Dear \_\_\_\_\_ Editors,

Every year, about 18 million Black Americans report mistreatment while shopping in a store, and these numbers are steadily rising. Blacks report experiencing unfair treatment while shopping more frequently than they report experiencing mistreatment during police encounters. Protecting racial minorities from marketplace discrimination is a persistent challenge for policymakers. As this Article explains, current Anti-Discrimination and Public Accommodations laws fail to adequately protect minority consumers because they exclude retail stores from their scope. This legal loophole is likely the result of lawmakers’ belief that retail stores are not prominent sites of racial discrimination. The absence of empirical research documenting retail race discrimination arguably contributes to the prevailing perception that such discrimination is not widespread.

This Article empirically tests this presumption. It presents the results of an original field experiment in which nineteen testers*—*Black and white females and males*—*returned more than 200 unworn clothing items to approximately sixty retail stores in Chicago from which these items were purchased. The findings reveal that store clerks of both races treat white consumers significantly more favorably than Blacks. White testers were 11-15% more likely to receive refunds and 31-40% more likely to have their returns accepted (for exchange, store credit, or refund) than were Blacks returning identical items and following identical scripts. The findings also reveal that race intersects with gender in ways that disproportionately disadvantage Black females and favor white males.

Everyday retail discrimination is harmful to minority consumers and society. It curtails Black people’s shopping experiences and limits their purchasing possibilities. The everyday and cumulative nature of discrimination while shopping leads to diminished self-esteem, lower life satisfaction, and mental and physical health problems among minority consumers. While the experiment does not provide a single explanation for the observed discrimination, it provides evidence that the revealed disparities are driven, at least in part, by store agents’ inferences about Black customers’ criminality, buying power, and value to the store. As original interviews conducted with Chicago store clerks illustrate, these inferences are often shaped by racial bias and stereotypes.

The problem is that courts have consistently interpreted existing statutes as excluding retail discrimination, and Black consumers are left with very little recourse when experiencing retail discrimination. Even those who file lawsuits and prevail in court are often provided with only limited remedies. This Article therefore ends with suggestions on how to better protect racial minorities from retail discrimination. Until legislation that explicitly prohibits *retail* discrimination is adopted, courts could interpret existing statutes as covering retail stores. Alternatively, regulatory agencies (including the CFPB and the FTC) and State Attorneys General could use their existing authority to curb unfair market practices to combat retail discrimination, by recognizing that race retail discrimination is an “unfair” practice.

I am a contracts and consumer law professor who studies marketplace discrimination. I have previously published my scholarship in leading law reviews and peer-reviewed journals (including Stanford Law Review, the Journal of Legal Analysis, and the Boston Globe), and my research was cited in major news outlets (including the *Boston Globe*). This Article combines my expertise in contracts, consumer law, and discrimination law to derive new insights. It will be presented at the Conference on Empirical Legal Studies, the Berkeley Consumer Scholars Conference, and other workshops and fora in the U.S. and worldwide.

Thank you very much for your consideration,

Meirav Furth-Matzkin