

auctions.<sup>2</sup> In addition, my 2002 book, *Pervasive Prejudice?: Unconventional Evidence of Race and Gender Discrimination* develops and tests for unjustified disparate racial impacts and disparate treatment in a variety of non-conventional settings. I have also developed and applied theories of (i) what constitutes a “business justification” for disparate impact purposes, and (ii) how to use regressions to test for unjustified disparate impacts.<sup>3</sup>

I have statistically tested for racial disparities in policing practices as an expert witness for the

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<sup>2</sup> See, e.g., Ian Ayres, Fred Vars & Nasser Zakariya, *To Insure Prejudice: Racial Disparities in Taxicab Tipping*, 114 Yale L. J. 1613 (2005); Ian Ayres, *Three Tests for Measuring Unjustified Disparate Impacts in Organ Transplantation: The Problem of “Included Variable” Bias*, 48 Pers. Biology S68 (2005).

I have also published dozens of econometric tests in non-discrimination settings. See, e.g., Ian Ayres & Quinn Curtis, *Beyond Diversification: The Pervasive Problem of Excessive Fees and “Dominated Funds” in 401(k) Plans*, Yale L. J. (forthcoming 2014).

<sup>3</sup> See Ian Ayres, *Market Power and Inequality: A Competitive Conduct Standard for Assessing When Disparate Impacts are Justified*, 95 Calif. L. Rev. 669 (2007); Ian Ayres, *Testing for Discrimination and the Problem of “Included Variable Bias,”* unpublished working paper (2010).

Justice Department and have served as an expert witness in more than a dozen matters concerning tests of racial disparate impact in lending.<sup>4</sup> Additionally, I served as a consultant to the Justice and Commerce Department in developing statistical methods to test whether an affirmative program is narrowly tailored to remedy discrimination.<sup>5</sup>

Consistent with my sustained efforts to improve the analysis of disparate impact testing in a wide variety of settings, I have a strong interest in ensuring that the Court's treatment of this case is informed by a sound understanding of pertinent statistical issues. In particular, I write to correct the misunderstandings and misapprehensions contained in James P. Scanlan's amicus brief.

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<sup>4</sup> See, e.g., *Adkins v. Morgan Stanley*, No. 1:12-cv-7667-VEC (S.D.N.Y.); *Saint-Jean v. Emigrant Mortgage Co.* (2013) No. 1:11-cv-02122-SJ (E.D.N.Y.); *Guerra v. Guerra v. GMAC LLC*, No. 2:08-cv-01297-LDD (E.D. Pa.).

<sup>5</sup> See, e.g., Ian Ayres, Written Statement, Disparity Studies as Evidence of Discrimination in Federal Contracting, U.S. Commission on Civil Rights (May 2006); *Rothe Dev. Corp. v. United States Dept. of Defense*, 545 F.3d 1023 (Fed. Cir. 2008).