# Project Summary

### **Overview**

The discriminatory exercise of discretion has been widely documented in various contexts, such as policing, prosecution, rental housing, and employment. Nonetheless, the possibility that sellers enforce their standard terms in a discriminatory manner has not been tested to date, perhaps due to the widely held assumption that standardized contracts apply uniformly towards all consumers entering into the same agreement with a seller. According to economic theories of incomplete contracting, sellers may value terms that they can use at their discretion to penalize customers for undesirable behavior when such objectionable behavior is hard to include in a contract due to the cost of its verification. Drawing on these insights, the proposed research will test whether and when even rigid, bright-line contract terms are enforced or used as guidelines by sellers exercising discretion on the ground. To the extent that discretionary tailoring of contract terms by sellers is observed, this research will test whether it results in discrimination against minority consumers (e.g., female and African-American customers).

### **Intellectual Merit**

The research will contribute to two areas of law and social sciences scholarship: consumer contracting and discrimination theory. More particularly, this will be the first study to examine if and how discretionary tailoring of consumer contracts results in differential treatment of certain consumer groups based on gender, race, assertiveness, or socioeconomic status. Debates about the contemporary relevance of discrimination have been difficult to resolve, in part due to the challenges of identifying, measuring, and documenting its presence in all but the most conspicuous cases. This research will explore a contemporary form of discrimination which is relatively subtle and covert, thus leading to less frequent detection and awareness by the general public. Using mixed methods, including interviews and field experiments, this research will measure discrimination in consumer markets. In the experiments, testers will be sent to stores to return items, following a uniform, memorized script. The studies will explore whether retailers deviate from their formal return policies, and whether such tailored departures are applied discriminatorily, disproportionately favoring some consumers (particularly white, male, or upper-class customers) while discriminating against others (e.g., African-American, female, or lower-class customers). Consequently, this research will also make a significant contribution to discrimination scholarship. While racial and gender discrimination in the labor and housing markets has been thoroughly documented, studies of discrimination in product markets are remarkably scarce, and focus mainly on differential pricing in a few specific markets.

### **Broader Implications**

Minority consumers continue to report experiences of discrimination, ranging from poor service in restaurants to heightened surveillance in department stores and outright harassment in public accommodations. These reports suggest that discrimination imposes both emotional and financial costs on minority consumers. This research will test, measure, and quantify racial and gender discrimination, using original field experiments alongside qualitative interviews. Although field experiments do have limitations, they also offer unique advantages, most particularly, the opportunity to observe discrimination directly. By controlling for observed differences between testers through thoughtful experimental design, the research will test whether sellers treat similarly situated consumers differently based on race, gender, assertiveness, or perceived socioeconomic status. The findings will advance our understanding of the prevalence of, and reasons for, discriminatory enforcement of consumer contracts, paving the way for data-driven policy and legal reform.