opponents are increasingly challenging a range of policies aimed at advancing racial equity, including some related to health care and public health. Thus, a primary consideration for changemakers seeking to advance health and racial equity is: Which policy approaches are more or less likely to face and withstand legal challenges, including lawsuits and other legal consequences such as government investigations and enforcement actions? This section begins to answer this question by providing a high-level overview of the legal landscape for policymaking to advance racial equity, recent challenges, and considerations for navigating legal risks.

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## Longstanding Protections Against Discrimination

Civil rights law is the body of law most directly implicated by policymaking to advance racial equity. Civil rights are legally enforceable claims or privileges, including the legally enforceable right to be free from discrimination.<sup>64</sup> For example, the Fourteenth Amendment to the U.S. Constitution is known for its Equal Protection Clause, ratified in 1868, which establishes that a government body may not deny people equal protection under the law.<sup>65,66</sup> Put another way, governments cannot treat people in similar conditions and circumstances differently without a valid reason.<sup>67,68</sup> Many state constitutions create similar rights to equal treatment under the law, and federal and state legislatures have also enacted antidiscrimination laws that build on constitutional protections by prohibiting discrimination against people on the basis of race and other characteristics such as gender and physical ability.<sup>69,70,71</sup> At the core of antidiscrimination laws is the promise of equal opportunity: that everyone should have a fair chance to succeed and thrive, regardless of identity or social factors – a principle that is also central to public health.<sup>72,73</sup>

Federal, state, and local governments, as well as private-sector organizations, can adopt new policies and practices that remove barriers to opportunity and that mitigate or prevent discrimination and structural racism. Governments can also advance health and racial equity through consistent and fair implementation and enforcement of existing antidiscrimination laws. At the same time, any new policies and practices to address racism and advance racial equity must themselves be consistent with the Equal Protection Clause, federal and state antidiscrimination laws, and judicial interpretations of these protections.

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### Antidiscrimination Laws

To learn more about federal, state, and local antidiscrimination laws and how courts have interpreted them, refer to [What Legal Concepts Should Changemakers Be Aware of When Using Policy to Advance Racial Equity?](#)

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## Race-Based & Race-Neutral Policies

Whether a policy is vulnerable to legal challenges based on the Equal Protection Clause and federal and state antidiscrimination laws depends in part on how the policy is designed – in particular, whether it is [race-based](#) or [race-neutral](#). In general, race-based policies carry more legal risk than race-neutral policies, though neither is inherently illegal.<sup>74</sup> Both race-based and race-neutral policies can either promote or hinder racial equity-related goals. Because these policy design choices have both legal and practical significance, it's important for changemakers to understand the distinction.

**Race-based** policies use individual racial classifications “as a decision or selection criterion” to allocate benefits or impose burdens.<sup>75,i</sup> Some, but not all, race-based policies advance racial equity. For example, Jim Crow laws required racial segregation in neighborhoods and public facilities and sometimes resulted in explicit or tacit exclusion of minority-owned businesses from public contracting opportunities.<sup>76</sup> Jim Crow laws were explicitly race-based, but they codified structural racism rather than mitigating or eliminating it, with long-term negative impacts to Black families' economic stability – one of the social determinants of health.<sup>77,78</sup> By contrast, a procurement policy that requires government entities to give a competitive advantage to certified minority-owned businesses in contracting decisions makes explicit race-based distinctions to equalize opportunities and remedy the effects of past and ongoing discrimination in public contracting.<sup>79,80</sup>

**Race-neutral** is a legal term used to describe policies that are “facially neutral,” meaning they do not make explicit racial distinctions.<sup>81</sup> Some scholars understand race-neutral to mean colorblind policies that “attempt to improve quality and outcomes for everyone, regardless of race” and “do not consider the potential and inevitable role of racism, or even race, in policy outcomes.”<sup>82</sup> This resource uses race-neutral in the narrower legal sense, in which race-neutral policies may still advance racial equity, but only if they are developed, implemented, and enforced with awareness of racial disparities and potential effects on people from minoritized racial and ethnic groups. Thus – as with race-based policies – some, but not all, race-neutral policies advance racial equity. Building on the public contracting example, a law that requires government entities to award contracts to suppliers that offer goods at the lowest price would be facially race-neutral and unlikely to advance racial equity. By contrast, consider a law that requires government entities to give a competitive advantage to small businesses. There are many legitimate rationales for governments to support small businesses – such as the desire to promote innovation, create jobs, and encourage fair competition among potential contractors – all of which can help foster economic conditions that improve health.<sup>83,84</sup> Governments may also enact such preferences with the awareness that a significant number of small businesses are owned by people from minoritized racial and ethnic groups.<sup>85,86,87</sup> Thus, while such preferences benefit small businesses generally, they may also help to equalize public contracting opportunities for people with marginalized identities.

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## Legal Risks

For a summary of how legal risk varies depending on policy type, refer to [How Can Changemakers Apply Relevant Legal Concepts When Using Policy to Advance Racial Equity?](#)

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i Some courts and commentators use an alternative term, race-conscious, as a synonym for race-based. Others use the term race-conscious more broadly to refer to any policy that seeks to mitigate or eliminate structural racism. Because of this ambiguity, we do not use the term race-conscious in this resource.

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## Challenges to Policymaking to Advance Racial Equity

Although the ideal of equal treatment under the law is a bedrock principle of democracy in the United States, opponents of policymaking to advance racial equity are taking actions that threaten to erode longstanding protections, curtail future opportunities to address racism through policies and practices, and exacerbate conditions that contribute to health disparities based on race. Two examples are “reverse discrimination” lawsuits and efforts to narrow protections against discrimination by dismantling DEIA programs and weakening civil rights enforcement.

### Reverse Discrimination Lawsuits

Lawsuits challenging policymaking to advance racial equity accelerated following the Supreme Court’s 2023 decision holding that Harvard and the University of North Carolina could not consider race as a “tip” or “plus factor” in admissions because the practice violated the Equal Protection Clause and Title VI of the Civil Rights Act.<sup>88,89,90,91</sup> While this decision was limited to the use of affirmative action in the admissions programs at two institutions of higher education, various advocacy groups have since filed lawsuits challenging racial equity-related policies across many different sectors, including health care and public health.<sup>92</sup> These lawsuits have challenged not just race-based policies, such as affirmative action, but also policies that rely on race-neutral factors and other approaches to address the effects of discrimination experienced by particular racial or ethnic groups.<sup>93,94</sup>

In lawsuits related to the health sector, plaintiffs have often claimed that programs, services, or advisory groups with racial eligibility preferences or requirements constitute unlawful discrimination.<sup>95</sup> They have argued that “excluding or disfavoring a white individual from a program because they do not belong to a minority group is not a compelling enough reason to use race as the reason for exclusion.”<sup>96</sup> For example, in *Do No Harm v. The University of Pennsylvania Health System*, an advocacy group sued several health system organizations, alleging racial discrimination due to the creation of a Black Doctors Directory.<sup>97</sup> There is a growing body of evidence that racial concordance between patients and clinicians – which the Black Doctors Directory could help to facilitate – can improve trust, communication, and ultimately health outcomes.<sup>98,99,100,101</sup> The case was resolved when the health system defendants agreed to use a race-neutral term in the name of the directory and to ensure the directory was equally open to all physicians regardless of race.<sup>102</sup> The same advocacy group also sued public entities in several states challenging statutes requiring racial diversity on boards of medical examiners – a policy that has the potential to diversify the medical workforce with salutary effects for patients.<sup>103,104,105</sup> The cases were dismissed when the defendants worked to change state law to remove eligibility preferences or requirements.<sup>106</sup>

Several examples of lawsuits challenging race-neutral policies pertain to educational access, another social determinant of health.<sup>107,108</sup> Plaintiffs in these lawsuits have claimed that admissions programs that consider race-

neutral factors to equalize educational opportunities at selective public schools constitute unlawful discrimination.<sup>109</sup> For example, in *Boston Parent Coalition for Academic Excellence v. The School Committee for the City of Boston*, a parents' group challenged an admissions program that considered students' zip codes and family income in allocating seats at selective public high schools.<sup>110</sup> The group generally argued that the program was motivated by an intent to disfavor white and Asian students, relying on evidence that school administrators had discussed the program's potential to promote racial diversity and studies showing that white and Asian students made up a smaller percentage of admitted students under the program as compared to previous years. An appeals court rejected the challenge, and the Supreme Court denied review; however, litigation challenging a revised admissions program that considers students' socioeconomic status is ongoing, as is a challenge to a similar admissions program for selective public high schools in Philadelphia.<sup>111, 112, 113, 114</sup>

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*The Equal Protection Clause and civil rights laws were originally intended to protect people who are devalued and disempowered in society because of their race, ethnicity, or other dimensions of identity.*

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The arguments presented in each of the lawsuits above turn antidiscrimination laws on their head: the Equal Protection Clause and civil rights laws were originally intended to protect people who are devalued and disempowered in society because of their race, ethnicity, or other dimensions of identity. However, opponents are attempting to leverage these same civil rights laws to argue that governmental and institutional decision-making should never take race-related concerns into account, even as a broad policy goal to benefit protected classes, and even when race is not being used as a criterion to confer benefits or impose burdens. To date, these lawsuits have largely been unsuccessful or have resulted in dismissals or judgments that do not alter the laws governing policymaking to advance racial equity.<sup>115, 116, 117</sup> However, the legal landscape may evolve as cases make their way through the courts, in particular the ongoing cases challenging race-neutral admissions programs. Furthermore, as the outcomes of the cases related to the health sector show, litigation can sometimes push changemakers to discontinue policies or programs that advance racial equity even when compliance has not been legally compelled.

## **Narrowing Protections: Anti-DEIA Efforts & Weak Civil Rights Enforcement**

In parallel with efforts to narrow civil rights protections through the courts, the federal government and some state governments have made policy changes that hamper changemakers' ability to prevent discrimination and to proactively identify, investigate, and address instances of discrimination that have already occurred.

For example, since the election of President Trump, the current federal administration has issued executive orders and taken other actions attacking DEIA initiatives throughout the federal government. In some cases, these efforts seek to undermine DEIA initiatives undertaken by non-federal actors, such as state and local governments and private-sector organizations.<sup>118</sup> Relatedly, the U.S. Department of Justice issued a memo with guidance about the types of DEIA practices it considers unlawful discrimination and threatened enforcement actions based on reasoning that does not accurately reflect judicial interpretations of civil rights laws.<sup>119, 120</sup> Various agencies under the President's control – including the U.S. Department of Health and Human Services, which

is responsible for enhancing the nation's health – have begun to implement the orders and guidance by removing equity-related guidance from their websites,<sup>121,122</sup> and cutting positions at offices responsible for health disparities research and other issues purportedly related to DEIA.<sup>123</sup> The administration has also taken actions that affect state and local governments and private-sector organizations, such as opening costly investigations and rescinding or threatening to rescind federal grants and other sources of funding.<sup>124,125</sup> At the same time, efforts to address racism and racial discrimination have also been limited by state-level actions, such as legislation banning or rolling back DEIA programs at public universities and government agencies.<sup>126,127,128</sup>

Relatedly, the current federal administration has taken actions that have weakened federal agencies' ability to enforce civil rights laws. For example, significant cuts have been reported at equal employment opportunity offices that are responsible for protecting federal employees from discrimination.<sup>129</sup> The administration has also laid off hundreds of employees at offices responsible for enforcing civil rights laws that protect members of the public, such as the U.S. Department of Education's Office for Civil Rights.<sup>130,131,132</sup> Additionally, through various executive actions and regulatory changes, the current federal administration has sought to limit the use of disparate impact analysis in certain civil rights statutes.<sup>133,134,135</sup> Disparate impact allows for a finding of wrongdoing when a seemingly race-neutral policy causes disproportionate negative harm to a racial or ethnic group, even absent proof of discriminatory intent, and it can be an important tool for fighting covert forms of discrimination in contexts such as employment and housing.<sup>136</sup>

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*Recent government actions, including lawsuits, are designed to discourage and intimidate governments and organizations from pursuing policies and practices to address racism. Despite these efforts, there remain strategic opportunities for policymaking to advance racial equity even within the current context.*

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## Navigating Legal Risks

Lawsuits challenging policymaking to advance racial equity and recent government actions to dismantle DEIA programs and narrow protections against discrimination pose real risks for individuals and communities. If successful, these efforts could reshape policymaking and governmental and private-sector decision-making across the social determinants of health – from education to health care access and quality, neighborhoods and built environments, social and community contexts, and economic stability.<sup>137,138</sup> However, these efforts are designed to discourage and intimidate governments and organizations from pursuing policies and practices to address racism. There remain strategic opportunities for policymaking to advance racial equity even within the current context.

At the same time, changemakers should remain cognizant of the legal risks posed by various approaches. For example, changemakers should work with attorneys to assess which approaches are more or less likely to withstand lawsuits or successfully counter government enforcement actions such as investigations or loss of funding. They should also consider their orientation toward legal risks. Stephen Menendian, a legal scholar with the Othering & Belonging Institute, has identified three possible orientations:

1. **Courageous defiance**, or moving forward without fear of legal challenges and sometimes even contrary to prevailing law, despite potential backlash.

2. **Risk aversion**, or taking “a middle course” that “seeks to forthrightly advance racial equity objectives while hewing as closely as possible to prevailing legal constraints and limitations.” This approach “seeks to place carefully designed racial equity efforts onto a firmer legal foundation and avoids obvious legal pitfalls, but it is not so fearful that it believes it must avoid any possible legal challenge.”
3. **Risk avoidance**, or adopting only “universalistic, class-based, or wholly race-neutral approaches that may ultimately help reduce racial disparities or inequities, but while disguising the racial purpose or goal.” Menendian warns that this approach “cedes the symbolic and narrative importance of centering racial equity in policy and programming debates.”<sup>139</sup>

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*It's important to remember that only courts can decide whether specific policies and practices constitute unlawful discrimination.*

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Changemakers' orientation towards legal risks may change in different circumstances. For example, the decision about whether to pursue a particular policy may be influenced by the strength of the policy's potential to further important goals and outcomes, and by political and practical realities. It is also important to note that certain orientations may carry their own legal and practical risks. For example, while courageous defiance may sometimes be appropriate, changemakers should also consider the long-term risks of losing in court, and whether a judicial decision could further chill or curtail opportunities for policymaking to advance racial equity. Litigation can also be costly and divert time and resources from other activities that may be equally important to community members.

Additionally, legal risks should be weighed carefully against the risk of not acting (i.e., risk avoidance). Retreating too far from values-driven approaches to address racism – or otherwise complying with, for example, the federal government's interpretation of antidiscrimination laws before courts have weighed in – poses significant risks to people's health, safety, and well-being, given racism's role as a fundamental driver of unjust health disparities. Furthermore, swinging too far in the direction of complete race-neutrality and failing to address certain forms of racism can place government and private-sector actors at legal risk as well, as doing so may in and of itself constitute discrimination.<sup>140</sup> Taking a “middle course” simultaneously honors the real risks of litigation – “by hewing as closely as possible to prevailing legal constraints and limitations” – and the risks of abandoning efforts to promote racial equity entirely.

It's important to remember that only courts can decide whether specific policies and practices constitute unlawful discrimination. Since limitations on policymaking hinge on judicial interpretations of civil rights laws, a deeper look at these laws and interpretations can shed light on where opportunities may lie. In the following sections, we provide greater detail on [key legal concepts that changemakers should be aware of when using policy to address racism](#), and [how changemakers can apply these concepts](#) to make informed policy choices that account for different goals and orientations toward legal risk.

# What Legal Concepts Should Changemakers Be Aware of When Using Policy to Advance Racial Equity?

Although many laws and judicial interpretations may limit how race can be considered in policymaking,<sup>i</sup> this resource focuses on the primary sources of civil rights laws and nondiscrimination protections, as well as related state constitutional provisions. Civil rights laws were originally enacted to protect specific populations, including those historically marginalized on the basis of race. However, opponents of policies aimed at advancing racial equity increasingly argue that these laws prohibit any consideration of race at all, even when policies are designed to benefit, rather than harm, people from minoritized racial and ethnic groups.

The following sources of civil rights law are described below:

- **Federal laws**
  - The Equal Protection Clause
  - Federal nondiscrimination statutes
- **State laws**
  - State constitutions (especially provisions related to civil rights and bans on affirmative action)
  - State nondiscrimination laws
- **Local nondiscrimination laws**
- **Additional laws requiring consideration of race**

At the end of this section, [Table 2](#) serves as a tool changemakers can use as a reference in the context of policymaking to advance racial equity.

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<sup>i</sup> Claims challenging policies aimed at advancing racial equity have also been brought on other grounds that don't expressly have to do with race, such as the First Amendment. See, e.g., *Khatibi v. Hawkins*, 145 F.4th 1139 (9th Cir. 2025) (previously styled *Khatibi v. Lawson*); see also *National Religious Broadcasters v. FCC*, 138 F.4th 282 (5th Cir. 2025) and *American Alliance for Equal Rights v. Raoul*, 795 F.Supp.3d 1073 (N.D. Ill. 2025). While a full discussion of the First Amendment is outside the scope of this resource, these cases challenging racial equity under the First Amendment have generally been unsuccessful or decided on other grounds. In fact, the First Amendment may also support policies that advance racial equity.

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## Federal Laws

### The Equal Protection Clause

The Equal Protection Clause prohibits discrimination by limiting the federal government,<sup>141</sup> as well as state and local governments, in their ability “to confer benefits or impose burdens based on race” and other protected classifications.<sup>142</sup> This includes programmatic decisions and actions taken by government entities such as public schools and agencies. Whereas these constitutional provisions generally apply only to government actions, other laws, such as nondiscrimination statutes, may extend to private-sector actors and are discussed further below.

When a law, policy, or government action is challenged on Equal Protection grounds, courts apply a particular legal standard – strict scrutiny, intermediate scrutiny, or rational basis review – depending on the classification at issue. [Table 1](#) below summarizes these legal standards and their applications.

#### Strict Scrutiny

Strict scrutiny applies to laws, policies, and government actions that make explicit distinctions based on race, ethnicity, or national origin – categories courts sometimes call *protected classes* or *suspect classifications* – in distributing benefits or imposing burdens. Accordingly, strict scrutiny generally applies to race-based policies, but may, in limited circumstances, also apply to race-neutral policies as discussed further below.<sup>143</sup>

In the public health context, an example of a policy that may face strict scrutiny is one that prioritizes vaccine distribution expressly on the basis of race, or on the basis of race in combination with other classifications.<sup>144</sup> For example, if the vaccine distribution program “prioritizes three applicant groups: veterans, people with disabilities, and members of a minority racial group, the racial preference triggers strict scrutiny, even though it is not the only preference.”<sup>145</sup>

Strict scrutiny is a very demanding standard. In practice, this means that laws and policies that confer benefits or impose burdens based on express racial distinctions are likely to face lawsuits and are often struck down by courts. To survive strict scrutiny (i.e., to be upheld in court as a lawful use of government power), the government authority that adopted the policy must show that:

1. The policy promotes a “compelling government interest,” and
2. The policy goals cannot be achieved through race-neutral alternatives (also known as *narrow tailoring*).<sup>146</sup>

Perhaps the most important “compelling government interest” recognized by the Supreme Court in this context is the use of express racial distinctions to remediate “specific, identified instances of past discrimination that violated the Constitution or a statute.”<sup>147, i</sup> This requires building an evidence base of “pervasive, systematic, and obstinate discriminatory conduct.”<sup>148</sup>

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## Equal Protection

Although this section focuses on the federal Equal Protection Clause, many states have their own constitutional equal protection provisions, which are discussed later in the section on [State Laws](#).

Additionally, some policies that advance racial equity are unlikely to implicate the federal Equal Protection Clause because they do not classify individuals or do not allocate benefits and burdens. To learn more, refer to [How Can Changemakers Apply Relevant Legal Concepts When Using Policy to Advance Racial Equity?](#)

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<sup>i</sup> Although other compelling interests have been recognized by courts, they are outside the scope of this resource. More information about them can be found in: Menendian S. Advancing Racial Equity: Legal Guidance for Advocates. Othering & Belonging Institute; 2023. <https://belonging.berkeley.edu/advancing-racial-equity>.

Examples of policies that have sought to address specific instances of past government discrimination include reparations and affirmative action in education and employment.<sup>149</sup>

Courts have been less clear about what constitutes narrow tailoring, but they typically require some consideration of race-neutral alternatives and that the policy be limited in scope. Building on the vaccine distribution program example, government defendants might present the court with evidence that their goals could not be furthered using a race-neutral factor, such as socioeconomic status, as a decision-making criterion. However, it remains uncertain whether race-neutral alternatives must actually be implemented and fail to achieve the desired outcome, or whether merely evaluating them is sufficient.<sup>150</sup> To demonstrate that a policy is limited in scope, defendants may show that it applies only to a limited geography or specific circumstances, or that it is time-limited and requires “periodic review or reconsideration.”<sup>151</sup>

### **Intermediate scrutiny**

Intermediate scrutiny applies to laws, policies, and government actions that differentially allocate benefits or impose burdens based on what courts call “quasi-protected classes,” such as gender or sex. In the public health context, a policy that denies medically necessary breast cancer screenings to men<sup>i</sup> solely based on their gender would likely face intermediate scrutiny.

While not as exacting as strict scrutiny, intermediate scrutiny is still a moderately demanding standard, which, in practice, means that laws and policies that make express gender or sex distinctions are likely to face lawsuits and are often struck down by courts. To survive intermediate scrutiny, the government authority that adopted the policy must show that:

1. The policy promotes an important government interest, and
2. The policy uses means that are substantially related to that interest.<sup>152</sup>

While full consideration of these issues is outside the scope of this resource, from a lens of intersectionality, some gender- or sex-based policies may be required to address gender- or sex-related disparities that intersect with racial inequities – such as maternal and infant mortality disparities affecting Black birthing parents and children or HIV disparities affecting Black populations, particularly Black transgender women.

### **Rational basis review**

Rational basis review applies to laws, policies, and government actions that confer benefits or impose burdens based on “non-suspect” categories such as income, veteran status, immigration status, criminal record, or disability status.

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<sup>i</sup> While routine breast cancer screening for men is not recommended, some groups, such as transgender men with significant breast tissue or men who have a strong family history of breast cancer or a genetic mutation, might benefit from screening. See, e.g., American Cancer Society. Early Detection, Diagnosis, and Staging of Breast Cancer in Men. October 15, 2025. Accessed January 27, 2026. [www.cancer.org/cancer/types/breast-cancer-in-men/detection-diagnosis-staging.html](http://www.cancer.org/cancer/types/breast-cancer-in-men/detection-diagnosis-staging.html). Regardless, although the appropriateness of screening might inform whether a policy survives constitutional review, the purpose here is simply to illustrate that the gender-based classification is what triggers intermediate scrutiny.

In the public health context, a policy that prioritizes vaccine distribution to neighborhoods based on residents' income levels would likely face rational basis review. Rational basis review generally applies to race-neutral policies.

Rational basis review is a relatively easy standard to meet. Laws, policies, and government actions subject to this review are less likely to face lawsuits, and even if they do, courts are likely to uphold them. To survive rational basis review, the government authority that adopted the policy must merely show that:

1. The policy promotes a legitimate government interest, and
2. The policy uses means that are rationally related to achieving that interest.<sup>153</sup>

Alternatively, if the government does not provide a rationale for the policy up front, it can still be upheld as long as the court itself can identify a single, rational reason for it. For example, a conceivable, legitimate rationale for a vaccine distribution policy prioritizing populations based on race-neutral factors such as socioeconomic status might be that it reaches people experiencing a higher disease burden.<sup>154</sup>

Although rational basis is generally a low bar, government actions can still sometimes be invalidated under rational basis review. In one case, for example, the Supreme Court concluded that a zoning ordinance that classified group homes for people with disabilities as an unpermitted use was unsupported by any legitimate government interest and appeared to be motivated by an "irrational prejudice" against people with disabilities.<sup>155</sup>

## Discriminatory Intent

Within the context of the Equal Protection Clause, courts have held that strict scrutiny applies to policies that make explicit distinctions based on race or another protected class, as described above, and to policies that are race neutral but have a racially discriminatory *intent* or *purpose*.<sup>156,157</sup> Courts have explained that "mere awareness" of a policy's racial effects is not enough; rather, for strict scrutiny to apply, challengers must show that a race-neutral policy was selected "because of," not merely "in spite of," its effects on certain racial groups.<sup>158</sup> To determine whether a policy was motivated by a discriminatory purpose, courts will look to different types of evidence including the policymaking record and historical background, and whether the policy resulted in differential outcomes<sup>i</sup> across racial lines – also known as disparate impact.<sup>159</sup> Continuing the earlier example, a government policy that prioritizes vaccine distribution to neighborhoods based on residents' income levels would likely be subject to rational basis review, with additional proof needed to subject the policy to strict scrutiny. For example, if government officials make statements – especially during the formal policy adoption process – indicating that they intend for the policy to have certain effects on access for different racial groups and data show changes in vaccine access across different racial groups, a court may be more likely to apply strict scrutiny and to declare the policy unlawful.<sup>160</sup>

## Discriminatory Intent

Note that this area of the law is in flux. Courts across the country are not consistent in how they analyze claims that a race-neutral policy is intentionally discriminatory.<sup>161</sup> Among other things, courts differ in whether they consider evidence of the intent to *benefit*, rather than *harm*, protected classes as demonstrative of a discriminatory purpose.<sup>162</sup> For examples of relevant cases that are pending as of the date of this resource, refer to the section on [Reverse Discrimination Lawsuits](#). To learn about the practical significance of these concepts, refer to [How Can Changemakers Apply Relevant Legal Concepts When Using Policy to Advance Racial Equity?](#)

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<sup>i</sup> Courts are split on whether challengers must prove both discriminatory intent and disparate impact in order for strict scrutiny to be applied to a race-neutral policy, or if strict scrutiny can be applied based on discriminatory intent alone (in which case evidence of disparate impact may or may not be introduced as one way to demonstrate discriminatory intent). See *Sargent v. School District of Philadelphia*, 165 F.4th 727, 739-40 & n.6 (3d Cir. Feb. 2, 2026).

**Table 1. Brief Summary of Legal Standards**

Legal Standard	What Types of Policies Trigger the Standard?	What Is Required to Meet the Standard?
<b>Strict Scrutiny</b>	Laws, policies, and government actions that are race-based or that have an impermissible racial intent or purpose	<ol style="list-style-type: none"> <li>1. A “compelling government interest,” such as remediating specific instances of past governmental discrimination, and</li> <li>2. Narrow tailoring, including consideration of race-neutral alternatives and ensuring the policy has a limited scope – for example, by applying it only to a limited geography, under specific circumstances, or for a limited time with “periodic review or reconsideration”<sup>163</sup></li> </ol>
<b>Intermediate Scrutiny</b>	Laws, policies, and government actions that are sex- or gender-based	<ol style="list-style-type: none"> <li>1. An “important government interest,” and</li> <li>2. Use of means that are substantially related to that interest</li> </ol>
<b>Rational Basis Review</b>	Laws, policies, and government actions that are based on non-suspect classes, such as income, veteran status, immigration status, criminal record, or disability status	<ol style="list-style-type: none"> <li>1. A “legitimate government interest,” and</li> <li>2. Use of means rationally related to achieving that interest (rationale does not necessarily need to be provided in advance; policies under review can be upheld as long as the court itself can identify a rational basis for it)</li> </ol>

## Federal Nondiscrimination Statutes

There are many federal civil rights statutes that may inform policymaking to advance racial equity, each of which applies in specific contexts. Some of the most relevant statutes include:

- Title VI of the Civil Rights Act of 1964, prohibiting discrimination in programs or activities that receive federal funding
- Title VII of the Civil Rights Act of 1964, prohibiting discrimination in employment
- Title IX of the Education Amendments of 1972, prohibiting discrimination on the basis of sex in education
- The Fair Housing Act (FHA), prohibiting discrimination in housing
- Section 1557 of the Affordable Care Act, prohibiting discrimination in health care

The FHA is a prime example of how these statutes can affect policymaking to advance racial equity. The FHA prohibits both public and private-sector actors from discriminating in the provision, terms and conditions, or advertising of housing.<sup>164</sup> As in the context of the Equal Protection Clause, unlawful discrimination can be demonstrated through decisions that make explicit distinctions based on race to confer benefits or impose burdens – even when the distinctions are intended to benefit protected classes, such as minoritized racial and ethnic groups.<sup>165</sup>

Accordingly, if a government partners with private-sector organizations to implement programs that promote racial equity in housing, the FHA could limit those partners' ability to make explicit racial distinctions in the provision of benefits, even though the federal Equal Protection Clause does not apply to private actors. Although court decisions on this issue have not been perfectly clear, rulings in some lower court cases suggest that both governments and private-sector actors enacting race-based policies "should be prepared to face standards similar to strict scrutiny" under nondiscrimination statutes.<sup>166</sup>

### **Disparate Impact**

Additionally, under some federal antidiscrimination statutes courts consider disparate impact – meaning different outcomes across racial groups – as an independent basis for a finding of unlawful discrimination, even without proof of discriminatory intent. For example, the Supreme Court has applied the disparate impact doctrine when evaluating claims based on Title VII and the Fair Housing Act, though it has not extended the doctrine to Equal Protection claims. For example, if a state environmental agency disproportionately approves permits for polluting facilities in neighborhoods where a significant number of people of color live, it may be subject to a demanding standard of review, similar to strict scrutiny, even though it does not make explicit racial distinctions.<sup>167</sup> In addition to court decisions, nondiscrimination statutes may expressly state whether disparate impact claims are available or not.<sup>168</sup> Disparate impact principles are also embedded into some internal governmental processes, such as environmental and health impact assessments, through legislation and policy at the federal, state, and local levels.<sup>169</sup>



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## State Laws

### State Equal Protection Provisions

Many states have their own constitutional equal protection provisions. Although many are analogous to the federal Equal Protection Clause, some provide even greater protection from discrimination. For example, several state constitutions prohibit discrimination based on disability status,<sup>170</sup> and some state equality provisions apply to both government and private-sector actors.

### State Bans on Affirmative Action

To date, nine states have enacted further restrictions on affirmative action – some through their state constitution, others through statutes, and one through an executive order:

- **Constitutional bans:** Arizona, California, Michigan, Nebraska, Oklahoma
- **Statutory bans:** Idaho, New Hampshire, Washington
- **Executive order:** Florida

As an example, California’s constitution, which mirrors language used by most other states,<sup>171</sup> prohibits state and local governments from “discriminat[ing] against, or grant[ing] preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting.”<sup>172</sup> In states with affirmative action bans, cases considering whether government actions violate the prohibition on preferential treatment in public contracting typically concern public bids for services.

These bans largely overlap with federal Equal Protection prohibitions, only going further to prohibit the narrow uses permitted by federal law. For example, before the Supreme Court struck down affirmative action in higher education, federal law permitted race to be used as a factor in holistic admissions assessments. However, many of these state affirmative action bans prohibited this use.

In determining whether affirmative action is prohibited under state bans, courts have analyzed the language of constitutional amendments using standard principles of statutory construction, focusing on the meaning of “preferential treatment” and “discrimination.” However, the vast majority of this litigation has occurred in California. This may or may not be persuasive to courts in other jurisdictions, which could choose to apply a similar analysis or to apply a new one.

Construing the California amendment liberally and with no indication that the words have any special meaning, “preferential treatment” means “any kind of treatment favoring one group or individual over another” and “discriminate” means treating individuals “differently according to criteria other than individual merit.”<sup>173</sup> While this sounds incredibly broad, California courts have been clear that not all uses of race or gender are prohibited, and permitted uses have been refined on a case-by-case basis. As examples, California courts have upheld targeted outreach based on race and gender – so long as outreach

was not exclusively directed to these populations and remained independent of any decision regarding the allocation of benefits or burdens – as well as legal requirements to collect race- and gender-related data.<sup>174</sup>

### **Federally Compelled Affirmative Action**

In extremely limited circumstances, federal law may preempt state bans and require affirmative action. Although no court has directly decided this issue, courts in California and Washington have suggested that the federal Equal Protection Clause may not only permit but also compel the use of race-based classifications to correct specific instances of intentional discrimination by the government, preempting state affirmative action bans.<sup>175</sup>

### **Exception for Federal Funding**

A notable exception to many of these bans allows states and localities to take actions that would otherwise violate a state ban if necessary “to establish or maintain eligibility for [a] federal program, where ineligibility would result in a loss of federal funds to the state.”<sup>176</sup>

### **State Nondiscrimination Laws**

Similar to the interplay between the federal Equal Protection Clause and federal nondiscrimination statutes like the FHA, state nondiscrimination statutes may further limit race-based distinctions that would otherwise be permissible under federal laws or the state’s constitution. For example, Idaho’s ban on affirmative action was enacted through state statutes requiring that the state “not discriminate against, or *grant preferential treatment to*, any individual or group on the basis of race, sex, color, ethnicity, or national origin” (emphasis added) in the contexts of public employment and education,<sup>177</sup> state procurement,<sup>178</sup> or local procurement.<sup>179</sup> The language in these statutes has not yet been interpreted by a court; however, it could indicate that the state has chosen to prohibit itself and its localities from enacting race-based policies – even those that would survive strict scrutiny under federal law.

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## **Local Nondiscrimination Laws**

Just as state laws can expand on requirements under federal law, local laws can further expand on both federal and state requirements. Local nondiscrimination laws may support policymaking to advance racial equity from a lens of intersectionality by adding protected classes. For example, a locality may prohibit discrimination based on family status (i.e., “families or relationships that fall outside the nuclear family norm”<sup>180</sup>) to help support Black, Indigenous, and People of Color (BIPOC) communities, which are more likely to have multigenerational households or other family structures.<sup>181</sup> As another example, local fair housing law may prohibit discrimination against people living with HIV,<sup>182</sup> which disproportionately impacts BIPOC communities, particularly Black communities, due to “social and structural issues – such as HIV stigma, homophobia, discrimination, poverty, and limited access to high-quality health care.”<sup>183</sup>

## Additional Laws Requiring Consideration of Race

Other laws may also require consideration of race in the policymaking process. For example, several states require that Racial Equity Impact Assessments (REIA), which evaluate a policy’s potential effects on racial and ethnic groups, be conducted before certain new laws can be passed or amended, and many more have proposed similar legislation.<sup>184</sup> REIAs can also be adopted and implemented at the local level.<sup>185</sup> Laws requiring consideration of race are legally permissible as long as they do not, in and of themselves, confer benefits or impose burdens based on racial classifications. These types of laws typically help support an evidence base and build awareness about the effects policies may have on different racial groups.

More information on state-level laws is available from the [Collaborative for Anti-Racism & Equity](#); additional local examples can be found in Race Forward’s [Racial Equity Impact Assessment Toolkit](#).

**Table 2. Brief Summary of Legal Concepts for Policymaking to Advance Racial Equity**

Law or Legal Doctrine	To What Parties May It Apply?	What Effect Might It Have on Policymaking to Advance Racial Equity?
<p><b>Federal Equal Protection Clause</b></p>	<p>Federal, state, and local governments and subdivisions</p>	<ul style="list-style-type: none"> <li>• Race-based policies must survive strict scrutiny.</li> <li>• Some race-neutral policies can advance racial equity and are typically subjected to rational basis review. However, if a court determines that a policy is motivated by an impermissible racial intent or purpose, strict scrutiny would apply instead. Note that mere awareness of a policy’s likely impact on different racial groups is not sufficient to show an impermissible racial purpose; rather an impermissible racial purpose means that the policy was adopted specifically because of the ways in which it would affect a particular racial group.</li> <li>• Intermediate scrutiny may be applied to intersectional, racially equitable policies that confer benefits and impose burdens on the basis of sex or gender.</li> <li>• For policies that use multiple classifications, note that each classification may receive its own level of scrutiny. For example, with respect to a policy that classifies based both on race and on gender, the race-based classification would receive strict scrutiny, while the gender-based classification would receive intermediate scrutiny.</li> </ul>

Law or Legal Doctrine	To What Parties May It Apply?	What Effect Might It Have on Policymaking to Advance Racial Equity?
<b>Federal Nondiscrimination Statutes</b>	<ul style="list-style-type: none"> <li>• Federal, state, and local governments and subdivisions</li> <li>• Private-sector actors operating in areas addressed by the statute (e.g., employment, housing, education, health care)</li> </ul>	<p>Unlike the Equal Protection Clause, which applies only to government actions, federal nondiscrimination statutes can also subject race-based policies of private actors to a demanding standard similar to strict scrutiny. Federal nondiscrimination statutes can further support or limit policies to advance racial equity.</p>
<b>State Constitutions: Equal Protection Provisions and Affirmative Action Bans</b>	<ul style="list-style-type: none"> <li>• State and local governments and subdivisions</li> <li>• Private-sector actors</li> </ul>	<ul style="list-style-type: none"> <li>• State equal protection provisions can further support or limit policies to advance racial equity in a jurisdiction, depending on how – or if – they differ from the U.S. Constitution, such as state affirmative action bans further limiting policies to advance racial equity.</li> <li>• Unlike the Equal Protection Clause, which applies only to government actions, some state constitutional provisions can also be applied to private actors.</li> </ul>
<b>State Nondiscrimination Laws</b>	<ul style="list-style-type: none"> <li>• State and local governments and subdivisions</li> <li>• Private-sector actors operating in areas addressed by the statute (e.g., employment, housing, education, health care)</li> </ul>	<p>Similar to federal nondiscrimination statutes, state nondiscrimination laws may extend to private actors and can further support or limit policies to advance racial equity.</p>
<b>Local Nondiscrimination Laws</b>	<ul style="list-style-type: none"> <li>• The local government that passed the law and its subdivisions</li> <li>• Private-sector actors operating in areas addressed by the law (e.g., employment, housing, education, health care) and covered by the geographic scope of the law</li> </ul>	<p>Local nondiscrimination laws are likely to apply to private actors and, like federal nondiscrimination statutes and state nondiscrimination laws, can further support or limit policies to advance racial equity.</p>
<b>Other Laws Requiring Consideration of Race (Often State and Local)</b>	<ul style="list-style-type: none"> <li>• State and local governments and subdivisions</li> <li>• Private-sector actors</li> </ul>	<p>Laws requiring consideration of race are legally permissible as long as they do not, in and of themselves, confer benefits or impose burdens based on racial classifications. These types of laws often help support an evidence base and build awareness about the effects policies may have on different racial groups.</p>

# How Can Changemakers Apply Relevant Legal Concepts When Using Policy to Advance Racial Equity?

Within the legal landscape described in the previous sections, there are many strategic opportunities for changemakers in both the public and private sectors to pursue policies to advance racial equity. As a reminder, whether a policy is likely to draw increased scrutiny from opponents of policymaking to advance racial equity and from courts depends in part on how the policy is designed, in particular whether the policy is [race based](#) or [race neutral](#). **Race-based** policies use individual racial classifications “as a decision or selection criterion” to allocate benefits or impose burdens.<sup>186</sup> By contrast, **race-neutral** policies do not make explicit racial distinctions.<sup>187</sup>

When selecting an approach, the following key points may be helpful:

- No court has established that policymaking to advance racial equity is in and of itself impermissible.
- Race-based policies that allocate benefits or impose burdens generally face heightened scrutiny by courts but may nevertheless be legally permissible if they remediate specific past instances of government-sponsored racial discrimination.
- Race-neutral policies designed to intentionally disfavor certain racial groups generally do not advance racial equity; they will very likely face heightened judicial scrutiny and be deemed illegal if there is sufficient evidence of discriminatory intent.
- Race-neutral policies that allocate benefits or impose burdens may face heightened judicial scrutiny if they intend to favor certain racial groups and result in differential outcomes across racial lines, though the law surrounding this type of policy is currently in flux.
- Race-neutral policies adopted with an awareness of their potential positive impact on different racial groups are often a legally viable path forward, especially if they allocate benefits based on a broad, race-neutral category such as income. Such policies often result in positive outcomes for all and, provided the policies are equitably implemented, can also shrink racial disparities.
- Some policies can advance racial equity objectives through means that are unlikely to implicate Equal Protection or other federal and state antidiscrimination laws, even when they are adopted with an awareness of their potential positive impact on different racial groups. For example,
  - policies that establish aspirational goals to address racial equity that do not affect decision-making;

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*Race-neutral policies adopted with an awareness of their potential positive impact on different racial groups are often a legally viable path forward. Such policies often result in positive outcomes for all and, provided the policies are equitably implemented, can also shrink racial disparities.*

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- policies that reference racial categories but do not inherently allocate benefits or impose burdens, such as requirements to collect race and ethnicity data to identify disparities in admissions, employment, or health care;<sup>188</sup> and
- race-neutral policies that establish universal protections, such as strengthening occupational health and safety standards across an entire industry with a high proportion of workers from minoritized racial and ethnic groups, like agriculture or domestic labor.

Policymakers working to advance racial equity face two types of legal risks:

- first, the risk of facing a court challenge, or of being threatened with a loss of funding or out-of-court enforcement action, based on a claim that the policy violates the Equal Protection Clause or other civil rights laws; and
- second, the risk of the policy being invalidated by a court, funding being withdrawn, or other enforcement action resulting in a negative determination.

Importantly, the risk of drawing a legal challenge or other threatened adverse action is *not the same* as the risk that the policy will actually be deemed illegal – that risk depends on settled law, and as described above is highest when the standard of review is strict scrutiny and less when the standard of review is intermediate scrutiny or rational basis review. Accordingly, race-based policies that allocate benefits or impose burdens and race-neutral policies that are designed with intent to harm certain racial groups both carry a high risk of facing a legal challenge and are often overturned by courts based on existing legal precedent.

For race-based policies, though they generally face heightened scrutiny by courts, it is important to remember that they may nevertheless be legally permissible if they remediate specific past instances of government-sponsored racial discrimination. Changemakers can be proactive in building an evidence base to better understand the health effects of specific past instances of governmental discrimination and then formulate remedial or reparative policies. This approach is examined further below in the section on [Establishing an Evidence Base](#).

If changemakers lack sufficient evidence to support a race-based policy, they may instead opt to pursue a race-neutral policy with an *awareness* of potential positive outcomes for people from minoritized racial and ethnic groups. Opponents of policymaking to advance racial equity are increasingly arguing that even awareness of racial disparities or the ways in which race-neutral policies would affect racial groups differently should trigger strict scrutiny.<sup>189</sup> To date, courts have not agreed with these arguments, though the line between awareness and intent can be thin. Therefore, when pursuing race-neutral policies, changemakers must consciously build a record demonstrating that the primary motivation for the policy is unrelated to its effects on different racial groups to avoid the application of strict scrutiny.

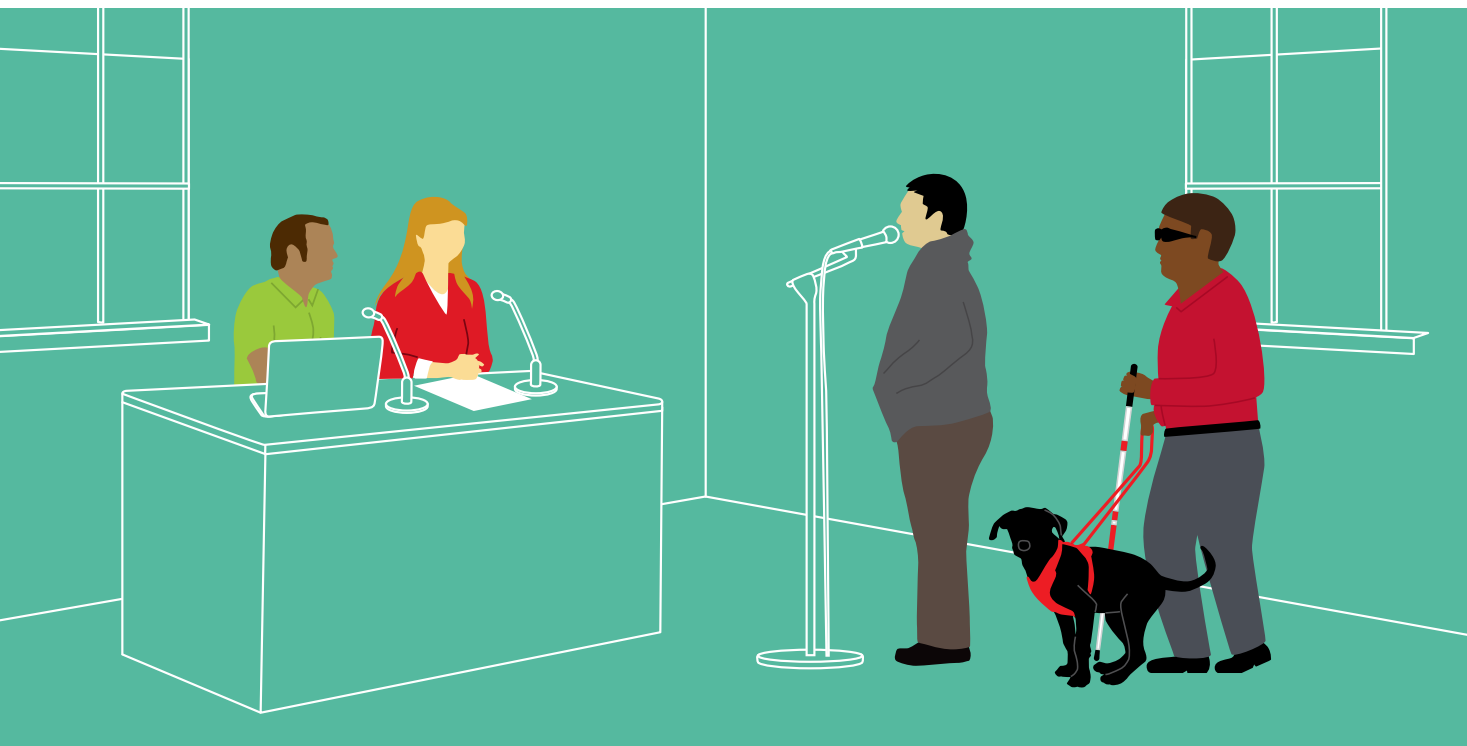
The risk of a challenge, and of a court analyzing a challenge using strict scrutiny, appears to be higher when race-neutral policies are allocating benefits or

imposing burdens in a “zero-sum” environment, meaning that an allocation to one person necessarily results in some other person not receiving the benefit – one primary example of this is school admissions policies.<sup>190</sup>

Before pursuing policies to advance racial equity, and particularly those that may be at higher risk of a challenge or other adverse action, changemakers should consider their available resources to defend the policy in litigation and whether there are less legally risky approaches that might advance their goals while also preserving resources for other efforts to support the community. It is also important to consider whether litigation could result in legal precedent that could limit or undermine future policymaking efforts to advance racial equity. This risk calculation will be different for different jurisdictions and entities and decisions should be made in close consultation with an attorney who is knowledgeable in this area of law and who is able to help weigh legal risks against other types of risks and benefits, including the risk to communities of not taking certain actions to advance racial and health equity.

Very importantly, as noted above, the Equal Protection Clause is implicated only when a law, policy, or government action treats groups differently when allocating benefits or imposing burdens. This leaves open categories of policies that fall outside of this framework entirely and that are, generally, less legally risky.

To learn more about policies and practices like these, refer to [How Can Changemakers Put Policymaking to Advance Racial Equity Into Action?](#)



# How Can Changemakers Put Policymaking to Advance Racial Equity Into Action?

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*Collection of race and ethnicity data, including the creation of legal requirements to collect such data, is clearly permissible under existing legal concepts.*

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This section describes key strategic considerations and practice tips for changemakers seeking to pursue policies to advance racial equity. These considerations apply to every phase of policymaking, including: (1) establishing an evidence base, (2) building a coalition and community support, (3) selecting and designing a policy, (4) developing the record to support a policy, (5) implementing, enforcing, and evaluating a policy, and (6) defending a policy.<sup>191</sup>

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## 1. Establishing an Evidence Base

Data and evidentiary support are crucial in the policymaking process. Evidence can help identify problems or issues, such as by establishing the existence of disparities, and inform policy changes to address them.<sup>192</sup> It can also create important opportunities to center community and build community trust through both quantitative and qualitative data.<sup>193</sup> Furthermore, evidence can document specific instances of government-sponsored discrimination to support race-based policies and be used to evaluate the impact and effectiveness of policies that aim to advance racial equity. Even when race-based policies are not a feasible approach, evidence can demonstrate where there are disparities and help changemakers understand the potential ways in which race-neutral or universal policies might advance, or hinder, racial equity.

Collection of race and ethnicity data, including the creation of legal requirements to collect such data, is clearly permissible under existing laws. This is because data collection does not, in and of itself, involve conferring any benefits or imposing any burdens.<sup>194</sup> Similarly, laws or policies that require REIAs are permissible to the extent that the assessments do not, in and of themselves, confer benefits or impose burdens. Given federal funding cuts and the implementation of executive orders, it may be particularly important to establish or reinforce data collection mechanisms in state and local laws to maintain population data.

Sufficient evidence can support policymaking to advance racial equity by creating awareness of racial impacts. Evidence is especially important to support race-based policies. In particular, it can help establish the following:

- The policy (or proposed action) remedies specific instances of government-sponsored racial discrimination in the geographic area covered by the policy.
- Race-neutral alternatives would be ineffective at remedying these instances of past discrimination, and race-based or other policies to advance racial equity benefit everyone, or at least do not disparately impact other racial or ethnic groups, including white or other majority groups.

## EXAMPLES

### **Past Discrimination and Remediation**

There is extensive evidence that the federal Home Owners' Loan Corporation (HOLC) engaged in "redlining" by unlawfully discriminating based on race when classifying neighborhoods as "high risk" for mortgage lending, which affected residents' access to loans and investment.<sup>195</sup> Evidence can further establish that a targeted, reparative policy providing investment or support will specifically reach people negatively affected by redlining – or their descendants – and address this discrimination in the geographic area where the policy is being considered.<sup>196</sup>

### **Narrow Tailoring**

Although a legal challenge to the program is still pending at the time of publication, the city of Evanston, Illinois, has defended its reparations fund because it provides "modest relief" directly to Black residents affected by discriminatory housing policies implemented in the city from 1919 to 1969, or to their direct descendants.<sup>197</sup> In other words, the program is narrowly tailored because it is limited in scope, timeframe, and geographic area.

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### **Tailored Research**

As demonstrated by these examples, highly tailored and issue-specific evidence is required to support race-based policies. Ongoing research must be conducted to equip changemakers with the tools they need to make policy decisions that advance racial equity. For race-based policies to remedy specific instances of government-sponsored discrimination, it is crucial that researchers catalog these instances, as well as the harms they have caused, with as much specificity as possible. Research on the effectiveness of various policy solutions can also support policy design and bolster legal arguments about narrow tailoring and the effectiveness of race-neutral versus race-based policies.

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## 2. Building a Coalition & Community Support

Policy decision-making requires understanding how a policy or action will affect community health outcomes. This involves participation by stakeholders from government agencies, private-sector actors, community organizations, and individual community members. People-centered community engagement supports this process by focusing on the needs and perspectives of communities affected by health disparities and advancing their power to influence, advocate for, and make changes to policies that impact them. Engaging the communities that are experiencing inequities increases the likelihood that resulting policies, programs, and investments will reduce disparities and improve their health outcomes. Community engagement in decision-making also increases accountability, transparency, and, ultimately, support and buy-in for law and policy change. These types of collaborations must be ongoing, inclusive, and representative of the populations most affected by the identified health issue or policy change.<sup>198</sup>

## EXAMPLE

### Pathways Programs

Seeking to continue advancing racial equity while following the Supreme Court's decision to ban affirmative action in higher education, and as part of more holistic recruitment and admissions strategies, educational programs have partnered with racially and ethnically diverse high schools and colleges for pathway programs. They have also partnered with institutions dedicated to serving minoritized groups, such as Historically Black Colleges and Universities (HBCU), to ensure recruitment reaches diverse populations while remaining open to all prospective students.<sup>199</sup>

Community engagement work, whether required or encouraged by laws and policies, can itself raise legal considerations.<sup>200</sup> In some cases, using race-neutral engagement approaches that seek to advance racial equity may be more legally defensible. However, this can involve tradeoffs, as race-neutral approaches may be less precise and less effective at addressing racial disparities than race-based approaches. Community members may also lose trust or willingness to engage in the policymaking process due to historical and ongoing discrimination and exclusion, compounded by a real or perceived lack of sustained external commitment to racial equity by decision-makers.

## EXAMPLE

### Ryan White Planning Councils

Ryan White Planning Councils, which make decisions regarding the local allocation of federal funds to provide HIV care and treatment to low-income and uninsured people, are a prime example of racially equitable community engagement embedded in policy. By law, at least 33 percent of council members must be people living with HIV who receive Ryan White services.<sup>201</sup> Council membership must also reflect the demographics and disparities of the local HIV epidemic, with priority given to historically underserved populations.<sup>202,i</sup> This not only ensures inclusive engagement but also shares power and decision-making with the community.

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## 3. Selecting & Designing a Policy

Once equipped with an evidence base and coalition or community support, changemakers can choose and design policies to address identified issues.<sup>203</sup> Research into policy options can take various forms, including policy scans, health impact assessments or REIAs, policy evaluations, scientific legal mapping

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i The requirements related to representation of historically underserved populations on the Planning Councils have not been legally challenged as of the date of this resource; however, note that when laws establish explicit racial or gender eligibility preferences for advisory group membership they may be more vulnerable to legal challenges. See J. Crespo et al., *Litigation Challenging Governmental and Health Institution Efforts to Address Health Equity from January 2024 to May 2025*. Public Health Law Watch; 2025. Accessed February 27, 2025. [publichealthlaw-watch.org/health-equity-litigation-report-2025](https://publichealthlaw-watch.org/health-equity-litigation-report-2025).

or legal epidemiology, and economic methods like cost-benefit analysis.<sup>204</sup> The full range of possible considerations is outside the scope of this resource, but an important part of this process is a legal risk review to determine whether a policy or action is feasible based on its design, the implementing entity, and the jurisdiction in which it would be implemented. Working with local legal counsel is crucial to understanding the specific legal issues that may be relevant in your jurisdiction, many of which may fall outside civil rights law.

The sections above, [What Legal Concepts Should Changemakers Be Aware of When Using Policy to Advance Racial Equity?](#) and [How Can Changemakers Apply Relevant Legal Concepts When Using Policy to Advance Racial Equity?](#), outline the most important considerations for this phase of the policymaking process. As noted, when engaging in policymaking, changemakers can choose to advance racial equity through race-based or race-neutral approaches. Making this choice involves weighing multiple considerations, including the resources available to defend against potential litigation, the risk of establishing negative legal precedent, and the changemakers' broader policy agenda to advance racial equity. Importantly, they must also account for potential harms to the community that could result from failing to adopt a policy that considers racial equity, including breaking trust and furthering or perpetuating existing disparities. They will also need to consider what evidence is available to justify the selected approach and whether race-neutral or universal options could also lead to positive outcomes for affected racial groups.

If considering a race-neutral policy to advance racial equity, changemakers can adopt policies informed by awareness of racial disparities and potential benefits to particular racial groups. For example, policymakers may choose to adopt or implement stronger occupational protections that apply broadly to industries like agriculture and domestic work and that benefit all workers, with awareness that many workers in those sectors belong to minoritized racial groups.<sup>205</sup> As another example, government agencies and health care institutions may adopt policies to improve health outcomes for birthing parents and their children – such as providing doula care – that benefit all birthing parents, with awareness of racial disparities in birthing parent and infant health outcomes.<sup>206</sup>

Some race-neutral policies that seek to advance racial equity, like the examples above, can be designed to be universal and available to all. In other cases, policymakers may need or want to use race-neutral categories to guide how policy benefits are prioritized or allocated, either due to the nature of the policy or to further advance racial equity. In these cases, changemakers may need to balance considerations: while a truly universal policy that does not use a category to allocate benefits may be less precise in distributing benefits equitably, it may still advance racial equity to some degree and would fall outside constitutional scrutiny under the Equal Protection Clause – much like policies that merely require consideration of race without allocating benefits based on it.

A non-exhaustive list of race-neutral categories that can potentially advance racial equity while benefitting all who fall into them includes:

- Geographic location (especially when combined with other health or economic data)

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*When engaging in policymaking, changemakers can choose to advance racial equity through race-based or race-neutral approaches.*

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- Socioeconomic status
- Primary or preferred language or language ability<sup>207</sup>
- Employment status (e.g., protections for contractors, part-time employees, and gig workers, in addition to full-time employees)
- Employment industry (e.g., protections for agricultural workers, domestic workers, or health care workers)

In the procurement context, race-neutral policies that seek to advance racial equity may include:

- Prioritizing small businesses or entities not previously awarded funding
- Banding or grouping<sup>i</sup> applicants<sup>208</sup>

## EXAMPLE

### Advancing DEI Initiative

The [Advancing DEI Initiative](#), a project of the New York University School of Law's Meltzer Center for Diversity, Inclusion, and Belonging, recommends designing DEI programs that focus on program content and the character and conduct of applicants, rather than race-based eligibility. For example, in response to attacks on DEI, some race-based programs have been redesigned as race-neutral yet still seek to advance racial equity by conferring benefits through categories such as “having a demonstrated commitment to diversity, equity, and inclusion.”

## 4. Developing the Record to Support a Policy

In the context of policymaking, “the record” refers to materials that a court might look to as evidence of the intent or purpose behind a policy or action. Perhaps the most well-recognized example is a legislative record, which incorporates the findings, reports, committee meetings, and public hearings that supported the passage of a piece of legislation into law. However, every policymaking context has its own equivalent of a record, whether a local legislative body, such as a city council, is passing an ordinance; an executive agency at the federal, state, or local level is issuing regulations; or a private entity is adopting institutional policies.

Developing the record is a collaborative process. Although policymakers may be legally required to have certain processes in place and may reach out directly to stakeholders to request evidence and input, community members and advocates can always introduce evidence into the record when there are opportunities for public input, such as opportunities for “notice and comment” during the rulemaking process when federal and state agencies are adopting or changing regulations.<sup>209</sup>

<sup>i</sup> Banding involves grouping similarly qualified applicants and treating them as equivalent, as opposed to ranking applicants sequentially. This can help ensure applicants who would have ranked lower under a more traditional sequential system due to a lack of opportunity or systemic discrimination are competitive with higher scoring applicants in a similar range.

If choosing to pursue a race-based policy, policymakers and supporters must ensure that the record includes the evidence needed to survive strict scrutiny (see [Establishing an Evidence Base](#)). Evidence requirements to support race-neutral policies aimed at advancing racial equity, on the other hand, can be more complex and nuanced. As described in [How Can Changemakers Apply Relevant Legal Concepts When Using Policy to Advance Racial Equity?](#), race-neutral policies may be vulnerable to legal challenges and may face heightened judicial scrutiny if they could be perceived as intending to favor certain racial groups and result in differential outcomes across racial lines, though the law surrounding this type of policy is currently in flux. Therefore, when pursuing race-neutral policies, changemakers should build a record demonstrating that while the policy's racial effects may have been considered, the policy is not being adopted specifically because of those effects but because of other rationales or goals.

## EXAMPLE

### **Awareness of Race, Rather than Intent**

Opponents of policymaking to advance racial equity challenged the Berkeley Unified School District's admissions policies for primary and secondary (K-12) schools.<sup>210</sup> The court upheld the admissions policies as race-neutral because they examined factors such as "the average household income in the [student's] neighborhood, the average education level of adults residing in the [student's] neighborhood, and the racial composition of the [student's] neighborhood as a whole" rather than admitting students based on the individual student's race.<sup>211</sup>

As stated by the California state appellate court in this case, "decision makers remain free to recognize that our society is composed of multiple races with different histories, to gather information concerning geographic distribution of the races, and to adopt race-neutral policies in an effort to achieve a fair allocation of resources."<sup>212</sup>

The boundaries of what may be considered part of the record or count as evidence in litigation over a policy are not perfectly clear, which necessitates careful planning not only for the record but also for broader external messaging and communications. For example, there is case law to support that policymakers may describe aspirational goals around equity or target populations, so long as those goals clearly do not factor into decision-making about who receives benefits under the policy.<sup>213</sup> In this sense, aspirational goals may be legally permissible – similar to race and ethnicity data collection or REIAs, where benefits or burdens are not being directly conferred or imposed on the basis of race.

## EXAMPLE

### Aspirational Goals and Messaging

In one case, a mayor had stated publicly that he “wish[ed] the [c]ity would have more African-American contractors.”<sup>214</sup> The federal appellate court reviewing the city’s contracting policy held that this did not constitute evidence that the city discriminated because these were isolated aspirational remarks, and the city provided other legitimate reasons for its contracting decisions.<sup>215</sup> However, statements of this kind added to the policy record or made repeatedly in other contexts could be taken as greater evidence of intent, which could subject the policy to strict scrutiny.

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## 5. Implementing, Enforcing & Evaluating a Policy

Policy implementation, enforcement, and evaluation are key parts of the process to ensure that policies have their intended effect.<sup>216</sup> Successful implementation may require educating stakeholders who will be affected, changing or adapting processes to put the policy in place, and monitoring to update or enforce the policy as necessary.<sup>217</sup> Implementation, enforcement, and evaluation can each, in turn, be thought of as their own policy processes. As such, the same strategic considerations apply: changemakers can collect data on race, work with external partners, maintain awareness of racial disparities, develop a record to support the policy, and weigh the same considerations when it comes to making race-based or race-neutral choices.<sup>218</sup>

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## 6. Defending a Policy

As discussed throughout, policies to advance racial equity may face legal challenges from opponents. The steps of the policymaking process above can facilitate more strategic decision-making around litigation, and thoughtful and informed policymaking processes ultimately strengthen the defense of a policy.

Developing the evidence base and the record can help establish that a policy should either survive strict scrutiny or that strict scrutiny should not apply. Working with a coalition and community partners can also apply in the context of litigation decisions. Stakeholders can provide valuable input to help decision-makers weigh the costs of litigation, the importance of defending and maintaining a policy that aims to advance racial equity, and the potential harms of an adverse court decision – or of abandoning efforts to advance racial equity in favor of a strictly race-neutral policy.

Other stakeholders may also be able to provide funding, resources, or litigation support and can even participate in litigation as *amici curiae*, or “friends of the court.” Friends of the court are individuals or groups that may have an interest in an ongoing lawsuit but are not directly involved in the case. With a court’s permission, amici can submit additional written material to provide support for one side of the case or to provide the court with additional information or evidence about policy, social issues, or historical context related to the dispute.

In this context, amici might file briefs to support race-based and other policies to advance racial equity and introduce additional relevant evidence when these policies are challenged in court.

Deciding not to defend a policy can also be strategically valid, depending on the balance of harms, but changemakers should weigh this decision carefully and avoid over-complying with opponents' challenges by prematurely abandoning efforts to advance racial equity through policymaking.

## EXAMPLE

### **Strategic Litigation Decisions**

The Fearless Fund, a venture capital firm that invests in supporting women of color entrepreneurs, was sued over a specific grant program for Black women business owners. Although the Fund originally defended the program, the team ultimately decided to settle and close the program since it had almost concluded and there was only one grant left to award. This avoided a potentially adverse decision at the Supreme Court level, which would have applied to all programs like theirs across the nation<sup>219</sup> and potentially limited future race-based policymaking.

While litigation may be the most common and high-profile circumstance, policies that aim to advance racial equity also need to be defended in other contexts throughout the policymaking process. Changemakers may need to defend the creation of their evidence base – such as legal requirements to collect race and ethnicity data – to defend the formation of coalitions and other community engagement efforts, or to defend policies from being unnecessarily rolled back through the legislative process or other policymaking activities, such as executive agency rulemaking. This work may involve educating policymakers, testifying in front of a legislative body, engaging in the notice and comment process when an executive agency proposes changes to regulations, participating in advisory bodies, and advocating for inclusive community engagement processes.

# Conclusion

Both race-based and race-neutral policies that seek to advance racial equity have legally viable paths forward and are critically needed to address racial disparities in health arising from historical and ongoing racism built into our structures and systems.

As a final note, within all these processes, it is important to recognize that social change is the culmination of a complex interplay involving not only formal legal institutions but also social movements and mobilized people acting both inside and outside the formal procedures of the legal system. Government agencies, including public health, as well as health care institutions, community-based organizations, researchers, and many other diverse stakeholders will need to continue deepening their relationships and building trust to support one another in navigating the current political and legal landscape to ensure that everyone has a fair opportunity to be as healthy as possible.

# Glossary

## **Health disparities**

The Healthy People 2020 initiative of the U.S. Department of Health and Human Services defined health disparities as

a particular type of health difference that is closely linked with social, economic, and/or environmental disadvantage. Health disparities adversely affect groups of people who have systematically experienced greater obstacles to health based on their racial or ethnic group; religion; socioeconomic status; gender; age; mental health; cognitive, sensory, or physical disability; sexual orientation or gender identity; geographic location; or other characteristics historically linked to discrimination or exclusion.<sup>220</sup>

## **Race-based policies**

Policies that use individual racial classifications “as a decision or selection criterion” to allocate benefits or impose burdens.<sup>221</sup>

## **Race-neutral policies**

Policies that are “facially neutral,” meaning they do not make explicit racial distinctions.<sup>222</sup>

## **Racism**

Racism can be defined as

an organized social system in which the dominant racial group, based on an ideology of inferiority, categorizes and ranks people into social groups called “races” and uses its power to devalue, disempower, and differentially allocate valued societal resources and opportunities to groups defined as inferior.<sup>223</sup>

Racism functions on multiple levels, but public health scholars and others have often focused on its interpersonal manifestations, where an individual’s conscious or unconscious racial prejudices or biases result in harm to an individual of a different racial group.<sup>224</sup> A different framing, which is becoming more widely accepted, is that interpersonal racism is a symptom of structural factors that reinforce racism.<sup>225</sup> Structural racism refers to the ways that laws, policies, and practices – as well as history and culture – are used to structure systems to advantage one racial group, while disadvantaging another.<sup>226</sup>

## **Social determinants of health**

According to Healthy People 2030, “[s]ocial determinants of health are the conditions in the environments where people are born, live, learn, work, play, worship, and age that affect a wide range of health, functioning, and quality-of-life outcomes and risks.” Social determinants of health can be grouped into five domains: economic stability, education access and quality, health care access and quality, neighborhood and built environment, and social and community context.<sup>227</sup>

## **Structural discrimination**

Structural discrimination occurs when systems, rather than individuals, unjustly deny wealth, opportunity, power, or government representation on the basis of characteristics such as race, gender, sexual orientation, social class, age, ability, or immigration status.<sup>228</sup> Structural discrimination can be applied to one attribute or group, such as race or a racial group, or it can be carried out against multiple attributes such as race, gender, and class.<sup>229</sup>

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# Resources

## **ChangeLab Solutions**

- [A Blueprint for Changemakers: Achieving Health Equity Through Law and Policy](#)
- [Strategies for Equitable Policymaking](#)
- [Equitable Enforcement to Achieve Health Equity](#)
- [Understanding the Equitable Enforcement Ecosystem](#)
- [Developing Equitable Enforcement Provisions](#)

## **Circulation**

- [Addressing Structural Racism Through Public Policy Advocacy: A Policy Statement From the American Heart Association](#)

## **Greenlining Institute**

- [Embedding Equity Into Policy](#)

## **Health Affairs**

- [Proposing A Racism-Conscious Approach to Policy Making and Health Care Practices](#)

## **Housing Solutions Lab**

- [Understanding Legal Frameworks to Address Racial Disparities and Discrimination in Housing](#)

## **Meltzer Center for Diversity, Inclusion, and Belonging, NYU School of Law**

- [The Law of Diversity, Equity, and Inclusion](#)
- [New Paradigm Shifts DEI from Box-Checking to Mindset-Building](#)

## **NAACP Legal Defense Fund (LDF)**

- [Equal Protection Initiative](#)
- Health Equity Community Collaborative's [Advancing Health Equity: Myths vs. Facts](#)

## **Othering & Belonging Institute**

- [Advancing Racial Equity: Legal Guidance for Advocates](#)
- [FAQ: Racial Equity Legal Guidance](#)

## **PolicyLink and the University of Southern California (USC) Equity Research Institute**

- [National Equity Atlas](#)

## **Robert Wood Johnson Foundation**

- [How Equity Strategies Can Make Healthcare Better for Everyone](#)

## **University of Massachusetts Amherst**

- [An Historical Timeline of Reparations Payments Made From 1773 through 2025 by the United States Government, States, Cities, Religious Institutions, Universities, Corporations, and Communities.](#)  
(Additionally accessible at [doi.org/10.5281/zenodo.15390817](https://doi.org/10.5281/zenodo.15390817) and [reparationshistory.org](https://reparationshistory.org).)

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