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Health Justice: A Framework (and Call to Action) for the Elimination of Health Inequity and Social Injustice

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Health Justice: A Framework (and Call to Action) for the Elimination of Health Inequity and Social Injustice

ARTICLES

HEALTH JUSTICE: A FRAMEWORK (AND CALL TO ACTION) FOR THE ELIMINATION OF HEALTH INEQUITY AND SOCIAL INJUSTICE

EMILY A. BENFER*

Every aspect of society is dependent upon the health of its members. Health is essential to an individual's well-being, quality of life, and ability to participate in society. Yet the healthcare industry, even at its optimal level of functioning, cannot improve the health of the population without addressing the root causes of poor health. The health of approximately 46.7 million individuals, most of whom are low-income and racial minorities, is threatened by economic, societal, cultural, environmental, and social conditions. Poor health in any population group affects everyone, leading to higher crime rates, negative economic impacts, decreased residential home values, increased healthcare costs, and other devastating consequences. Despite this fact, efforts to improve health among low-income and minority communities are impeded by inequitable social structures, stereotypes, legal systems, and regulatory schemes that are not designed to take into account the social determinants of health in decision making models and legal interpretation. As a result, a

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large segment of the population is continually denied the opportunity to live long, productive lives and to exercise their rights under democratic principles. Health, equity, and justice make up the keystone of a functional, thriving society. These principles are unsatisfied when they do not apply equally to all members of society. This Article describes the social and legal roots of poor health and how health inequity, social injustice, and poverty are inextricably linked. For example, it provides an in depth overview of the social determinants of health, including poverty, institutional discrimination and segregation, implicit bias, residential environmental hazards, adverse childhood experiences, and food insecurity. It then discusses how the law is a determinant of health due to court systems that do not evaluate individual circumstances, the enactment of laws that perpetuate poor health, and the lack of primary prevention laws. It demonstrates how addressing these issues requires true adherence to equality principles and making justice and freedom of opportunity accessible to everyone. Finally, it recommends the creation of "health justice," a new jurisprudential and legislative framework for the achievement and delivery of health equity and social justice.

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INTRODUCTION

The relevance of health equity for social justice in general is hard to overstress.

– Amartya Sen¹

Every aspect of society is dependent upon the health of its members. Health is essential to an individual’s well-being, quality of life, and ability to participate in society. Yet, not all individuals have the same opportunity to live long and productive lives. Minorities and people living in poverty, among other groups outside the traditional power structure, are unjustly burdened by health disparities and the resultant poor quality of life. Poor health within any population group affects all groups, leading to higher crime rates, economic impacts, decreased residential home values, increased healthcare costs, and other devastating consequences. It results in legal issues that drive the development of law in all forums and in a wide range of subject areas, including criminal, family, housing, and civil rights law.

It is widely recognized that poverty is a social determinant of poor health. Paradoxically, however, one can rarely overcome poverty and social disadvantage without health. Despite this fact, efforts to improve health among low-income and minority communities are impeded by inequitable social structures, stereotypes, legal systems, and regulatory schemes that are not designed to take into account the social determinants of health in decision making models and legal interpretation.

This Article sets forth a new jurisprudential and legislative framework for the achievement of health equity and social justice—or “health justice.”² Premised on fundamental principles of equity,

1. Amartya Sen, *Why Health Equity?*, 11 HEALTH ECON. 659, 663 (2002) [hereinafter Sen, *Why Health Equity?*].

2. The term “health justice” is a relatively new term in the field of health and poverty law. This Article introduces health justice as an equity model that is critical to the delivery of health equity and social justice. See Lindsay F. Wiley, *Health Law as Social Justice*, 24 CORNELL J.L. & PUB. POL’Y 47, 86–87 (2014).

health justice requires that all persons have the same chance to be free from hazards that jeopardize health, fully participate in society, and access opportunity. Health justice addresses the social determinants of health that result in poor health for individuals and consequential negative outcomes for society at large.

Part I of this Article provides an overview of the underpinnings of health inequity and examines the social context, institutions, and history that perpetuate poor health, especially among minority and low-income populations. It describes the origins of health disparities in the United States, which are multifaceted and encompass multiple categories of vulnerability, including minority and economic status, and environmental and social factors. Part II examines the link between health and justice, detailing how the legal system is a social determinant of health that can compound and perpetuate health disparities. Part III introduces and describes the necessity for “health justice” jurisprudence in addressing poverty and health inequity and creating a society that can be described as just. Finally, Part III proposes measures necessary to addressing the social determinants of poor health and achieving health justice.

I. THE SOCIAL ROOTS OF HEALTH INEQUITY

There is more to health than health care.

– Risa Lavizzo-Mourey and David R. Williams³

According to the World Health Organization, the “social determinants of health . . . are the conditions in which people are born, grow, work, live, and age, and the wider set of forces and systems shaping the conditions of daily life.”⁴ The social determinants of health often lead to health inequities.⁵ The ability to access life-sustaining resources, such as “food supply, housing, economic and social relationships, transportation, education, and health care . . . effectively determines [the] length and quality of [a

3. Risa Lavizzo-Mourey & David R. Williams, *Strong Medicine for a Healthier America: Introduction*, 40 AM. J. PREVENTIVE MED. S1, S1 (2011).

4. *Social Determinants of Health*, WORLD HEALTH ORG., http://www.who.int/social_determinants/en (last visited Dec. 1, 2015).

5. See WORLD HEALTH ORG., CLOSING THE GAP IN A GENERATION: HEALTH EQUITY THROUGH ACTION ON THE SOCIAL DETERMINANTS OF HEALTH I (2008), http://www.who.int/social_determinants/final_report/csdh_finalreport_2008.pdf (discussing the unequal distribution of wealth and the corresponding effect on health). Part I is meant to provide a foundational understanding of the social determinants of health, rather than an exhaustive examination.

person's] life."⁶ Even the decisions people make about their own health are "more than a matter of personal choice: the decisions that people make about health are shaped by the environment in which they are conceived, raised and live their adult lives."⁷ The overwhelming evidence demonstrates that disadvantaged groups have poorer survival chances and a higher mortality rate, die at a younger age, experience a blighted quality of life, and have overall diminished health and well-being when compared to other members of society.⁸ Ultimately, an individual's health is significantly influenced by economic, cultural, societal, environmental, and social conditions. This Part will discuss the underlying factors presented by each of these conditions.

A. *Economic Conditions*

According to the most recent data from the U.S. Census Bureau, 46.7 million people, or 14.8% of the U.S. population, were living in poverty in 2014.⁹ This is an increase from 37.3 million, or twelve percent of the population, in 2007 and nearly twice the amount of people living in poverty in 1974.¹⁰ Nearly 15.5 million children—

6. LAURA K. BRENNAN RAMIREZ ET AL., CTRS. FOR DISEASE CONTROL & PREVENTION, PROMOTING HEALTH EQUITY: A RESOURCE TO HELP COMMUNITIES ADDRESS SOCIAL DETERMINANTS OF HEALTH 6 (2008), <http://www.cdc.gov/nccdphp/dch/programs/healthycommunitiesprogram/tools/pdf/SDOH-workbook.pdf> (quoting Sherman A. James, Address at the University of North Carolina Minority Health Conference: Social Determinants of Health (Mar. 1, 2002), <http://sph.unc.edu/mhp/minority-student-caucus-minority-health-conference-2002-2>).

7. Alistair Woodward & Ichiro Kawachi, *Why Reduce Health Inequalities?*, 54 J. EPIDEMIOLOGY & COMMUNITY HEALTH 923, 924 (2000).

8. Margaret Whitehead, *The Concepts and Principles of Equity and Health*, 6 HEALTH PROMOTION INT'L 217, 218 (1991).

9. CARMEN DENAVAS-WALT & BERNADETTE D. PROCTOR, U.S. CENSUS BUREAU, INCOME AND POVERTY IN THE UNITED STATES: 2014 12 (2015), <https://www.census.gov/content/dam/Census/library/publications/2015/demo/p60-252.pdf>. The 2015 federal poverty guidelines define a family of four with an income of \$24,250 or below as living in poverty—a slight increase from the \$23,550 threshold defined in 2013. See *2015 Poverty Guidelines*, U.S. DEP'T OF HEALTH & HUMAN SERVS. (Jan. 22, 2015), <http://aspe.hhs.gov/poverty/15poverty.cfm> (providing the 2015 thresholds); *Prior HHS Poverty Guidelines and Federal Register References*, U.S. DEP'T OF HEALTH & HUMAN SERVS. (Sept. 3, 2015), <http://aspe.hhs.gov/poverty/figures-fed-reg.cfm> (providing the thresholds prior to 2015).

10. See CARMEN DENAVAS-WALT ET AL., U.S. CENSUS BUREAU, INCOME, POVERTY, AND HEALTH INSURANCE COVERAGE IN THE UNITED STATES: 2007, at 12 (2008) (providing the poverty rates in 2007); UNITED STATES CENSUS BUREAU, CHARACTERISTICS OF THE POPULATION BELOW THE POVERTY LEVEL: 1974, at 1 (1976), <https://www.census.gov/hhes/www/poverty/publications/p60-102.pdf> (indicating that there were 24.3 million people, or twelve percent of the population, living below the poverty level in 1974).

about one in five—were living in poverty in 2013.¹¹ Of those living in poverty, 20.8 million Americans, or 6.6% of the total U.S. population, and 44.6% of people in poverty, live in *extreme* poverty,¹² which is defined as a household income for a family of four of \$12,000 or less per year.¹³

The risk of poverty is concentrated in communities of color and low-income neighborhoods. For example, the highest rate of poverty by race is within the African American population at 26.2%.¹⁴ Hispanics have the second highest rate of poverty at 23.6%, followed by 12% of the Asian population.¹⁵ The rate of poverty within the white population is the lowest at 10.1%.¹⁶ “[N]early half of poor black children (45%) live in concentrated poverty tracts, *nine* times the rate for poor white children.”¹⁷

Poverty is a determining factor in an individual’s or family’s socioeconomic status.¹⁸ Socioeconomic status is a measure of a

11. DENAVAS-WALT & PROCTOR, *supra* note 9, at 14.

12. *Id.* at 17.

13. H. Luke Shaefer & Kathryn Edin, *The Rise of Extreme Poverty in the United States*, PATHWAYS, Summer 2014, at 29, 31 (estimating that 1.65 million households with approximately 3.55 million children were surviving on two dollars or less per person per day in 2011).

14. DENAVAS-WALT & PROCTOR, *supra* note 9, at 12–14.

15. *Id.*

16. *Id.*

17. Alexander Polikoff, *Housing Mobility: Why Is It So Controversial?*, POVERTY & RACE, July/Aug. 2015, at 3, 6 (citing ANNIE E. CASEY FOUND., KIDSCOUNT DATA SNAPSHOT ON HIGH-POVERTY COMMUNITIES 2 (2012), <http://www.aecf.org/resources/data-snapshot-on-high-poverty-communities> (finding that children whose families live in poverty are also more likely to live in a community made up of residents who also live below the poverty threshold)); *see also* PAUL A. JARGOWSKY, THE CENTURY FOUND. & RUTGERS CTR. FOR URBAN RES. & EDUC., CONCENTRATION OF POVERTY IN THE NEW MILLENNIUM: CHANGES IN THE PREVALENCE, COMPOSITION, AND LOCATION OF HIGH POVERTY NEIGHBORHOODS 1–2 (2013), http://www.tcf.org/assets/downloads/Concentration_of_Poverty_in_the_New_Millennium.pdf (explaining that the number of census tracts with poverty rates of forty percent or more—“high poverty tracts”—increased by fifty percent between 2000 and 2011).

18. Socioeconomic status is “conceptualized as the social standing or class of an individual or group. It is often measured as a combination of education, income and occupation.” *Socioeconomic Status*, AM. PSYCHOL. ASS’N, <http://www.apa.org/topics/socioeconomic-status> (last visited Dec. 1, 2015); *see* Donna Rae Scheffer, *Can You Name the U.S. Socio-Economic Levels?*, WASH. TIMES (Dec. 31, 2014), <http://www.washingtontimes.com/news/2014/dec/31/can-you-name-us-socio-economic-levels/?page=all> (identifying twelve socio-economic levels: (1) generational poverty, (2) working poor, (3) working class, (4) situational poverty, (5) risen from the poverty class, (6) illusory middle class, (7) lower aspiring middle class, (8) solidly middle class, (9) upper middle class, (10) millionaire middle class, (11) owning rich, and (12) ruling rich); *see cf.* Nancy Adler & Ichiro Kawachi, Presentation

person's or family's income, education, and occupation in relation to another's.¹⁹ The lower an individual's socioeconomic status is, the more limited their resources and ability to access goods and services are.²⁰

Resource inequality and income distribution in society, and not solely genetics and access to healthcare, explain a person's health status.²¹ It is well documented that poverty and lower socioeconomic status are strongly linked to poor health outcomes.²² One's socioeconomic status has a significant effect on health and, in turn, health affects one's ability to improve status. For example, in the United States, a person's socioeconomic status largely determines health and longevity.²³ The risk of dying before the age of sixty-five is more than three times greater for those with low socioeconomic status than for those with high.²⁴ "Within the United States, income inequality²⁵ accounts for about [twenty-five percent] of the between-state variance in age-adjusted mortality rates independent of state median income."²⁶ States with the highest income inequality have lower rates of improved life expectancy among residents with low socioeconomic status,

Before the Nat'l Health Policy Forum, *Reaching for a Healthier Life: Facts on Socioeconomic Status and Health in the U.S.* 7 (Mar. 14, 2008), http://www.nhpf.org/library/handouts/Adler.Kawachi.slides_03-14-08.pdf (asserting that social circumstances were a contributing factor to premature morbidity in fifteen percent of cases).

19. *Socioeconomic Status*, *supra* note 18.

20. *Age & Socioeconomic Status*, AM. PSYCHOL. ASS'N, <http://www.apa.org/pi/ses/resources/publications/factsheet-age.pdf> (emphasizing the effect of socioeconomic status on older and retired adults).

21. See Norman Daniels, *Justice, Health, and Healthcare*, J. BIOETHICS, Spring 2001, at 2, 7 (discussing the relative-income hypothesis, which states "that inequality is strongly associated with population mortality and life-expectancy across nations").

22. Adler & Kawachi, *supra* note 18, at 2–3, 10 (explaining that poverty and lower socioeconomic status are linked to a higher risk for premature death, asthma, high blood pressure, poor glucose, and inflammation).

23. See *id.* at 11.

24. *Id.*

25. Income inequality refers to the uneven distribution of income throughout a population. See *Measuring Inequality: Poverty Reduction & Equity*, THE WORLD BANK, <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTPOVERTY/EXTPA/0,,contentMDK:20238991~menuPK:492138~pagePK:148956~piPK:216618~theSitePK:430367,00.html> (last visited Dec. 1, 2015) (explaining the commonly used Gini-coefficient measurement of inequality, which measures inequality with a coefficient between zero—complete equality—and one—complete inequality).

26. Norman Daniels et al., *Justice, Health, and Health Policy*, in *ETHICAL DIMENSIONS OF HEALTH POLICY* 19, 25 (Marion Danis et al. eds., 2002) (citation omitted). This is independent of state median income. With regard to the health of a population, it is not merely the overall wealth of a nation, but how the wealth is distributed that matters. *Id.* at 24–25.

especially when compared to states with more even income distributions.²⁷ Overall, there is a negative correlation between socioeconomic status and premature birth, low birth weight, birth defects,²⁸ signs of future disease,²⁹ chronic diseases,³⁰ infectious diseases,³¹ and disabilities.³²

B. Societal and Cultural Conditions

In addition to economic conditions, the societal and cultural environment, such as societal responses to race or sexual orientation,³³ can also have a significant impact on an individual's

27. See Nancy E. Adler & Katherine Newman, *Socioeconomic Disparities in Health: Pathways and Policies*, HEALTH AFFAIRS, Mar./Apr. 2002, at 60, 62 (explaining that health effects occur both due to relative and absolute deprivation); Woodward & Kawachi, *supra* note 7, at 925–26 (providing international examples of where widening wealth gaps coincided with worsening mortality rates).

28. See Woodward & Kawachi, *supra* note 7, at 927.

29. See Adler & Kawachi, *supra* note 18, at 7 (including high blood pressure, obesity, and a weakened immune system).

30. See Adler & Newman, *supra* note 27, at 60 (observing that some chronic diseases are correlated with low socioeconomic status, including diabetes, heart disease, and many forms of cancer). A 2012 Gallup poll found that Americans living in poverty are more likely to suffer from chronic health conditions, including depression, asthma, obesity, and diabetes. Alyssa Brown, *With Poverty Comes Depression, More Than Other Illnesses*, GALLUP (Oct. 30, 2012), http://www.gallup.com/poll/158417/poverty-comes-depression-illness.aspx?utm_source=alert&utm_medium=email&utm_campaign=syndication&utm_content=morelink&utm_term=All%20Gallup%20Headlines.

31. See Woodward & Kawachi, *supra* note 7, at 924–25 (noting that although infectious disease epidemics often first emerge “in conditions of poverty and disorder,” they can eventually spread to anyone).

32. Low socioeconomic status increases the likelihood of developing asthma, learning disabilities, and a decline in physical strength, among other disabilities and impairments. BARBARA BLOOM ET AL., CTRS. FOR DISEASE CONTROL, SUMMARY HEALTH STATISTICS FOR U.S. CHILDREN: NATIONAL HEALTH INTERVIEW SURVEY, 2012, at 4 (2013), http://www.cdc.gov/nchs/data/series/sr_10/sr10_258.pdf. In a 2012 summary of data collected from the National Health Interview Survey, the Centers for Disease Control and Prevention (CDC) reported that children in poor families were more likely to have been diagnosed with asthma (nineteen percent) or to have chronic asthma (thirteen percent) than children in families that were not poor (twelve percent and eight percent, respectively). *Id.*

33. Discrimination in the form of homophobia can have devastating effects on an individual's health. Although not conclusive, the preliminary results of a case study on the Lesbian-Gay-Bisexual-Transsexual (LGBT) community in India show that, among people who experienced discrimination on the basis of sexual orientation, the rate of depression is six to twelve times higher than average, and suicidal thoughts occur seven to fourteen times more frequently. M.V. Lee Badgett, *The Economic Cost of Homophobia & the Exclusion of LGBT People: A Case Study of India* (Feb. 2014) (preliminary results), <http://www.worldbank.org/content/dam/>

health. Discrimination in any form can raise the risk of emotional or physical problems, such as depression, hypertension, breast cancer, and early mortality.³⁴ This is true for both the act of discrimination through institutional mechanisms, such as segregation, and the subjective experience of discrimination, whether it is overt or implicit in nature.³⁵

1. *Institutional discrimination and segregation*

Racial, ethnic, and economic discrimination and segregation have long-term consequences. In 1935, the Federal Home Loan Bank Board (FHLBB) asked the Home Owners' Loan Corporation (HOLC) to look at 239 cities and create "residential security maps" indicating the level of security for real estate investments in each surveyed city.³⁶ Cities were color-coded and ranked on a scale of one to four, A to D, and by color to indicate levels of real estate risk.³⁷

Worldbank/document/SAR/economic-costs-homophobia-lgbt-exclusion-india.pdf; see Michael Friedman, *The Psychological Impact of LGBT Discrimination*, PSYCHOL. TODAY (Feb. 11, 2014), <https://www.psychologytoday.com/blog/brick-brick/201402/the-psychological-impact-lgbt-discrimination> (explaining that LGBT individuals who suffer workplace discrimination have higher levels of psychological distress and health related problems than those who have not experienced discrimination). Furthermore, the economic burden of homophobia is \$30.8 billion–\$23.1 billion due to health disparities and \$7.7 billion in labor related losses. André Rhoden-Paul, *World Bank: Homophobia Costs Indian Economy 30.8 Billion Dollars*, PINKNEWS (June 16, 2014, 1:57 PM), <http://www.pinknews.co.uk/2014/06/16/world-bank-homophobia-costs-indian-economy-30-8-billion-dollars>. See generally COMM. ON LESBIAN, GAY, BISEXUAL, & TRANSGENDER HEALTH ISSUES & RESEARCH GAPS & OPPORTUNITIES, INST. OF MED., *THE HEALTH OF LESBIAN, GAY, BISEXUAL, AND TRANSGENDER PEOPLE: BUILDING A FOUNDATION FOR BETTER UNDERSTANDING I* (2011) ("[A]ssessing the state of the science on the health status of lesbian, gay, bisexual, and transgender populations . . .").

34. Jason Silverstein, *How Racism Is Bad for Our Bodies*, THE ATLANTIC (Mar. 12, 2013), <http://www.theatlantic.com/health/archive/2013/03/how-racism-is-bad-for-our-bodies/273911>; see David R. Williams, *Discrimination and Health*, in 1 ENCYCLOPEDIA OF HEALTH & BEHAVIOR 254, 255–56 (Norman B. Anderson ed., 2004) (discussing the positive correlation between perceptions of discrimination and poor mental health, including depression). The concept of implicit bias in healthcare explains racial disparities in health through the biological effects of discrimination and is known as the embodiment of racial inequality. See Clarence C. Gravlee, *How Race Becomes Biology: Embodiment of Social Inequality*, 139 AM. J. PHYSICAL ANTHROPOLOGY 47, 47–48 (2009) (discussing how "the sociocultural reality of race and racism has biological consequences for racially defined groups").

35. Williams, *supra* note 34, at 254–55.

36. Amy E. Hillier, *Redlining and the Home Owners' Loan Corporation*, 29 J. URBAN HIST. 394, 395 (2003).

37. *Id.* The Home Owners' Loan Corporation (HOLC) established four categories of quality, "entitled First, Second, Third, and Fourth, with corresponding code letters of A, B, C, and D and colors of green, blue, yellow, and red . . ." KENNETH T. JACKSON, *CRABGRASS FRONTIER: THE SUBURBANIZATION OF THE UNITED*

Neighborhoods that were deemed hazardous for investment were color-coded red and received a grade of four, which prompted loan companies to refuse mortgage loans to anyone living in “redlined” neighborhoods.³⁸ The mere presence of a small African American population in an entire community resulted in a color code of red, a grade of D, and a rank of four.³⁹ Neighborhoods with African American or Latino residents were consistently redlined, along with other low-income neighborhoods with older and substandard housing conditions.⁴⁰ The Federal Housing Administration (FHA) and, shortly thereafter, the Veterans Administration (VA), followed the HOLC’s appraisal practices when determining the degree of risk associated with \$119 billion of mortgage insurance.⁴¹ The FHA and VA acted on the information included in HOLC’s appraisal practices to clearly favor homogeneous subdivisions and discriminate against racial and ethnic minorities.⁴² The FHA went so far as to recommend racially restrictive covenants and required a rigid white-black separation to retain neighborhood stability.⁴³ This resulted in the

STATES, 196–98 (1985) (footnote omitted). The first grade of green described areas that were “homogenous,” meaning American business and professional men and excluding Jewish neighborhoods, and was considered “in demand as residential locations in good times and bad.” *Id.* at 197. The second grade of blue described areas that were “still desirable” but had “reached their peak” and were expected to remain stable for many years. *Id.* The third grade of yellow described “definitely declining” areas. *Id.* The fourth grade of red described areas in which “the things taking place” in the third grade areas had “already happened.” *Id.* at 197–98. “[B]lack neighborhoods were invariably rated as Fourth grade, but so . . . were any areas characterized by poor maintenance or vandalism.” *Id.* at 198.

38. See Juan F. Perea, *Doctrines of Delusion: How the History of the G.I. Bill and Other Inconvenient Truths Undermine the Supreme Court’s Affirmative Action Jurisprudence*, 75 U. PITT. L. REV. 583, 598 (2014) (“Federal underwriting guidelines thus directed and enabled race discrimination by private banks and real-estate brokers.”).

39. See *id.* (“In Detroit, every neighborhood ‘with even a tiny African American population was rated ‘D’ or ‘hazardous’ by federal appraisers”).

40. The HOLC is not the initial source of including race and ethnicity in real-estate appraisal. See JACKSON, *supra* note 37, at 196–99 (recognizing that not only did realtors consider race in determining how a house would sell, but also that academic writings in the 1920s and 30s stated that the presence of “least desirable” elements in a neighborhood would bring down housing prices). Some public subsidies were used to further racism and segregation. See Perea, *supra* note 38, at 588–601 (discussing racism in implementation of the G.I. Bill and services at Veterans’ Administration hospitals).

41. See JACKSON, *supra* note 37, at 215 (“[T]he HOLC developed real-estate appraisal methods that discriminated against racial and ethnic minorities and against older, industrial cities.”).

42. See *id.*

43. See *id.* at 208 (asserting that the Federal Housing Administration (FHA) feared that if a neighborhood was not rigidly segregated, it would become unstable

prevention of wealth accumulation among minorities,⁴⁴ urban disinvestment, and lasting segregation.⁴⁵ The effects remain apparent today.⁴⁶ In 2010, the median wealth, or net worth, for African

and lose its investment value, which caused the FHA to bluntly warn that neighborhoods should be only occupied by one social and racial class).

44. See MELVIN L. OLIVER & THOMAS M. SHAPIRO, *BLACK WEALTH / WHITE WEALTH: A NEW PERSPECTIVE ON RACIAL INEQUALITY* 18–19 (1997) (arguing that, due to the FHA’s discriminatory practices, African Americans who desired and could afford home ownership were “consigned to central-city communities where their investments were . . . cut off from sources of new investment [and] their homes and communities deteriorated,” creating a “lasting impact on the wealth portfolios of black Americans”); see also THOMAS M. SHAPIRO, *THE HIDDEN COST OF BEING AFRICAN AMERICAN* 61, 63 (2004) (discussing the significance of “handed-down, transformative assets” in building net worth); Julian Bond, *Historical Perspectives on Fair Housing*, 29 J. MARSHALL L. REV. 315, 317 (1996) (arguing that current ghetto residents live there as a result of historical governmental housing policies and practices).

45. See JOHN R. LOGAN, *SEPARATE AND UNEQUAL IN SUBURBIA* 3–4, 6–7 (Dec. 1, 2014), <http://www.s4.brown.edu/us2010/Data/Report/report12012014.pdf> (“[T]he average black suburbanite lived in a neighborhood that was 35.6% black in 2010, more than a three-to-one disproportion. Although 68.7% of suburban residents were white, the average black suburbanite’s neighborhood was only 44.6% white.”). White neighborhoods have about half as many residents below the poverty line as Hispanic or African American neighborhoods. See *id.* at 6 (stating that the average poverty rates for white, black, and Hispanic neighborhoods were 7%, 11.4%, and 12%, respectively). This is true even when controlling for income. See *id.* at 7 (“In fact, lower income whites live in neighborhoods with a lower poverty rate (8.2%) than affluent Hispanics (9.6%) or blacks ([9%]).”). Today, although segregation from neighborhood to neighborhood (micro-segregation) has decreased slightly in metropolitan areas (i.e., black-white neighborhood segregation decreased from 67.5% to 62.1%), suburban communities are becoming increasingly homogenous. Daniel T. Lichter et al., *Toward a New Macro-Segregation? Decomposing Segregation Within and Between Metropolitan Cities and Suburbs*, 80 AM. SOC. REV. 843, 844, 846 (2015). For instance, the population of Ferguson, Missouri became significantly more homogenous over a twenty-year period, as white residents left that suburb for one even further away from the city. Daniel Lichter states, “Whites have left Ferguson mostly for white suburban communities even farther from the urban core that is St. Louis. The racial composition of Ferguson went from about [twenty-five] percent black to [sixty-seven] percent black in a [twenty]-year period. Though one would be correct in saying that segregation decreased between neighborhoods in Ferguson, the change simply reflects massive white depopulation.” *Racial Segregation Takes New Forms, Study Shows*, CORNELL CHRON. (July 30, 2015), <http://www.news.cornell.edu/stories/2015/07/racial-segregation-takes-new-forms-study-shows>.

46. See Janell Ross, *A Rundown of Just How Badly the Fair Housing Act Has Failed*, WASH. POST (July 10, 2015), <http://www.washingtonpost.com/blogs/the-fix/wp/2015/07/10/a-look-at-just-how-badly-the-fair-housing-act-has-failed> (discussing how the vast majority of the nation’s neighborhoods remain deeply segregated due to the government’s failure to adequately enforce the Fair Housing Act of 1968 and the resulting adverse health effects related to education and employment outcomes for minority populations). “Instead of building subsidized

American families was \$4,900, compared to the median wealth for white families of \$97,000.⁴⁷ As Figures 1, 2, and 3 below demonstrate, geographically, current poverty and demographic maps track almost identically with the 1930s redlined areas. Even today, some government officials are open about their goals of segregation. In Sunnyvale, Texas, for example, a town councilman supported “high standard” land policies because “it kept niggers out.”⁴⁸

*Figure 1: HOLC Residential Security Map of Chicago (1939)*⁴⁹



housing in racially integrated areas that offer minority citizens access to jobs and good schools, local governments have deepened racial isolation by placing such housing in existing ghettos.” Editorial, *Affordable Housing, Racial Isolation*, N.Y. TIMES (June 29, 2015), <http://www.nytimes.com/2015/06/29/opinion/affordable-housing-racial-isolation.html> (discussing *Tex. Dep’t of Hous. & Cmty. Affairs v. Inclusive Cmty. Project, Inc.*, 135 S. Ct. 2507 (2015), in which the Supreme Court broadly interpreted the Fair Housing Act of 1968 and allowed the plaintiffs to challenge a discriminatory housing policy without having to prove that the policy was intentional).

47. ECON. POLICY INST., STATE OF WORKING AMERICA KEY NUMBERS: AFRICAN AMERICANS, <http://stateofworkingamerica.org/files/book/factsheets/african-americans.pdf>.

48. Thomas Korosec, *Sunnyvale: The Whitest Town in North Texas*, D MAG. (Mar. 2012), <http://www.dmagazine.com/publications/d-magazine/2012/march/sunnyvale-the-whitest-town-in-north-texas> (discussing Sunnyvale’s torrid history of being sued for perpetuating racial segregation by enacting zoning laws that essentially prohibited the development of affordable housing for “black families of low and moderate incomes”).

49. The darkest shaded areas in this Figure represent hazardous real estate markets where homeowners were denied FHA-backed mortgages. Ta-Nehisi Coates, *The Case for Reparations*, ATLANTIC (June 2014), <http://www.theatlantic.com/features/archive/2014/05/the-case-for-reparations/361631>.

Figure 2: *Racial Demographic Map of Chicago (2010 Census)*⁵⁰

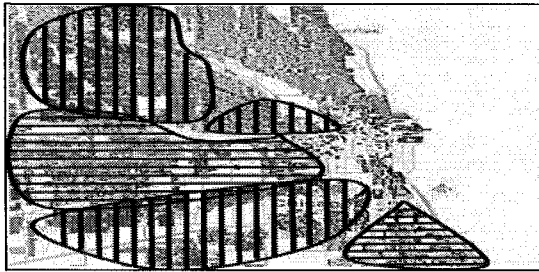
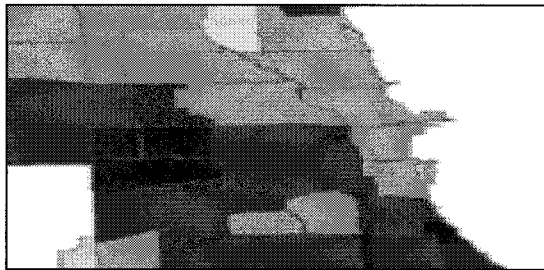


Figure 3: *Map of Poverty in Chicago*⁵¹



2. *Implicit bias*

Despite anti-discrimination laws and policies⁵² and the efforts of civil rights leaders to end racial segregation and discrimination

50. Areas with vertical lines represent the African American population and areas with horizontal lines represent the Latino population. Kyle Vanhemert, *The Best Map Ever Made of America's Racial Segregation*, WIRED (Aug. 26, 2013, 6:30 AM), <http://www.wired.com/2013/08/how-segregated-is-your-city-this-eye-opening-map-shows-you> (map created by Dustin Cable at the University of Virginia's Weldon Cooper Center for Public Service using data from the 2010 U.S. Census). The original map appears in color. Given that this Article appears only in black and white, the Editors have added vertical and horizontal lines for clarity.

51. This Map of Poverty illustrates data from the U.S. Census Bureau's 2007–11 American Community Survey five year estimates program. The darker the shade, the higher the poverty concentration. SOC. IMPACT RESEARCH CTR., *ILLINOIS'S 33%: REPORT ON ILLINOIS POVERTY* 7 (2013), http://www.ilpovertyreport.org/sites/default/files/uploads/Illinois_33percent_PovertyReport_FINAL.pdf.

52. See JODY FEDER, CONG. RESEARCH SERV., RL33386, *FEDERAL CIVIL RIGHTS STATUTES: A PRIMER 1–7* (2012) (providing a general overview of federal civil rights laws, including the Americans with Disabilities Act of 1990 (ADA), the Civil Rights Act of 1964, the Fair Housing Act, the Equal Credit Opportunity Act, and the Voting Rights Act of 1965); Florence Wagman Roisman, *Mandates Unsatisfied: The Low Income Housing Tax Credit Program and the Civil Rights Laws*, 52 U. MIAMI L. REV. 1011, 1022–23 (1998) (discussing civil rights laws affecting the low-income housing tax credit).

against African Americans,⁵³ perceptual challenges remain and often result in devastating outcomes to health and even life.⁵⁴ Implicit bias, racial anxiety, and stereotype threat are developed on an unconscious level and in reaction to societal and institutional conditions.⁵⁵ Implicit bias is a “bias in judgment and/or behavior that results from subtle cognitive processes (e.g., implicit attitudes and implicit stereotypes) that often operate at a level below conscious awareness and without intentional control.”⁵⁶ In other words, it is the automatic

53. See generally RAYMOND ARSENAULT, *FREEDOM RIDERS: 1961 AND THE STRUGGLE FOR RACIAL JUSTICE* 2–3 (2006) (providing an overview of the history of the Freedom Rider movement, “a broad-based movement involving hundreds of activists representing a number of allied local, regional, and national civil rights organizations” that “challenged federal officials to enforce the law[s]” requiring desegregation of facilities used in interstate travel); TAYLOR BRANCH, *AT CANAAN’S EDGE: AMERICA IN THE KING YEARS, 1965–68*, at 48–49 (2006) (discussing the final three years of Martin Luther King Jr.’s life and the Civil Rights Movement, beginning with the marches to Selma and ending with King’s assassination); TAYLOR BRANCH, *PARTING THE WATERS: AMERICA IN THE KING YEARS 1954–63*, at xi (1988) (providing a broad narrative of the Civil Rights Movement that discusses Martin Luther King Jr., Mother Pollard, President Eisenhower, Bob Moses, and J. Edgar Hoover); JUAN WILLIAMS, *EYES ON THE PRIZE: AMERICA’S CIVIL RIGHTS YEARS, 1954–1965*, at 3, 255 (1987) (compiling stories about the people and places of the Civil Rights Movement, beginning with school desegregation and ending with the march on Selma).

54. See RACHEL D. GODSIL ET AL., *PERCEPTION INST., ADDRESSING IMPLICIT BIAS, RACIAL ANXIETY, AND STEREOTYPE THREAT IN EDUCATION AND HEALTHCARE* 17 (2014), http://diversity.berkeley.edu/sites/default/files/ScienceofEquality_web.pdf (discussing killings of unarmed black men); Gerald Wing Sue et al., *Racial Microaggressions in Everyday Life: Implications for Clinical Practice*, 62 *AM. PSYCHOLOGIST* 271, 272, 279 (2007) (discussing how the culminating effect of daily common experiences of racial aggression (“microaggressions”) can have devastating effects on minorities that could include “diminished mortality, augmented morbidity[,] and flattened confidence” (quoting Chester M. Pierce, *Stress Analogs of Racism and Sexism: Terrorism, Torture, and Disaster*, in *MENTAL HEALTH, RACISM, AND SEXISM* 277, 281 (Charles V. Willie et al. eds., 1995))).

55. GODSIL ET AL., *supra* note 54, at 44; see Jim Tankersley et al., *Half of American Whites See No Racism Around Them*, *WASH. POST* (June 18, 2015), <http://www.washingtonpost.com/blogs/wonkblog/wp/2015/06/18/half-of-american-whites-see-no-racism-around-them/> (“[H]alf of white people do not sense black people are treated less fairly than whites—by police, employers, doctors, restaurants and schools, and at the ballot box. . . . The whites who see no racism around them are far more conservative than the population as a whole, more often male[,] and more likely to live in rural areas. Three-fifths of white Republicans see no racism, compared to about a third of white Democrats.”).

56. PAMELA M. CASEY ET AL., *NAT’L CENTER FOR STATE COURTS., HELPING COURTS ADDRESS IMPLICIT BIAS: RESOURCES FOR EDUCATION B-2* (2012), [http://www.ncsc.org/~media/Files/PDF/Topics/Gender%20and%20Racial%20Fairness/IB_report_033012.ashx](http://www.ncsc.org/~/media/Files/PDF/Topics/Gender%20and%20Racial%20Fairness/IB_report_033012.ashx). For an overview of the unconscious and automatic mental processes leading to implicit bias, how implicit bias is measured by social

association of stereotypes with particular groups.⁵⁷ These automatic associations become problematic when they are assumed to predict real world behavior and when decision making is based on them.⁵⁸ Automatic negative associations with stereotypes or implicit racial attitudes, while existing in the unconscious, become displayed through the individual's behavior.⁵⁹ These behaviors are often apparent in microaggressions, which are "brief and commonplace daily verbal, behavioral, and environmental indignities, whether intentional or unintentional, that communicate hostile, derogatory, or negative racial slights and insults to the target person or group."⁶⁰

Implicit bias and, historically, overt racism, have severe consequences for minority health.⁶¹ For example, a doctor with

cognitionists, and the consequences of implicit bias (namely alterations in behavior), see Jerry Kang, *Trojan Horses of Race*, 118 HARV. L. REV. 1489, 1491–94, 1498–99, 1506–16 (2005) (exploring implicit bias against racial minorities), and Justin D. Levinson, *Forgotten Racial Equality: Implicit Bias, Decisionmaking, and Misremembering*, 57 DUKE L.J. 345, 355, 357–62 (2007) (claiming that judges and jurors unknowingly misremember case facts in racially biased ways). The most commonly used measurement tool is the Implicit Association Test ("IAT"), which measures how closely two concepts are related to one another. See *Overview*, PROJECT IMPLICIT, <https://implicit.harvard.edu/implicit/education.html> (last visited Dec. 1, 2015) (explaining the IAT); *Take a Test*, PROJECT IMPLICIT, <http://www.implicit.harvard.edu> (last visited Dec. 1, 2015) (providing an example of the IAT). See generally Anthony G. Greenwald et al., *Understanding and Using the Implicit Association Test: III. Meta-Analysis of Predictive Validity*, 97 J. PERSONALITY & SOC. PSYCHOL. 17, 18 (2009) (providing an extensive review of the predictive value of the IAT).

57. CASEY ET AL., *supra* note 56, at 1. A 2012 report explains that "[w]e naturally assign people into various social categories divided by salient and chronically accessible traits [S]ome of the underlying cognitions include stereotypes, which are simply traits that we associate with a category." These schemes can be helpful, but can also "lead to discriminatory behaviors if we are not careful." *Id.* at A-4, A-5.

58. See Levinson, *supra* note 56, at 357, 359–60 (discussing the existence of a hiring bias against "African-American sounding names" when compared to "White-sounding names" and the existence of a "shooter bias" where individuals demonstrate a propensity to shoot black perpetrators more quickly and more frequently than white perpetrators when playing a shooting simulation video game).

59. See Kang, *supra* note 56, at 1523 (noting that "implicit bias, as measured by reaction time studies," has predicted "behavior in stranger-to-stranger social interactions such as interviews and face-to-face meetings").

60. Wing Sue et al., *supra* note 54, at 273.

61. Medical science in the United States has a lengthy historical record of egregious and abusive medical experimentation on African Americans, including the Tuskegee syphilis study, in which 400 low-income African Americans were left untreated for syphilis solely so researchers could observe the effects of the devastating disease postmortem; forced sterilization; and obstetric experiments. See HARRIET A. WASHINGTON, *MEDICAL APARTHEID: THE DARK HISTORY OF MEDICAL EXPERIMENTATION ON BLACK AMERICANS FROM COLONIAL TIMES TO THE PRESENT* 2–5

implicit racial bias will be less likely to refer minority patients to a specialist or may recommend surgery over a less invasive treatment.⁶² In one study, physicians were forty percent less likely to refer African American patients for cardiac catheterization than white patients.⁶³ In another study, the more negative the doctors' implicit attitudes, the less likely the doctors were to recommend thrombolytic drugs for African American patients.⁶⁴ Approximately twenty-five percent of surveyed minority participants felt discriminated against in their healthcare, affecting the overall quality of treatment and services.⁶⁵ It is estimated that these cultural conditions cost society as much as \$82 billion, including an additional \$60 billion in excess medical costs and \$22 billion in lost productivity.⁶⁶

Implicit bias permeates the justice system in the same way it does society, altering the course of decision making.⁶⁷ "African Americans are more likely to be stopped, questioned, and searched than whites."⁶⁸ African Americans are more likely to be associated with guns and other weapons.⁶⁹ Prosecutors are more likely to charge

(2006) (providing a detailed account of the long history of abuse of African Americans in the U.S. medical field).

62. See GODSIL ET AL., *supra* note 54, at 12 (observing that doctors' bias mirrors that of the general population, but this bias can manifest in both bedside manner and treatment referrals); Hayley Roberts, *Implicit Bias and Social Justice*, OPEN SOC'Y FOUNDS. (Dec. 18, 2011), <http://www.opensocietyfoundations.org/voices/implicit-bias-and-social-justice> (asserting that a doctor with bias may be more likely to recommend surgery over a less invasive alternative to his or her African American patients).

63. GODSIL ET AL., *supra* note 54, at 41.

64. *Id.* at 42.

65. Maureen R. Benjamins & Steven Whitman, *Relationships Between Discrimination in Health Care and Health Care Outcomes Among Four Race/Ethnic Groups*, 37 J. BEHAV. MED. 402, 408–09 (2014).

66. ANI TURNER ET AL., W.K. KELLOGG FOUND., *THE BUSINESS CASE FOR RACIAL EQUITY* 5 (2013), <https://www.wkkf.org/resource-directory/resource/2013/10/the-business-case-for-racial-equity>.

67. See MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* 96–97 (2010) (explaining that the grossly disproportionate rates of incarceration for drug-crimes between African Americans and whites result from racial bias); MARK PEFFLEY & JON HURWITZ, *JUSTICE IN AMERICA: THE SEPARATE REALITIES OF BLACKS AND WHITES* 30 (2010) (discussing racial disparities in incarceration rates, specifically that African Americans are more likely to be incarcerated and sentenced disproportionately to serve time in prison); see also Sara K. Rankin, *Invidious Deliberation: The Problem of Congressional Bias in Federal Hate Crime Legislation*, 66 RUTGERS L. REV. 563, 563 (2014) (discussing bias in legislative decision making).

68. TURNER ET AL., *supra* note 66, at 15.

69. See Michael B. Hyman, *Implicit Bias in the Courts*, 102 ILL. B.J. 40, 42 (2014) (outlining studies that show people implicitly associate African Americans with guns and other weapons); Robert J. Smith & Justin D. Levinson, *The Impact of Implicit Racial*

African American suspects than white suspects for the same actions.⁷⁰ African Americans are twenty percent more likely to be sentenced to prison and twenty-one percent more likely to receive mandatory minimum sentences than are white defendants facing an eligible charge.⁷¹ Decision makers, including juries and judges, are not immune to implicit bias and are easily primed by external factors to act on implicit bias.⁷² “Just one biased juror infringes on a defendant’s right to a fair criminal trial.”⁷³ Judges sentenced dark-skinned defendants up to eight months longer than lighter-skinned peers charged with committing identical crimes.⁷⁴ These overwhelming data make it clear that social determinants of health in the form of societal and cultural conditions negatively affect the health of minorities and marginalized populations. Environmental conditions have similar consequences for health outcomes.

Bias on the Exercise of Prosecutorial Discretion, 35 SEATTLE U. L. REV. 795, 802, 807 (2012) (discussing an empirical study indicating that a majority of tested Americans harbor negative implicit attitudes towards African Americans, ultimately associating African Americans with aggression, hostility, and guns).

70. Hyman, *supra* note 69, at 42; see John F. Irwin & Daniel L. Real, *Unconscious Influences on Judicial Decision-Making: The Illusion of Objectivity*, 42 MCGEORGE L. REV. 1, 2–3 (2011).

71. See THE SENTENCING PROJECT, THE STATE OF CIVIL AND HUMAN RIGHTS IN THE UNITED STATES 6 (2014), http://www.sentencingproject.org/doc/publications/rd_Statement_for_SJC_Hearing_on_Civil_and_Human_Rights_in_the_U.S._Dec_2014.pdf (prepared statement of Marc Mauer, Executive Director of the Sentencing Project) (explaining that one reason why white defendants receive less than the mandatory minimum is “law enforcement priorities”).

72. See Hyman, *supra* note 69, at 43.

73. *Id.*; see also *Ristaino v. Ross*, 424 U.S. 589, 595 n.6 (1976) (stating that the right to an impartial jury is guaranteed by both the Sixth Amendment, made applicable to the states through the Fourteenth Amendment, and principles of due process).

74. Roberts, *supra* note 62; see Matthew I. Fraidin, *Decision-Making in Dependency Court: Heuristics, Cognitive Biases, and Accountability*, 60 CLEV. ST. L. REV. 913, 916 (2013) (exploring factors that “cause decision-makers to ignore relevant information, to prioritize irrelevant information, or to place too much or too little weight on information that is available to them”); Chris Guthrie et al., *Inside the Judicial Mind*, 86 CORNELL L. REV. 777, 779 (2001) (suggesting that even highly qualified judges rely on cognitive decision making processes that can result in systematic errors in judgment); Irwin & Real, *supra* note 70, at 2–3 (arguing that implicit biases can be particularly problematic in judicial decision making because judges can produce behavior that diverges from a person’s endorsed beliefs); Jeffrey J. Rachlinski et al., *Does Unconscious Racial Bias Affect Trial Judges?*, 84 NOTRE DAME L. REV. 1195, 1197 (2009) (finding that judges harbor the same kinds of implicit biases as others and that these biases can influence their judgment, but, given sufficient motivation, judges can compensate for the influence of these biases on their decision making).

C. *Environmental Conditions*

Poor health is often the result of environmental hazards commonly found in low-income neighborhoods.⁷⁵ Individuals and families in poverty have less control over the built⁷⁶ and natural environment, and few to no alternatives to substandard housing.⁷⁷ They suffer negative health effects resulting from exposure to old, inadequate housing units.⁷⁸ Nationwide, inadequate conditions, age, and affordability of housing sustain current health trends.⁷⁹ The

75. According to the U.S. Surgeon General, “In the United States today the leading preventable causes of death, disease, and disability are asthma, lead poisoning, deaths in house fires, [and] falls on stairs and from windows” U.S. DEP’T OF HEALTH & HUMAN SERVS., *THE SURGEON GENERAL’S CALL TO ACTION TO PROMOTE HEALTHY HOMES* vii (2009), http://www.ncbi.nlm.nih.gov/books/NBK44192/pdf/Bookshelf_NBK44192.pdf; see *Healthy Homes Policy Development*, HEALTH JUST. PROJECT, <http://luc.edu/law/centers/healthlaw/hjp/policy.html> (last visited Dec. 1, 2015) (providing a detailed list of sources discussing environmental health hazards).

76. Built environment refers to the physical structures and infrastructure of communities. MANAL J. ABOELATA ET AL., *THE BUILT ENVIRONMENT AND HEALTH: 11 PROFILES OF NEIGHBORHOOD TRANSFORMATION I* (2004), http://www.preventioninstitute.org/index.php?option=com_jlibrary&view=article&id=114&Itemid=127; see VIRGINIA LEE ET AL., *STRATEGIES FOR ENHANCING THE BUILT ENVIRONMENT TO SUPPORT HEALTHY EATING AND ACTIVE LIVING 4* (2008), <http://www.preventioninstitute.org/component/jlibrary/article/id-60/127.html> (defining “built environment” as manmade surroundings that include buildings, public resources, land use patterns, the transportation system, and design features); Ross, *supra* note 46 (“Neighborhood environments—the presence of sidewalks, pools[,] and safe parks and affordable, nutritious food versus the number of fast-food outlets, tobacco ads[,] and actual crime—can shape behavior in ways that ultimately boost or erode health . . .”).

77. See *infra* Part I.C.1–2 (discussing environmental housing conditions).

78. See Samiya A. Bashir, *Home Is Where the Harm Is: Inadequate Housing as a Public Health Crisis*, 92 AM. J. PUB. HEALTH 733, 733 (2002) (discussing the connection between inadequate housing and poor health, from respiratory disease and neurological disorders to psychological and behavioral dysfunction).

79. See JOINT CTR. FOR HOUS. STUDIES OF HARVARD UNIV., *THE STATE OF THE NATION’S HOUSING I* (2015) [hereinafter *THE STATE OF THE NATION’S HOUSING 2015*], <http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/jchs-sonhr-2015-full.pdf> (stating that the high cost of housing forces many households to contribute more than thirty percent of income toward rent); *id.* at 30 (explaining that, in contrast to homeowners, cost-burdened renters set a new high in 2013 of \$20.8 million in income paid for housing—a number just under half of all renter households). Minorities are prone to facing severe housing cost burdens: “[twenty-six] percent of black households, [twenty-three] percent of Hispanic households, and [twenty] percent of Asian and other minority households were severely burdened in 2013, compared with just [fourteen] percent of white households.” *Id.* Moreover, whereas only a tenth of married couples faced severe housing burdens, a third of single parents faced these burdens. *Id.* Access to affordable housing has a large impact on health, forcing cost-burdened households to cut back on food, healthcare, and other

prevalence of inadequate housing, which includes lack of running water and other signs of disrepair, rose seven percent nationwide between 2007 and 2011.⁸⁰ In 2011, an estimated 2.4 million units were considered to be in poor condition.⁸¹ People living in poverty occupy many of these units.⁸²

As a result, the entire low-income population is at risk of developing serious health problems such as asthma, respiratory infections, lead poisoning, learning disabilities, behavioral and mental health problems, injuries, long-term brain damage, cancer, and other harmful conditions due to residential environmental hazards.⁸³ Lead poisoning and asthma, in particular, often result from housing conditions that violate tenants’ rights and environmental and housing laws.⁸⁴

1. *Lead poisoning*

One of the most severe and dangerous effects of substandard housing is lead poisoning.⁸⁵ Lead poisoning, which is typically concentrated in low-income neighborhoods, most frequently occurs after an individual is exposed to lead-based paint in the form of chips or dust.⁸⁶ While the use and production of lead paint was prohibited in 1978, the majority of homes built before that year still contain

critical expenses. *Id.* at 5. Those households able to obtain affordable housing enjoy a dramatic improvement in quality of life, but federal assistance does not meet the need. *Id.* at 5–6. Racial minorities are at further risk of suffering negative health outcomes due to housing conditions and residential segregation. *See* Ross, *supra* note 46.

80. WILLIAM APGAR ET AL., JOINT CTR. FOR HOUSING STUD. OF HARV. UNIV., THE U.S. HOUSING STOCK: READY FOR RENEWAL 7 (2013) (showing that housing inadequacy has been on the rise since the housing market bust).

81. *Id.* at 6–7.

82. *See For Low-Income Families, Substandard Housing Takes Toll on Children*, SCIENCE DAILY (2013), <http://www.sciencedaily.com/releases/2013/10/131022132145.htm> (“An estimated two million poor children lived in run-down and unsafe housing in 2005, and double blows dealt to low-income neighborhoods by the recent housing crisis and the recession have likely only worsened the situation.”).

83. *See infra* Part I.C.1–2 (discussing environmental housing conditions).

84. Johnna S. Murphy & Megan T. Sandel, *Asthma and Social Justice: How to Get Remediation Done*, 41 AM. J. PREVENTATIVE MED. S57, S57 (2011).

85. HEALTH JUSTICE PROJECT, BARRIER TO HEALTH: LEAD POISONING I (2010), http://luc.edu/media/lucedu/law/centers/healthlaw/pdfs/hjp/policy_barriers_lead_poisoning.pdf. *See generally* GERALD MARKOWITZ & DAVID ROSNER, LEAD WARS: THE POLITICS OF SCIENCE AND THE FATE OF AMERICAN’S CHILDREN 1–2, 5 (2014) (providing the history of lead poisoning and the public health response over the last half-century and the devastating effects of low levels of toxic exposure).

86. *See Lead Poisoning Definition*, MAYO CLINIC, <http://www.mayoclinic.org/diseases-conditions/lead-poisoning/basics/definition/con-20035487> (last visited Dec. 1, 2015).

lead-based paint and pose a potential lead hazard. Lead-based paint is most commonly found in and around older homes. For example, a majority of homes built before 1980 have lead-based paint somewhere in the home, and homes built before 1940 have approximately three times as much lead-based paint as do homes built between 1960 and 1979.⁸⁷ When these homes are renovated or surfaces disturbed, most commonly through the friction of opening and closing windows and doors, lead particles are dispersed into the home.⁸⁸ Once lead is in the environment, it does not dissipate.⁸⁹

The adverse health effects of lead poisoning are especially damaging to children: “Once poisoned, the damage to a child’s developing brain is done and the focus must shift to addressing the problems caused by the poisoning and to avoiding further accumulation of lead in a child’s body.”⁹⁰ The Centers for Disease Control and Prevention (CDC) designates five micrograms per deciliter ($\mu\text{g}/\text{dL}$) as the upper value of the reference range for blood lead levels in young children.⁹¹ If a child’s blood lead level exceeds that amount, public health intervention is recommended.⁹² However, research shows that no blood lead level is safe.⁹³ At a blood lead level as low as three $\mu\text{g}/\text{dL}$, children demonstrate decreased end-of-grade test scores; at a blood lead level of four $\mu\text{g}/\text{dL}$, three-year-olds face an increased likelihood of being classified as learning disabled in elementary school; and at a blood lead level of five

87. ENVTL. PROT. AGENCY, REPORT ON THE NATIONAL SURVEY OF LEAD-BASED PAINT IN HOUSING vi (1995), <http://www.epa.gov/sites/production/files/documents/r95-003.pdf>. Dangerous lead concentrations are often identified near older homes. *Id.* at 1–4. For example, the yards of almost two-thirds of New Orleans homes contained dangerous levels of lead in 2015. Lindsey Konkel, *Protecting a New Generation of Poisoned Kids After Katrina*, NAT’L GEOGRAPHIC (Aug. 19, 2015), <http://news.nationalgeographic.com/2015/08/150819-new-orleans-katrina-lead-poisoning-hurricane-children-environment-health-pollution>.

88. Anita Weinberg, *A Case Study of a Partnership in Chicago to Prevent Childhood Lead Poisoning*, in *A CHILD’S RIGHT TO A HEALTHY ENVIRONMENT* 43, 47 (James Garbarino & Garry Sigman eds., 2010).

89. *Id.* at 45 (“Once lead is dispersed and redeposited in the environment, it will remain to poison generations of children unless it is contained or removed.”).

90. *Id.* at 44.

91. *Lead*, CTRS. FOR DISEASE CONTROL & PREVENTION, <http://www.cdc.gov/nceh/lead> (last visited Dec. 1, 2015).

92. *Id.*

93. CTRS. FOR DISEASE CONTROL & PREVENTION, EDUCATIONAL INTERVENTIONS FOR CHILDREN AFFECTED BY LEAD viii (2015) [hereinafter EDUCATIONAL INTERVENTIONS], http://www.cdc.gov/nceh/lead/publications/educational_interventions_children_affected_by_lead.pdf.

µg/dL, children are thirty percent more likely to fail third grade reading and math tests and to be non-proficient in math, science, and reading.⁹⁴ In fact, global childhood lead exposure contributes to approximately 600,000 new cases of intellectual disabilities diagnosed in children each year.⁹⁵ Lead poisoning causes severe health concerns, such as significant biological and neurological damage affecting cognition and behavior.⁹⁶ It can lead to academic failure, juvenile delinquency, high blood pressure, learning disabilities, behavioral problems, developmental delay, and even death.⁹⁷

Lead poisoning has an extreme cost to society. It eliminates natural leaders by shifting the population IQ by five points, which decreases the five percent of the population with an IQ above 120 and doubles the number of people with an IQ below eighty, who qualify for special education.⁹⁸ This amounts to \$11–53 billion in healthcare costs, \$165–233 billion in lost lifetime earnings, \$25–35 billion in lost tax revenue, \$30–146 million in special education expenses, and \$1.7 billion in direct costs of crime.⁹⁹

Although rates of lead exposure have dropped dramatically in the United States¹⁰⁰ over the past thirty years with the reduction of lead

94. *Id.*

95. *Lead Poisoning and Health*, WORLD HEALTH ORG., <http://www.who.int/mediacentre/factsheets/fs379/en> (last visited Dec. 1, 2015).

96. Elise Gould, *Childhood Lead Poisoning: Conservative Estimates of the Social and Economic Benefits of Lead Hazard Control*, 117 ENV. HEALTH PERSP. 1162, 1162 (2009).

97. *Lead Poisoning and Health*, *supra* note 95.

98. Hilary A. Godwin, *Lead Exposure and Poisoning in Children*, UCLA INST. OF THE ENV'T & SUSTAINABILITY (2009), <http://www.environment.ucla.edu/reportcard/article3772.html>.

99. Gould, *supra* note 96, at 1164–65; see Deborah W. Denno, *Considering Lead Poisoning as a Criminal Defense*, 20 FORDHAM URB. L.J. 377, 393–94 (1993) (advocating for a lead poisoning defense to mitigate criminal charges because lead poisoning has been linked to disciplinary problems, aggression, and crime).

100. Lead poisoning is even more widespread internationally, especially in developing and impoverished countries where lead is not prohibited in paint and other products. See, e.g., *Doctors Treat More Than 1000 Children for Lead Poisoning in African Village*, FOX NEWS (Aug. 5, 2013), <http://www.foxnews.com/health/2013/08/05/doctors-treat-more-than-1000-children-for-lead-poisoning-in-african-village> (reporting on a lead poisoning incident in Nigeria caused by mining from a gold rush); Rebecca Kessler, *Long Outlawed in the West, Lead Paint Sold in Poor Nations*, YALE ENV'T 360 (Mar. 28, 2013), http://e360.yale.edu/feature/long_outlawed_in_the_west_lead_paint_sold_in_poor_nations/2633 (discussing the manufacture and sale of household lead paint in Cameroon); Adi Narayan, *Nestle's Biggest India Crisis Over Lead in Noodles: Q&A*, BLOOMBERG BUSINESS (June 5, 2015), <http://www.bloomberg.com/news/articles/2015-06-05/nestle-s-biggest-india-crisis-over-lead-in-noodles-q-a> (describing an incident where lead was found in packaged noodle seasoning in India); Lynne

content in gasoline, paint, and other sources,¹⁰¹ the risk of lead poisoning is still quite high for children living in poor neighborhoods.¹⁰² A recent investigation in Chicago uncovered that, although lead has been almost entirely eliminated from higher income neighborhoods, more than one-fifth of children from the poorest neighborhoods have alarming levels of lead poisoning.¹⁰³ Furthermore, the risks fall disproportionately on minority children, with African American children two times more likely to develop lead poisoning than white children.¹⁰⁴

2. Asthma

Asthma is among the leading adverse health consequences of substandard housing conditions and is the most common chronic pediatric disease in the United States among children.¹⁰⁵ Nationally, asthma affects 6.1 million children and 16.5 million adults.¹⁰⁶ Asthma requires constant health monitoring, daily medication, and vigilant avoidance of triggers.¹⁰⁷ Substandard housing conditions, such as the presence of cockroaches, rodents, mold, and poor air quality, often create common asthma triggers.¹⁰⁸ One study found that low-income

Peeples, *Feds Block Shareholders' Attempt to End Production of Toxic Lead Paint*, HUFFINGTON POST (May 13, 2015), http://www.huffingtonpost.com/2015/05/13/lead-paint-ppg_n_7273770.html (reporting that one of the world's largest paint manufacturers sells industrial paint containing lead to customers outside the United States); Mohammed Yusuf, *Kenya's Lead Poisoning Victims Narrate Ordeal*, ALJAZEERA (Aug. 13, 2014), <http://www.aljazeera.com/news/africa/2014/08/kenya-lead-poison-201481114402134794.html> (discussing widespread health consequences from lead poisoning in Kenya).

101. Gould, *supra* note 96, at 1162.

102. *Id.*

103. See Michael Hawthorne, *Lead Paint Poisons Poor Chicago Kids as City Spends Millions Less on Cleanup*, CHI. TRIB. (May 1, 2015, 2:56 PM), <http://www.chicagotribune.com/news/watchdog/ct-lead-poisoning-chicago-met-20150501-story.html>.

104. *Disparities in Risk*, NAT'L CTR. FOR HEALTHY HOUSING, <http://www.nchh.org/What-We-Do/Health-Hazards-Prevention-and-Solutions/Disparities-in-Risk.aspx> (last visited Dec. 1, 2015).

105. HEALTH JUSTICE PROJECT, BARRIER TO HEALTH: ASTHMA 1 (2015), http://luc.edu/media/lucedu/law/centers/healthlaw/pdfs/hjp/policy_barriers_asthma.pdf.

106. *Most Recent Asthma Data*, CTRS. FOR DISEASE CONTROL & PREVENTION, http://www.cdc.gov/asthma/most_recent_data.htm (last visited Dec. 1, 2015).

107. MARLA McDANIEL ET AL., URBAN INST., MAKING SENSE OF CHILDHOOD ASTHMA: LESSONS FOR BUILDING A BETTER SYSTEM OF CARE 1 (2014).

108. Murphy & Sandel, *supra* note 84, at S57; see Carolien Dekker et al., *Childhood Asthma and the Indoor Environment*, 100 CHEST 922, 922, 925 (1991) (examining the influence of the indoor environment on asthma in a population of Canadian

public housing residents in Illinois experienced poor housing conditions at extremely high rates: fifty percent of residents experienced a cockroach infestation, thirty-three percent lived with mold or mildew, twenty percent endured a rodent infestation, and thirty-three percent had plumbing problems.¹⁰⁹ Further, asthma sufferers from low-income communities often live near major pollution sources such as freeways or factories.¹¹⁰

While asthma affects people regardless of their socioeconomic status, ethnicity, or race, disease incidence tends to be the highest among the nation's most vulnerable.¹¹¹ Children living in poverty are more likely to be diagnosed, to experience more severe symptoms, and to have ongoing asthma symptoms than their more affluent peers.¹¹² Children living in poverty experience higher rates of asthma across racial and ethnic groups, and African American children experience higher rates of asthma than do white children in the same

schoolchildren, indicating that gas cooking, exposure to environmental tobacco smoke, home dampness, and humidifier use are associated with the prevalence of asthma). Data show that the age of housing, housing type (apartments versus single family homes), floor level, and location affect respiratory and mental health outcomes. Megan Sandel & R.J. Wright, *When Home Is Where the Stress Is: Expanding the Dimensions of Housing that Influence Asthma Morbidity*, 91 ARCHIVES DISEASE IN CHILDHOOD 942, 943 (2006).

109. Victoria Persky et al., *Inner-City Asthma: The Role of the Community*, 132 CHEST 831S, 832S (2007).

110. See Marie Lynn Miranda et al., *Making the Environmental Justice Grade: The Relative Burden of Air Pollution Exposure in the United States*, 8 INT'L J. ENVTL. RES. & PUB. HEALTH 1755, 1757 (2011) (finding that low-income and minority groups are most exposed to air pollution); Jane Kay & Cheryl Katz, *Pollution, Poverty, People of Color: The Factory on the Hill*, ENVTL. HEALTH NEWS (June 4, 2012), <http://www.environmentalhealthnews.org/ehs/news/2012/pollution-poverty-and-people-of-color-richmond-day-1> (indicating that the majority of Americans who live adjacent to commercial waste facilities are people of color, and poverty rates in those areas are 1.5 times higher than in the rest of the country); *Asthma and Air Pollution*, NAT. RES. DEF. COUNCIL, <http://www.nrdc.org/health/effects/fasthma.asp> (last visited Dec. 1, 2015) (“[M]ore than 131 million Americans—over [forty] percent of the nation’s population—live in areas with bad air.”).

111. Jeanne E. Moorman et al., *Current Asthma Prevalence—United States, 2006–2008*, MORBIDITY & MORTALITY WKLY. REP., Jan. 14, 2011, at 80, 84–86.

112. See BLOOM ET AL., *supra* note 32, at 4 (stating that African American children were more likely to be diagnosed with asthma and to continuously have asthma than Hispanic or Caucasian children); Murphy & Sandel, *supra* note 84, at S57 (“Children living in poverty experience higher rates of asthma across all ethnic groups . . .”). In 2012, a CDC study found that children in poor families were more likely to have developed asthma (nineteen percent) or to have chronic asthma (thirteen percent) than children in families that were not poor (twelve percent and eight percent, respectively). BLOOM ET AL., *supra* note 32, at 4.

income or wealth levels.¹¹³ For example, the overall emergency department visit rate for asthma among African Americans from birth to age seventeen is 4.1 times greater than among whites, and the asthma death rate is 7.3 times greater.¹¹⁴ The National Institutes of Health identified racial differences in asthma prevalence as a significant public health concern.¹¹⁵

The effects of asthma on everyday activities can be severe. Among adults, twenty-five percent with asthma are unable to work or carry out activities of daily living¹¹⁶ and, in 2008, asthma alone caused 14.2 million missed days of work.¹¹⁷ For children, asthma is the leading cause of school absences.¹¹⁸ In 2008, there were 10.5 million missed days of school due to asthma.¹¹⁹ The economic cost of asthma as a

113. See Murphy & Sandel, *supra* note 84, at S57 (indicating that poor and racial minorities experience the disease more severely than non-poor, white peers). Philadelphia's two communities with the highest number of children living in poverty have rates of asthma at forty percent and forty-seven percent; St. Louis' poorer neighborhoods have rates between thirty percent and forty percent; and in New York City, the impoverished neighborhood of East Harlem has rates at nineteen percent, compared to its affluent neighbor, the Upper East Side, at just seven percent. Linda Carroll, *Mold, Mice and Zip Codes: Inside the Childhood Asthma Epidemic*, NBC NEWS (Jan. 3, 2014, 1:20 AM), http://inplainsight.nbcnews.com/_news/2014/01/03/22149240-mold-mice-and-zip-codes-inside-the-childhood-asthma-epidemic.

114. McDANIEL ET AL., *supra* note 107, at 1.

115. See *National Asthma Education and Prevention Program*, NAT'L INST. OF HEALTH, <http://www.nhlbi.nih.gov/about/org/naepp/naepp> (last visited Dec. 1, 2015); see also Ruchi S. Gupta et al., *Geographic Variability in Childhood Asthma Prevalence in Chicago*, 121 J. ALLERGY & CLINICAL IMMUNOLOGY 639, 642 fig.1 (2008) (mapping the prevalence of childhood asthma in Chicago).

116. ILL. DEP'T OF PUB. HEALTH, ADDRESSING ASTHMA IN ILLINOIS 3 (2009), http://www.idph.state.il.us/pdf/Asthma_State_Plan_3rd_Edit.pdf.

117. CTRS. FOR DISEASE CONTROL & PREVENTION, ASTHMA'S IMPACT ON THE NATION: DATA FROM THE CDC NATIONAL ASTHMA CONTROL PROGRAM 1, 3 (2015) [hereinafter ASTHMA'S IMPACT ON THE NATION], http://www.cdc.gov/asthma/impacts_nation/asthmafactsheet.pdf.

118. CTRS. FOR DISEASE CONTROL & PREVENTION, ASTHMA FACTS: CDC'S NATIONAL ASTHMA CONTROL PROGRAM GRANTEES 8 (July 2013), http://www.cdc.gov/asthma/pdfs/asthma_facts_program_grantees.pdf; *Asthma Facts and Figures*, ASTHMA AND ALLERGY FOUND. OF AM., http://www.aafa.org/display.cfm?id=8&sub=42#_ftnref12 (last visited Dec. 1, 2015).

119. ASTHMA'S IMPACT ON THE NATION, *supra* note 117, at 1; see *Research Findings*, AGENCY FOR HEALTHCARE RES. & QUALITY, <http://www.ahrq.gov/research/findings/index.html> (last visited Dec. 1, 2015) (compiling a list of various reports providing comprehensive, science-based information on common, costly medical conditions and new health care technologies and strategies). Asthma related school absences have direct consequences for school funding and public housing eligibility. Seven states use Average Daily Attendance to count students for input into funding formula. ECONORTHWEST, USING AVERAGE DAILY ATTENDANCE AS A BASIS FOR DISTRIBUTING STATE SCHOOL REVENUE 1-2 (2010), <http://chalkboardproject.org/wp>

result of medical expenses, lost work, missed school days, and premature death is estimated at as much as \$56 billion.¹²⁰ Despite highly effective treatment guidelines for asthma, the overall morbidity (attack rates, emergency department visits, and hospitalizations) and mortality rates among children have not decreased.¹²¹ It is irrefutable that environmental hazards—especially in housing—have devastating consequences for health, even when effective treatment options are available.

D. Social Conditions

Providing young children with a healthy environment in which to grow and learn is not only good for their development, it is critical to their long-term health.¹²² The environments in which a person is born, lives, works, and plays have a direct effect on immediate and future health prognoses.¹²³ Adverse Childhood Experiences (“ACE”) and food insecurity demonstrate how social conditions can have lifelong repercussions.

content/uploads/2010/12/Attendance.pdf. This means they count the number of children who attend school in a given time period instead of the number of children enrolled in school. *Id.* at 1. Average Daily Attendance is designed to encourage school attendance and places responsibility on school officials, parents, and students for attendance. *Id.* It also penalizes schools in low-income neighborhoods with students who live in substandard housing and have environmentally induced asthma as a result of their zip code. *See id.* In addition, cities have included school absences as a basis for termination from public housing. *See, e.g.,* MIAMI-DADE CTY., PUBLIC HOUSING AND COMMUNITY DEVELOPMENT ADMISSIONS AND CONTINUING OCCUPANCY POLICY, VIII.A.13 (2014), <http://www.miamidade.gov/housing/library/reports/2014-plans/acop.pdf>.

120. ASTHMA’S IMPACT ON THE NATION, *supra* note 117, at 3. Medical costs are related to 479,300 hospitalizations, 1.9 million emergency department visits, and 8.9 million doctor visits for asthma treatment. *Id.* at 2–3; *see* Brigid Schulte, *Children’s Hospital Aims to Cut Asthma-Related ER Visits*, WASH. POST (Oct. 12, 2013), http://www.washingtonpost.com/local/childrens-hospital-aims-to-cut-asthma-related-er-visits/2013/10/12/65a540fc-2c79-11e3-8ade-af23cda135e_story.html (proffering that asthma costs the U.S. economy as much as \$56 billion a year in medical expenses, lost work and school days, and premature deaths).

121. MCDANIEL ET AL., *supra* note 107, at 1.

122. *See* Paul Tough, *The Poverty Clinic: Can a Stressful Childhood Make You a Sick Adult?*, NEW YORKER (Mar. 21, 2011), <http://www.newyorker.com/magazine/2011/03/21/the-poverty-clinic> (discussing the links among poverty, childhood trauma, and biological changes adversely affecting health); Polikoff, *supra* note 17, at 3, 6 (discussing the Adverse Childhood Experiences (ACE) Study, which demonstrated a correlation between childhood adversity and adult well-being).

123. *See* discussion on environmental housing conditions *infra* Part I.C.1–2.

1. *Adverse childhood experiences*

One major longitudinal study, the ACE Study, examined the effects of an unhealthy environment on adult health outcomes.¹²⁴ The study of 17,421 people identified ACEs, many of which occur at a high rate among low-income populations, including: emotional abuse, physical abuse, neglect, sexual abuse, emotional neglect, mother treated violently, household substance abuse, household dysfunction, household mental illness, parental separation or divorce, and an incarcerated household member, among others.¹²⁵

The ACE Study revealed, first, that there is a direct link between childhood trauma and adult onset of chronic disease and mental illness, serving prison sentences, and problems at work.¹²⁶ Second, two-thirds of the participants had experienced at least one type of ACE.¹²⁷ Of those participants, eighty-seven percent had experienced two or more types of ACEs.¹²⁸ Third, the greater the number of ACEs, the higher the risk of medical, mental, and social problems subjects experienced as adults.¹²⁹

Overall, the Study found a strong correlation between ACEs and poor health outcomes in adulthood, such as alcoholism, chronic obstructive pulmonary disease, depression, fetal death, ischemic heart disease, liver disease, smoking, suicide attempts, sexually transmitted diseases, and early and unintended pregnancies.¹³⁰ Additionally, the higher the ACE “score,” the greater the likelihood the individual would face one or more negative health outcomes as an adult.¹³¹

124. *Adverse Childhood Experience Study, Injury Prevention & Control: Division of Violence Prevention*, CTRS. FOR DISEASE CONTROL & PREVENTION [hereinafter *ACE Study*], <http://www.cdc.gov/violenceprevention/acestudy> (last visited Dec. 1, 2015).

125. *Prevalence of Adverse Childhood Experiences*, CTRS. FOR DISEASE CONTROL & PREVENTION [hereinafter *ACE Prevalence*], <http://www.cdc.gov/violenceprevention/acestudy/prevalence.html> (last visited Dec. 1, 2015).

126. Jane Ellen Stevens, *The Adverse Childhood Experiences Study—The Largest, Most Important Public Health Study You Never Heard Of—Began in an Obesity Clinic*, ACES TOO HIGH NEWS (Oct. 3, 2012), <http://acestoohigh.com/2012/10/03/the-adverse-childhood-experiences-study-the-largest-most-important-public-health-study-you-never-heard-of-began-in-an-obesity-clinic>.

127. *Id.*

128. *Id.*

129. *Id.*

130. *ACE Study*, *supra* note 124.

131. *See* Stevens, *supra* note 126 (explaining that each type of adverse childhood experience counts as one ACE point). Compared with an ACE score of zero, people “with four categories of ACEs had a 240 percent greater risk of hepatitis, were 390 percent more likely to have chronic obstructive pulmonary disease[,] . . . and [had] a 240 percent higher risk of a sexually-transmitted disease.” *Id.* “They were twice as

The participants in the ACE Study, which took place at Kaiser Permanente, were average Americans who were employed and had health insurance.¹³² The Study participants were seventy-five percent white, eleven percent Latino, 7.5% Asian and Pacific Islander, and five percent black.¹³³ They were middle class and middle-aged, and thirty-six percent had attended college, while forty percent obtained college degrees or higher.¹³⁴ Presumably, because the factors considered in determining an ACE score are prevalent in low-income environments and experienced at a higher rate among low-income individuals, the ACE Study results would show much higher ACE scores if administered among people living in poverty.¹³⁵

To demonstrate, many of the ACE definitions describe scenarios that are common in poverty. For example, the definition of household dysfunction includes single parent household, a parent with depression, or a parent who is incarcerated.¹³⁶ These factors describe many low-income households: people in poverty live in single parent households 46.5% of the time¹³⁷ and have been diagnosed with depression 30.9% of the time.¹³⁸ In addition, many poor children grow up with an incarcerated parent.¹³⁹

Similarly, the ACE Study's definition of physical neglect includes not having enough to eat,¹⁴⁰ wearing dirty clothes, having inconsistent childcare, and not having someone available to take the child to

likely to be smokers, [twelve] times more likely to have attempted suicide, seven times more likely to be alcoholic, and [ten] times more likely to have injected street drugs." *Id.* "People with high ACE scores are more likely to be violent, to have more marriages, more broken bones, more drug prescriptions, more depression, more auto-immune diseases, and more work absences." *Id.*

132. *Id.*

133. *Id.*

134. *Id.*

135. See Tough, *supra* note 122 (discussing the links among poverty, childhood trauma, and biological changes adversely affecting health).

136. *ACE Prevalence, supra* note 125.

137. DENAVAS-WALT & PROCTOR, *supra* note 9, at 16.

138. Brown, *supra* note 30 (noting that thirty-one percent of impoverished Americans were diagnosed with depression compared to only 15.8% of Americans not living in poverty).

139. Benjamin H. Harris & Melissa S. Kearney, *The Unequal Burden of Crime and Incarceration on America's Poor*, BROOKINGS (Apr. 28, 2014, 4:18 PM), <http://www.brookings.edu/blogs/up-front/posts/2014/04/28-unequal-burden-crime-americas-poor-kearney-harris> ("[F]or an African American child whose father does not have a high school diploma, there is roughly a [fifty] percent chance that he will be in prison by the time of the child's fourteenth birthday.").

140. See discussion on food insecurity *infra* Part II.D.2.

doctor's appointments.¹⁴¹ Many of these factors are unavoidable for families living in poverty, especially when a caregiver works a nonstandard schedule.¹⁴² Jobs with nonstandard schedules, which entail a work shift between 6 PM and 6 AM, are usually filled by low-income individuals and minorities.¹⁴³ A nonstandard schedule makes it challenging for caregivers to provide consistent childcare, spend time with their families, secure transportation, and control their schedules.¹⁴⁴ As a result, the likelihood of ACEs—and collateral poor health outcomes in adulthood—is increased in low-income households.

2. *Food insecurity*

Food insecurity is an example of both an ACE and a social condition that affects the immediate and long-term health outcomes of an individual. Food insecurity is the “limited or uncertain availability of nutritionally adequate safe foods”¹⁴⁵ Food insecurity is directly linked to an individual's access to food, ability to purchase food, available time to prepare the food, and uncertainties

141. *ACE Prevalence*, *supra* note 125.

142. See MARIA E. ENCHAUTGUI, NONSTANDARD WORK SCHEDULES AND THE WELL-BEING OF LOW-INCOME FAMILIES 1, 3 (2013), <http://www.urban.org/sites/default/files/alfresco/publication-pdfs/412877-Nonstandard-Work-Schedules-and-the-Well-being-of-Low-Income-Families.PDF> (stating that workers with non-standard schedules often cannot get paid time off and face challenges such as securing child care and reliable transportation).

143. See *id.* at 3 (concluding that African American workers have higher chances of nonstandard schedules, even as their income increases). One in four workers with wages at or below the median work on a nonstandard schedule. *Id.* at 6.

144. *Id.* at 3. In addition, low-wage workers are less likely to have paid sick days or vacation days than higher-wage workers, and most workers are not covered by the Family Medical Leave Act. *Id.* at 5. This means low-wage workers can rarely obtain time off for unexpected circumstances, such as doctors' appointments, and still retain their job. *Id.*; see also ANNA DANZINER & SHELLEY WATERS BOOTS, URBAN INST., LOWER-WAGE WORKERS AND FLEXIBLE WORK ARRANGEMENTS 1 (2008), <http://workplaceflexibility2010.org/images/uploads/Lower-Wage%20Workers%20and%20FWAs.pdf> (discussing low-wage workers and their need for flexible work arrangements, which alter the time and/or place that work is conducted on a regular basis); *Selected Resources on Flexible Work Arrangements for Lower-Wage Workers*, WORKPLACE FLEXIBILITY (2010), <http://workplaceflexibility2010.org/images/uploads/Selected%20Sources%20Low%20Wage%20FWA.pdf> (listing selected resources on flexible work arrangements for lower-wage workers).

145. *Food Security in the U.S.*, U.S. DEP'T OF AGRIC. ECON. RES. SERV., <http://www.ers.usda.gov/topics/food-nutrition-assistance/food-security-in-the-us/measurement.aspx> (last visited Dec. 1, 2015); see *Food Security*, WORLD HEALTH ORG., <http://www.who.int/trade/glossary/story028/en> (last visited Dec. 1, 2015) (defining food security as existing only when individuals have consistent, reliable access to safe, nutritious food).

of daily life near, at, or below the poverty line.¹⁴⁶ In 2014, 15.3 million children lived in food insecure homes.¹⁴⁷ In food insecure households, infants and toddlers are thirty percent more likely to have a history of hospitalization and two-thirds more likely to be at risk for developmental delays than their counterparts in food secure households.¹⁴⁸ In the short term, food insecurity can result in malnutrition,¹⁴⁹ failure to thrive, stunted growth, mental or physical disability, illness, and—in some instances—death.¹⁵⁰ In the long term, children experiencing food insecurity could suffer related adult onset disability and disease.¹⁵¹

Food insecurity is prevalent in food deserts, which are defined as “large geographic areas with no or distant grocery stores.”¹⁵² Food deserts include “urban neighborhoods and rural towns without ready access to fresh, healthy, and affordable food.”¹⁵³ Food deserts are characterized by an imbalance of food choice—meaning, more fast food, convenience, and liquor stores nearby than stores selling fresh produce and meats.¹⁵⁴ Food deserts are more common in low-income

146. *Hunger and Food Insecurity*, NAT'L COALITION FOR THE HOMELESS, <http://www.nationalhomeless.org/factsheets/hunger.html> (last visited Dec. 1, 2015). *But see* Vikki Valentine, *Q & A: The Causes Behind Hunger in America*, NAT'L PUB. RADIO (Nov. 22, 2005), <http://www.npr.org/2005/11/22/5021812/q-a-the-causes-behind-hunger-in-america> (noting that there is little data that directly link poverty to food security, but that the uncertainties of low-income lifestyles show correlations).

147. *Child Hunger Fact Sheet*, FEEDING AM., <http://www.feedingamerica.org/hunger-in-america/impact-of-hunger/child-hunger/child-hunger-fact-sheet.html> (last visited Dec. 1, 2015).

148. *Food Insecurity and Child Health*, CHILD.'S HEALTH WATCH, <http://www.childrenshealthwatch.org/methods/findings> (last visited Dec. 1, 2015).

149. *See Malnutrition*, JOHNS HOPKINS CHILD.'S CTR., <http://www.hopkinschildrens.org/Malnutrition.aspx> (last visited Dec. 1, 2015) (noting that “[m]alnutrition is [a] condition that develops when the body is deprived of vitamins, minerals, and other nutrients”).

150. *Malnutrition*, MEDLINEPLUS, <http://www.nlm.nih.gov/medlineplus/ency/article/000404.htm> (last visited Dec. 1, 2015).

151. *Child Hunger Fact Sheet*, *supra* note 147.

152. U. OF MICH. SCH. OF SOC. WORK, GOOD NEIGHBORHOODS: A GREAT PLACE FOR KIDS TO LIVE (2008) [hereinafter GOOD NEIGHBORHOODS], http://www.marigallagher.com/site_media/dynamic/project_files/01_Definitions.pdf.

153. *Food Deserts*, U.S. DEP'T OF AGRIC., <http://apps.ams.usda.gov/fooddeserts/fooddeserts.aspx> (last visited Dec. 1, 2015) [hereinafter *Food Deserts*]. Oftentimes, these neighborhoods only have access to fast food restaurants, contributing to a poor diet that can lead to obesity, diabetes, and heart disease. *Id.*

154. GOOD NEIGHBORHOODS, *supra* note 152; *see* Ross, *supra* note 46 (discussing the correlation between the built environment and access to nutritious food to the health outcomes of minorities in racially segregated neighborhoods); *see also* Irina B. Grafova, *Overweight Children: Assessing the Contribution of the Built Environment*, 47 PREVENTIVE MED. 304, 305–07 (2008) (revealing that a built environment with a

neighborhoods, which have thirty percent fewer supermarkets than higher-income neighborhoods.¹⁵⁵ In the United States, 23.5 million people live in food deserts and 13.5 million of those people are low-income.¹⁵⁶ Food deserts are widespread and affect both rural and urban areas.¹⁵⁷ For example, residents of rural communities in the Lower Mississippi Delta have access to one supermarket per 190.5 square miles.¹⁵⁸ In Chicago, children residing in food deserts could fill nearly 2,500 school buses to capacity, or approximately seventeen miles of buses lined up bumper-to-bumper.¹⁵⁹ Food deserts have greater rates of obesity, malnutrition, premature death, and lowered quality of life, for mothers and children in particular.¹⁶⁰

Residing in a food desert can have dangerous consequences for health. In a study that controlled for other causal factors,

higher density of convenience stores than supermarkets and farmer's markets is correlated with obesity in children); Tamanna Rahman et al., *Contributions of Built Environment to Childhood Obesity*, 78 MOUNT SINAI J. MED. 49, 51 (2011) (commenting that neighborhoods with low socioeconomic classes tend to have worse food options, even if they are otherwise healthy).

155. *Child Watch Column: "Urban Food Deserts Threaten Children's Health"*, CHILD.'S DEF. FUND (2010), <http://www.childrensdefense.org/newsroom/child-watch-columns/child-watch-documents/urban-food-deserts.html>.

156. *Food Deserts*, *supra* note 153.

157. See *Food Access Research Atlas*, U.S. DEP'T OF AGRIC. ECON. RES. SERV., <http://www.ers.usda.gov/data-products/food-access-research-atlas/go-to-the-atlas.aspx> (last visited Dec. 1, 2015) (mapping food desert pockets across the continental United States); see also Troy C. Blanchard & Todd L. Matthews, *Retail Concentration, Food Deserts, and Food-Disadvantaged Communities in Rural America*, in REMAKING THE NORTH AMERICAN FOOD SYSTEM: STRATEGIES FOR SUSTAINABILITY 201, 208–09 (C. Clare Hinrichs & Thomas A. Lyson eds., 2007) (explaining that only Massachusetts, Rhode Island, Connecticut, and New Jersey do not have food desert counties and that Maine, Texas, Kansas, Nebraska, North Dakota, South Dakota, and Montana are made mostly of food desert counties).

158. Blanchard & Matthews, *supra* note 157, at 201.

159. See MARI GALLAGHER RESEARCH & CONSULTING GRP., THE 2011 CHICAGO FOOD DESERT DRILLDOWN 2 (5th ed. 2011) [hereinafter CHICAGO FOOD DESERT DRILLDOWN], http://marigallagher.com/site_media/dynamic/project_files/Final_2011_ChgFD_drilldown.pdf.

160. MARI GALLAGHER RESEARCH & CONSULTING GRP., GOOD FOOD: EXAMINING THE IMPACT OF FOOD DESERTS ON PUBLIC HEALTH IN CHICAGO 9 (2006) [hereinafter GOOD FOOD], http://www.marigallagher.com/site_media/dynamic/project_files/Chicago_Food_Desert_Report.pdf; see Jennifer Wehunt, *The Food Desert*, CHI. MAG. (Aug. 11, 2009) (examining food deserts on the south side of Chicago and finding that 609,034 Chicagoans live in a food desert); *Obesity and Overweight*, WORLD HEALTH ORG., <http://www.who.int/mediacentre/factsheets/fs311/en> (last visited Dec. 1, 2015) (stating that obesity is also on the rise in developing countries, where the problem ironically exists alongside malnutrition).

researchers in Chicago found that as grocery store access decreases, obesity increases.¹⁶¹ In the United States, more than one-third of American adults (78.6 million) suffer from obesity.¹⁶² Seventeen percent of children (12.7 million) are obese.¹⁶³ Minority and low-income youth experience obesity at a higher rate than their non-minority peers. In 2011, 22.4% of Hispanic youth and 20.2% of black youth were obese, compared to 14.1% of white children.¹⁶⁴ Additionally, according to the CDC, as a family's income increases, a child's rate of obesity decreases.¹⁶⁵ Obesity is linked to several life-threatening health conditions, which ultimately cost the U.S. healthcare system a staggering amount of money. In 2005 alone, these health conditions cost the U.S. healthcare system \$190.2 billion.¹⁶⁶

Even if individuals or families have access to nutritious foods, they may not be able to afford the purchase. Although the Supplemental Nutrition Assistance Program (SNAP, formerly the Food Stamp Program) is designed to increase an individual's or family's budget for purchasing food, the program's estimated average monthly benefit almost always falls short of the cost of food.¹⁶⁷ As Pulitzer Prize winner David Shipler observes in *The Working Poor*,

161. GOOD FOOD, *supra* note 160, at 9, 11.

162. *Adult Obesity Facts*, CTRS. FOR DISEASE CONTROL & PREVENTION, <http://www.cdc.gov/obesity/data/adult.html> (last visited Dec. 1, 2015).

163. *Childhood Obesity Facts*, CTRS. FOR DISEASE CONTROL & PREVENTION, <http://www.cdc.gov/obesity/data/childhood.html> (last visited Dec. 1, 2015).

164. *Id.*

165. *Id.*

166. John Cawley & Chad Meyerhoefer, *The Medical Care Costs of Obesity: An Instrumental Variables Approach*, 31 J. HEALTH ECON. 219, 227 (2011) (commenting that 20.6% of annual medical spending in the United States goes towards obesity); *Obesity Prevention Source, Economic Costs*, HARV. T.H. CHAN SCH. PUB. HEALTH (noting that heart disease, stroke, and diabetes are just a few diseases related to obesity).

167. See Peter B. Edelman, *Changing the Subject: From Welfare to Poverty to a Living Income*, 4 NW. J.L. & SOC. POL'Y, Winter 2009, at 14, 18 (suggesting that the problem is compounded by reductions to federal welfare grants after the Temporary Assistance to Needy Families (TANF) policy was enacted and allowed states wide discretion to limit welfare qualifying requirements); see also HEALTH JUSTICE PROJECT, BARRIER TO HEALTH: MALNUTRITION I, http://luc.edu/media/lucedu/law/centers/healthlaw/pdfs/hjp/policy_barriers_malnutrition.pdf (stating that millions of low-income households are forced to forgo food for other basic necessities due to insufficient funds); Barak Y. Orbach, *Unwelcome Benefits: Why Welfare Beneficiaries Reject Government Aid*, 24 LAW & INEQ. 107, 114–16 (2006) (discussing reasons why an eligible individual would forgo food stamp benefits, including the burden and cost of screening mechanisms). Compare *A Quick Guide to SNAP Eligibility and Benefits*, CTR. ON BUDGET & POL'Y PRIORITIES, <http://www.cbpp.org/research/a-quick-guide-to-snap-eligibility-and-benefits> (last visited Dec. 1, 2015) (giving estimates of how much a family would

Food is one of the few flexible parts of a tight budget. Rent is a fixed amount. Car payments are constant. The charges for electricity and basic telephone service cannot be compromised, negotiated, or trimmed. But the amount a family spends on food is elastic; it can be expanded or squeezed to fit whatever cash is left after the unyielding bills are paid. The result is an array of malnourished children in America.¹⁶⁸

Many families are forced to choose: “heat or eat.”¹⁶⁹ In these low-income households, families choose between buying groceries and keeping their utilities on.¹⁷⁰ In 2010, 24 million households faced this grim decision, continuing on the downward health cycle.¹⁷¹

The evidence demonstrates that, to a large extent, economic, societal, cultural, environmental, and social conditions determine the overall health of an individual.¹⁷² As Part II will show, legal systems and regulatory schemes have an equally significant impact on and operate as determinants of health.

II. LAW AS A DETERMINANT OF HEALTH

As described in Part I, poor health is rooted in social determinants, including economic, societal, cultural, environmental, and social conditions. Each of these has a nexus with the legal system, which is implicated in nearly every aspect of life.¹⁷³ The legal system is a

qualify for in federal benefits), with *Family Budget Calculator*, ECON. POL’Y INST., <http://www.epi.org/resources/budget> (last visited Dec. 1, 2015) (estimating how much money a family would require to live on in a given zip code).

168. DAVID K. SHIPLER, *THE WORKING POOR: INVISIBLE IN AMERICA* 201 (2004).

169. HEALTH JUSTICE PROJECT, *BARRIER TO HEALTH: MALNUTRITION*, *supra* note 167, at 1.

170. ADAM SEGE, NAT’L CTR. FOR MED.-LEGAL P’SHP, *UTILITY ACCESS AND HEALTH* 3 (2010), <http://www.kidscounsel.org/Utility%20Access%20and%20Health%20An%20MLPPatients-to-Policy%20Case%20Study.pdf>.

171. *Id.*

172. See Robert S. Lawrence et al., *Poverty, Food Security, and the Right to Health*, 15 *GEO. J. ON POVERTY L. & POL’Y* 583, 592 (2008) (arguing that a human rights framework of the state’s obligation to respect, protect, and fulfill the right to food and health can act as a more proactive method of alleviating hunger and obtaining food security, as opposed to responding to crises with emergency food supplies); see also Wenche Barth Eide, *Nutrition and Human Rights*, *NUTRITION: A FOUND. FOR DEV.*, 1, 4 (2002) (concluding that nutrition advocacy should begin with the moral and legal imperative for the right to food, centered on human dignity, instead of focusing solely on economic arguments).

173. Federal and state laws regulate every aspect of daily living. For example, the quality of the food we consume and how it is packaged is controlled by the Federal Food, Drug, and Cosmetic Act of 1938 and the Fair Packaging and Labeling Act of 1967; the use of credit cards is controlled by the Consumer Credit Protection Act of 1968; the Care Labeling Act of 1972 regulates the labels in our clothes; the Clean Air

determinant that can have devastating consequences for individual or family health. The legal system exacerbates, and in some cases causes, poor health in many ways, including (1) court systems that inconsistently apply legal standards and mandates or that do not evaluate individual circumstances in applying them, (2) the enactment of laws that perpetuate poor health, and (3) the haphazard enforcement of laws designed to protect or remove barriers to health. While these conditions affect everyone, they have a more drastic effect on low-income people who do not have access to legal representation and whose health may already be compromised by other social determinants of health.¹⁷⁴

A. *Court Systems Without an Individualized Approach*

Low-income and minority individuals are often disadvantaged in legal forums designed to enforce or interpret the law. Legal standards are relaxed and individual circumstances are disregarded in multiple areas of law. Because of the strong relationship between health and housing and health and family support, this section focuses on eviction and neglect proceedings.

1. *Eviction courts*

Alex was rushed to the emergency room the night he stopped breathing. The doctor diagnosed the toddler with pediatric acute respiratory distress. The family described finding evidence of rats in the child's crib and throughout the apartment. When the family reported the rodent infestation to their landlord, he changed the locks

Act of 1969 and Safe Drinking Water Act of 1974 impact the cleanliness of our environment; and local fire and building codes control the structure, placement, and operation of buildings and machinery. See generally LAW IN EVERYDAY LIFE 2 (Austin Sarat & Thomas R. Kearns eds., 1995).

174. Low-income people experience legal issues at a higher rate than their non-poor peers. REBECCA L. SANDEFUR, ACCESSING JUSTICE IN THE CONTEMPORARY USA: FINDINGS FROM THE COMMUNITY NEEDS AND SERVICES STUDY 1, 3 (2014), http://www.abajournal.com/files/sandefur_accessing_justice_in_the_contemporary_usa_aug2014.pdf. Sixty-six percent of survey participants reported experiencing one or more civil justice situations (money, debt, rented and owned housing, insurance, employment, government benefits, children's education, clinical negligence, personal injury, and relationship breakdown). *Id.* at 3. The average number was 2.1 and, among people who reported any situation, the average was 3.3 for civil legal needs. *Id.*

*on the door to the apartment, separating them from their belongings and guaranteeing immediate homelessness.*¹⁷⁵

As Alex's crisis and the discussion on environmental conditions demonstrate, substandard housing predicts negative health outcomes.¹⁷⁶ Similarly, eviction court can have an enormous impact on health. Forcible entry and detainer laws were enacted to avoid the detrimental ramifications of "self-help" evictions in which landlords evict tenants without the authority of law.¹⁷⁷ However, even with forcible entry and detainer laws in place, tenants' rights are often ignored.

In Chicago, the eviction court is the Forcible Entry and Detainer Section of the First Municipal District of the Circuit Court of Cook County (Eviction Court).¹⁷⁸ The Lawyers' Committee for Better Housing, a non-profit law firm in Chicago serving low- and moderate-income renters in the private housing market,¹⁷⁹ conducted a study of Eviction Court.¹⁸⁰ The findings showed that tenants were denied substantive and procedural justice in an overwhelming number of cases.¹⁸¹

175. This story is based on a situation experienced by a client of the Loyola University Chicago School of Law's Health Justice Project, a medical legal partnership clinic. Health Justice Project client names and case details have been changed throughout this Article to protect the clients' anonymity and to abide by confidentiality rules. See *Health Justice Project*, LOY. U. CHI, <http://www.luc.edu/healthjustice> (last visited Dec. 1, 2015) (providing an overview of the Health Justice Project initiative with links to specific studies and research).

176. See *infra* Part II.C.

177. 735 ILL. COMP. STAT. 5/9-101 (2015); *Robinson v. Chi. Hous. Auth.*, 54 F.3d 316, 321-22 (7th Cir. 1995) (providing a concise description of the eviction process for non-payment of rent, which involves five distinct steps); LAWYERS' COMMITTEE FOR BETTER HOUSING, *NO TIME FOR JUSTICE: A STUDY OF CHICAGO'S EVICTION COURT* 6 (2003) [hereinafter *NO TIME FOR JUSTICE*], <http://lcbh.org/sites/default/files/resources/2003-lcbh-chicago-eviction-court-study.pdf> (providing the results of a court monitoring study and outlining the legislative attempts to reduce the dangers of landlord self-help).

178. *Evictions (Forcible Entry and Detainer)*, STATE OF ILL., CIR. CT. COOK COUNTY, <http://www.cookcountycourt.org/ABOUTTHECOURT/MunicipalDepartment/FirstMunicipalDistrictChicago/EvictionsForcibleEntryDetainer.aspx> (last visited Dec. 1, 2015).

179. *About Us*, LAW. COMMITTEE FOR BETTER HOUSING, <http://lcbh.org/about-us> (last visited Dec. 1, 2015).

180. *NO TIME FOR JUSTICE*, *supra* note 177, at 4.

181. See *id.* at 7 (concluding that the data revealed by the study show that courts are far from achieving the goals of the hearings).

Figure 4: Overview of Relaxed Legal Standards in Chicago Eviction Court Proceedings¹⁸²

Average length of hearing:	1 minute 44 seconds
Average length of hearing when tenant was pro se and landlord was represented by an attorney:	1 minute 38 seconds
Average length of hearing when a landlord was pro se and a tenant was represented by an attorney:	3 minutes 22 seconds
Judge examined the eviction notice:	65% of cases
Judge dismissed case when landlord failed to appear:	60% of cases
Tenant asked by judge about defense:	27% of cases
Tenants with defense:	55% of cases
Tenants with defense evicted:	100% of cases
Parties sworn in:	8% of cases

In Eviction Court, landlords were rarely required to meet the burden of proof necessary to support an order of possession. To establish a *prima facie* case, the landlord must prove that: (1) the landlord has a right of possession of the premises; (2) the tenant currently has possession of the premises; (3) the tenant violated the law or breached the rental agreement; and (4) the landlord served the tenant with a valid written termination notice where required.¹⁸³ The first two elements are rarely disputed.¹⁸⁴ A judge must determine the third element, typically, after receiving testimony from both parties¹⁸⁵; yet both parties were sworn in and asked to take an oath to tell the truth in only eight percent of cases.¹⁸⁶ To show the fourth element was

182. *See id.* at 7, 11–23.

183. *Id.* at 14.

184. *Id.*

185. *Id.*

186. *Id.*

met, the judge must verify that the notice of eviction complies with procedural due process notice requirements,¹⁸⁷ but a judge examined these notices in only sixty-five percent of cases.¹⁸⁸ Cases should be dismissed if the landlord is not present, but they were only dismissed in sixty percent of cases when a landlord failed to appear.¹⁸⁹ Under these circumstances, standards of justice are rarely met.

Tenants are entitled to present a defense in forcible entry and detainer cases. For example, a tenant is permitted to withhold some or all of the rent if the condition of a rental unit does not comply with public health and building codes, making it uninhabitable.¹⁹⁰ However, judges asked tenants if they had a defense in only twenty-seven percent of cases.¹⁹¹ When asked, tenants offered a legitimate defense in fifty-five percent of cases, yet *all* of these tenants were evicted.¹⁹² Even if they were asked, it is difficult to imagine being able to present a complete defense in the amount of time devoted to each case. The average hearing lasted one minute and forty-four seconds, and if a landlord was represented by an attorney the hearing lasted even less time.¹⁹³

These statistics demonstrate that the procedures designed to guarantee fairness and justice are not being followed. The three crucial components of the legal system—equality, impartiality, and transparency—are undermined by an apparent bias in the landlord's favor.¹⁹⁴ The system loses its legitimacy and integrity when landlords are not required to prove all elements of their *prima facie* case or when tenants are not offered the opportunity to respond.

187. Before a landlord can bring a forcible entry and detainer suit against a tenant, the landlord must first serve the tenant with a termination notice and an opportunity to cure the defect. Forcible Entry and Detainer Act, 735 ILL. COMP. STAT. 5/9-104 (West 2015); see NO TIME FOR JUSTICE, *supra* note 177, at 7 (explaining that the length of time a tenant has to cure the defect varies; for instance, if the eviction is based on nonpayment of rent, the termination notice is called a "five-day notice" and provides the tenant five days to pay rent in full before the landlord proceeds to formal proceedings); see also 735 ILL. COMP. STAT. 5/9-209; CITY OF CHI. ILL., RESIDENTIAL LANDLORD & TENANT ORDINANCE, MUN. CODE ch. 5-12-130 (2015).

188. NO TIME FOR JUSTICE, *supra* note 177, at 15.

189. *Id.* at 17.

190. CITY OF CHI. ILL., RESIDENTIAL LANDLORD & TENANT ORDINANCE, MUN. CODE ch. 5-12-110; see *supra* Part II.C (discussing environmental conditions).

191. NO TIME FOR JUSTICE, *supra* note 177, at 16 (noting that oftentimes, tenants are not aware that poor conditions may be a defense).

192. *Id.*

193. *Id.* at 11.

194. Lloyd T. Wilson, Jr., *The Beloved Community: The Influence and Legacy of Personalism in the Quest for Housing and Tenants' Rights*, 40 J. MARSHALL L. REV. 513, 530 (2007).

Perhaps the system would be held to a higher standard if more tenants were represented. Nationwide, only ten percent of tenants are able to secure representation, compared to ninety percent of landlords.¹⁹⁵ In some major cities the representation gap is even wider. Ninety-nine percent of tenants facing eviction in New York City, and ninety-eight percent of tenants in the rest of the state of New York, are unrepresented in eviction court.¹⁹⁶ Since the majority of low-income parties have difficulty obtaining legal counsel, access to justice is certainly part of the problem.¹⁹⁷ However, it also is a symptom of the

195. Matthew Desmond, *Tipping the Scales in Housing Court*, N.Y. TIMES (June 29, 2012), <http://www.nytimes.com/2012/11/30/opinion/tipping-the-scales-in-housing-court.html>.

196. N.Y. CITY BAR, REPORT IN SUPPORT OF THE JUDICIARY'S 2011–2012 BUDGET REQUEST 1, 2 (2011), <http://www.nycbar.org/pdf/report/uploads/JudiciaryBudgetJudicialAdministrationReportFINAL1.7.10.pdf>.

197. Although the Supreme Court established a constitutional right to counsel in criminal cases in *Gideon v. Wainwright*, 372 U.S. 335, 344 (1963), a similar right to counsel does not exist for civil cases such as eviction, domestic violence, or child custody. In response to this need, in 1974, President Richard Nixon signed the law creating the Legal Services Corporation (LSC) to provide funding for civil legal services. *History*, LEGAL SERVICES CORP., <http://www.lsc.gov/about-lsc/who-we-are/history> (last visited Dec. 1, 2015). However, funding for LSC has been dramatically cut since its creation—as much as forty percent in the past decade. Susan Beck, *The Justice Gap: Corporate Lawyers Are Making Record Revenues, but Legal Aid Is in Crisis*, HUFFINGTON POST (July 7, 2015), http://www.huffingtonpost.com/susan-beck/legal-aid-funding_b_7744964.html. Currently, there is only one legal aid attorney for every 8893 individuals who qualify for legal aid. *Id.* This large gap forces many to represent themselves pro se, which can become impossible due to complex forms or language barriers. See REBECCA L. SANDEFUR & AARON C. SMYTH, ACCESS ACROSS AMERICA: FIRST REPORT OF THE CIVIL JUSTICE INFRASTRUCTURE MAPPING PROJECT (2011), http://www.americanbarfoundation.org/uploads/cms/documents/access_across_america_first_report_of_the_civil_justice_infrastructure_mapping_project.pdf (concluding that filling the justice gap requires more than analysis of funds or costs, and must include conversations about the causes); NAT'L COALITION FOR C.R. TO COUNS., <http://civilrighttocounsel.org> (last visited Dec. 1, 2015) (providing further information on the justice gap and spotlighting New York City legislation that would provide a right to counsel in housing cases); *Access to Justice*, U.S. DEP'T. OF JUST., <http://www.justice.gov/atj> (last visited Dec. 1, 2015) (describing strategies to combat the justice gap, including advancing statutory policy, advocating mediation, and researching); *Resource Center for Access to Justice Initiatives*, AM. BAR ASS'N, http://www.americanbar.org/groups/legal_aid_indigent_defendants/initiatives/resource_center_for_access_to_justice.html (last visited Dec. 1, 2015) (collecting data on the different funding sources for civil legal aid); see also SANDEFUR, *supra* note 174, at 3 (noting that even if there were enough attorneys to represent every low-income person, the percentage of people with a civil legal need that seek legal services to address civil justice situations is only twenty-two percent, as most people do not recognize when an issue is legal in nature).

larger public health crisis.¹⁹⁸ Eviction almost always results in downward instability and “many and severe” consequences.¹⁹⁹

Renters with evictions on their public record are often blacklisted by landlords who purchase consumer reports to separate out people with a history of “problem” tenancies,²⁰⁰ regardless of whether the claim for possession was decided in the tenant’s favor.²⁰¹ As a result of this practice, prospective tenants with a history of eviction are forced into rental housing with substandard conditions that pose a threat to their and their children’s health and safety. In addition to a guaranteed move to a more disadvantaged, high crime neighborhood or rundown housing, consequences of eviction often include prolonged periods of homelessness, job loss, depression, and subsequent deterioration of health.²⁰² These outcomes fall disproportionately on poor women and racial and ethnic minorities who represent the majority of low-income tenants.²⁰³

2. *Abuse and neglect proceedings*

Abuse and neglect proceedings provide another example of court systems that do not examine individual circumstances central to the

198. In one American Bar Association study, the most common negative consequence of civil legal issues reported was an adverse impact on health. SANDEFUR, *supra* note 174, at 3.

199. Matthew Desmond, *Eviction and the Reproduction of Urban Poverty*, 118 AM. J. SOC. 88, 91 (2012) [hereinafter Desmond, *Reproduction of Urban Poverty*].

200. See Brief of Loyola University Chicago Health Justice Project as Amici in Support of Defendant-Petitioner at 2, 8, *Foster v. Wilson*, No. 1-13-0723 (Ill. Dec. 3, 2014) [hereinafter Health Justice Project Amicus Brief] (requesting that the court reverse the Appellate Court’s dismissal in part because of the serious consequences that result from tenant-screening reports); Mary Spector, *Tenant Stories: Obstacles and Challenges Facing Tenants Today*, 40 J. MARSHALL L. REV. 407, 407–08 (2007) (noting that many of the housing problems from forty years ago continue to appear, alongside a more complex legal environment); Rudy Kleysteuber, Note, *Tenant Screening Thirty Years Later: A Statutory Proposal to Protect Public Records*, 116 YALE L.J. 1344, 1347, 1356 (2007) (remarking that as an initial screening process, landlords rely on consumer reports that give overwhelmingly negative information).

201. Health Justice Project Amicus Brief, *supra* note 200, at 7 (citing Dennis Hevesi, *When the Credit Check Is Only the Start*, N.Y. TIMES (Oct. 12, 2003), <http://www.nytimes.com/2003/10/12/realestate/when-the-credit-check-is-only-the-start.html>); see Lior Jacob Strahilevitz, *Reputation Nation: Law in an Era of Ubiquitous Personal Information*, 102 NW. U. L. REV. 1667, 1680 (2008) (“[I]nvolvement in litigation of any sort will place meaningful constraints on their future ability to obtain rental housing.”).

202. Desmond, *Reproduction of Urban Poverty*, *supra* note 199, at 91.

203. Chester Hartman & David Robinson, *Evictions: The Hidden Housing Problem*, 14 HOUS. POL’Y DEBATE 461, 467–68 (2003).

issue, such as poverty and the social determinants of health, when making determinations of grave importance to the individual. Poverty is the most powerful predictor of child abuse, neglect, and poor health in infants.²⁰⁴ In fact, the majority of children in the child welfare system are from low-income, minority families.²⁰⁵ In one study of neglect and abuse cases, the income for African American and Hispanic families was three times more likely to be below the poverty level than was the income of white families.²⁰⁶ Poverty alone is not grounds for removal of a child from the home.²⁰⁷ However, the health effects of poverty may be.

204. See Brett Drake et al., *Racial Bias in Child Protection? A Comparison of Competing Explanations Using National Data*, 127 PEDIATRICS 471, 473 (2011); see also Bruce A. Boyer & Amy E. Halbrook, *Advocating for Children in Care in a Climate of Economic Recession: The Relationship Between Poverty and Child Maltreatment*, 6 NW. J.L. SOC. POLY. 300, 302 (2011) (summarizing multiple studies documenting that “children living in poverty are substantially more likely than children of affluence to be defined as abused or neglected and taken into foster care”). “There is no single explanation for why children living in poverty are at a higher risk of reported abuse or neglect. Social scientists continue to debate the extent to which the root causes of this relationship arise from community norms, social isolation, chronic resource deficits, or simply from the increased exposure of poor families to public systems that often lead to protective interventions.” Boyer & Halbrook, *supra*, at 301–02.

205. See Candra Bullock, Comment, *Low-Income Parents Victimized by Child Protective Services*, 11 AM. U. J. GENDER SOC. POL’Y & L. 1023, 1024 (2003) (stating that children from low-income homes are more likely to be reported to child-welfare agencies when compared to children from middle and high-income homes); see also Boyer & Halbrook, *supra* note 204, at 303–04 (stressing that minority families are disproportionately represented in the child welfare system).

206. Drake et al., *supra* note 204, at 474 (finding that family structure and socioeconomic status were predictors of child maltreatment). African American and Hispanic children experience maltreatment and physical neglect at a higher rate than white children. ANDREA J. SEDLAK ET AL., SUPPLEMENTARY ANALYSES OF RACE DIFFERENCES IN CHILD MALTREATMENT RATES IN THE NIS-4 32 (2010); Boyer & Halbrook, *supra* note 204, at 303–04.

207. See, e.g., *Norman v. Johnson*, 739 F. Supp. 1182, 1184, 1192, 1194 (N.D. Ill. 1990) (granting injunctive relief to parents, who “are impoverished parents and legal guardians who have lost, are at risk of losing, will lose, or cannot regain custody of their children from the Illinois Department of Children and Family Services (‘DCFS’) because they are homeless or unable to provide food or shelter for their children,” and holding that the Adoption Assistance and Child Welfare Act required reasonable efforts be made to keep the families together); *Martin A. v. Gross*, 546 N.Y.S.2d 75, 77 (N.Y. App. Div. 1989) (confirming that poverty alone is not a reason to separate a family). Similar cases include *Norman v. McDonald*, 930 F. Supp. 1219, 1220 (N.D. Ill. 1996), which involved plaintiffs who were “impoverished parents or legal guardians . . . at risk of losing their children because they were unable to provide adequate food or shelter.” *Id.* After obtaining a Consent Order in the 1990 *Norman* case that required DCFS to implement certain procedures and services, the

Under the Fourteenth Amendment, parents' interest in the "care, custody, and control of their children . . . is perhaps the oldest of the fundamental liberty interests recognized by [the Supreme] Court."²⁰⁸ Aligned with this liberty interest, the Adoption Assistance Child Welfare Act of 1980 required, as a condition of receiving federal funds, that states make "reasonable efforts to preserve and reunify families."²⁰⁹ This right, while fundamental, is not absolute. States can infringe upon the parental liberty interest when doing so would serve a compelling interest and where the means are narrowly tailored to achieve that compelling interest.²¹⁰

The extent of the "reasonable efforts" required to preserve an impoverished family unit under the Adoption Assistance Child

same class action plaintiffs moved to extend the monitoring period of the Consent Order due to DCFS inaction. *Id.* at 1221. The District Court found additional monitoring would be beneficial in obtaining compliance and stated that child services must make a reasonable effort to ensure housing and other necessities like food, clothing, and/or childcare are met before the children were removed. *Id.* The plaintiffs in *Gross* were families whose children were removed for "a variety of severe, tragic personal crises" and for "inadequate housing." 546 N.Y.S.2d at 76. The plaintiffs sought to compel the defendant social service agency to provide "preventive and protective services reasonably calculated to preserve family integrity." *Id.* The court held such preliminary injunction was proper. *Id.* at 79.

208. *Troxel v. Granville*, 530 U.S. 57, 65 (2000). A series of Supreme Court decisions leading up to *Troxel* held that parents have a fundamental liberty interest in the care, custody, and control of their children without unreasonable interference by the state. *See, e.g.*, *Pierce v. Soc'y of Sisters*, 268 U.S. 510, 534 (1925) (declaring that mandatory school attendance is reasonable); *Meyer v. Nebraska*, 262 U.S. 390, 402-03 (1923) (holding that preventing a child from learning German at a young age was unreasonable, but that other curriculum mandates were reasonable). However, as public awareness of the heightened number of reports of child maltreatment grew in the mid-1900s, the Court held in *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944), that a parent's fundamental rights are not absolute. Accordingly, the *Prince* court articulated that under the state's *parens patriae* power, the state can intervene and take over the care, custody, and control of a child if it is in the child's best interest. *Id.* at 166.

209. CHILDREN'S BUREAU, REASONABLE EFFORTS TO PRESERVE OR REUNIFY FAMILIES AND ACHIEVE PERMANENCY FOR CHILDREN 1, 2 (2012), <https://www.childwelfare.gov/pubPDFs/reunify.pdf> (summarizing relevant state statutes and providing interpretations of "reasonableness"); *see* Adoption and Safe Families Act of 1997, Pub. L. No. 105-89, 111 Stat. 2115, 2116.

210. *See Reno v. Flores*, 507 U.S. 292, 303 (1993) (justifying keeping a child under government custody when it is done so decently and within the best interests of the child). *Parens patriae* stands for the principles that the government has a duty to protect its citizens who cannot protect themselves. *See Prince*, 321 U.S. at 166 ("Acting to guard the general interest in youth's well[-]being, the state as *parens patriae* may restrict the parent's control . . ."). If no less invasive alternatives would effectively achieve the ends sought, the state has a "wide range of power for limiting parental freedom and authority in things affecting the child's welfare." *Id.* at 167.

Welfare Act was challenged in the District Court for the Northern District of Illinois in *Norman v. Johnson*²¹¹ and in the Supreme Court of New York in *Martin A. v. Gross*.²¹² Both cases considered the removal of children from their families due to the effects of poverty and the families' unstable housing circumstances.²¹³ In both cases, the courts found that separating children from their parents solely because of their inability to afford adequate housing violated the "reasonable efforts" requirement.²¹⁴ As a result, state departments for child and family services must provide housing assistance, such as longer shelter stays, to assist in preserving the family unit.²¹⁵

The Adoption and Safe Families Act (ASFA) of 1997 made the child's health and safety the paramount concern, clarifying that "reasonable efforts shall be made to preserve and reunify families—prior to the placement of a child in foster care, to prevent or eliminate the need for removing the child from the child's home; and to make it possible for the child to safely return to the child's home."²¹⁶ ASFA limited the meaning of "reasonable efforts," specifying that these efforts were *not* required under certain exceptions.²¹⁷ Theoretically, when the exceptions do not apply, this mandate could include the provision of eviction prevention resources, public benefit enrollment, funding for security deposits, housing relocation services, and other forms of assistance and resources that would allow a family to move out of a food desert or to a home that meets habitability standards. However, when it comes to

211. 739 F. Supp. 1182.

212. 546 N.Y.S.2d 75.

213. *Id.* at 76.

214. *Johnson*, 739 F. Supp. at 1191; *Martin*, 524 N.Y.S.2d at 77.

215. *Martin*, 524 N.Y.S.2d at 79; *see Norman v. McDonald*, 930 F. Supp. 1219, 1221 (N.D. Ill. 1996) (noting that "reasonable efforts" includes assisting in locating and securing permanent or temporary housing).

216. Adoption and Safe Families Act of 1997, Pub. L. No. 105-89, 111 Stat. 2115, 2116.

217. The circumstances in which reasonable efforts are not required include when:
 a court of competent jurisdiction has determined that (i) the parent has subjected the child to aggravated circumstances (as defined in State law, which definition may include but need not be limited to abandonment, torture, chronic abuse, and sexual abuse); (ii) the parent has (I) committed murder . . . of another child of the parent; (II) committed voluntary manslaughter . . . of another child of the parent; (III) aided or abetted, attempted, conspired, or solicited to commit such a murder or such a voluntary manslaughter; or (IV) committed a felony assault that results in serious bodily injury to the child or another child of the parent; or (iii) the parental rights of the parent to a sibling have been terminated involuntarily.
 42 U.S.C. § 671(a)(15) (2012).

health and disability, reasonable efforts to assist the family in overcoming barriers to health are limited.

i. Obesity

Jerri Gray was a single mother who worked two jobs and overtime, did not have time to cook, and could not afford healthy foods or gas.²¹⁸ Her high school-aged son, Alexander Draper, who achieved good grades and participated in school activities, was obese.²¹⁹ When she asked a doctor for help addressing his obesity, she was reported to Child Protective Services (CPS).²²⁰ At CPS's recommendation, she saved to buy a bike for her son and enrolled him in special programs.²²¹ When she missed a few doctor's appointments because she could not afford the gas money, she was charged with criminal neglect and Alexander was removed from her care. She faced up to fifteen years in prison because she fled with her son when she learned of the removal decision.²²² When her son's foster mother had trouble keeping up with the boy's appointments, there was discussion about providing additional help and a personal trainer, help that was not offered to Ms. Gray.²²³

Ms. Gray's situation is not uncommon. In at least seven states, courts have allowed the removal of a child from his parents due to the child's obesity.²²⁴ Many cases had several elements in common:

218. See Lauren Cox, *Courts Charge Mother of 555-Pound Boy*, ABC NEWS (June 29, 2009), <http://abcnews.go.com/Health/WellnessNews/story?id=7941609> (explaining that the State intervened because Alexander Draper's health was an issue of life-or-death and Jerri Gray could not properly care for him because she could not afford health insurance or gas to travel to Draper's medical appointments); *Mom of 555-Pound Teen Speaks Out*, CBS NEWS (June 25, 2009, 9:02 AM), <http://www.cbsnews.com/news/mom-of-555-pound-teen-speaks-out> (describing the nature of the charges brought against Gray and possible reasons why Alexander Draper gained the amount of weight he did, such as that Gray worked long hours and did not have time or resources to cook healthy meals).

219. Ron Barnett, *S.C. Case Looks on Child Obesity as Child Abuse. But Is It?*, USA TODAY (June 23, 2009, 5:39 PM), http://usatoday30.usatoday.com/news/health/weightloss/2009-07-20-obesityboy_N.htm.

220. Cox, *supra* note 218.

221. *Id.*

222. *Id.*

223. Sora Song, *An Obese Boy Is Placed in Foster Care. Can It Help?*, TIME (Nov. 28, 2011), <http://healthland.time.com/2011/11/28/an-obese-boy-is-placed-in-foster-care-can-it-help>.

224. These states are South Carolina, Indiana, New Mexico, Texas, New York, Pennsylvania, and Iowa. See *In re L.T.*, 494 N.W.2d 450, 451-53 (Iowa Ct. App. 1992)

(1) the inability of the parent to provide or afford some aspect of treatment; (2) no other cause for removal present; (3) no imminent harm to the child; and (4) the parents' express desire to help their children, but inability to do so without State assistance.²²⁵ Proponents of court intervention cite to the role of parental influence over eating habits and lifestyle choices as a major cause of childhood obesity.²²⁶

(affirming the district court's decision to place a ten-year-old girl, weighing 290 pounds and suffering from a personality disorder and a severe yeast infection in her skin creases, in residential treatment foster care when her mother refused to place her in treatment); *In re Brittany T.*, 852 N.Y.S.2d 475, 478–79 (N.Y. App. Div. 2008) (reversing a finding of removal of an obese nine-year-old); *In re D.K.*, 58 Pa. D. & C.4th 353, 354 (Com. Pl. 2002) (removing a sixteen-year-old boy weighing 451 pounds and diagnosed with life-threatening morbid obesity and other physical and psychological consequences, from his single mother, despite the court's recognition that she was homebound and physically limited due to her own weight); *In re G.C.*, 66 S.W.3d 517, 520 (Tex. Ct. App. 2002) (removing a four-year-old boy, weighing ninety-seven pounds, due to the mother's medical neglect); Cheryl George, *Parents Super-Sizing Their Children: Criminalizing and Prosecuting the Rising Incidence of Childhood Obesity as Child Abuse*, 13 DEPAUL J. HEALTH CARE L. 33, 61–62 (2010) (discussing a New Mexico case where a 130-pound three-year-old child's parents were found guilty of criminal child neglect, and, as a result, the child was removed from the parents' custody, and discussing an Indiana case in which a 138-pound four-year-old boy was removed from his parents for morbid obesity and other serious health problems; the parents were also found guilty of criminal child neglect); see also Barnett, *supra* note 219 (discussing the South Carolina case involving Jerri Gray and her son, Alexander Draper); Shawna Boothe & Caroline Ackerman, *Courts Struggle with the Growing Problem of Child Obesity: Is It Neglect Justifying Removal From The Home?*, SCHIFF HARDIN (Jan. 2014), <http://www.schiffhardin.com/Templates/media/files/publications/PDF/Boothe-Shawna-Courts-Struggle-with-Growing-Problem-of-Child-Obesity-IICLE-Jan-2014.pdf> (providing that almost one in three children today are either overweight or obese). In addition to these removal cases, a mother in California was found guilty of misdemeanor child abuse after her thirteen-year-old daughter, who weighed 680 pounds, died due to complications from her obesity. Deena Patel, Note, *Super-Sized Kids: Using the Law to Combat Morbid Obesity in Children*, 43 FAM. CT. REV. 164, 170 (2005).

225. See *In re L.T.*, 494 N.W.2d at 451, 453 (stating that the mother had asked the Department of Human Services for assistance with her daughter's obesity and that she had taken her daughter to numerous doctor's appointments); *In re Brittany T.*, 48 A.D.3d at 999 (“[E]ven though [the parents] could not afford the membership fees, their daughter did attend [the fitness center] as often as possible.”); *In re D.K.*, 58 Pa. D. & C.4th at 354 (acknowledging the inability of the mother to assist her obese child due to her own health and being homebound from obesity).

226.

State intervention may serve the best interests of many children with life-threatening obesity, comprising the only realistic way to control harmful behaviors. Child protective services typically provide intermediate options such as in-home social supports, parenting training, counseling, and financial assistance, that may address underlying problems without resorting to removal.

However, removal does not guarantee “improved physical health, and substantial psychosocial morbidity may ensue.”²²⁷ According to Professor Vivek Sankaran, Director of the Detroit Center for Family Advocacy at the University of Michigan, a center that works to prevent children from entering state custody,

A lot of people don’t realize how traumatic it is for children to be ripped away from their parents. . . . [T]he actual removal causes irreparable damage to the child—emotional problems, behavioral problems—and it’s the type of thing that can’t be remedied [Y]ou need to make sure you have tried every other possibility to protect the child.²²⁸

Protecting the child requires an investigation into the economic, societal, cultural, environmental, and social underpinnings of health and obesity.²²⁹ It is well established that, among low-income families and individuals, obesity is often the result of social determinants of health, such as the built environment and food insecurity or an ACE.²³⁰ These challenges may be addressed with social supports or housing relocation assistance.²³¹ Yet, courts rarely recognize the need for this type of support, which presumably is no more burdensome

Lindsey Murtagh & David S. Ludwig, *State Intervention in Life-Threatening Childhood Obesity*, 306 J. AM. MED. ASS’N 206, 207 (2011); see Shauneen M. Garrahan & Andrew W. Eichner, Note, *Tipping the Scale: A Place for Childhood Obesity in the Evolving Legal Framework of Child Abuse and Neglect*, 12 YALE J. HEALTH POL’Y L. & ETHICS 336, 343 (2012) (emphasizing the influence parents have over their children’s diet and lifestyle).

227. Murtagh & Ludwig, *supra* note 226, at 207.

228. Bonnie Rochman, *Should Parents Lose Custody of Their Extremely Obese Kids?*, TIME (July 13, 2011), <http://healthland.time.com/2011/07/13/should-parents-lose-custody-of-their-very-obese-kids>.

229. *See id.*

230. *See supra* Part I (discussing the social roots of health inequity).

231. In a study conducted between 1994 and 1998, families residing in public housing in high-poverty census tracts were given housing vouchers to move to housing in low-poverty neighborhoods and were compared to families who were given vouchers and told to reside in any tract, as well as a control group that continued to reside in high-poverty neighborhoods. Jens Ludwig et al., *Neighborhoods, Obesity, and Diabetes—A Randomized Social Experiment*, 365 NEW ENG. J. MED. 1509, 1509–11 (2011). Researchers comparing the groups after approximately ten years determined that the group that moved to low-poverty neighborhoods had lower rates of obesity and diabetes. *Id.* at 1516–17; see Thomas B. Edsall, *Does Moving Poor People Work?*, N.Y. TIMES (Sept. 16, 2014), <http://www.nytimes.com/2014/09/17/opinion/does-moving-poor-people-work.html>; Barbara Sard, *Housing Vouchers Help Families Live in Better Neighborhoods—But They Can Do More*, CENTER ON BUDGET & POLICY PRIORITIES BLOG (Oct. 17, 2014, 2:35 PM), <http://www.cbpp.org/blog/housing-vouchers-help-families-live-in-better-neighborhoods-but-they-can-do-more>.

on a state under the “reasonable efforts” standard than the housing assistance provided in *Norman v. Johnson*²³² and *Martin A. v. Gross*.²³³

Only one court, the New York Supreme Court, subtly considered the limitations of poverty in overturning a determination of willful violation of an order of supervision in a neglect case, which carries with it a jail sentence.²³⁴ In *In re Brittany T.*, the Family Court of Chemung Valley ordered the removal of the child from the home because of the parents’ “willful violation” of the court’s order, as evidenced by the child’s failure to lose weight.²³⁵ The thirteen-year-old child was morbidly obese and suffered multiple comorbidities.²³⁶ The State asserted, and the court agreed, that the parents failed to ensure the child attended school regularly and on time, take the child to the gym at least two to three times per week, actively participate in a nutrition and education program, cooperate with the referred programs, and sign necessary releases of information.²³⁷ According to the court, these “shockingly” willful violations were without just cause and had a very negative physical, emotional, and mental impact on the child.²³⁸ The New York Supreme Court reversed the Family Court’s decision, finding that, despite their financial difficulty in doing so, Brittany’s parents complied with the court’s order to the best of their abilities.²³⁹ The family lived in Elmira, New York, a

232. 739 F. Supp. 1182, 1203, 1207 (N.D. Ill. 1990) (requiring the State to provide plaintiffs with services, such as case plans, case plan reviews, and coordination with social welfare programs to help prevent the need for removal before a removal decision has been made).

233. 524 N.Y.S.2d 121, 123, 129 (Sup. Ct. 1987) (holding that the parents of children placed in foster homes were entitled to injunctive relief against the city, requiring it to develop and implement a plan to provide protective services, and granting a preliminary injunction enjoining the state from imposing a ninety-day limit on emergency shelter as a preventative service), *aff’d*, 546 N.Y.S.2d 75 (N.Y. App. Div. 1989).

234. *See In re Brittany T.*, 852 N.Y.S.2d 475, 478 (App. Div. 2008) (noting that, although the child did not attend the gym as frequently as the State would prefer, because the parents could not afford the child’s gym membership fees, attendance nonetheless showed a good faith attempt and a recognition of their obligations under the terms of the court order).

235. *In re Brittany T.*, 835 N.Y.S.2d 829, 831 (Fam. Ct. 2007), *rev’d*, 852 N.Y.S.2d 475 (App. Div. 2008).

236. *See id.* at 833 (noting the following comorbidities: gallstones, sleep apnea, intermittent high blood pressure, pain in the knee joints, insulin resistance, and acanthosis nigricans). She also exhibited signs of depression. *Id.* at 834.

237. *Id.* at 831–32.

238. *Id.* at 837.

239. *See In re Brittany T.*, 852 N.Y.S.2d at 478–80 (holding that the petitioner failed to establish that the parents willfully violated any term or condition contained in the supervision order when they exerted a good faith attempt to have their daughter attend

declining industrial town with a median family income of \$30,804 where 29.2% of the population was living below the poverty line and was most likely experiencing many of the negative consequences of the social determinants of health discussed herein.²⁴⁰ The two courts viewed the same facts in two very different ways, and only the appellate court considered the limitations of poverty on health.²⁴¹

ii. Disability

Erika Johnson and Blake Sinnett lost custody of their newborn because they had difficulty breastfeeding the baby at the hospital.²⁴² A nurse reported them to Child Protective Services because, from the nurse's perspective, the couple's blindness made them incapable of caring for a child.²⁴³ The baby was not returned to the family until she was two months old and Erika had lost the ability to breastfeed.²⁴⁴

Despite anti-discrimination laws, parents with disabilities—either genetic or resulting from social determinants of health²⁴⁵—also face unfair treatment by legislators and the courts. In addition to the

the gym and related activities; ensured their daughter's attendance at school, which resulted in her placement on the honor roll; and monitored her food intake by using food logs and routinely traveling more than 130 miles to meet with the child's nutritionist).

240. *Elmira, New York, State & County QuickFacts*, U.S. CENSUS BUREAU, <http://quickfacts.census.gov/qfd/states/36/3624229.html> (last visited Dec. 1, 2015). See *supra* Part I (discussing the social determinants of health).

241. However, the New York Supreme Court did not overturn the finding of neglect. See *In re Brittany T.*, 852 N.Y.S.2d at 478 (“First, we note that respondents’ challenge to the initial finding of neglect entered against them is not properly before us. That finding was entered with their consent and they failed to make a timely application in Family Court to vacate that order.” (citations omitted)).

242. Susan Donaldson James, *Baby Sent to Foster Care for 57 Days Because Parents Are Blind*, ABC NEWS (July 28, 2010), <http://abcnews.go.com/Health/missouri-takes-baby-blind-parents/story?id=11263491>.

243. *Id.*

244. *Id.*

245. For example, the definition of disability under the ADA Amendments Act includes multiple impairments that can be related in origin to poverty, including any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities; visual, speech, and hearing impairments; HIV; and addiction and alcoholism. See 28 C.F.R. § 36.104 (2014); EMILY A. BENFER, AM. CONSTITUTION SOC’Y FOR LAW & POLICY, THE ADA AMENDMENTS ACT: AN OVERVIEW OF THE RECENT CHANGES TO THE AMERICANS WITH DISABILITIES ACT, 1, 16 (2009), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2341414; Chai R. Feldblum et al., *The ADA Amendments Act of 2008*, 13 TEX. J. C.L. & C.R. 187, 188 (2008).

protections afforded to parents under laws governing child welfare cases, federal law prohibits discrimination against and disparate treatment of individuals with a disability. When signing the Americans with Disabilities Act²⁴⁶ (ADA) into law, President George H. W. Bush described the purpose of the Act:

[The law] will ensure that people with disabilities are given the basic guarantees for which they have worked so long and so hard: independence, freedom of choice, control of their lives, the opportunity to blend fully and equally into the rich mosaic of the American mainstream. Legally, it will provide our disabled community with a powerful expansion of protections and then basic civil rights. It will guarantee fair and just access to the fruits of American life which we all must be able to enjoy. . . . And in our America, the most generous, optimistic nation on the face of the Earth, we must not and will not rest until every man and woman with a dream has the means to achieve it. . . . Let the shameful wall of exclusion finally come tumbling down.²⁴⁷

Section 504 of the Rehabilitation Act provides similar protection against exclusion from programs funded with federal monies.²⁴⁸

Notwithstanding these ideals and standards, thirty-seven states incorporate disability—including, but not limited to physical, intellectual, emotional, and psychiatric disabilities—as grounds for termination of parental rights.²⁴⁹ All states allow—and some mandate—both child welfare and family law courts to consider the physical and mental health of a parent in determining the best interest of a child, often resulting in a loss of custody or

246. Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101–12213 (2012).

247. Remarks of President George H.W. Bush at the Signing of the Americans with Disabilities Act (July 26, 1990), http://www.eeoc.gov/eeoc/history/35th/videos/ada_signing_text.html.

248. U.S. DEP'T HEALTH & HUMAN SERVS., FACT SHEET: YOUR RIGHTS UNDER SECTION 504 OF THE REHABILITATION ACT (2006), <http://www.hhs.gov/ocr/civilrights/resources/factsheets/504.pdf> (explaining that Section 504 of the Rehabilitation Act forbids employers and organizations that receive federal funding from excluding or denying individuals with disabilities benefits and program participation). These statutes are further supported by *Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581, 587 (1999), a Supreme Court case that held public entities must provide community based services when: (1) such services are appropriate, (2) the individual with the disability does not oppose the services, and (3) these services can be reasonably accommodated. *Id.*

249. NAT'L COUNCIL ON DISABILITY, ROCKING THE CRADLE: ENSURING THE RIGHTS OF PARENTS WITH DISABILITIES AND THEIR CHILDREN 99 (Sept. 27, 2012), <http://www.ncd.gov/publications/2012/Sep272012> [hereinafter ROCKING THE CRADLE].

diminishment of visitation rights.²⁵⁰ In these cases, any “reasonable efforts” focus solely on reunification after the removal and not in the form of services to correct or accommodate for the noted “deficiency.”²⁵¹ Some state child welfare systems deny reunification even to non-offending parents on the basis of the parents’ disability.²⁵² According to the National Council on Disability, “Often this disallowance [of constitutional rights] is based solely on speculation that parental disability may be detrimental to a child at some point in the future.”²⁵³ Courts are rarely the exception and uphold the state’s right to factor the health or disability of the parent in the custody or visitation decision.²⁵⁴

When a court fails to make reasonable efforts to address the social determinants of health or to recognize the rights of parents with disabilities, the court not only infringes upon the parents’ fundamental rights, but also functions as a social determinant of health, perpetuating poor health outcomes for the child by guaranteeing placement in foster care. Nearly thirteen percent of children in the child welfare system had a caregiver with a reported disability.²⁵⁵

Another egregious pipeline to foster care placement is custody relinquishment, which occurs when a child, living with mental illness, is removed from his or her family and placed into foster care, solely because the family was unable to access mental health treatment—at

250. *Id.* at 137, 142, 146, 156; see also Megan Kirshbaum et al., *Parents with Disabilities: Problems in Family Court Practice*, 4 J. CTR. FAM. CHILD. & CTS. 27, 27 (2003).

251. Kirshbaum et al., *supra* note 250, at 41–42.

252. ROCKING THE CRADLE, *supra* note 249, at 300.

253. *Id.*

254. See *id.* at 142 (“Parents with disabilities encounter pervasive discrimination in child custody and visitation disputes.”); Kirshbaum et al., *supra* note 250, at 38 (finding a physically-disabled mother unable to parent for fear she would use her children as her attendants and because she could not get upstairs in an emergency, despite the findings of psychological and occupational evaluations demonstrating her capability and even though she was independent and capable of climbing the stairs); Courtney Hutchison, *Judge Cites Mom’s Breast Cancer in Denying Custody of Children*, ABC NEWS (May 10, 2011), <http://abcnews.go.com/Health/BreastCancerCenter/north-carolina-mom-breast-cancer-loses-custody/story?id=13546870> (giving primary custody of children to the father in divorce proceedings, in part because of the mother’s late stage cancer and treatment requirements). *But see In re Marriage of Carney*, 598 P.2d 36, 37 (Cal. 1979) (reversing the trial court’s decision to change custody to the mother, stating that the father’s disability did not necessitate a lesser ability to be a good parent to his children).

255. ROCKING THE CRADLE, *supra* note 249, at 91.

no fault of the parents.²⁵⁶ It is estimated that, while approximately one in five children have a mental illness, less than twenty percent of those diagnosed are able to access youth mental health services.²⁵⁷

Placement into foster care further deteriorates the health of both children with disabilities and those without. “Children in foster care are seventy-five percent more likely to be maltreated, four times more likely to be sexually abused, and are more likely to receive inadequate health care and develop behavioral and emotional problems.”²⁵⁸ They are two times more likely to have post-traumatic stress disorder

256. See Tracy J. Simmons, *Relinquishing Custody in Exchange for Mental Healthcare Services: Undermining the Adoption and Safe Families Act’s Promise of Reasonable Efforts Towards Family Preservation and Reunification*, 10 J.L. & FAM. STUD. 377, 378 (2008) (explaining that custody relinquishment occurs due to inaccessibility to affordable, high-quality mental health services).

257. *Mental Health Myths and Facts*, MENTALHEALTH.GOV, <http://www.mentalhealth.gov/basics/myths-facts> (last visited Dec. 1, 2015). Similarly, one in four adults live with a mental illness, but as few as twenty-nine percent of those who need it can access treatment. *Mental Illness and the Need for Health Care Access Reform*, BAZELON CTR. FOR MENTAL HEALTH L., http://www.bazelon.org/LinkClick.aspx?fileticket=Tgq0Qq-w6_c%3D&tabid=220 (last visited Dec. 1, 2015). The National Alliance on Mental Illness (“NAMI”) estimates that two million individuals with a mental illness are jailed each year. *Jailing People with Mental Illness*, NAT’L ALLIANCE ON MENTAL ILLNESS, <https://www.nami.org/Learn-More/Public-Policy/Jailing-People-with-Mental-Illness> (last visited Dec. 1, 2015). In fact, one of the largest mental health providers in the United States is Cook County Jail, located in Chicago, Illinois, where at least one third of inmates have a diagnosed psychological disorder. Matt Ford, *America’s Largest Mental Hospital Is a Jail*, ATLANTIC (June 8, 2015), <http://www.theatlantic.com/politics/archive/2015/06/americas-largest-mental-hospital-is-a-jail/395012>. Recent attempts to improve access to mental health treatment include (1) the Mental Health Parity and Addiction Equity Act of 2008 (“MHPAEA”), which mandates that health insurers and group plans that offer mental health benefits, such as employment-sponsored insurance for employers with fifty or more employees, Medicaid managed care plans, Medicare Advantage, and state and local government plans, must provide an equal level of benefits for a mental health condition that would be provided for a physical health condition; and (2) the Affordable Care Act of 2010, which requires that health plans provide mental health and substance abuse benefits as an essential health benefit, forcing them to also comply with MHPAEA. However, these laws are yet to have a major impact, as states continue to decrease funding, forcing existing services to shut down. Between 2009 and 2012, states cut \$5 billion in services. Liz Szabo, *Cost of Not Caring: Nowhere to Go*, USA TODAY (May 12, 2014), <http://www.usatoday.com/story/news/nation/2014/05/12/mental-health-system-crisis/7746535>; Telephone interview with Amanda Walsh, Equal Justice Works Fellow and Staff Attorney, Chicago Medical-Legal Partnership for Children (June 1, 2015).

258. Elizabeth Ralston, Comment, *KinderLARDen Cop: Why States Must Stop Policing Parents of Obese Children*, 42 SETON HALL L. REV. 1783, 1814 (2014).

than combat veterans.²⁵⁹ Foster care children are the highest risk group for homelessness, with twenty-four percent experiencing homelessness after aging out of the system.²⁶⁰ Sixty-one percent of foster care children are unemployed one year after aging out.²⁶¹ Sixty-four percent of male and 32.5% of female former foster children are incarcerated.²⁶² Foster care results in trauma, depression, social phobia, panic syndrome, separation anxiety disorder, and other anxiety disorders.²⁶³ Laws that perpetuate poor health exacerbate many of these issues.

D. *The Enactment of Laws that Perpetuate Poor Health*

Ms. Briggs was a repeated victim of domestic violence. After multiple calls to 911, an officer told her, "You are on three strikes. We're gonna have your landlord evict you."²⁶⁴ When her abuser was released from jail and arrived at her front door, she felt she had no choice but to let him stay, even though she feared for her daughter's and her own safety. She did not call 911 when her abuser attacked her with a brick. She begged neighbors not to call the authorities when her abuser returned and stabbed her, leaving a gash on her forehead and a four-inch stab wound on her neck. Fortunately, neighbors did call emergency services and Ms. Briggs was airlifted to the hospital. Three days after the stabbing, the city informed the landlord that his rental license was revoked and that Ms. Briggs had ten days to vacate the property.²⁶⁵ The city planned on eliminating the "nuisance" by forcibly removing her from the property.²⁶⁶

259. *Id.* at 1814.

260. *Facts: What Happens to Former Foster Children?*, FIRST STAR, <https://www.firststar.org/whats-at-stake/facts> (last visited Dec. 1, 2015).

261. *Id.* Further, 53.5% of foster children are still unemployed five years after aging out. *Id.*

262. *See id.* (comparing the number of incarcerated former foster children to the less than one percent of the general population that is incarcerated in jail or prison).

263. Ralston, *supra* note 258, at 1813.

264. Verified First Amended Complaint at 10, *Briggs v. Borough of Norristown*, No. 2:13-cv-02191-ER (E.D. Pa. Apr. 29, 2013) [hereinafter *First Amended Complaint, Briggs*]; see Sandra Park, *Victory! Town Will No Longer Treat Domestic Violence Victims as Nuisances*, AM. CIV. LIBERTIES UNION, <https://www.aclu.org/blog/victory-town-will-no-longer-treat-domestic-violence-victims-nuisances> (describing the circumstances leading to the lawsuit between Briggs and the Borough of Norristown).

265. First Amended Complaint, *Briggs*, *supra* note 264, at 16.

266. *Id.*

Many laws that are neutral on their face have a disastrous effect on low-income, marginalized communities, especially when they are enacted and enforced without regard to the consequences for low-income people or their health. For example, third party policing laws, such as nuisance ordinances and crime-free rental housing laws, have dangerous consequences for victims of crime. An alternative to the traditional police force, “[t]hird-party policing attempts to control or prevent crime and disorder by activating nonoffending persons [such as parents, landlords, and business owners] who are [in a position to] influence environments where offenses have occurred or may occur.”²⁶⁷ Ms. Briggs’s experience, as a result of the introduction of third party policing laws, is commonplace. In Wisconsin, a landlord was informed that his property was in violation of a nuisance ordinance after one of his tenants had been beaten and called the police.²⁶⁸ Knowing the tenant was a domestic violence victim, the landlord responded to the city, “We suggested she obtain a gun and kill him in self-defense, but evidently she hasn’t. Therefore, we are evicting her.”²⁶⁹

Nuisance property ordinances are the most widespread third-party policing laws.²⁷⁰ Nuisance ordinances have three common features: (1) a property is designated as a “nuisance” due to excessive emergency service (911) calls within a set timeframe, typically more than three calls in one month;²⁷¹ (2) calls are initiated in response to a broad list of “nuisance activities;”²⁷² and (3) property owners must

267. See Matthew Desmond & Nicol Valdez, *Unpolicing the Urban Poor: Consequences of Third-Party Policing for Inner-City Women*, 78 AM. SOC. REV. 117, 118–19 (2012) (stating that ordinances expanding policing duties of parents, landlords, and business owners began by holding these individuals partially responsible for the crime occurring in their communities).

268. *Id.* at 134.

269. *Id.* at 135.

270. See *id.* at 119–20.

271. EMILY WERTH, SARGENT SHRIVER NAT’L CTR. ON POVERTY LAW, THE COST OF BEING “CRIME FREE”: LEGAL AND PRACTICAL CONSEQUENCES OF CRIME FREE RENTAL HOUSING AND NUISANCE PROPERTY ORDINANCES 1–2 (2013), <http://povertylaw.org/sites/default/files/files/housing-justice/cost-of-being-crime-free.pdf>.

272. “The general legal principle to be inferred from court action in nuisance cases is that one landowner will not be permitted to use his land so unreasonably as to interfere unreasonably with another landowner’s use and enjoyment of his land.” *What Is a Nuisance?*, MRSC, <http://mrsc.org/Home/Explore-Topics/Legal/Regulation/Nuisances-Regulation-and-Abatement/What-is-a-Nuisance.aspx> (last visited Dec. 1, 2015). Nuisance activities can include the “the accumulation of junk, animals, noise, dangerous buildings, sewage and unsanitary conditions, and encroachments on the public right-of-way that interfere with pedestrian passage.” *Id.*

“abate the nuisance” or face “fines, property forfeiture, or even incarceration.”²⁷³ Once the problem is abated, the property owner’s license is restored.²⁷⁴ Most ordinances also require that the landlord use a crime-free lease, which allows the eviction of an entire household if anyone, including third parties with or without the tenant’s knowledge, commits a crime or engages in another activity that qualifies as a nuisance on the property.²⁷⁵ Third party policing laws are extremely common and, according to the International Crime Free Association, have been enacted in over two thousand cities within forty-eight states across the United States, five Canadian provinces, England, Nigeria, and Puerto Rico.²⁷⁶

In a typical example, the Elkhart, Indiana City Council unanimously passed a resolution to develop the Crime Free Housing Program based on a model developed by the International Crime Free Association.²⁷⁷ According to the Resolution, “statistics demonstrate that areas of cities with rental housing are responsible for a disproportionate share of police calls for service” and, reminiscent of redlining and segregationist justifications, “reducing the level of crime in areas of the City with rental housing would help to stabilize the property values of such properties[,] the surrounding neighborhoods[,] and community as a whole”²⁷⁸ The Resolution did not consider the race or socioeconomic status of, or collateral consequences to, individuals residing in areas of the city in need of police intervention. Similarly, when considering the Resolution, the

273. Desmond & Valdez, *supra* note 267, at 120.

274. WERTH, *supra* note 271, at 4.

275. *Id.*

276. The International Crime Free Association hosts an annual conference and a twenty-four hour training program for police officer certification, the attendees of which then train local property owners and certify properties in the community. *Crime Free Multi-Housing: Keep Illegal Activity off Rental Property*, INT’L CRIME FREE ASS’N, <http://www.crime-free-association.org/multi-housing.htm> (last visited Dec. 1, 2015).

277. See ELKHART, IND., RESOLUTION OF THE COMMON COUNCIL OF THE CITY SUPPORTING AND APPROVING THE CRIME FREE MULTI-HOUSING PROGRAM, PROPOSED RESOLUTION NO. 08-R-29 (June 12, 2008) [hereinafter ELKHART RESOLUTION], http://www.elkhartindiana.org/egov/documents/1213365429_132446.pdf; see also Elkhart, Ind., *Minutes of the Regular Common Council Meeting*, Resolution No. R-26-08 (June 16, 2008) [hereinafter Elkhart Minutes], http://www.elkhartindiana.org/egov/documents/1215104120_81665.pdf (explaining the discussion the council had on the resolution, which ultimately voted unanimously in favor of adopting the crime free multi-housing program).

278. See ELKHART RESOLUTION, *supra* note 277. The majority of racially motivated zoning laws are based on the preservation of property values. See *supra* Part II.B.1 (discussing institutional discrimination in the form of redlining).

City Council did not discuss the potential for harm to tenants, such as deterring a crime victim from seeking assistance. To the contrary, the City Council discussion preceding unanimous passage of the Resolution only addressed a clarifying question to determine if the program would solve the issue of parking on front lawns and sidewalks, which it did.²⁷⁹

While originally enacted to abate activities such as gun violence and drug distribution,²⁸⁰ nuisance laws criminalize victims who call 911 in an emergency involving violence, harassment, or stalking.²⁸¹ One study found that nearly one-third of nuisance citations are generated by domestic violence, exceeding the combined total of citations related to battery, disorderly conduct, and drug crimes.²⁸² Nuisance citations often lead to a threat of eviction or the initiation of eviction proceedings.²⁸³ The only way for battered victims to avoid eviction is to discontinue emergency service calls and control the situation themselves, or move. The result is an average seventy-five to ninety percent “reduction in crime and/or police calls” to properties.²⁸⁴

A nuisance property ordinance in Norristown, Pennsylvania was the reason Ms. Briggs was forced to choose between her home and her physical safety.²⁸⁵ In 2013, the American Civil Liberties Union (ACLU) and the law firm of Pepper Hamilton, LLP filed a federal lawsuit challenging the consecutive ordinances that resulted in Ms.

279. See Elkhart Minutes, *supra* note 277.

280. Desmond & Valdez, *supra* note 267, at 119–20.

281. AM. CIVIL LIBERTIES UNION, SILENCED: HOW NUISANCE ORDINANCES PUNISH CRIME VICTIMS IN NEW YORK 3–4 (2015) [hereinafter ACLU, SILENCED], https://www.aclu.org/files/field_document/equ15-report-nuisanceord-rel3.pdf.

282. Desmond & Valdez, *supra* note 267, at 117, 131; ACLU, SILENCED, *supra* note 281, at 26.

283. See ACLU, SILENCED, *supra* note 281, at 1 (explaining that nuisance ordinances deter victims of crime from calling 911 and reporting crime for fear they will be evicted or suffer penalties); see also Desmond & Valdez, *supra* note 267, at 137 (showing that because of the consequences of nuisance ordinances, abused and battered women have to make the difficult decision of whether to call the police on their abusers and risk eviction or to not call the police, stay in their apartments, and risk continued abuse).

284. *Crime Free Programs: A Brief History*, INT’L CRIME FREE ASS’N, <http://www.crime-free-association.org/history.htm> (last visited Dec. 1, 2015).

285. Erik Eckholm, *Victims’ Dilemma: 911 Calls Can Bring Eviction*, N.Y. TIMES (Aug. 16, 2013), <http://www.nytimes.com/2013/08/17/us/victims-dilemma-911-calls-can-bring-eviction.html>. While nuisance laws force a choice, many victims of domestic violence do not have the means, in the form of a security deposit or the ability to pay rent, to leave their abuser.

Briggs's hospitalization.²⁸⁶ Ms. Briggs argued that the ordinances violated her First Amendment right to petition; Fourth Amendment rights to property; Fourteenth Amendment procedural and substantive due process and equal protection rights, as well as the prohibition on enforcement of legislation that is unduly vague; Fair Housing Act rights; and Violence Against Women Act rights.²⁸⁷ The parties reached a settlement agreement that bound Norristown to repeal its ordinance, refrain from passing another similar law that would punish residents and landlords as a result of requests for emergency assistance, and pay \$495,000 in compensation and attorneys' fees to Ms. Briggs.²⁸⁸ The case sent a powerful message: crime victims are not nuisances.²⁸⁹

Nevertheless, these nuisance laws continue to perpetuate poor health outcomes across the United States by preventing individuals from seeking protection to make their homes and communities safe.²⁹⁰ Domestic violence is associated with many adverse health outcomes both as a result of physical violence and from the stress of the experience.²⁹¹ Common health conditions include broken bones, bruises, traumatic brain injury, asthma, bladder and kidney infections, cardiovascular disease, gynecological disorders, sexually transmitted diseases, anxiety, and depression.²⁹² In addition, domestic violence is an ACE that exacerbates health conditions of

286. The complaint alleged that one ordinance authorized the city to "revoke or suspend a landlord's rental license and forcibly remove a tenant from any property where the police have responded to three instances of 'disorderly behavior' at the property within a four month period." First Amended Complaint, *Briggs*, *supra* note 264, at 1. It claimed another ordinance allowed the city to "assess a series of escalating criminal fines against landlords of any property, at which, within a four-month period, the police have responded to three instances of 'disorderly behavior.'" *Id.* at 3. "[D]isorderly behavior" includes domestic violence. *Id.* at 2.

287. *Id.* at 25–36.

288. Park, *supra* note 264.

289. *I Am Not a Nuisance: Local Ordinances Punish Victims of Crime*, AM. CIV. LIBERTIES UNION, <https://www.aclu.org/i-am-not-nuisance-local-ordinances-punish-victims-crime> (last visited Dec. 1, 2015).

290. *Id.* Congress has prohibited terminating housing assistance based on victims' actions or criminal activity related to domestic violence. 42 U.S.C. § 1437f(o)(20)(A)–(C) (2012); First Amended Complaint, *Briggs*, *supra* note 264, at 35–36.

291. *Intimate Partner Violence: Consequences*, CTRS. FOR DISEASE CONTROL & PREVENTION, <http://www.cdc.gov/violenceprevention/intimatepartnerviolence/consequences.html> (last visited Dec. 1, 2015).

292. *Id.*

children residing in the household in adulthood.²⁹³ It is well documented that domestic violence is a leading cause of homelessness and housing instability among women.²⁹⁴ For instance, Norristown, Pennsylvania reported that twenty percent of its homeless population were domestic violence victims in 2012.²⁹⁵ Adding an eviction to a domestic violence victim's record ensures a downward move to a more dangerous community, substandard housing conditions, and related adverse health effects.²⁹⁶

E. Secondary and Tertiary Prevention Laws

When Fiona's²⁹⁷ four-year-old son was diagnosed with lead poisoning and a learning disability, she immediately alerted the landlord and asked for repairs. The landlord refused to fix the problem and called her a troublemaker. Unable to save for a security deposit at a new apartment, she remained in the unit throughout her second pregnancy. Her newborn was also diagnosed with lead poisoning. Faced with a citation from the city, the landlord reluctantly took it upon himself to renovate one room in the apartment. In violation of lead laws,²⁹⁸ the landlord dry sanded the walls and dispersed lead particles into the air. After renovation, both children's lead levels elevated. The landlord moved to terminate the tenancy citing the "trouble" the family caused him.

293. See *supra* Part I.D.1 (explaining how the environment and social conditions can impact a child's long-term health outcomes).

294. U.S. CONFERENCE OF MAYORS, HUNGER AND HOMELESSNESS SURVEY 24 (2014), <http://www.usmayors.org/pressreleases/uploads/2014/1211-report-hh.pdf>; see KAYA LURIE & BREANNE SCHUSTER, DISCRIMINATION AT THE MARGINS: THE INTERSECTIONALITY OF HOMELESSNESS & OTHER MARGINALIZED GROUPS v, 11 (Sara K. Rankin ed., 2015) (surveying studies showing the disproportionate representation of domestic violence survivors in homeless populations); *Domestic Violence and Homelessness*, AM. CIV. LIBERTIES UNION, <https://www.aclu.org/sites/default/files/pdfs/dvhomelessness032106.pdf> (last visited Dec. 1, 2015) (highlighting that, in 2005, fifty percent of U.S. cities identified domestic violence as the leading cause of homelessness).

295. First Amended Complaint, *Briggs*, *supra* note 264, at 8–9 (citing U.S. DEP'T OF HOUS. & URBAN DEV., THIRD PROGRAM YEAR ACTION PLAN 26 (2011)).

296. See *supra* Part III.A.1 (discussing the effects of evictions).

297. Fiona is a pseudonym for a former Health Justice Project client. See *Health Justice Project*, *supra* note 175 (explaining the use of Health Justice Project clients' stories in this Article).

298. See ILL. ADMIN. CODE tit. 77, § 845.270 (2015) (prohibiting dry sanding); *Lead Renovation, Repair and Painting Program*, U.S. ENVTL. PROT. AGENCY, <http://www.epa.gov/lead/renovation-repair-and-painting-program> (last visited Dec. 1, 2015) (explaining that the U.S. Environmental Protection Agency requires repairs to be done by trained and certified workers).

In the public health field, primary prevention attempts to prevent the development of disease entirely.²⁹⁹ Secondary prevention is designed to identify a disease at its earliest stages, before symptoms appear.³⁰⁰ Tertiary prevention is directed at preventing further deterioration in those who already have symptoms of disease.³⁰¹ The majority of laws regulating lead substances classify as secondary and tertiary prevention at best, especially when their enforcement is discretionary. These laws perpetuate health inequity among low-income and minority populations who are the most likely to reside in old and rundown housing that contains lead hazards.³⁰²

Federal laws regulating lead hazards include the Residential Lead-Based Paint Hazard Reduction Act,³⁰³ the Toxic Substances Control Act,³⁰⁴ the Clean Air Act,³⁰⁵ and the Renovation, Repair and Painting Rule.³⁰⁶ Standard state lead laws mandate screening children to identify elevated blood lead levels and include a series of procedures designed to educate families about lead poisoning and encourage property owners to remove lead hazards.³⁰⁷ Although some aspects of these laws are designed to prohibit the use of lead and regulate remediation, none of them prevent or protect all children from the permanent injuries caused by the initial exposure and subsequent lead poisoning.³⁰⁸ No amount of lead in the blood stream is safe and studies have shown that lead poisoning resulting in a blood lead level as low as three µg/dL can lead to significant and permanent health

299. *Primary Prevention*, MEDILEXICON, <http://www.medilexicon.com/medicaldictionary.php?t=72026> (last visited Dec. 1, 2015).

300. *Secondary Prevention*, MEDILEXICON, <http://www.medilexicon.com/Medicaldictionary.php?t=72027> (last visited Dec. 1, 2015).

301. *Tertiary Prevention*, MEDILEXICON, <http://www.medilexicon.com/medicaldictionary.php?t=72028> (last visited Dec. 1, 2015).

302. *Disparities in Risk*, *supra* note 104.

303. Pub. L. No. 102-550, §§ 1001-56, 106 Stat. 3672, 3897 (1992).

304. Pub. L. No. 94-469, 90 Stat. 2003 (1976).

305. Pub. L. No. 88-206, 77 Stat. 392 (1963); *see* HEALTH JUSTICE PROJECT, FEDERAL & ILLINOIS POLICIES REGARDING INDOOR ENVIRONMENTAL HAZARDS 3-4 (2014), http://luc.edu/media/lucedu/law/centers/healthlaw/pdfs/hjp/Federal_and_Illinois_Laws_Regarding_Indoor_Environmental_Hazards_HJP_HHCL_FINAL.pdf (providing an overview of the Residential Lead-Based Paint Hazard Reduction Act, the Toxic Substances Control Act, and the Clean Air Act as the primary federal laws addressing lead exposure).

306. 40 C.F.R. 745.80-92 (2014).

307. Katrina S. Korfmacher & Michael L. Hanley, *Are Local Laws the Key to Ending Childhood Lead Poisoning?*, 38 J. HEALTH POL. POL'Y & L. 757, 759 (2013).

308. *Id.* at 759.

consequences for children.³⁰⁹ Secondary and tertiary laws have no power to reverse these effects.

Advocates in Illinois sought to move from a reactive to preventative approach to lead poisoning.³¹⁰ The Illinois Lead Poisoning Prevention Act (“ILPPA”) is considered innovative and proactive among lead prevention advocates.³¹¹ Yet, in effect and despite its advocates’ best efforts, it serves largely as a secondary prevention law. Legislators enacted the ILPPA to reduce and prevent the occurrence of lead poisoning in children and enumerated certain mandates.³¹² ILPPA includes preventative measures that require child care agencies to provide information about lead poisoning and prevention, paint supply stores to display posters or distribute information about lead safe work practices, and property owners to post signs when two or more units have lead, as well as lead mitigation procedures.³¹³ Under the implementing administrative code, inspections for lead bearing substances are mandatory in residential units in Illinois when a child has a confirmed blood lead level at or above twenty $\mu\text{g}/\text{dL}$, three successive confirmed blood lead levels of fifteen to nineteen $\mu\text{g}/\text{dL}$, a single confirmed blood lead level at or above ten $\mu\text{g}/\text{dL}$ combined with a physician request for an investigation, or a blood lead level at or above ten $\mu\text{g}/\text{dL}$ when the child is less than three years old.³¹⁴ However, by the time the events necessary to trigger an environmental inspection take place, the harm has already occurred. A blood lead level of ten $\mu\text{g}/\text{dL}$ causes irreparable harm, including

309. See EDUCATIONAL INTERVENTIONS, *supra* note 93, at viii; see also *supra* Part I.C.1.

310. Weinberg, *supra* note 88, at 53.

311. Korfmacher & Hanley, *supra* note 307, at 788. The Civitas ChildLaw Policy Institute at Loyola University Chicago School of Law spearheaded the effort to pass the Illinois Lead Poisoning Prevention Act in 2006. Weinberg, *supra* note 88, at 44; *Lead Safe Housing Initiatives*, LOYOLA U. CHI., http://www.luc.edu/law/centers/childlaw/institutes/policy/lead_safe.html (last visited Dec. 1, 2015); see LEAD SAFE ILLINOIS, www.leadsafeillinois.org (last visited Dec. 1, 2015).

312. 410 ILL. COMP. STAT. 45/4 (West 2015); Weinberg, *supra* note 88, at 61–63.

313. 410 ILL. COMP. STAT. 45/4, 45/6.01, 45/9.4, 45/8.1(a).

314. ILL. ADMIN. CODE tit. 77, § 845.85 (2015); see ILL. DEP’T OF PUB. HEALTH, LEAD SCREENING AND CASE FOLLOW-UP FOR LOCAL HEALTH DEPARTMENTS 9 (2015), <http://www.dph.illinois.gov/sites/default/files/publications/leadtestingguidelinesforlhds-2015.pdf> (stating that “[e]nvironmental investigation and follow-up shall be conducted [in the case of] a child or pregnant person with a confirmed BLL ≥ 10 $\mu\text{g}/\text{dL}$ [or] if a regulated facility is occupied by a child of less than [three] years of age with an EBLL [(elevated blood lead level)], the [Illinois Department of Public Health], in addition to all other requirements of the Act, must inspect the dwelling unit and common place area of the child with an EBLL”).

neurological disorders and lowered IQ.³¹⁵ Blood lead levels above fifteen µg/dL can cause seizures and severe disability.³¹⁶

ILPPA specifically grants municipalities in the state the right to establish lead poisoning control and prevention laws with higher standards than those established in the state law.³¹⁷ For example, the City of Chicago lowered the blood lead level that qualifies as lead poisoning and for government intervention to five µg/dL or above and requires contractors applying for permits to certify that they will comply with federal lead safety requirements.³¹⁸ The Chicago Department of Public Health (“CDPH”) is authorized to inspect any property frequented by a child under age six.³¹⁹

While these are important and necessary measures, they fall short of true prevention.³²⁰ ILPPA does not require pre-rental lead inspections that would notify prospective renters of a potential health hazard. CDPH rarely inspects units without documented lead poisoning, and most tenants are unaware of their right to request an inspection.³²¹ Even units rented through the Housing Choice

315. AGENCY FOR TOXIC SUBSTANCES & DISEASE REGISTRY, CASE STUDIES IN ENVIRONMENTAL MEDICINE (CSEM) LEAD TOXICITY 31 (2012), <http://www.atsdr.cdc.gov/csem/lead/docs/lead.pdf>; see *supra* Part I.C.1.

316. *Facts on Lead*, CTNS. FOR DISEASE CONTROL & PREVENTION, <http://www.cdc.gov/nceh/lead/publications/1997/factlead.htm> (last visited Dec. 1, 2015).

317. 410 ILL. COMP. STAT. 45/15; Korfmacher & Hanley, *supra* 307, at 788.

318. CITY OF CHI., DEP’T OF PUB. HEALTH, CONTROL AND MITIGATION OF LEAD-BEARING SUBSTANCES, RULES AND REGULATIONS 1.1 (2008), http://www.cityofchicago.org/content/dam/city/depts/cdph/statistics_and_reports/SR_CntrlMitigationofLeadBearingSubstancesRegs.pdf (“Lead Poisoning [is defined as a] confirmed level of lead in human blood of greater than 5 mg/dL (five micrograms per deciliter).”); Press Release, Mayor’s Press Office, City of Chicago, *City Council Passes Lead-Safe Renovation Ordinance* (May 8, 2013), http://www.cityofchicago.org/city/en/depts/cdph/provdrs/environmental_health/news/2013/may/city_council_passeslead-saferenovationordinance.html. Chicago was the first city to enact an ordinance limiting lead in paint and establishing a lead unit in the Department of Buildings. Weinberg, *supra* note 88, at 56.

319. CHI., ILL. MUN. CODE § 7-4-090 (2015). Under Chicago law, it is the duty of every owner of a residential building in Chicago to maintain the dwelling “in such a manner so as to prevent the existence of a lead hazard.” *Id.* § 7-4-030.

320. Illinois administers pilot lead poisoning prevention programs, created by the Comprehensive Lead Education, Reduction, and Window Replacement Program Act, which provide some grants and loans for low-income communities. *Prevention Programs*, LEAD SAFE ILL., <http://www.leadSAFEillinois.org/prevention> (last visited Dec. 1, 2015). In addition, some grant funding is available through the Chicago Department of Public Health, which aims to eliminate lead hazards in low-income homes. *Id.*

321. ADVANCING HEALTHY HOMES & HEALTHY COMTYS. COLLABORATIVE INITIATIVE AT LOYOLA UNIV. CHI., A CITY AND COUNTYWIDE SUMMIT TO ADVANCE HEALTHY HOMES & HEALTHY COMMUNITIES 22 (2014), <http://www.luc.edu/media/lucedu/hhcci/pdf/>

Voucher Program, a federally-funded program that requires pre-rental inspections, are not always inspected for lead prior to rental.³²²

Like all lead laws, the ILPPA does not create a private right of action or tenants' rights.³²³ It relies on IDPH to identify a hazard and on the State's Attorney or Attorney General to execute penalties and enforcement mechanisms at their discretion.³²⁴ The Illinois Attorney General received *zero* referrals from the IDPH from 2012–14,³²⁵ and,

HealthyHomes_Chicago_Cook_2014Summit_Report.pdf; Korfmacher & Hanley, *supra* note 307, at 388 (indicating that tenants have a right to request a lead inspection). The Chicago Department of Public Health provides recommendations for eliminating the lead hazard and a timeline by which it must be abated. 410 ILL. COMP. STAT. 45/9; CHI., ILL. MUN. CODE § 7-4-100. The Chicago Municipal Code requires that, when a lead hazard is identified, the City post notices, report elevated blood lead levels, distribute informational packets to parents or guardians with children under six years of age, and screen children age six months through six years of age. CHI., ILL. MUN. CODE § 7-4-070, 075, 115.

322. Emily A. Benfer et al., Comment Letter on Proposed Housing Choice Voucher Program 2016 Administrative Plan (Oct. 16, 2015) (on file with author) (explaining that the Housing Choice Voucher Program 2016 Administrative Plan would allow for prolonged exposure to lead hazards resulting in harm to young children). While pre-rental lead inspections are not required under the Residential Lead-Based Paint Hazard Reduction Act of 1992, section 1018 of the Act does direct the Department of Housing and Urban Development and the Environmental Protection Agency to require landlords to provide *known* information on lead hazards to incoming tenants. *The Lead Disclosure Rule*, U.S. DEP'T HOUSING & URB. DEV., http://portal.hud.gov/hudportal/HUD?src=/program_offices/healthy_homes/enforcement/disclosure (last visited Dec. 1, 2015). In the Housing Choice Voucher program, all units must satisfy housing quality standards (HQS) at the moment of and throughout occupancy, and the federal lead poisoning prevention statutes and regulations specifically apply to all rented units in the program. 24 C.F.R. § 982.401(a)(3), (j) (2014); see Emily A. Benfer & Amanda M. Walsh, *When Poverty Is the Diagnosis: The Health Effects of Living Without on the Individual*, 4 IND. J. L. & SOC. EQUITY 1 (2016).

323. See *Abbasi v. Paraskevoulakos*, 718 N.E.2d 181, 187 (Ill. 1999) (holding that the Illinois Lead Poisoning Prevention Act ("ILPPA") does not require a court to imply a private right of action and explaining that a common law negligence action would accomplish the same goal because the ILPPA establishes a violation of its lead removal requirements as *prima facie* evidence of negligence).

324. 410 ILL. COMP. STAT. 45/11. Additionally, the ILPPA requires the Attorney General and State's Attorney to submit annual reports to the General Assembly on the number of cases referred for enforcement due to violations of the act. 410 ILL. COMP. STAT. 45/12.1.

325. Letter from Mary Morrissey-Kochanny, Deputy Chief of Staff for Policy & Legislative Affairs, to Members of the Ill. General Assembly (Jan. 30, 2014), http://www.ag.state.il.us/publications/annualrpt_ga/lead_poisoning_prevention/2013_Lead_Report_GA.pdf; Letter from Mary Morrissey-Kochanny, Deputy Chief of Staff for Policy & Legislative Affairs, to Members of the Ill. General Assembly (Jan. 15, 2015), http://www.ag.state.il.us/publications/annualrpt_ga/lead_poisoning_

even if it had, lead laws are rarely enforced against property owners in low-income neighborhoods—in part because at least one court held that it may be discriminatory under the Fair Housing Act to do so.³²⁶

Harvard public health professor and political philosopher Norman Daniels theorized: “If we are right that the health of nations does not reflect some inevitable natural order[,] but [rather] that it reflects policy choices—or features of society that are amenable to change via policies—then we must ask which of these policies are just.”³²⁷ Certainly, laws that operate as a determinant of poor health for low-income and disabled individuals, such as third party policing and secondary or tertiary laws, cannot be defended as just. To the contrary, they effectuate inequity and the further decline of marginalized, impoverished communities. Attaining lasting health equity and social justice requires a commitment to health justice and the reform necessary to achieve it.

prevention/2014_Lead_Report_GA.pdf; *Abstracts of Reports Required to Be Filed with General Assembly*, 28 FIRST READING 9 (2015), <http://ilga.gov/commission/lru/May2015FirstRdg.pdf>. While the Attorney General received no referrals from 2012–14, a 2015 Chicago Tribune investigation found that the rate of lead poisoning was higher in 2013 than in the prior five years. Hawthorne, *supra* note 103.

326. See *Gallagher v. Magner*, 619 F.3d 823, 833–35 (8th Cir. 2010) (finding that St. Paul, Minnesota indoor environmental hazard city codes may be discriminatory under the Fair Housing Act when enforced against landlords who predominantly rent to low-income, minority tenants because they might lead to a decrease in affordable housing in the city).

327. Norman Daniels et al., *Why Justice Is Good for Our Health: The Social Determinants of Health Inequalities*, 128 DAEDALUS 215, 220 (1999) (adding that disparities in health between nations are due in part to different cultures, social organizations, and government policies). For example, states with the highest health disparities invest less in public education and spend less on social safety nets. *Id.* at 223; see Ichiro Kawachi & Bruce P. Kennedy, *Health and Social Cohesion: Why Care about Income Inequality?*, 312 BRITISH MED. J. 1037, 1040 (1997) (noting that the “underinvestment in human capital” leads to tangible results, such as higher high school dropout rates). A nation’s investment in human capital through education (which is tightly linked to the political process that influences government policy) has profound implications. Income inequality can cause elementary students to fall below basic reading levels and lead to adult illiteracy, which is a strong predictor in life expectancy. See Norman Daniels, *Justice, Health, and Healthcare*, 1 AM. J. BIOETH. 2, 7 (2001) (discussing that the perpetuation of this cycle is not explained by “fixed laws of economic development,” but rather it is due to cultural, social, and political factors); Daniels et al., *supra*, at 223–24.

III. ACHIEVING HEALTH JUSTICE

[H]ealth is among the most important conditions of human life and a critically significant constituent of human capabilities which we have reason to value Equity in the achievement and distribution of health gets, thus, incorporated and embedded in a larger understanding of justice.

– Amartya Sen³²⁸

It always seems impossible until it's done.

– Nelson Mandela³²⁹

As described throughout this Article, a large segment of the U.S. population, approximately 46.7 million low-income and largely minority individuals, is negatively affected by social determinants of health. The resulting poor health outcomes inhibit a person's ability to use resources to his or her advantage and in the pursuit of public participation.³³⁰ True justice, liberty, and freedom do not exist where they are reserved for the limited portion of the population that has the capability to exercise them.³³¹ To protect equal opportunity of

328. Sen, *supra* note 1, at 660.

329. John Bertino, *Nelson Mandela International Day: "It Always Seems Impossible Until It's Done,"* GLOBAL CITIZEN (July 17, 2015), <https://www.globalcitizen.org/en/content/nelson-mandela-international-day-it-always-seems-i>.

330. Amartya K. Sen, *Well-Being, Capability and Public Policy*, 53 *GIORNALE DEGLI ECONOMISTE ANNALI DI ECONOMIA, NUOVA SERIE* 333, 333–34 (1994). Income and resources alone do not restrict capability. *Id.* The capability approach can be observed in the options available to a person, the options actually used, or by the maximally valued option. *Id.* at 339–40.

331. Inequality and racial hierarchy are firmly embedded in our culture and the origins of our society, resulting in lasting disparity today. See PAUL FINKELMAN, *SLAVERY AND THE FOUNDERS: RACE AND LIBERTY IN THE AGE OF JEFFERSON* ix (3d ed. 2014) (exploring how the early presidents, administrations, and states considered the legal question of slavery after ratification of the U.S. Constitution); Juan F. Perea, *Race and Constitutional Law Casebooks: Recognizing the Proslavery Constitution*, 110 *MICH. L. REV.* 1123, 1148–52 (2012) (emphasizing the importance of slavery's role in the Constitution and the danger of forgetting its influence on the country's legal foundation); *Scrapped Declaration of Independence Passage Denounced Slavery*, NAT'L PUB. RADIO (July 3, 2015), <http://www.npr.org/2015/07/03/419824340/scrapped-declaration-of-independence-passage-denounced-slavery> (discussing how a draft paragraph denouncing slavery was dropped from the final version of the Declaration of Independence to appease delegates profiting from the slave trade). The Constitution had several provisions supporting slavery. See U.S. CONST. art. I, § 2, cl. 3 (counting slaves as three fifths of a person for purposes of establishing a state's population for determining the number of Congressional representatives and for tax purposes); U.S. CONST. art. IV, § 2, cl. 3 (requiring that slaves who escape to another

public participation, adherence to these principles requires interventions that address social determinants of health.

According to modern philosophers Amartya Sen and Martha Nussbaum, for these rights to exist, one must have the capability to exercise them.³³² In Martha Nussbaum's evaluation,

The right to political participation, the right to religious free exercise, the right of free speech—these and others are all best thought of as secured to people only when the relevant capabilities to function are present. In other words, to secure a right to citizens in these areas is to put them in a position of capability to function in that area. To the extent that rights are used in defining social justice, we should not grant that the society is just unless the capabilities have been effectively achieved.³³³

The capabilities approach “makes [it] clear that [securing a right] involves affirmative material and institutional support, not simply a failure to impede.”³³⁴ Otherwise, liberty rights and the freedom to pursue opportunity only belong to those who have the ability to do so.³³⁵ Without the necessary interventions, through laws and policies, that position all citizens to capably function in each area of freedom, justice will never be realized in society.³³⁶

Social injustice, health inequity, and poverty are inextricably linked, and addressing them requires that freedom of opportunity be accessible to everyone. Barriers to personal freedoms, especially those erected by the social determinants of poor health, must be removed.³³⁷ Margaret Whitehead, who developed principles of health equity for the World Health Organization,³³⁸ determined that

state, whether or not that state has abolished slavery, are still to be considered slaves and must be returned to their original state if claimed by the slave-owner). The Thirteenth Amendment, which abolished slavery, was not passed and ratified until 1865. U.S. CONST. amend. XIII.

332. Martha C. Nussbaum, *Capabilities as Fundamental Entitlements: Sen and Social Justice*, 9 FEMINIST ECON. 33, 37 (2003); Sen, *Well-Being*, *supra* note 330, at 334.

333. Nussbaum, *supra* note 332, at 37.

334. *Id.* at 38.

335. *Id.* at 37.

336. *See id.* (reinforcing that, in a just society, individuals must possess the capability to actually exercise fundamental rights).

337. *Id.*; *see* JOHN RAWLS, A THEORY OF JUSTICE 53 (1999) (outlining principles of justice as fairness: “First: each person is to have an equal right to the most extensive scheme of equal basic liberties compatible with a similar scheme of liberties for others. Second: social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone’s advantage, and (b) attached to positions and offices open to all”); Daniels et al., *supra* note 327, at 217 (asserting that Rawls’s theory describes a proper allocation of social determinants of health in a

everyone should have a fair opportunity to attain their full health potential [T]he aim of [a] policy for equity and health is . . . to reduce or eliminate those [health differences that] result from factors [that] are considered to be both avoidable and unfair. Equity is therefore concerned with creating equal opportunities for health and with bringing health differentials down to the lowest level possible.³³⁹

The health justice framework builds on the capabilities approach and principles of health equity. Health justice requires a regulatory and jurisprudential approach that consistently and reliably considers the health ramifications of judicial and legislative decision making. The preponderance of the evidence clearly indicates the urgent need for robust measures that address the deleterious effects of economic, societal, cultural, environmental, and social conditions, as well as the policies and legal systems that have devastating effects on health. This knowledge of social determinants of health should be integrated into the policy-making and judicial decision making processes. Policies, laws, and social structures must anticipate, and be designed to mitigate, the effects of socioeconomic inequality and the social determinants of poor health.³⁴⁰ Equally important, health justice requires the development of laws and policies that prevent health inequity and increase individual capability. There is precedent for this type of robust measure in, inter alia, early childhood interventions,³⁴¹ extensive public health, medical, and social support services;³⁴² workplace safety norms,³⁴³

way that applies to policy, medicine, and political philosophy); Robin West, *Social Justice: The Moral Foundations of Public Health and Health Policy*, 10 DEPAUL J. HEALTH CARE 567–85 (2007) (reviewing MADISON POWERS & RUTH FADEN, *SOCIAL JUSTICE: THE MORAL FOUNDATIONS OF PUBLIC HEALTH AND HEALTH POLICY* (2006)) (asserting that, for a constitution to actually serve the people’s interest, it must require the government to promote social justice). “Any constitution that truly emanates from the people and that establishes a government that truly serves the people, requires the state to promote social justice.” RAWLS, *supra*, at 337.

338. Biography of Professor Margaret Whitehead, U. LIVERPOOL, <https://www.liv.ac.uk/psychology-health-and-society/staff/margaret-whitehead>.

339. MARGARET WHITEHEAD, WORLD HEALTH ORG. REG’L OFFICE FOR EUR., *THE CONCEPTS AND PRINCIPLES OF EQUITY AND HEALTH* 7 (1992).

340. See Wiley, *supra* note 2, at 87 (explaining that to achieve health justice, the reasons for health disparities must be explored, including the effects that bias and institutional disadvantages have on efforts to reduce health differences that are focused on an individualistic approach).

341. See, e.g., Individuals with Disabilities Education Act, Pub. L. No. 101-476, § 203, 104 Stat. 1103 (1990).

342. See, e.g., Patient Protection and Affordable Care Act, Pub. L. No. 111-148, § 2703, 124 Stat. 199, 319 (2010) (allowing an optional Medicaid State Plan benefit to create Health Homes to coordinate treatment and services).

and in the rationale for social costs of reasonable accommodations to people with disabilities.³⁴⁴ As Amartya Sen wrote,

Any conception of social justice that accepts the need for a fair distribution as well as efficient formation of human capabilities cannot ignore the role of health in human life and the opportunities that persons, respectively, have to achieve good health—free from escapable illness, avoidable afflictions and premature mortality.³⁴⁵

Health justice protects the health of low-income and minority individuals and preserves the foundational liberty rights of all people.³⁴⁶

The problems of health inequity and social injustice are complex in nature and require an interdisciplinary and interprofessional response that engages all fields of expertise, including law, medicine, public health, social work, organizing, communications, historical studies, urban planning, education, and business, among others. At a minimum, in the quest for health justice, society as a whole must hold itself to a higher standard and commit to (1) developing primary prevention policies; (2) prohibiting, amending, or repealing laws adversely affecting health; (3) ending discrimination and racial bias; and (4) listening to, engaging, and developing affected communities.

A. *Develop Primary Prevention Policies*

The development of primary prevention policies to address conditions that disproportionately affect low-income and minority individuals must be prioritized, especially when the root cause and viable solutions are apparent. In many cases, health conditions related to indoor environmental hazards are a function of building and property maintenance.³⁴⁷ Only complete abatement of lead

343. *OSHA Law & Regulations*, OCCUPATIONAL SAFETY & HEALTH ADMIN., <https://www.osha.gov/law-regs.html> (last visited Dec. 1, 2015).

344. See, e.g., Americans with Disabilities Act, Pub. L. No. 101-336, §§ 301–10, 104 Stat. 327, 328 (1990).

345. Sen, *Why Health Equity?*, *supra* note 1, at 11.

346. Because the reality in which we exist is interdependent, “[t]o treat even a single person unjustly . . . is an affront to *all* persons.” Wilson, *supra* note 194, at 526 (quoting RUFUS BURROW, JR., *GOD AND HUMAN DIGNITY: THE PERSONALISM, THEOLOGY, AND ETHICS OF MARTIN LUTHER KING, JR.* 159 (2006)).

347. For example, asthma symptoms dissipate when infestations and mold are addressed. *Learn How to Control Asthma*, CTRS. FOR DISEASE CONTROL & PREVENTION, <http://www.cdc.gov/asthma/faqs.htm> (last visited Dec. 1, 2015). Similarly, lead paint only becomes hazardous when it is disturbed by deterioration, friction, or renovation that releases dust into the environment. *California v. Atl. Richfield Co.*, No. 1-00-CV-788657, 2014 WL 280526, at *11 (Cal. Super. Ct. Jan. 7, 2014), *amended*

paint will guarantee protection of children from the devastating, life-altering consequences of lead poisoning.³⁴⁸ Federal and local governments must appropriate funds and invest in the elimination of environmental hazards, such as lead remediation efforts that remove lead-based paint and lead-contaminated soil in residential communities and areas that children frequent.³⁴⁹ At a minimum, and as an immediate first step, cities should require pre-rental inspections, especially in buildings predating prohibitions against lead in paint and in units rented through federal subsidy programs. For example, Detroit, Michigan requires proactive yearly inspections and lead clearance for all rental properties before any can be rented.³⁵⁰ These interventions will only be as effective as their execution. Accordingly, federal and local governments must commit to and dedicate resources toward monitoring and enforcement measures.

Equally important, the government and tenants must have access to penalties and remedies that will motivate property upkeep, maintenance, and repairs. In most states, children suffering the lifelong effects of lead poisoning have little redress outside of personal injury claims and, even then, they must find an attorney willing to accept their

and superseded by No. 100CV788657, 2014 WL 1385823 (Cal. Super. Ct. Mar. 26, 2014). Homes with deteriorated paint; dust from lead-painted, high-friction surfaces (like pulley system windows); and bare soil are more likely to have lead hazards. *Id.*

348. *Learn about Lead*, ENVTL. PROT. AGENCY, <http://www.epa.gov/lead/learn-about-lead#exposed> (last visited Dec. 1, 2015).

349. *See generally* MARKOWITZ & ROSNER, *supra* note 85, at xvi.

350. *See* DETROIT CITY CODE § 9-1-83 (2009) (requiring an inspection every three years if abatement was used on all identified hazards; allowing no inspection only if property is fully abated or has been certified lead free); *see also* BURLINGTON, VT. CODE OF ORDINANCES art. 18-112 (2009) (requiring all dwellings, including exterior, to be free from deteriorated painted surfaces and establishing specific mitigation steps for deteriorated exterior paint); PHILADELPHIA, PA. CODE §§ 6-802, 6-803 (2011) (requiring a lead-safe or lead-free certificate prior to rental, which lasts for twenty-four months for households with children under age six); SAN DIEGO, CAL. MUN. CODE § 54.1012 (2008) (authorizing inspections of the interior and exterior of premises where lead hazard conditions may exist); ST. LOUIS, MO. CITY ORDINANCE 69202 (2012) (requiring inspections of building exteriors in conservation districts where most of the buildings were built before 1978); WASH., D.C. MUN. CODE. § 8-231.01 (2012) (defining lead hazard clearance reports as those issued by a lead-paint inspector; defining “child-occupied facilit[ies]” as those regularly occupied by children under age six; and defining “[p]erson at risk” as a child under six or a pregnant woman); WASH., D.C. MUN. CODE. § 8-231.04 (2011) (requiring clearance reports for buildings constructed before 1978 that are child-occupied facilities, or that at-risk persons regularly visit).

hard-to-prove case.³⁵¹ A private right of action and enumerated damages will provide tenants with important mechanisms for ensuring their family's health. In addition, local civil and human rights laws must be amended to conform to the ADA Amendments Act of 2008,³⁵² especially with regard to the definition of disability that includes many of the health outcomes associated with poverty.

Rent reduction and lien programs have also proven effective. Under the Los Angeles Systematic Code Enforcement Program, dwelling units are inspected every three years by a municipal inspector.³⁵³ If a building does not come into compliance with the housing code, the property is placed in the Rent Escrow Account Program ("REAP").³⁵⁴ REAP tenants receive a rent reduction for the cited violations, and the city records REAP as a lien on the property, which is satisfied only when the property owner comes into compliance with the housing code.³⁵⁵ The city also has a tenant relocation program that entitles tenants to financial assistance from their landlords to find new housing if there are significant code violations.³⁵⁶

Companies responsible for manufacturing and selling lead-based paint with actual and constructive knowledge that it was harmful must be held accountable and required to invest in lead abatement. Santa Clara Superior Court Judge James Kleinberg found that Conagra Grocery Products Co., NL Industries, Inc., and Sherwin-Williams Co. marketed paint they knew was harmful to children.³⁵⁷ In the decision, and aligned with the health justice framework, Judge Kleinberg stated,

Consistent with their arguments throughout the trial the Defendants rely on statistics and percentages. When translated into the lives of children that is not a persuasive position. The Court is convinced there are thousands of California children in

351. LEAD POISONING: EXPOSURE, ABATEMENT, REGULATION 92 (Joseph J. Breen & Cindy R. Stroup eds., 1995).

352. ADA Amendments Act of 2008, Pub. L. No. 110-325, 122 Stat. 3553.

353. L.A., CAL., MUN. CODE, § 161.353 (2015).

354. *Id.* §§ 161.805, 162.03.

355. *Id.* § 161.904.

356. *Id.* § 163.07.

357. See Statement of Decision, *California v. Atl. Richfield Co.*, Case No. 1-00-CV-788657 (Super. Ct. Mar. 28, 2014) (holding three paint companies liable for public nuisance and ordering them to remove lead paint in houses constructed prior to 1978 at a cost of \$1.15 billion). An appeal is pending in the California Court of Appeals (No. H040880). See Dianne Saxe, *Landmark Lead Paint Abatement Case Decided in California*, ENVIROLAW.COM (Jan. 20, 2014), <http://envirolaw.com/landmark-lead-paint-abatement-case-decided-california> (revealing that, although one of the defendant's internal publications from 1900 admitted that "white lead is a deadly cumulative poison," the company still promoted use of lead).

the Jurisdictions whose lives can be improved, if not saved through a lead abatement plan.³⁵⁸

Geographic targeting in older neighborhoods is an effective way to eradicate hazards. In New York, the Childhood Lead Poisoning Prevention Act mandates the city to focus resources on communities that have the highest concentrations of lead paint, low-income families, and minorities.³⁵⁹ In addition, the Act requires property inspections by certified professionals every three years for “lead contained” and “lead stabilized” properties.³⁶⁰

For these measures to be successful and alleviate harm, enforcement must be direct and consistent. In Philadelphia, a specialized court process proved very effective in resolving exposure of children to property-based lead hazards by mandating compliance with orders to remediate.³⁶¹ Jurists on the Lead Court were educated on the health harms caused to children every time an extension for remediation was granted.³⁶² As a result, rates of swift compliance increased, properties were remediated within one year of the citation, and the time prior to compliance was significantly reduced.³⁶³ These mechanisms would be equally effective in addressing other residential environmental health hazards.

B. Address Laws that Negatively Affect the Health of Marginalized Populations

States must monitor legislation and correct any potentially deleterious effect on low-income and minority populations, especially the penalization of people who are victims of crime, impoverished, minority, or disabled. To do this effectively and before the harm occurs, states must (1) evaluate how a law might be applied, intentionally or inadvertently,³⁶⁴ to the disadvantage of marginalized individuals; and (2) examine the potential health effects on the entire population, paying special attention to marginalized individuals. Failure to take these precautionary and corrective

358. See Amended Statement of Decision at 97, Atl. Richfield Co., Case No. 1-00-CV-788657.

359. See N.Y. PUB. HEALTH LAW § 1370-a (McKinney 2012).

360. *Id.*

361. See Carla Campbell et al., *Philadelphia's Lead Court Is Making a Difference*, 38 J. HEALTH POL. POL'Y & L. 709, 710, 717, 720 (2013).

362. *Id.* at 721, 723–24.

363. *Id.* at 723–24.

364. See *supra* Part I.B.2 (explaining that implicit bias, operating below conscious awareness, permeates the justice system).

measures will result in a law that either perpetuates the issue legislators seek to address, or creates new ones.

For example, in neglect proceedings, courts must consider the social determinants of health related to socioeconomic status that may be at the root of perceived neglect.³⁶⁵ “Reasonable efforts” to maintain the family unit should address the root causes of neglect, including the social determinants of health, and provide the family with the support necessary to overcome them.³⁶⁶ Similarly, third party policing laws must be amended or repealed. The purpose of any legislation should not be to simply criminalize the reporting of crimes; rather, legislation should address the underlying causes of a “nuisance,” such as the social determinants of health, including the longstanding effects of discrimination and bias.³⁶⁷

In 2015, Illinois advocates and legislators engaged in a health justice analysis and amended the Illinois Municipal Code prohibiting all enactment or enforcement of laws that penalize tenants who contact police or other emergency services if the contact was to prevent or respond to an emergency situation like domestic violence, sexual violence, or criminal activity.³⁶⁸ Additionally, the law creates a private right of action, allowing a landlord or tenant to bring a civil suit seeking to invalidate the nuisance ordinance, as well as compensatory damages, attorneys’ fees, court costs, and other equitable relief.³⁶⁹

365. *See supra* Part II.A.2 (discussing the effect of socioeconomics on child removal cases).

366. *See supra* Part II.A.2 (explaining that while the Adoption and Safe Families Act of 1997 mandates reasonable efforts be made to preserve and reunite families or eliminate the need for removing the child, efforts to actually assist the family in overcoming barriers to health are limited).

367. SB 1547, Ill. 99th General Assembly, § (b)(1)(A) (2015), <http://www.ilga.gov/legislation/99/SB/PDF/09900SB1547lv.pdf> (protecting any contact that was made to prevent any emergency situation, demand a response for any emergency situation, or any contact that involved an individual with a disability); *see supra* Part II.B (explaining the dangerous outcomes third party policing laws have for crime victims).

368. SB 1547, Ill. 99th General Assembly, § (b)(1)(A) (2015), <http://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=099-0441> (“(i) the contact was made with the intent to prevent the perpetration or escalation of domestic violence, sexual violence, criminal activity, or any other emergency situation; (ii) the contact was made with the intent to respond to domestic violence, sexual violence, criminal activity, or other emergency situation; (iii) the intervention or emergency assistance was needed to respond to the perpetration or escalation of domestic violence, sexual violence, criminal activity, or other emergency situation; or (iv) the contact was concerning an individual with a disability.”).

369. *Id.* § (c).

C. *End Implicit and Overt Bias, Discriminatory Practices, and Their Effects*

The overwhelming evidence shows that implicit bias affects all aspects of human interaction, including variances in healthcare delivery; treatment in the justice system, the classroom, and housing markets; and the way employers make hiring decisions.³⁷⁰ To achieve health equity and social justice, interventions must ameliorate bias by transforming individual behavior and culture. Individual members of society and governments, businesses, non-profit organizations, community groups, schools and universities, churches, and other places of influence must provide their members with incentives and opportunities to learn about and overcome bias. In turn, individuals must take responsibility for their own bias and apply strategies to overcome it.

Social psychologists have identified concrete steps and interventions to eliminate bias and improve one's ability to access opportunity and to fully and equally participate in society.³⁷¹ Stereotypes and messages can be dissolved and biases neutralized through multiple interventions.³⁷² For example, according to new research, exposure to counter-stereotypic examples results in

370. See *supra* Part I.B.2 (explaining that implicit bias, operating below conscious awareness, results from subtle cognitive processes); see also GODSIL ET AL., *supra* note 54, at 3 (discussing police shootings of unarmed young black men); *Test Yourself for Hidden Bias*, TEACHING TOLERANCE, <http://www.tolerance.org/activity/test-yourself-hidden-bias> (last visited Dec. 1, 2015) (providing information about implicit bias and a way to test levels of implicit bias through an online test).

371. GODSIL ET AL., *supra* note 54, at 44.

372. For instance, teachers can take steps to address implicit bias and racial anxiety in the classroom. See Susan Bryant & Jean Koh Peters, *Reflecting on the Habits: Teaching About Identity, Culture, Language, and Difference*, in TRANSFORMING THE EDUCATION OF LAWYERS: THE THEORY AND PRACTICE OF CLINICAL PEDAGOGY 349, 349 (Susan Bryant et al. eds., 2014) (discussing the way habits are taught and employed); Jean Koh Peters & Susan Bryant, *Talking about Race*, in TRANSFORMING THE EDUCATION OF LAWYERS, THE THEORY AND PRACTICE OF CLINICAL PEDAGOGY 375, 375 (Susan Bryant et al. eds., 2014) (focusing on teaching about racial injustice and developing ways to “recognize, explore, and confront residual and ongoing racial prejudice in our systems of justice”); see also Deborah N. Archer, *There Is No Santa Claus: The Challenge of Teaching the Next Generation of Civil Rights Lawyers in a “Post-Racial” Society*, 4 COLUM. J. RACE & L. 55, 57 (2013) (observing that while students respect and acknowledge different cultures, that same respect for diversity does not extend to issues of race and racial discrimination); Phyllis Goldfarb, *Pedagogy of the Suppressed: A Class on Race and the Death Penalty*, 31 N.Y.U. REV. L. & SOC. CHANGE 547, 549–50 (2007) (advocating for a method of teaching legal analysis and legal doctrines that examines the history and cultural norms underlying those doctrines).

“debiasing.”³⁷³ Similarly, feeling empathy toward a member of a stereotyped race results in reduced bias.³⁷⁴ In addition, researchers have identified multiple strategies to “break the prejudice habit,”³⁷⁵ including stereotype replacement,³⁷⁶ counter-stereotypic imaging,³⁷⁷ individuation,³⁷⁸ perspective taking,³⁷⁹ and increasing opportunities for contact between diverse racial and ethnic groups.³⁸⁰ University of California Los Angeles law professor Jerry Kang spearheaded the identification of strategies for preventing decision making based on implicit bias, including doubting one’s objectivity³⁸¹ and increasing one’s motivation to be fair.³⁸²

All of these strategies for preventing automatic bias responses require a deliberate and controlled thought process that can be achieved through mindfulness practice.³⁸³ Mindfulness is a method of observing one’s own thoughts and being curious about the mind.³⁸⁴

373. In one study, researchers found that exposure to counter-stereotypic examples of people can diminish implicit stereotypes of women and negative implicit attitudes toward gays. GODSIL ET AL., *supra* note 54, at 45.

374. *See id.* (noting that inducing empathy toward an Asian American movie character—the daughter in *The Joy Luck Club*—resulted in decreased implicit bias toward Asian Americans).

375. *Id.*

376. *See id.* at 46 (requiring participants to self-identify and reflect on stereotypical responses).

377. *See id.* (requiring participants to imagine individuals who counter the stereotype of a race, whether based on actual examples or imagination).

378. *See id.* (requiring participants to consider people as individuals rather than merely a part of a group with the same attributes).

379. *See id.* (requiring participants to adopt the perspective of a stereotyped group member).

380. *See id.* (promoting positive interactions between different racial and ethnic groups to ameliorate implicit bias).

381. *See id.* at 47 (explaining that the process of becoming aware of one’s lack of objectivity helps to reduce bias through critical self-evaluation).

382. *See id.* (recounting that when judges were taught the neuroscience of bias and convinced it could impact their behavior, they were motivated to take proactive steps to reduce bias in their courtrooms).

383. *See id.* (describing “mindfulness practice” as a process of slowly and deliberately determining our behaviors). An example of mindfulness practice is meditation. *See generally* Yoona Kang et al., *The Nondiscriminating Heart: Lovingkindness Meditation Training Decreases Implicit Intergroup Bias*, 143 J. EXPERIMENTAL PSYCHOL. 1306, 1306 (2014).

384. *See* Angela Harris et al., *From “The Art of War” to “Being Peace”*: Mindfulness and Community Lawyering in the Neoliberal Age, 95 CALIF. L. REV. 2073, 2076 (2007) (describing mindfulness as “the art of paying attention ‘to what we already know or sense, not just in the outer world of our relationships with others and with our surroundings, but in the interior world of our own thoughts and feelings, aspirations

Mindfulness allows an individual to consider “how individual action is tied to group process, how group process connects to institutionalized relations of power, and thus how transformational change at the interpersonal level is linked to transformational change at the regional, national[,] and global levels.”³⁸⁵

Prior to enacting the Equity and Social Justice Ordinance,³⁸⁶ the Seattle King County government hosted multiple and ongoing bias and mindfulness trainings for city employees to ensure laws and decisions were in furtherance of health justice and free of bias.³⁸⁷ More recently, the Department of Housing and Urban Development issued a rule, Affirmatively Furthering Fair Housing, by which communities must analyze segregation patterns using historical data and submit goals for reducing segregation.³⁸⁸ Courts have also begun

and fears, hopes and dreams” (citing JON KABAT-ZINN, *COMING TO OUR SENSES: HEALING OURSELVES AND THE WORLD* 5–6 (2005)). Law firms, the criminal justice system, medical schools, and law schools are training employees and students in mindfulness practices. See, e.g., *Mindfulness at Berkeley Law*, BERKELEY L., <https://www.law.berkeley.edu/student-life/mindfulness-at-berkeley-law> (last visited Dec. 1, 2015). The skill is credited with multiple personal and health benefits, including reduced stress and anxiety, self-understanding, increased happiness, and improved emotional intelligence. See Leonard Riskin, *The Contemplative Lawyer: On the Potential Contribution of Mindfulness Meditation to Law Students, Lawyers and Their Clients*, 7 HARV. NEGOT. L. REV. 1, 46–48 (2002); Shauna L. Shapiro et al., *Cultivating Mindfulness: Effects on Well-Being*, 64 J. CLINICAL PSYCHOL. 840, 841, 843 (2008) (examining meditators and the effects of two distinct, meditation-based interventions for undergraduates and finding that adherence to practice predicted some positive outcomes); Amanda L. Chan, *Mindfulness Meditation Benefits: 20 Reasons Why It's Good for Your Mental and Physical Health*, HUFFINGTON POST (Apr. 8, 2013, 8:53 AM), http://www.huffingtonpost.com/2013/04/08/mindfulness-meditation-benefits-health_n_3016045.html. Mindfulness can be practiced through daily meditation or exercises. Sue Bryant & Jean Koh Peters, *Five Habits for Cross-Cultural Lawyering*, in RACE, CULTURE, PSYCHOL., & LAW 47, 47 (Kimberly Holt Barrett & William H. George eds., 2004); Leonard L. Riskin, *Knowing Yourself: Mindfulness*, in THE NEGOTIATOR'S FIELDBOOK: THE DESK REFERENCE FOR THE EXPERIENCED NEGOTIATOR 239, 242 (Andrea Kupfer Schneider & Christopher Honeyman eds., 2006); *Fourteen Mindfulness Trainings*, ORDER OF INTERBEING (Apr. 22, 2012), <http://www.orderofinterbeing.org/for-the-aspirant/fourteen-mindfulness-trainings>.

385. Harris et al., *supra* note 384, at 2076.

386. King County Proposed Ordinance No. 2010-0509.2, <http://www.ci.richmond.ca.us/DocumentCenter/Home/View/8657>.

387. See *Equity and Social Justice*, KING COUNTY, <http://www.kingcounty.gov/elected/executive/equity-social-justice.aspx> (last visited Dec. 1, 2015) (stating that the strategic plan is specifically intended to “remove barriers” that lead to health, social, and legal injustice).

388. 24 C.F.R. §§ 5, 91–92, 570, 574, 576, 903 (2015); see Laura Kusisto, *New HUD Rules Take Aim at Segregated Housing*, WALL ST. J. (July 8, 2015, 4:04 PM), <http://www.wsj.com/articles/hud-announces-rule-designed-to-bolster-so-called-fair->

holding anti-bias trainings for members of the judiciary.³⁸⁹ These are commendable first steps that should be replicated and improved upon. Ultimately, to prevent the lasting damage and poor health outcomes resulting from longstanding bias, discrimination, and segregation, federal and local governments, members of the legal system, members of academia, as well as communities and individuals, must commit to collaboratively developing robust and affirmative measures that address implicit bias and prevent its collateral negative effects.

D. Empower Communities and Individuals

Communities and individuals experiencing the negative consequences of injustice and health inequity firsthand are best positioned to identify the major challenges to overcoming inequity and to evaluate the viability of proposed solutions. The community-based participatory approach allows affected individuals to interact with policymakers while identifying issues and developing strategies that address social determinants of poor health.³⁹⁰ The approach is well suited

housing-initiatives-1436370563 (“Under the new rule, HUD will provide communities with historical data they must use to analyze segregation patterns, areas where race and poverty are concentrated, and access to good schools and jobs. Communities now will be required to submit these analyses to HUD, set goals for reducing segregation[,] and track the results.”); *Affirmatively Furthering Fair Housing*, U.S. DEP’T OF HOUSING & URB. DEV., http://www.huduser.org/portal/affht_pt.html#final-rule (last visited Dec. 1, 2015) (“HUD’s rule clarifies and simplifies existing fair housing obligations for HUD grantees to analyze their fair housing landscape and set locally-determined fair housing priorities and goals through an Assessment of Fair Housing (AFH). To aid communities in this work, HUD will provide open data to grantees and the public on patterns of integration and segregation, racially and ethnically concentrated areas of poverty, disproportionate housing needs, and disparities in access to opportunity.”).

389. See Mark W. Bennett, *Unraveling the Gordian Knot of Implicit Bias in Jury Selection: The Problems of Judge-Dominated Voir Dire, the Failed Promise of Batson, and Proposed Solutions*, 4 HARV. L. & POL’Y REV. 149, 151 (2010) (proposing solutions to combat implicit bias in jury selections, including increasing lawyer participation and the total elimination of preemptory challenges); Jerry Kang et al., *Implicit Bias in the Courtroom*, 59 UCLA L. REV. 1124, 1127–28 (2012) (providing a review of implicit bias from a criminal and civil perspective and suggesting ways to prevent implicit bias for judges and during jury selection); *Terrific Resources on Implicit Bias and the Courts*, JERRYKANG.NET (Apr. 1, 2012), <http://jerrykang.net/2012/04/01/terrific-resources-on-implicit-bias-and-the-courts> (providing a list of resources for courts to combat implicit bias).

390. See Barbara A. Israel et al., *Review of Community-Based Research: Assessing Partnership Approaches to Improve Public Health*, 19 ANN. REV. PUB. HEALTH 173, 177–79 (1998) (explaining that participatory approaches can be instrumental in poverty reduction strategies and improved health outcomes by: (1) recognizing the community as a unit of identity; (2) building on strengths and resources within the community; (3)

to matters of public health as the Public Health Code of Ethics suggests there is a moral obligation of public health professionals to partner with community members to address health issues.³⁹¹ In addition, the United Nations Convention on the Rights of Persons with Disabilities emphasizes the principle of public participation.³⁹²

Community mobilization at the local level is a critical and proven component to improving health outcomes. Interventions and investments that affect the entire community have a greater likelihood of reducing health inequities than attempts to change individual behavior.³⁹³ For example, increased investment in healthy housing on a community-wide level can lead to housing stability, less strain on families, and decreased violence.³⁹⁴ Overall, this type of investment in a community results in the reduction of social inequity and improved community health³⁹⁵ and bonded communities that are better able to recognize, respond to, and fight off detrimental environmental and community health threats.³⁹⁶ Mobilized communities have higher political and community participation and are positioned to influence resource allocation.³⁹⁷ In contrast, the absence of community cohesion can have negative consequences, such as increased violence, decreased participation in democracy,

facilitating a collaborative, equitable partnership that increases community ownership and control; (4) integrating knowledge and action for mutual benefit of all partners; (5) promoting a co-learning and empowering process that attends to social inequalities; and (6) disseminating findings and knowledge gained to all partners).

391. See PUB. HEALTH LEADERSHIP SOC'Y, PRINCIPLES OF THE ETHICAL PRACTICE OF PUBLIC HEALTH 4 (2002), <http://phls.org/CMSuploads/Principles-of-the-Ethical-Practice-of-PH-Version-2.2-68496.pdf> ("Public health policies, programs, and priorities should be developed and evaluated through processes that ensure opportunity for input from community members. Public health should advocate and work for empowerment of disenfranchised community members.").

392. See *Convention on the Rights of Persons with Disabilities*, UNITED NATIONS, <http://www.un.org/disabilities/convention/conventionfull.shtml> (last visited Dec. 1, 2015) (emphasizing the principle of public participation). Although there are international policies recognizing health as a human right, the United States has not adopted all of them. See Eleanor D. Kinney, *Recognition of the International Human Right to Health and Health Care in the United States*, 60 RUTGERS L. REV. 335, 344 (2008) ("Formal U.S. recognition of the international human right to health, particularly with respect to ratification of relevant international and regional treaties, has been limited.").

393. Woodward & Kawachi, *supra* note 7, at 926.

394. *Id.* at 925.

395. *Id.*

396. See Scott Burriss et al., *Integrating Law and Social Epidemiology*, 30 J.L. MED. & ETHICS 510, 515 (2002) (noting that wide differentials in income weaken the social connections that create cohesive and healthy communities).

397. *Id.* at 510, 516.

and reduced investment in education.³⁹⁸ These interventions can be conducted through community organizing, direct outreach, and investment in the development of communities.

One tested method of investing in communities is the social impact bond. Social impact bonds create public-private responsibility for achieving better outcomes and have proven successful in Europe, while growing in popularity in the United States.³⁹⁹ In this model, private investors (e.g., foundations, banks, corporations) issue bonds to local governments that, in turn, fund community groups and nonprofits to implement community intervention programs that ultimately demonstrate cost-savings for state or local governments.⁴⁰⁰ If the program is successful,⁴⁰¹ local governments repay the bond issuing organization from the savings created by decreased dependence on government funded safety-net programs.⁴⁰²

For example, the first health-focused social impact bond was funded in California in 2014 to address environmentally triggered asthma.⁴⁰³ The program, which is currently funded by the California

398. See *id.* at 512, 516 (indicating that these negative impacts are not isolated in the affected communities, but income and health inequality spill over to impact all members of society through infectious disease, violence, mental health issues, and drug abuse).

399. See HEALTHY HOMES HEALTHY COMMUNITIES INITIATIVE, MODEL HEALTHY HOMES POLICIES, 8 (2014), <http://luc.edu/media/lucedu/law/centers/healthlaw/pdfs/hjp/Model%20Healthy%20Homes%20Policies%20HJP%20FINAL.pdf> (explaining that governments enter into contracts with the bond-issuing organization and a nonprofit service provider seeking funding for an innovative program); Benjamin R. Cox, Note, *Financing Homelessness Prevention Programs with Social Impact Bonds*, 31 REV. BANKING & FIN. L. 959, 959–60 (2012) (explaining that social impact bonds “allow private investment capital to flow into intervention programs that produce cost-saving social outcomes”); Katrina Costa, *Social Impact Bonds: Investing for Success*, CTR. FOR AM. PROGRESS (Mar. 13, 2014), <https://www.americanprogress.org/issues/general/report/2014/03/03/85099/investing-for-success> (reporting that the United States began experimenting with social impact bonds after observing one such project in the United Kingdom).

400. See Cox, *supra* note 399, at 959–60 (discussing the costs of homelessness and that the use of social impact bonds to address a variety of community needs, including child welfare programs, lead court, housing conditions court); HEALTHY HOMES HEALTHY COMMUNITIES INITIATIVE, MODEL HEALTHY HOMES POLICIES, *supra* note 399, at 1 (referencing the use of HUD grants to assist lower income homeowners).

401. See Cox, *supra* note 399, at 960 (explaining that a neutral evaluator, agreed on by both parties at the contract signing, measures the outcomes and resolves any disputes).

402. *Id.* at 978, 980.

403. See Anna Gorman, *Fresno Pilots Asthma Program Aimed at Tapping Investors for Funds*, KAISER HEALTH NEWS (Oct. 27, 2014), <http://ww2.kqed.org/stateofhealth/2014/10/27/fresno-pilots-asthma-program-aimed-at-tapping-investors-for-funds>; see also Elizabeth Campbell, *Chicago Will Use \$17 Million in Social-Impact Bonds for Pre-K*, BLOOMBERG NEWS (Oct. 8, 2014, 12:06 PM), <http://www.bloomberg.com/news/articles/2014-10->

Endowment, is still in its pilot stage. Once the savings are determined and analyzed, organizers will seek outside investors for funding.⁴⁰⁴ Currently, the program is tracking asthma-related emergency room visits and working with parents who have young children with severe asthma to find possible triggers in the home.⁴⁰⁵ By preventing triggers and thus the need for an emergency room visit, the program estimates that these measures will save California more than \$7,700 per child served.⁴⁰⁶

In addition, the Community Development Financial Institutions Fund (“CDFI Fund”), a U.S. Department of Treasury program, promotes access to capital and local economic growth in both urban and rural low-income communities.⁴⁰⁷ The CDFI Fund gives monetary awards and tax credits for economic revitalization in distressed communities.⁴⁰⁸ For example, the New Markets Tax Credit Program, established by Congress in 2000, motivates investments into businesses and real estate projects located in low-income communities.⁴⁰⁹ Since its inception, the CDFI Fund has made 912 awards, allocating a total of \$43.5 billion in tax credit authority to community development entities. In 2007 alone, this investment resulted in \$621 million in private investments, more than 800 new bank account holders, financed the construction or rehabilitation of more than 4000 affordable housing units, and financed businesses that created or maintained nearly 30,000 full-time equivalent jobs.⁴¹⁰ Measures like these, which address the social foundations of health inequity, and the laws that perpetuate it, are the first step in achieving health justice.

08/chicago-will-use-17-million-in-social-impact-bonds-for-pre-k (stating that in 2014, Chicago announced the planned use of Social Impact Bonds to fund pre-kindergarten programs).

404. Gorman, *supra* note 403 (“Under the approach, investors fund a social impact bond; if a social program saves money—investors make money.”).

405. *Id.*

406. *Id.*

407. *See About Us*, CMTY. DEV. FINANCIAL INSTITUTIONS FUND, <https://www.cdfifund.gov/about/Pages/default.aspx> (last visited Dec. 1, 2015).

408. *Id.*

409. *New Markets Tax Credit Program*, CMTY. DEV. FINANCIAL INSTITUTIONS FUND, <https://www.cdfifund.gov/programs-training/Programs/new-markets-tax-credit/Pages/default.aspx> (last visited Dec. 1, 2015). The credit totals thirty-nine percent of the original investment amount and is claimed over a period of seven years—five percent for each of the first three years, and six percent for each of the remaining four years. *Id.*

410. *The Difference the CDFI Fund Makes*, COMMUNITY DEV. FIN. INSTITUTIONS FUND, http://www.mycdfi.cdfifund.gov/impact_we_make/overview.asp (last visited Dec. 1, 2015).

CONCLUSION

Until the great mass of the people shall be filled with the sense of responsibility for each other's welfare, social justice can never be attained.

– Helen Keller⁴¹¹

When people are determined, they can overcome anything.

– Nelson Mandela⁴¹²

The combined principles of health, equity, and justice are the keystone to a functional, thriving society. Yet, these principles go unfulfilled when they do not apply equally to all members of society. As demonstrated herein, entire populations are prohibited from full participation in society due to the health consequences of current economic, societal, cultural, environmental, and social conditions. As a result, low-income and minority individuals are unable to exercise their basic liberty rights, which, in effect, amounts to the denial of them. The status quo can only be improved by holding our laws and policies, our communities, and ourselves to a higher standard—one of health justice. Failure to respond to the flagrant injustice plaguing low-income communities and the resulting poor health outcomes impacts all of us. In the same way that everyone is affected by steep socioeconomic disparity, as seen in “spillover effects,”⁴¹³ interventions to eliminate health inequity and social injustice will benefit everyone.⁴¹⁴ As Dr. Martin Luther King, Jr. wrote, all persons “are caught in an inescapable network of mutuality,

411. CAROLYN WARNER, *THE LAST WORD: A TREASURY OF WOMEN'S QUOTATIONS* 253 (1992).

412. Mfonobong Nsehe, *19 Inspirational Quotes from Nelson Mandela*, FORBES (Dec. 6, 2013, 2:14 PM), <http://www.forbes.com/sites/mfonobongnsehe/2013/12/06/20-inspirational-quotes-from-nelson-mandela>.

413. See Woodward & Kawachi, *supra* note 7, at 928 (“Socioeconomic inequalities potentially affect every member of society via spillover effects. An obvious example is the rate of crime and violence: large disparities in social rewards (income and wealth) produce higher rates of property crime and violence. Spillover effects have been documented for many other social ills, including infectious disease (AIDS and tuberculosis) and drug misuse. A society that tolerates a steep socioeconomic gradient in health outcomes will experience a drag on improvements in life expectancy, and pay the cost via excess healthcare utilisation [sic].”).

414. See *id.* at 925 (stating that “wide differentials in income . . . weaken the social connections” that create cohesive and healthy communities).

tied in a single garment of destiny. [Thus,] whatever affects one directly affects all indirectly.”⁴¹⁵

We must make it our first priority to achieve health justice and insist on the elimination of health inequity and social injustice, especially of the kind that results in dangerous health consequences for minorities and people living in poverty. When individual human beings commit to these ideals, health justice will be realized. Only then will all individuals have the ability to access opportunity, achieve what they see as their responsibility and agency to do, and realize their fullest potential. Especially in this single garment of destiny, every human being should have that chance.

415. See Martin Luther King, Jr., *Letter from Birmingham Jail*, in *WHY WE CAN'T WAIT* 77, 86 (1964); see also Wilson, *supra* note 194, at 526–27 (“I can never be what I ought to be until you are what you ought to be, and you can never be what you ought to be until I am what I ought to be. This is the interrelated structure of reality.”).
