
RESPONSE

ROLE MODEL THEORY IN RACE-CONSCIOUS PRACTICE[†]

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[†] An invited response to Stacy Hawkins, *#RepresentationMatters: Reviving the Role Model Theory*, 105 B.U. L. REV. 2305 (2025).

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INTRODUCTION

This Response addresses role model theory in race-conscious practice. Building upon and extending the groundbreaking work of Professor Stacy Hawkins in *#RepresentationMatters: Reviving the Role Model Theory*,¹ the Response examines the salience of race-conscious role models and fact-development methods in civil rights practice and legal education. In *#RepresentationMatters*, Hawkins revisits race and role model theory against the backdrop of the Supreme Court's 1986 decision in *Wygant v. Jackson Board of Education*² and, to a lesser extent, the Court's 2023 decision in *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*³ to mount a renewed defense of diversity, equity, and inclusion ("DEI") programs in the contexts of education and employment.⁴ Hawkins challenges the long-standing, conventional view that *Wygant* forecloses the use of role model theory in equal protection litigation, marshalling wide support from both doctrinal and empirical sources.⁵

The Response proceeds in three parts. Part I parses the first of three race-conscious practice lessons gleaned from the *Wygant* litigation. This first lesson urges the adoption of formal and informal methods of race-conscious fact development and investigation in civil rights practice. Part II winnows a second lesson from the *Wygant* litigation drawn from careful assessment of the nature and extent of race-conscious fact development in local, equity-based public education advocacy and civil rights litigation more generally. This second lesson directs advocates in the field of public education to devise collaborative, street-level methods of race-conscious fact investigation in cooperation with teachers, staff, parents, students, and local school boards. Part III culls a third lesson from

¹ Stacy Hawkins, *#RepresentationMatters: Reviving the Role Model Theory*, 105 B.U. L. REV. 2305 (2025) [hereinafter Hawkins, *#RepresentationMatters*]; see also Stacy Hawkins, *Diversity, Democracy & Pluralism: Confronting the Reality of Our Inequality*, 66 MERCER L. REV. 577, 580-81 (2015) (seeking to reconcile anti-subordination and anti-discrimination principles undergirding equal protection doctrine); Stacy Hawkins, *How Diversity Can Redeem the McDonnell Douglas Standard: Mounting an Effective Defense of the Commitment to Diversity in the Legal Profession*, 83 FORDHAM L. REV. 2457, 2462 (2015) (endorsing McDonnell Douglas framework as "a viable means of defending workplace diversity efforts"); Stacy Hawkins, *Mismatched or Counted Out? What's Missing from Mismatch Theory and Why It Matters*, 17 U. PA. J. CONST. L. 869, 855-58 (2015) (offering empirical rebuttal to mismatch theory critique of race-conscious admission in higher education); Stacy Hawkins, *What the Supreme Court's Diversity Doctrine Means for Workplace Diversity Efforts*, 33 A.B.A. J. LAB. & EMP. L. 139, 139-40 (2018) (assessing effect of Fisher v. Univ. of Tex. at Austin, 579 U.S. 365 (2016) on workplace diversity initiatives).

² 476 U.S. 267 (1986).

³ 143 S. Ct. 1241 (2023).

⁴ Hawkins applies diversity, equity, and inclusion ("DEI") to a wide array of contexts (education, employment, and contracting) and practices tailored to ensuring equality of opportunity. See Hawkins, *supra* note 1, at 2309-10.

⁵ See *id.* Part IV.

the *Wygant* litigation derived from evaluation of the efficacy and availability of race-conscious role models in legal education, particularly in clinical education. This third lesson confirms the pedagogical and practice efficacy of race-identity role model incongruence or mismatching within community-based, litigation and transactional clinics.

I. RACE-CONSCIOUS PRACTICE LESSONS OF THE *WYGANT* LITIGATION

“[R]ace-consciousness is a necessary facet of the role model theory.”⁶

The race-conscious practice lessons of the *Wygant* litigation are bound up in the advocacy failure of counsel in the litigation to investigate and develop facts sufficient to prove discrimination in education and employment, and, concomitantly, in the institutional failure to determine and make factual findings of bias and prejudice in school board governance and public employee collective bargaining negotiation. In *Wygant*, these lessons are illustrated by the failure of the Jackson Board of Education and the United States District Court for the Eastern District of Michigan to make particularized factual findings of discrimination in their respective administrative agency determinations and trial rulings.⁷ Without findings of fact sufficient to establish a reliable and persuasive evidentiary record of discrimination, race-conscious, remedial programs adopted by public entities like local school boards are unlikely to survive constitutional scrutiny under the Equal Protection Clause of the Fourteenth Amendment.⁸

Hawkins considers the lessons of the *Wygant* litigation starting from the premise that “people, especially—but not exclusively—young people, need visible reflections to be able to imagine themselves in positions of power, authority, and opportunity.”⁹ From this dual premise of role-model visibility and role-inspired imagination, Hawkins reasons that “[w]ho and what people become is often a reflection of the world they see around them.”¹⁰ Indeed, she observes “[w]hat seems possible can be limited by a lack of representation or inspired by the presence of relatable role models.”¹¹

For Hawkins, role models offer a means of racial representation in education and employment contexts tied to the advancement of equal opportunity.¹² Her task is to embed the representation of racial role models in legal doctrine, specifically, the law of equal protection governing K-12 education and higher education and regulating the public and private workplace.¹³ To that end, she

⁶ *Id.* at 2379.

⁷ *See Wygant*, 476 U.S. at 271-72.

⁸ *See id.* at 274.

⁹ Hawkins, *#RepresentationMatters*, *supra* note 1, at 2308.

¹⁰ *Id.*

¹¹ *Id.*

¹² *See id.* at 2309-10.

¹³ *See id.* at 2315-18.

revisits the decade-long federal and state litigation embroiling the minority racial-preference provision of the 1972 Jackson Board of Education's collective bargaining agreement, which culminated in the Supreme Court's plurality opinion in *Wygant*, rejecting the constitutionality of race-based layoffs by public employers.¹⁴ Revisiting the Supreme Court's clashing accounts of role model theory in *Wygant* and its progeny, Hawkins challenges the long-standing rejection of role model theory as a valid and compelling interest rationale for race-conscious employment programs.¹⁵ To bolster that challenge, Hawkins reexamines the *Wygant* Court's plurality opinion, concurring opinion of Justice O'Connor, and dissenting opinion of Justice Stevens, in search of an evidentiary basis for a role model-informed, non-remedial interest defense of diversity under equal protection doctrine.¹⁶

Full appreciation of the lessons of the *Wygant* litigation for race-conscious fact development begins with a reexamination of Justice Powell's plurality opinion.¹⁷ From the outset, Justice Powell frames the constitutional question in *Wygant*—"whether a school board, consistent with the Equal Protection Clause, may extend preferential protection against layoffs to some of its employees because of their race or national origin"—without reference to role model theory or evidence of role model efficacy within schools or workplaces.¹⁸ To brace this narrow framing, Justice Powell traces the *Wygant* litigation from its inception in 1972 when the Jackson Board of Education, confronted by community-wide, school-infected racial tension, "considered adding a layoff provision to the Collective Bargaining Agreement (CBA) between the Board and the Jackson Education Association (Union) that would protect employees who were members of certain minority groups against layoffs."¹⁹ Justice Powell explains that the Jackson Board of Education and the Jackson Education Association "eventually approved a new provision, Article XII of the CBA, covering layoffs."²⁰

By its terms, Article XII provided "[i]n the event that it becomes necessary to reduce the number of teachers through layoff from employment by the Board, teachers with the most seniority in the district shall be retained."²¹ In a

¹⁴ See *id.* Part I.

¹⁵ See *id.* at 2315.

¹⁶ See *id.* Part I.

¹⁷ Chief Justice Burger and Justice Rehnquist joined the Powell plurality opinion in all but Part IV, which Justice O'Connor joined. *Wygant v. Jackson Bd. of Educ.*, 476 U.S. 267,268 (1986). Justice White also concurred in the judgment, condemning the Jackson School Board policy as unconstitutional and concluding that "[n]one of the interests asserted by the Board, singly or together, justify this racially discriminatory layoff policy and save it from the strictures of the Equal Protection Clause." *Id.* at 294-95 (White, J., concurring).

¹⁸ *Id.* at 269-70.

¹⁹ *Id.* at 270 (footnote omitted).

²⁰ *Id.*

²¹ *Id.*

noteworthy carve out, the Article XII provision added “at no time will there be a greater percentage of minority personnel laid off than the current percentage of minority personnel employed at the time of the layoff.”²² It also stated “[i]n no event will the number given notice of possible layoff be greater than the number of positions to be eliminated. Each teacher so affected will be called back in reverse order for positions for which he is certificated maintaining the above minority balance.”²³

Justice Powell notes that in 1974, “[w]hen layoffs became necessary” in the Jackson School District, it was already “evident that adherence to the CBA would result in the layoff of tenured nonminority teachers while minority teachers on probationary status were retained,” yet the Board instead “retained the tenured teachers and laid off probationary minority teachers,” in effect “failing to maintain the percentage of minority personnel that existed at the time of the layoff.”²⁴ Unsurprisingly, Justice Powell adds, the Jackson Education Association, “together with two minority teachers who had been laid off,” filed suit in *Jackson I* in the United States District Court for the Eastern District of Michigan, claiming that the “Board’s failure to adhere to the layoff provision violated the Equal Protection Clause of the Fourteenth Amendment and Title VII of the Civil Rights Act of 1964.”²⁵ Chronicling the trial and its upshot, Justice Powell comments, “the District Court *sua sponte* concluded that it lacked jurisdiction over the case,” in part reasoning that “there was insufficient evidence to support the plaintiffs’ claim that the Board had engaged in discriminatory hiring practices prior to 1972.”²⁶

As a consequence of the district court dismissal, Justice Powell reports, the Jackson Education Association and minority teachers subsequently filed *Jackson II*, a suit in Michigan state court “raising in essence the same claims that had been raised in *Jackson I*.”²⁷ In *Jackson II*, the state court upheld the minority racial-preference provision embedded in Article XII of the collective bargaining agreement as a permissible “attempt to remedy the effects of societal discrimination” notwithstanding “its discriminatory effect on nonminority teachers,” ruling that the actions of the Jackson Board of Education breached the express language of Article XII itself.²⁸ Justice Powell mentions that the Jackson Board of Education adhered to the minority racial-preference provision of the collective bargaining agreement during both the 1976-1977 and 1981-1982 school years, laying off nonminority teachers but retaining minority teachers with less seniority.²⁹

²² *Id.*

²³ *Id.* at 270-71.

²⁴ *Id.* at 271.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.* at 272.

In the aftermath of these layoffs, Justice Powell recounts, the displaced nonminority teachers in turn brought suit in the United States District Court for the Eastern District of Michigan alleging constitutional and statutory violations of the Equal Protection Clause, Title VII, 42 U.S.C. § 1983, and other federal and state laws.³⁰ Justice Powell relates that the district court dismissed all of the claims presented by the displaced nonminority teachers, holding that the layoff-specific racial preferences granted by the Jackson Board of Education “were permissible under the Equal Protection Clause as an attempt to remedy *societal discrimination* by providing ‘role models’ for minority schoolchildren,” even if uncorroborated by a finding of prior discrimination.³¹ On appeal, Justice Powell remarks, the Sixth Circuit Court of Appeals affirmed, “finding that the percentage of minority teachers was less than the percentage of minority students” and, accordingly, holding that the Board’s interest in alleviating the effects of societal discrimination by providing minority role models for its minority students stood “sufficiently important to justify the racial classification embodied in the layoff provision.”³²

In reversing the decision of the Sixth Circuit, Justice Powell, writing for the plurality of the *Wygant* Court, endorses the main constitutional claim of the displaced nonminority teachers, asserting that “they were laid off because of their race in violation of the Equal Protection Clause of the Fourteenth Amendment.”³³ Justice Powell finds that the minority racial-preference provision in Article XII of the collective bargaining agreement “operates against whites and in favor of certain minorities, and therefore constitutes a classification based on race.”³⁴ Equally important, he finds the racial-preference provision unsupported by a compelling state purpose and insufficiently tailored as a fair means to accomplish that purpose.³⁵ Justice Powell complains that the role model theory applied by the district court below suffers not only from the absence of a “logical stopping point” gauged by remedial purpose but also from the lack of a necessary relationship to the purported harm caused by the alleged prior discriminatory hiring practices.³⁶ For Justice Powell, the rationale of societal discrimination is too “amorphous” and “indefinit[e]” to form an adequate basis for imposing a racially classified remedy, especially in the absence of particularized remedial findings of discrimination.³⁷

Relatedly, Justice Powell refers skeptically to the Jackson Board of Education’s belated argument that the “purpose in adopting the layoff provision was to remedy prior discrimination against minorities by the Jackson School

³⁰ *Id.*

³¹ *Id.* (emphasis added).

³² *Id.* at 274.

³³ *Id.* at 273.

³⁴ *Id.*

³⁵ *See id.* at 276, 283-84.

³⁶ *See id.* 275-76.

³⁷ *See id.* at 276.

District in hiring teachers.”³⁸ Justice Powell objects to this argument on the ground that a public employer like the Jackson Board of Education must adduce “sufficient evidence to justify the conclusion that there has been prior discrimination.”³⁹ Both the trial and appellate court in *Wygant*, Justice Powell observes, relied on an evidentiary foundation insufficient to support findings of discrimination.⁴⁰ Of necessity, he stresses, a “trial court must make a factual determination that the employer had a strong basis in evidence for its conclusion that remedial action was necessary.”⁴¹ Absent such a determination, he adds, “an appellate court reviewing a challenge by nonminority employees to remedial action cannot determine whether the race-based action is justified as a remedy for prior discrimination.”⁴² In *Wygant*, Justice Powell spotlights, “no such determination ever has been made.”⁴³ To Justice Powell, the lack of such a factual determination by the trial court and the underlying local and state government entities renders the Jackson Board of Education’s layoff plan insufficiently tailored to satisfy the demands of the Equal Protection Clause, especially given the availability of other less intrusive means of accomplishing similarly legitimate purposes, such as targeted hiring goals.⁴⁴

In sum, a first lesson of the *Wygant* litigation is traceable to the entwined failure of the Jackson Board of Education and the United States District Court for the Eastern District of Michigan to make particularized factual findings of discrimination and, thereby, establish a strong evidentiary basis in support of a race-conscious remedy in the overlapping spheres of public education and employment. By comparison, Justice O’Connor’s opinion, concurring in part with the plurality, and concurring in the judgment of the Court, appears to ratchet up the evidentiary standard at stake. Justice O’Connor maintains that a public employer must have a factual basis grounded in the “reliable benchmarks” of statistical proof for determining that race-conscious remedial action is justified.⁴⁵ Hence, Justice O’Connor joins the plurality of the *Wygant* Court in rejecting the reasoning of the federal and state courts below which approved the proffered goals of remedying “societal discrimination” (i.e., discrimination not

³⁸ *See id.* at 277.

³⁹ *Id.*

⁴⁰ *See id.* at 278.

⁴¹ *Id.* at 277.

⁴² *Id.* at 278.

⁴³ *Id.*

⁴⁴ *Id.* at 282-84.

⁴⁵ O’Connor defines reliable benchmarks to include:

[D]emonstrable evidence of a disparity between the percentage of qualified blacks on a school’s teaching staff and the percentage of qualified minorities in the relevant labor pool sufficient to support a prima facie Title VII pattern or practice claim by minority teachers would lend a compelling basis for a competent authority such as the School Board to conclude that implementation of a voluntary affirmative action plan is appropriate to remedy apparent prior employment discrimination.

Id. at 292 (O’Connor, J., concurring).

traceable to its own actions) and providing “role models” as sufficiently compelling to withstand strict, equal protection scrutiny.⁴⁶ That rejection underscores the importance of isolating a sufficiently important governmental purpose and making a specific, contemporaneous finding of discrimination that could support a race-conscious remedial provision or program when challenged as constitutionally infirm.⁴⁷

The first race-conscious practice lesson of the *Wygant* litigation highlights the import of fact development and investigation in civil rights practice. This first lesson is instructive for both legal advocates and legal educators in reaffirming the value of teaching formal and informal methods of race-conscious fact development and investigation in civil rights practice specifically to lay the groundwork for reliable factual determinations at trial and on appeal.⁴⁸ Rooted in ethnography, those methods combine fieldwork immersion and clinical skill to create a new way of seeing the racialized, sociolegal culture of schools and workplaces and their surrounding communities.⁴⁹ For a second lesson of race-conscious fact development, turn next to Justice Marshall’s often-overlooked dissenting opinion in *Wygant*.

II. RACE-CONSCIOUS FACT DEVELOPMENT

“The first black teacher in the Jackson public schools was hired in 1954.”⁵⁰

This Part assesses the role of race-conscious fact development in *Wygant* and civil rights litigation more generally engrafted from Justice Marshall’s dissenting opinion. In his dissent, Justice Marshall, joined by Justice Brennan and Justice Blackmun, underlines the critical function of race-conscious fact development.⁵¹ At the outset, Justice Marshall makes plain that the *Wygant* Court is “hindered by a record that is informal and incomplete.”⁵² Justice Marshall notes that “[b]oth parties now appear to realize that the record is inadequate to inform the Court’s decision.”⁵³ Indeed, he mentions “[b]oth have lodged with the Court voluminous ‘submissions’ containing factual material that

⁴⁶ *Id.* at 288.

⁴⁷ *See id.* at 291-93.

⁴⁸ For a discussion of critical, race-conscious fact investigation methods, see Alina S. Ball, *Disruptive Pedagogy: Incorporating Critical Theory in Business Law Clinics*, 22 CLINICAL L. REV. 1, 30-31 (2015); Miriam Gohara, *Narrating Context and Rehabilitating Rehabilitation: Federal Sentencing Work in Yale Law School’s Challenging Mass Incarceration Clinic*, 27 CLINICAL L. REV. 39, 50-53 (2020).

⁴⁹ *See* Anthony V. Alfieri, *Rebellious Pedagogy and Practice*, 23 CLINICAL L. REV. 5, 16 (2016) (discussing Matthew Desmond’s neighborhood deployment of “ethnography as a sensibility, a ‘way of seeing’”).

⁵⁰ *Wygant*, 476 U.S. at 297 (Marshall, J., dissenting).

⁵¹ *See id.* at 295.

⁵² *Id.*

⁵³ *Id.*

was not considered by the District Court or the Court of Appeals.”⁵⁴ The Petitioners in *Wygant*, he adds, “have submitted 21 separate items, predominantly statistical charts, which they assert are relevant to their claim of discrimination,” while the “Respondents have submitted public documents that tend to substantiate the facts alleged in the brief accompanying their motion for summary judgment in the District Court,” including the transcripts and exhibits from *Jackson I*, *Jackson II*, and *Wygant*, the prior federal and state court proceedings litigated below.⁵⁵

In surveying the record and extra-record materials underpinning the *Wygant* litigation, Justice Marshall bemoans “[t]he haste with which the District Court granted summary judgment to respondents, without seeking to develop the factual allegations contained in respondents’ brief,” remarking that the speed of the judgment prevented the thorough exploration of key facts in dispute.⁵⁶ For Justice Marshall, rather than ignore the compelling factual setting of the litigation, the Supreme Court should give the district court below “the opportunity to develop a factual record adequate to resolve the serious issue raised by the case.”⁵⁷ That issue goes to the history of discrimination burdening the City of Jackson and the Jackson Public School System and, correspondingly, giving rise to the compelling remedial rationale for affirmative action by a public employer.⁵⁸ Reiterating “allegations that the imperative to integrate the public schools was urgent,” evidence that “[r]acially motivated violence had erupted at the schools, interfering with all educational objectives,” and state agency findings of “apparent violations of the law and a substantial underrepresentation of minority teachers,” Justice Marshall asserts that “if properly presented to the District Court,” these combined historical and discovery materials “would supply the ‘[e]videntiary support for the conclusion that remedial action is warranted.’”⁵⁹ Moreover, they would justify remanding the case to the lower court for further factfinding.⁶⁰

On Justice Marshall’s reading of the litigation record in *Wygant*, “[t]he alleged facts . . . evince, at the very least, a wealth of plausible evidence supporting the Board’s position that Article XII was a legitimate and necessary response both to racial discrimination and to educational imperatives.”⁶¹ Based on this evidence, Justice Marshall condemns the plurality opinion for its “attempt to resolve the constitutional issue either with no historical context

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *See id.* at 296.

⁵⁷ *Id.*

⁵⁸ *See id.* at 303-06.

⁵⁹ *Id.* at 306. *See also* *Wygant v. Jackson Bd. of Educ.*, 546 F. Supp. 1195, 1198 (E.D. Mich. 1982) (“In February [1972], race tensions boiled over and violence broke out at the Jackson High School.”), *aff’d*, 746 F.2d 1152 (6th Cir. 1984), *rev’d*, 476 U.S. 267 (1986).

⁶⁰ *Wygant*, 476 U.S. at 306 (Marshall, J., dissenting).

⁶¹ *Id.* at 312.

whatever” or, equally troubling, “on the basis of a record devoid of established facts.”⁶² The racial “roots” of that material context “reach nearly thirty (30) years into the past.”⁶³ In point of fact, “[b]efore 1953, no black teachers were employed by the Jackson Public Schools.”⁶⁴ Nearly two decades later in 1969, when “black students constituted 15.2 percent of the total student population,” Jackson Public School’s “black teachers constituted only 3.9 percent of the total teaching staff.”⁶⁵ To disregard this racial history, Justice Marshall protests, “is to do a grave injustice not only to the Board and teachers of Jackson and to the State of Michigan, but also to individuals and governments committed to the goal of eliminating all traces of segregation throughout the country.”⁶⁶

Hawkins shares Justice Marshall’s commitment to race-conscious fact development in *Wygant* and civil rights litigation more broadly.⁶⁷ In service to that commitment, Hawkins canvasses the academic and empirical literature surrounding non-remedial role model theory in recent decades.⁶⁸ For Hawkins, this literature reveals a strong evidentiary basis for finding that role models are a crucial contributing factor to individual success for underrepresented groups across a wide range of public and private domains encompassing business, education, and government.⁶⁹ This same literature, she adds, also shows identity congruence between minority role models and minority students not only enhances the impact of role models, but also serves to validate and further multiple compelling government interests.⁷⁰

According to Hawkins, race- and gender-based identity congruence links “individuals in visible leadership roles and those in subordinate positions” in the classroom and in the workplace producing “significant positive benefits” measured by aspiration and achievement data and even generating “positive behavioral effects among impacted groups.”⁷¹ To Hawkins, this substantial data set furnishes “the requisite ‘strong basis in evidence’ needed to support the

⁶² *Id.*

⁶³ *Wygant*, 546 F. Supp. at 1197.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Wygant*, 476 U.S. at 312. On the merits, Justice Marshall declares that with a sufficient record he “would hold that the state purpose of preserving the integrity of a valid hiring policy—which in turn sought to achieve diversity and stability for the benefit of *all* students—was sufficient, in this case, to satisfy the demands of the Constitution.” *Id.* at 306.

⁶⁷ See Hawkins, #*RepresnetationMatters*, *supra* note 1, at 2331 (“Given that the Supreme Court in *Wygant* rejected the role model theory for want of evidence, not for its doctrinal insufficiency, it is only necessary to establish a factual predicate in support of the role model theory as a compelling interest.”).

⁶⁸ See *id.* at 2332-42.

⁶⁹ See *id.* at 2341-43.

⁷⁰ See *id.* at 2342-44 (explaining role model theory could reduce education and income disparities and “improve national productivity”).

⁷¹ *Id.* at 2374, 2378.

pursuit of racially and gender-diverse role models” in society as a whole.⁷² In this way, Hawkins maintains, the post-*Wygant* evolution of role model theory research and parallel growth of empirical data affords “new arguments and evidence” that civil rights advocates can gather to sustain and expand DEI initiatives throughout business, government, K-12 education, and higher education.⁷³ Advocates, she admonishes, “should be prepared to proffer these arguments and evidence.”⁷⁴ Preparation in the context of education, as Justice Marshall teaches, requires advocates to devise collaborative, street-level methods of race-conscious fact investigation in cooperation with teachers, staff, parents, students, and local boards both inside school classrooms and outside school parks and playgrounds.⁷⁵

The second lesson of the *Wygant* litigation comes from careful assessment of the nature and extent of race-conscious fact development in local, equity-based public education advocacy and civil rights litigation. This lesson guides advocates in the field of public education in designing collaborative, street-level methods of race-conscious fact investigation, which occurs in close cooperation with community stakeholders. These collaborative methods borrow from an alternative vision of clients and non-clients as lay lawyers, that is as coequal partners in sociolegal problem-solving.⁷⁶ For potential pathways to such community-based collaboration, turn next to a discussion of identity congruent and incongruent or mismatched role models.

⁷² *Id.* at 2379.

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ See *Wygant v. Jackson Bd. of Educ.*, 476 U.S. 267, 297-99 (1986) (Marshall, J., dissenting) (outlining history of racial discrimination in Jackson Public Schools). For discussion of collaborative, street-level methods of race-conscious fact investigation in cooperation with neighborhood groups in the areas of fair housing, public transportation, and environmental justice, see Anthony V. Alfieri, *Black, Poor, and Gone: Civil Rights Law's Inner-City Crisis*, 54 HARV. C.R.-C.L. L. REV. 629, 688-692 (2019); Anthony V. Alfieri, *Community Education and Access to Justice in a Time of Scarcity: Notes from the West Grove Trolley Garage Case*, 2013 WIS. L. REV. 121, 138-142; Anthony V. Alfieri, *Paternalistic Interventions in Civil Rights and Poverty Law: A Case Study of Environmental Justice*, 112 MICH. L. REV. 1157, 1170-76 (2014) (reviewing SARAH CONLY, *AGAINST AUTONOMY: JUSTIFYING COERCIVE PATERNALISM* (2013)).

⁷⁶ See Gerald P. López, *Lay Lawering*, 32 UCLA L. REV. 1, 3 (1984) (defining lawyering as a “human problem-solving activity” involving the stock stories of daily living); Ann Shalleck, *Narrative Understanding: Revisiting the Stories of Lay Lawyering*, 24 CLINICAL L. REV. 467, 471 (2018) (critiquing López’s conception of lay lawyering for failing “to elucidate how storytelling works in deciding what to do and how to act to get to solution of a problem or how taking action can reshape understanding of the problem”).

III. RACE-CONSCIOUS ROLE MODELS

“It is one thing for a white child to be taught by a white teacher that color, like beauty, is only ‘skin deep’; it is far more convincing to experience that truth on a day-to-day basis during the routine, ongoing learning process.”⁷⁷

This Part evaluates the efficacy and availability of race-conscious role models in legal education, particularly in clinical education. Evaluation of the post-*Wygant* utility of race-conscious role models gains force from the research and rereading put forward by Hawkins. She points out that a majority of the Supreme Court in 1986 did not reject the role model theory as a predicate for supporting race-conscious affirmative action programs under equal protection doctrine.⁷⁸ Departing from the conventional view of *Wygant* as a hard doctrinal bar to the application of role model theory in defense of race-conscious employment programs,⁷⁹ Hawkins shifts the focal point of analysis from the unswayed remedial justification for the role model theory set out in Justice Powell’s plurality opinion and echoed in Justice O’Connor’s concurring opinion to the non-remedial justification set forth in Justice Stevens’s dissenting opinion.⁸⁰ On this revisionist reading of *Wygant*, Hawkins notes that at least five Justices appear receptive to the logic of non-remedial role model theory as a compelling rationale for race-conscious programs in the field of public employment.⁸¹

Consonant with the logic animating contemporary DEI practices, Hawkins embraces role model theory as a non-remedial justification for race-conscious programs directed toward underrepresented groups in both education and employment settings.⁸² In these and other settings, Hawkins shows, identity congruence between individuals in subordinate positions and those who serve as visible role models promotes achievement and success.⁸³ To Hawkins, this empirical showing establishes a factual predicate and a compelling non-remedial interest sufficient to meet the “strong basis in evidence” standard of proof erected by the plurality opinion in *Wygant*.⁸⁴ For elaboration of that non-remedial interest, Hawkins returns to *Wygant* and the dissent of Justice Stevens.

In his dissenting opinion, Justice Stevens clarifies that it is “not necessary to find” the Jackson Board of Education “has been guilty of racial discrimination in the past to support the conclusion that it has a legitimate interest in employing

⁷⁷ *Wygant*, 476 U.S. at 315 (Stevens, J., dissenting).

⁷⁸ See Hawkins, *#RepresentationMatters*, *supra* note 1, at 2329-30, 2333-43.

⁷⁹ On race and working identity in majority organizations, see DEVON W. CARBADO & MITU GULATI, *ACTING WHITE? RETHINKING RACE IN “POST-RACIAL” AMERICA* 144-45 (2013).

⁸⁰ See Hawkins, *#RepresentationMatters*, *supra* note 1, at 2317, 2327.

⁸¹ *Id.* at 2353 n.259.

⁸² See *id.* at 2317.

⁸³ See *id.* at 2374-75 (“The social science literature is replete with evidence that when there is racial and gender congruence between individuals in visible leadership roles and those in subordinate positions (whether in the classroom or in the workplace), social identification with these leaders as role models increases and significant positive benefits accrue . . .”).

⁸⁴ See *id.* at 2375.

more black teachers in the future.”⁸⁵ Instead, Justice Stevens explains, courts “should first ask whether the Board’s action advances the public interest in educating children for the future.”⁸⁶ If so, he continues, courts “should consider whether that public interest, and the manner in which it is pursued, justifies any adverse effects on the disadvantaged group.”⁸⁷

More expansively, in the context of public education, Justice Stevens remarks that “it is quite obvious that a school board may reasonably conclude that an integrated faculty will be able to provide benefits to the student body that could not be provided by an all-white, or nearly all-white, faculty.”⁸⁸ For purposes of illustration, he points to “one of the most important lessons that the American public schools teach,” namely that “the diverse ethnic, cultural, and national backgrounds that have been brought together in our famous ‘melting pot’ do not identify essential differences among the human beings that inhabit our land.”⁸⁹ In this respect, he asserts, “the collective-bargaining agreement between the Union and the Board of Education succinctly stated a valid public purpose” expressed in the “recognition of the desirability of multi-ethnic representation on the teaching faculty,” and, consequently, the adoption of “a policy of actively seeking minority group personnel.”⁹⁰

To Justice Stevens, “[n]othing in the record—not a shred of evidence—contradicts the view that the Board’s attempt to employ, and to retain, more minority teachers in the Jackson public school system served this completely sound educational purpose.”⁹¹ In echoing this educational purpose, Justice Stevens emphasizes that “there was a rational and unquestionably legitimate basis for the Board’s decision to enter into the collective-bargaining agreement” challenged in *Wygant*, “even though the agreement required special efforts to recruit and retain minority teachers.”⁹² That well-settled basis, he concludes, renders “the decision to include more minority teachers in the Jackson, Michigan, school system” concordant with “a valid public purpose” and, thus, constitutionally defensible on several grounds.⁹³ First, according to Justice Stevens, the Board decision “was adopted with fair procedures and given a narrow breadth.”⁹⁴ Second, Justice Stevens insists, the board decision “transcends the harm to petitioners.”⁹⁵ And, third, Justice Stevens contends, the Board decision signals “a step toward that ultimate goal of eliminating entirely

⁸⁵ *Wygant v. Jackson Bd. of Educ.*, 476 U.S. 267, 313 (1986) (Stevens, J., dissenting).

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.* at 315.

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.* at 315-16.

⁹³ *Id.* at 320.

⁹⁴ *Id.*

⁹⁵ *Id.*

from governmental decisionmaking such irrelevant factors as a human being's race."⁹⁶

Like Justice Stevens, Hawkins endorses the logic and legitimacy of diversity-oriented public school and public employer programs predicated on role model theory.⁹⁷ To buttress that endorsement, she pulls from a broad swath of academic literature and empirical research demonstrating that "identity congruence between those occupying visible positions of power or authority, *i.e.*, role models, and those in subordinate positions within the organizational context . . . generates a range of benefits at both the individual and institutional levels."⁹⁸ Alternatively described by Hawkins under the rubric of "the similarity hypothesis, role identification theory, social learning theory, social identity theory, social comparison theory, and even the role model effect," this body of research also demonstrates "[i]dentity congruence is most impactful for underrepresented groups" and is of "particular benefit for women and people of color."⁹⁹ For Hawkins, "what all of these theories suggest is that sameness is a key feature of the identification process" often "offsetting the negative effects of stereotype threat for underrepresented groups and bolstering performance outcomes."¹⁰⁰

For this reason, Hawkins confirms that the precept of sameness typically guides the organization of race- and gender-matched role model structures in academic (K-12 education and higher education) and workplace settings. At the same time, in the fields of legal education and civil rights practice, anecdotal evidence suggests that race- and gender-identity incongruence, or mismatching between minority clients and their nonminority law student advocates, may yield beneficial effects measured in terms of professional-identity formation and career-trajectory construction. Anecdotal evidence applies at least in community-centered, clinical contexts where students interact regularly with client role models represented by Black clergy and congregations as well as Black civic activists and nonprofit leaders.¹⁰¹ The third lesson of the *Wygant*

⁹⁶ *Id.*

⁹⁷ See Hawkins, *#RepresentationMatters*, *supra* note 1, at 2329-30.

⁹⁸ See *id.* at 2333.

⁹⁹ *Id.* 2333-34 (footnotes omitted).

¹⁰⁰ *Id.* at 2334, 2340.

¹⁰¹ For anecdotal evidence of the beneficial effects of race-identity incongruence between minority clients and their nonminority law student advocates measured in terms of professional-identity formation in community-centered clinical contexts, see Anthony V. Alfieri, *(Un)Covering Identity in Civil Rights and Poverty Law*, 121 HARV. L. REV. 805, 831-35 (2008) (discussing Black community-led creation of neighborhood-wide coalition, composed of residents and stakeholder groups, which promoted affordable housing, neighborhood preservation, mixed-income housing, and economic development). See also Cassandra M. D. Hart, *An Honors Teacher Like Me: Effects of Access to Same-Race Teachers on Black Students' Advanced-Track Enrollment and Performance*, 42 EDUC. EVALUATION & POL'Y ANALYSIS 163, 183 (2020) (finding benefits of Black teacher staffing on "advanced-track course enrollment were not concentrated solely among Black students, but extended to non-Black students as well,

litigation is the pedagogical and practice efficacy of race-identity role model incongruence, or mismatching, recurrent in the daily interchange between Black clients and their nonminority law student advocates, and materializing in community-based litigation and transactional clinics in legal education.

The third lesson of the *Wygant* litigation stems from consideration of alternative, race-conscious role models in legal education, particularly in clinical fieldwork settings. This third lesson bears out the potential pedagogical and practice efficacy of race-identity role model incongruence when nonminority law students forge both short- and long-term working relationships with Black clients and nonclient partners through rights education and outreach, litigation planning, legislative drafting and lobbying, and transactional negotiation. Fertile ground for building and sustaining such working relationships span the areas of housing (homeowners and tenants), economic development (small business owners and start-up entrepreneurs), education (parents and teachers), and religion, especially Black churches where both clergy and congregants often stand out as role models and mentors for students.¹⁰²

CONCLUSION

This Response explores role model theory in race-conscious practice drawing on Hawkins's powerful reconstruction of *Wygant* as a reimagined bulwark against the ongoing dismantling of DEI programs in public education and public employment. Although limited in scope, the instant exploration reinforces the continuing salience of race-conscious role models and the centrality of race-conscious fact development methods in civil rights practice and legal education. Both bold and thoroughgoing, Hawkins's revisionist reading of *Wygant* validates the utility of role model theory in equal protection litigation. In particular, her reading gives rise to new arguments harnessing race-conscious role models to non-remedial purposes and constitutionally compelling interests.

Additionally, Hawkins's discerning reading illuminates core lessons of legal-political civil rights campaigns waged by many law school-housed clinics in partnership with community groups and nonprofit organizations. Among those lessons, three again stand out here. The first lesson reasserts the value of teaching formal and informal methods of race-conscious fact development and

suggests that increasing the staffing of Black teachers may have broader benefits to other student groups as well"); Madeline Will, *Teachers of Color Are Linked to Social-Emotional, Academic Gains for All Students*, EDUC. WEEK (Feb. 8, 2022), <https://www.edweek.org/teaching-learning/teachers-of-color-are-linked-to-social-emotional-academic-gains-for-all-students/2022/02> [https://perma.cc/6V4S-SKSC] (reporting "[t]eachers of color tend to bring specific practices and mindsets into the classroom that benefit all students").

¹⁰² On Black church engagement in the area of affordable housing, see Patrick E. Reidy, *Churching NIMBYS: Creating Affordable Housing on Church Property*, 133 YALE L.J. 1254, 1282-1310 (2024); Conor Dougherty, *What Would Jesus Do? Tackle the Housing Crisis, Say Some Congregations*, N.Y. TIMES (Apr. 27, 2024), <https://www.nytimes.com/2024/04/27/business/affordable-housing-religious-organizations.html>.

investigation in civil rights practice to lay the groundwork for reliable factual determinations at trial and on appeal. The second lesson instructs advocates in the field of public education to devise collaborative, street-level methods of race-conscious fact investigation in cooperation with teachers, staff, parents, students, and local boards both inside and outside of school. The third lesson confirms the pedagogical and practice efficacy of race-identity role model incongruence or mismatching in the daily interchange between Black clients and their nonminority law student advocates within community-based litigation and transactional clinics. For all of us working with community partners in civil rights practice and in legal education, these are lessons worth repeating to our students and to ourselves.