# Project Summary

### **Overview**

Discriminatory exercise of discretion is now widely documented in various contexts, such as policing, prosecution, rental housing, and employment. Yet, in view of the widely held assumption that standardized contracts apply uniformly towards all consumers entering into the same agreement with the seller, the possibility that sellers enforce their standard terms in a discriminatory manner has not been tested to date. Under 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 write into 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 operate as standards, as sellers exercise discretion on the ground; and, to the extent that such discretionary tailoring of contract terms is observed, whether its exercise by sellers leads to 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 inquiry: 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 socio-economic status. Debates about the contemporary relevance of discrimination have been difficult to resolve, in part because of the challenges in identifying, measuring, and documenting its presence in all but extreme cases. This research will explore a contemporary form of discrimination which is relatively subtle and covert, leading to less frequent detection and awareness by the general public. The research will use mixed methods, including interviews and field experiments, to measure discrimination in consumer markets. In the experiments, testers will be sent to return items to stores, 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 benefiting some consumers (and particularly white, male, or upper-class customers) at the expense of others (e.g., African-American, female, or lower-class customers). In so doing, this research will also make a significant contribution to discrimination scholarship. While racial and gender discrimination in the labor and housing markets is thoroughly documented, studies of discrimination in product markets are remarkably scarce, and mainly focus on differential pricing in few specific markets.

### **Broader Impacts**

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 are not without limitations, they offer unique advantages—namely, 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 socio-economic status. The findings will advance our understanding of the prevalence of, and reasons for, discriminatory enforcement of consumer contracts, paving the way for a data-driven law and policy reform.