

# CLOSING THE HEALTH JUSTICE GAP: ACCESS TO JUSTICE IN FURTHERANCE OF HEALTH EQUITY

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## ABSTRACT

A massive civil “justice gap” plagues the United States. Every day, low-income Americans—and disproportionately people of color—go without the legal information and representation they need to enforce their rights. This can cost them their homes, jobs, food security, or children. But unmet civil legal needs in housing, employment, and public benefits, for example, are not simply injustices—they are well-documented drivers of poor health, or social determinants of health. Those marginalized by virtue of both race and socioeconomic status are particularly harmed by inaccessibility to justice and also by chronic health conditions and lower life expectancy. When a tenant walks into court alone for an eviction hearing and faces an experienced landlord’s attorney, the tenant is unlikely to prevail, and her eviction can lead to myriad poor health outcomes.

The health justice movement leverages law and policy to advance health equity. In recent years, it has gained tremendous traction, especially due to the COVID-19 pandemic’s spotlight on health disparities. In tandem, the access to justice movement is progressing with the advancement of major federal, state, and local legislation and initiatives. However, the movements have been running on parallel tracks, and their connections have been under-examined. This Article puts the two movements and bodies of scholarship squarely in dialogue with one another.

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True access to justice cannot be attained without leveraging law and policy in pursuit of health equity. There can be no justice for those who lack an equal opportunity to achieve health and well-being. This Article offers a new model for access to justice interventions defined by adherence to three core principles of health justice. To further health equity, access to justice strategies must (1) facilitate enforcement of extant laws; (2) elevate the power of affected individuals and communities; and (3) advance structural law and policy reform. Informed by the health justice framework, this model will allow the access to justice movement to realize its ultimate aspiration of social equality and provide for a healthier nation.

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## INTRODUCTION

Ms. Johnson<sup>1</sup> received a text message from her landlord asking her to vacate her apartment by the end of the month. She was behind on rent after spending some of her rent money on pest control to get rid of the roaches that had taken over her apartment. Her daughter's pediatrician had told her that these roaches and the mold in their bathroom—both of which the landlord had refused to fix—were the likely causes of her daughter's recent asthma attacks.<sup>2</sup>

When the text arrived, Ms. Johnson felt that she had no choice but to comply with her landlord's demand to leave. She knew from past experience that arguing with her landlord would only land her in an unsuccessful court battle. She had been evicted once before, a few years earlier, and as a result of that experience, she suspected that courts rarely side with tenants. On that occasion, she showed up to court at 8 A.M., as the eviction notice instructed, and then spent the entire day at the courthouse, with no choice but to take the whole day off of work as she awaited her hearing. When her case was finally called late in the afternoon, her hearing lasted just a few minutes.<sup>3</sup> The landlord's attorney enumerated the unpaid rent and expenses she owed, and Ms. Johnson stood alone at a table in the courtroom, embarrassed and defeated, as the judge ordered that the eviction proceed. This time, she felt there was no point in going through

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1. Ms. Johnson's story is based on a composite of several clients of the Georgetown University Health Justice Alliance Law Clinic. A pseudonym is used for confidentiality purposes.

2. See Barry Zuckerman et al., *Why Pediatricians Need Lawyers to Keep Children Healthy*, 114 PEDIATRICS 224, 224 (2004); OFF. DISEASE PREVENTION & HEALTH PROMOTION, HEALTHY PEOPLE 2020, QUALITY OF HOUSING [hereinafter HEALTHY PEOPLE 2020], <https://www.healthypeople.gov/2020/topics-objectives/topic/social-determinants-health/interventions-resources/quality-of-housing#11> [<https://perma.cc/K3ZT-L6HF>] (last visited Oct. 10, 2021) (“[T]he homes of low-income families are more likely to have water leaks; these leaks are associated with mold growth, which has been shown to affect respiratory health and increase the likelihood of asthma.”); Morgan Baskin, *Doctors Blame D.C.'s High Asthma Rates in Poor Housing*, WASH. CITY PAPER (May 22, 2019), <https://www.washingtoncitypaper.com/news/housingcomplex/article/21069963/doctors-blame-dcs-high-asthma-rates-in-part-on-poor-housing> [<https://perma.cc/D9W5-MJVZ>] (describing similar poor housing conditions as resulting in increased asthma likelihood).

3. John Whitlow, *Lawyer Calls Court an Eviction Machine*, ALBUQUERQUE J. (July 19, 2019), <https://www.abqjournal.com/1342272/lawyer-calls-court-an-eviction-machine.html> [<https://perma.cc/5ZN9-FVPM>]; WILLIAM E. MORRIS INST. FOR JUST., INJUSTICE IN NO TIME: THE EXPERIENCE OF TENANTS IN MARICOPA COUNTY JUSTICE COURTS 2 (2005), <https://morrisinstituteofjustice.org/helpful-information/landlord-and-tenant/4-final-eviction-report/file> [<https://perma.cc/9S7R-T8WX>] (“Most eviction cases take less than a minute to hear and many cases are heard in less than 20 seconds.”).

that again. A court-ordered eviction would harm her credit and make it harder for her to find a new apartment.<sup>4</sup> Enduring stress and foregoing sleep,<sup>5</sup> she packed up the family to move into their car until she could scrape together enough money to afford a security deposit for a new apartment.

When a tenant like Ms. Johnson faces eviction, she is likely to both lack access to justice and encounter detrimental health impacts for herself and her family.<sup>6</sup> Some tenants may not even realize they have legal

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4. Sacha Pfeiffer, *Health Justice Lawyer Argues for Nationwide Eviction Moratorium*, NPR (July 5, 2020), <https://www.npr.org/2020/07/05/887465412/health-justice-lawyer-argues-for-nationwide-eviction-moratorium> [https://perma.cc/55KQ-C9P9]; Kyle Swenson, *The Stimulus Relieved Short-Term Pain, But Evictions Impact Is a Long Haul*, WASH. POST (Feb. 8, 2021), <https://www.washingtonpost.com/dc-md-va/2021/02/05/eviction-covid-credit-score/> [https://perma.cc/V5AN-VQ3L] (“Eviction hits a tenant with the blunt force of dislocation; its second act, however, is a years-long slow burn of shrinking options. Credit scores tank.”); Kathryn A. Sabbeth, *Erasing the “Scarlet E” of Eviction Records*, THE APPEAL (Apr. 12, 2021), <https://theappeal.org/the-lab/report/erasing-the-scarlet-e-of-eviction-records/> [https://perma.cc/RT7S-GBDP] (“Eviction judgments also undermine. . . any activities that depend on good credit.”).

5. Ericka Peterson, *Building a House for Gideon: The Right to Counsel in Evictions*, 16 STAN. J. C.R. & C.L. 63, 69 (2020) (explaining that housing insecurity and the stress of being behind on rent is linked to poor health outcomes).

6. Eviction, housing insecurity, and homelessness are all well-documented drivers of poor health, and they disproportionately impact low-income people and people of color, as do a range of chronic health conditions. *Id.* at 68; Jonathan J. Sheffield, *Homeless Bill of Rights: Moving United States Policy Toward a Human Right to Housing*, 22 GEO. J. ON POVERTY L. & POL’Y 321, 329 (2015) (living “doubled up” with friends or family members indefinitely is a “common practice to avoid living on the street”); NAT’L HEALTH CARE FOR HOMELESS COUNCIL, HOMELESSNESS & HEALTH: WHAT’S THE CONNECTION? (Feb. 2019), <https://nhchc.org/wp-content/uploads/2019/08/homelessness-and-health.pdf> [https://perma.cc/CM9T-GVF4] (delving into the myriad ways in which eviction and homelessness can cause a low-income person’s health to enter a downward spiral); Emily A. Benfer, *Health Justice: A Framework (and Call to Action) for the Elimination of Health Inequity and Social Injustice*, 65 AM. U. L. REV. 275, 280–82 (2015) [hereinafter *Health Justice Framework*] (“Resource inequality and income distribution in society, and not solely genetics and access to healthcare, explain a person’s health status.”); Edith Chen et al., *Understanding Health Disparities: The Role of Race and Socioeconomic Status in Children’s Health*, 96 AM. J. PUB. HEALTH 702, 702 (2006) (“Low [socio-economic individuals] consistently have poorer health than high socio-economic individuals across a wide variety of morbidity and mortality outcomes.”); CTRS. FOR DISEASE CONTROL & PREVENTION, COVID-19 HEALTH EQUITY CONSIDERATIONS & RACIAL & ETHNIC MINORITY GROUPS (July 24, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/racial-ethnic-minorities.html> [https://perma.cc/FY4S-MWAR] (explaining that a higher percentage of people of color live in crowded housing and therefore may be more likely to be exposed to COVID-19). Eviction in particular disproportionately affects women and children, making it also an issue of gender justice. See Kathryn A. Sabbeth & Jessica K. Steinberg, *The Gender of Gideon*, 69 UCLA L. REV. (forthcoming 2022) (arguing that eviction disproportionately affects Black women).

defenses<sup>7</sup>—for example, those related to housing code violations, inadequate eviction notices,<sup>8</sup> and protections under pandemic-related eviction moratoria.<sup>9</sup> And if a tenant does have her day in court, as did Ms. Johnson during her prior eviction, she will often stand opposite a landlord's seasoned attorney without an understanding of her rights or attorney representation.<sup>10</sup> As so many low-income tenants across the country do, she may be able to walk through the courthouse doors, but she is without access to justice. Moreover, her eviction also reflects a *health* injustice. In addition to losing her home, an evicted tenant is also much likelier to experience negative effects on her physical and mental health, as well as harms to the health of her family members.<sup>11</sup>

A burgeoning body of scholarship explores “health justice,” a paradigm which aims to leverage law and policy to eliminate racial and socioeconomic health disparities.<sup>12</sup> The framework recognizes that much of

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7. See Kathryn A. Sabbeth, *(Under)Enforcement of Poor Tenants' Rights*, 28 GEO. J. ON POVERTY L. & POL'Y 97, 111 (2019) [hereinafter *(Under)Enforcement of Poor Tenants' Rights*] (discussing tenants' claims for right to safe housing including those related to implied warranty of habitability, common law torts, consumer protection, and antidiscrimination).

8. See Kathryn A. Sabbeth, *Housing Defense as the New Gideon*, 41 HARV. J.L. & GENDER 55, 80, 112–13 (2018) [hereinafter *Housing Defense as the New Gideon*]. Indeed, Ms. Johnson could potentially have raised such defenses to fight the “constructive eviction” her landlord initiated by demanding that she move out via text message. See Donald E. Campbell, *Forty (Plus) Years After the Revolution: Observations on the Implied Warranty of Habitability*, 35 U. ARK. LITTLE ROCK L. REV. 793, 798–99 (2013).

9. CTRS. FOR DISEASE CONTROL & PREVENTION, TEMPORARY HALT IN RESIDENTIAL EVICTIONS TO PREVENT THE SPREAD OF COVID-19 (Aug. 3, 2021), <https://www.cdc.gov/media/releases/2021/s0803-cdc-eviction-order.html> (“The eviction moratorium allows additional time for rent relief to reach renters and to further increase vaccination rates. In the context of a pandemic, eviction moratoria—like quarantine, isolation, and social distancing—can be an effective public health measure . . . .”) [<https://perma.cc/K8JN-P3MW>].

10. *Housing Defense as the New Gideon*, *supra* note 8, at 78; Peterson, *supra* note 5, at 76 (“Most landlords are represented by counsel, while most tenants are not.”).

11. Peterson, *supra* note 5, at 68; Matthew Desmond & Rachel Tolbert Kimbro, *Eviction's Fallout: Housing, Hardship, and Health*, 94 SOC. FORCES 295, 296 (2015) (“Compared to those not evicted, mothers who were evicted in the previous year experienced more material hardship, were more likely to suffer from depression, reported worse health for themselves and their children, and reported more parenting stress.”).

12. Yael Cannon, *Injustice Is an Underlying Condition*, 6 U. PA. J.L. & PUB. AFFS. 201, 205 (2020) [hereinafter *Injustice Is an Underlying Condition*] (drawing on descriptions of health justice as a burgeoning framework for using law and policy mechanisms to eliminate health disparities) (quoting Emily A. Benfer & Lindsay F. Wiley, *Health Justice Strategies to Combat COVID-19: Protecting Vulnerable Communities During a Pandemic*, HEALTH AFFS. (Mar. 19, 2020)) [hereinafter *Protecting Vulnerable Communities*], <https://>

health is not a result of biology or the care we receive at the doctor's office, but rather the social conditions that affect our daily lives. These "social determinants of health" are "the conditions in which people are born, live, work, learn, eat, play, and age."<sup>13</sup> Research estimates that they may impact as much as 80% of a person's health.<sup>14</sup> For example, housing and food insecurity, low-wage employment and unemployment, and inadequate education are well-known drivers of poor health; they are also heavily correlated with racial and socioeconomic disparities.<sup>15</sup>

People of color and low-income Americans—and those who fall into both categories and therefore experience compounding marginalization—have lower life expectancies and experience poorer health because of these social determinants.<sup>16</sup> Just as law has contributed to these disparities, the health justice framework recognizes that law must help address and eliminate them.<sup>17</sup> Health justice scholars have called for major systemic reforms in furtherance of health equity, such as a living wage, expansion of paid sick leave, robust protections and financial

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[www.healthaffairs.org/doi/10.1377/hblog20200319.757883/full/](http://www.healthaffairs.org/doi/10.1377/hblog20200319.757883/full/) [https://perma.cc/C9GL-G2XB]).

13. WORLD HEALTH ORG., STRATEGIC MEETING ON SOCIAL DETERMINANTS OF HEALTH: FINAL MEETING SUMMARY 3 (Sept. 12–13, 2019).

14. Sally Magnan, *Social Determinants of Health 101 for Health Care: Five Plus Five*, NAT'L. ACAD. MED. PERSP., 1,1 (Oct. 9, 2017), <https://nam.edu/wp-content/uploads/2017/10/Social-Determinants-of-Health-101.pdf> [https://perma.cc/NM8D-GB5D].

15. *Id.*; Maureen Black, *Household Food Insecurities: Threats to Children's Well-Being*, SOCIO-ECONOMIC STATUS INDICATOR (June 2012), <https://www.apa.org/pi/ses/resources/indicator/2012/06/household-food-insecurities> [https://perma.cc/3AVK-ZYDX]; Baskin, *supra* note 2 (listing specific factors, such as mold and bug-infestations that are more likely to affect low-income families and lead to poor health).

16. *Injustice Is an Underlying Condition*, *supra* note 12, at 212; Sheila Foster et al., *Health Justice Is Racial Justice: A Legal Action Agenda for Health Disparities*, HEALTH AFFS. (July 2, 2020) [hereinafter *Health Justice Is Racial Justice*], <https://www.healthaffairs.org/doi/10.1377/hblog20200701.242395/full> [https://perma.cc/4FCM-V35Q] (giving as an example of the effects of social determinants of health the Southeast D.C. ward, where approximately 90% of residents are Black and life expectancy is 15 years shorter than the city's highest-income neighborhood); Arline T. Geronimus et al., "Weathering" and Age Patterns of Allostatic Load Scores Among Blacks and Whites in the United States, 96 AM. J. PUB. HEALTH 826, 831 (2006) (finding allostatic load levels, which measure the physiological burden imposed by stress and serve as a proxy for health outcomes, as being particularly high for people living in poverty and for Black individuals across socioeconomic statuses); Chen et al., *supra* note 6, at 702 (noting that people from lower socioeconomic backgrounds and minority racial groups tend to have poorer health outcomes, with these effects compounded for those who fall into both groups).

17. *Injustice Is an Underlying Condition*, *supra* note 12, at 205; *Protecting Vulnerable Communities*, *supra* note 12 ("Health justice is an emerging framework for using law and policy to eliminate unjust health disparities.").

supports for low-income workers,<sup>18</sup> Medicaid expansion,<sup>19</sup> healthcare coverage for immigrants,<sup>20</sup> systemic reforms in the medical profession to address implicit bias,<sup>21</sup> and significant rental assistance and pathways for home ownership for low-income tenants.<sup>22</sup> They have advocated forcefully for empowerment and leadership building in affected communities<sup>23</sup> and for law and medical schools to train the next generation of professionals through a health justice lens.<sup>24</sup> With a growing movement in medicine and public health pushing to address social determinants of health,<sup>25</sup> including the role of law as a driver of health, and against the backdrop of a greater national focus on health equity and racial justice during the COVID-19 pandemic,<sup>26</sup> health justice has increasingly become part of the national conversation.

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18. Ruqaiyah Yearby & Seema Mohapatra, *Law, Structural Racism, and the COVID-19 Pandemic*, 7 J.L. & BIOSCIENCES 1, 17–18 (2020); Emily A. Benfer, *Coronavirus Rent Freezes Are Ending—And a Wave of Evictions Will Sweep America*, NBC NEWS (June 22, 2020), <https://www.nbcnews.com/think/opinion/coronavirus-rent-freezes-are-ending-wave-evictions-will-sweep-america-ncna1230916> [<https://perma.cc/5MSU-LBDE>] (“The demand for financial assistance is at an all-time high.”); Emily A. Benfer et al., *Health Justice Strategies to Combat the Pandemic: Eliminating Discrimination, Poverty, and Health Disparities During and After COVID-19*, 19 YALE J. HEALTH POL’Y L. & ETHICS 122, 168 (2020) [hereinafter *Health Justice Strategies*] (articulating how the financial disturbances brought on by the pandemic have disproportionately hurt low-income workers and workers of color and how financial responses have been insufficient to help them); *Protecting Vulnerable Communities*, *supra* note 12.

19. *Health Justice Strategies*, *supra* note 18, at 146.

20. Medha D. Makhoul, *Health Justice for Immigrants*, 4 U. PA. J.L. & PUB. AFFS. 235, 240 (2019) (applying the health justice framework to the issue of immigrant access to publicly funded health care).

21. *Health Justice Strategies*, *supra* note 18, at 146.

22. *Id.* at 159.

23. Angela P. Harris & Aysha Pamukcu, *The Civil Rights of Health: A New Approach to Challenging Structural Inequality*, 67 UCLA L. REV. 758, 821 (2020) [hereinafter *Civil Rights of Health*]; *Health Justice Strategies*, *supra* note 18, at 162, 171 (calling for strategies that work to eradicate disparities and allow for long-term sustainability in affected communities).

24. Edward B. Heaton et al., *Training Future Health Justice Leaders – A Role for Medical-Legal Partnerships*, 384 NEW ENG. J. MED. 1879, 1880 (2021).

25. AAMC CTR. FOR HEALTH JUST., <https://www.aamc.org/healthjustice> [<https://perma.cc/5YZX-CZQL>] (last visited July 29, 2021); Heaton et al., *supra* note 24; U.S. DEP’T OF HEALTH & HUM. SERVS., HEALTHY PEOPLE 2030, SOCIAL DETERMINANTS OF HEALTH [hereinafter HEALTHY PEOPLE 2030], <https://health.gov/healthypeople/objectives-and-data/social-determinants-health> [<https://perma.cc/EE7K-GDXP>] (last visited July 29, 2021) (“[P]ublic health organizations and their partners in sectors like education, transportation, and housing need to take action to improve the conditions in people’s environments.”).

26. *Health Justice Is Racial Justice*, *supra* note 16.



The access to justice<sup>27</sup> movement is similarly gaining momentum. In 2020, the American Academy of Arts and Sciences published a seminal report, “Civil Justice for All”, examining the justice gap—a phenomenon that leaves millions of Americans with unmet civil legal needs and without legal representation each year.<sup>28</sup> The pandemic and the accompanying recession have increased demand for free or low-cost civil legal services to address the same factors that affect health justice.<sup>29</sup> Policymakers and scholars have thus called for greater “access to justice”—seeking to assist low-income people in obtaining the knowledge, tools, and legal representation needed to enforce their rights.<sup>30</sup> They have also supported legislation to provide

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27. “Access to justice” is also frequently abbreviated as either “ATJ” or “A2J.” This article will refer to it as “access to justice” throughout.

28. *A New Report and Recommendations: Civil Justice for All*, AM. ACAD. ARTS & SCI. 1 (Sept. 24, 2020) [hereinafter *Civil Justice for All*], <https://www.amacad.org/news/new-report-civil-justice> [<https://perma.cc/X2J5-KNE2>]; see also LEGAL SERVS. CORP., THE JUSTICE GAP: MEASURING THE UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS 6 (2017) [hereinafter *The Justice Gap*], <https://www.lsc.gov/media-center/publications/2017-justice-gap-report> [<https://perma.cc/SB95-P2BV#>] (measuring and detailing the justice gap among low-income Americans in 2017).

29. These include housing, food security, domestic violence, access to healthcare, medical debt, and other legal needs. See, e.g., Linda Giannarelli et al., *2021 Poverty Projections*, URB. INST. (Feb. 2021), [https://www.urban.org/sites/default/files/publication/103656/2021-poverty-projections\\_1.pdf](https://www.urban.org/sites/default/files/publication/103656/2021-poverty-projections_1.pdf) [<https://perma.cc/LCB6-VYYV>] (detailing the projected upcoming increase in poverty); Alexandre Tanzi & Catarina Saraiva, *U.S. Suffers Sharpest Rise in Poverty Rate in More than 50 Years*, BLOOMBERG (Jan. 25, 2021), <https://www.bloomberg.com/news/articles/2021-01-25/u-s-suffers-sharpest-rise-in-poverty-rate-in-more-than-50-years> [<https://perma.cc/3Z7T-JMF2>] (“[P]overty rate increased by 2.4 percentage points during the latter half of 2020 as the U.S. continued to suffer the economic impacts from Covid-19.”); see also Adiel Kaplan, *More People than Ever Need Legal Aid Services. But the Pandemic Has Hit Legal Aid Funding Hard*, NBC NEWS (Apr. 25, 2021), <https://www.nbcnews.com/business/personal-finance/more-people-ever-need-legal-aid-services-pandemic-has-hitn1264989> [<https://perma.cc/A2Z2-HBX5>] (describing a similar increase in civil legal demand since the beginning of the pandemic).

30. For example, in the last two years, over two dozen bills have been introduced in Congress to promote access to legal representation and other forms of access to justice. Similarly, the executive branch has launched multiple access to justice initiatives, and several cities and states have enacted a right to counsel in certain civil cases, primarily for low-income tenants facing eviction. See, e.g., Recognizing the Right to Counsel in Civil Proceedings, H.R. Res. 960, 116th Cong. (as referred to the House Committee on the Judiciary, May 8, 2020) (providing legal representation without cost to low-income individuals facing legal action involving basic human needs, including safety, family, shelter, and sustenance); Fair Access to Legal Counsel Act of 2020, H.R. 6037, 116th Cong. § 2 (as referred to the House Committee on the Judiciary, Feb. 28, 2020) (requiring courts to inform an unrepresented individual of her right to request counsel if unable to afford counsel and providing courts discretionary power to appoint such counsel); S.B. 5160, 67th Leg., Reg. Sess. (Wash. 2021) (providing a right to counsel for

legal counsel as a matter of right at public expense in civil cases that affect basic human needs, along with other access to justice programs, such as community education, technology initiatives, pro bono efforts, and legal navigators.<sup>31</sup> More than thirty municipal and state laws establishing the appointment of or right to counsel for low-income individuals in areas of civil legal need passed in 2021 alone.<sup>32</sup> The Biden administration has also put forth multiple access to justice initiatives.<sup>33</sup>

Recognizing that both movements are accelerating in their own right, this Article brings the health justice and access to justice movements

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indigent tenants facing eviction); H.B. 18, 442d Gen. Assemb., Reg. Sess. (Md. 2021) (providing a right to counsel for indigent tenants facing eviction); H.B. 6531, 2021 Gen. Assemb. (Conn. 2021) (providing a right to counsel for indigent tenants facing eviction); N.Y.C. Local Law No. 54 of 2021, Council Int. No. 2050-A of 2020 (expanding access to legal services for tenants facing eviction in housing court citywide).

31. See, e.g., Katherine S. Wallat, *Reconceptualizing Access to Justice*, 103 MARQ. L. REV. 581, 609 (2019) (advocating for increased public education as a crucial solution to the general access to justice issue by helping individuals recognize and effectively exercise protections that are provided for in civil law); *Civil Justice for All*, *supra* note 28 (recommending a holistic approach to civil justice efforts and increased funding for these programs).

32. See, e.g., S.B. 5160, 67th Leg., Reg. Sess. (Wash. 2021) (providing a right to counsel for indigent tenants facing eviction); H.B. 0018, 442d Gen. Assemb., Reg. Sess. (Md. 2021) (providing a right to counsel for indigent tenants facing eviction); H.B. 6531, 2021 Gen. Assemb. (Conn. 2021) (providing a right to counsel for indigent tenants facing eviction); N.Y.C. Local Law No. 54 of 2021, Council Int. No. 2050-A of 2020 (expanding access to legal services for tenants facing eviction in housing court citywide); see also *Civil Right to Counsel Legislation*, NAT'L COAL. FOR A C.R. TO COUNSEL, [http://civilrighttocounsel.org/legislative\\_developments](http://civilrighttocounsel.org/legislative_developments) [<https://perma.cc/9MGT-CXXV>] (listing and describing all 2021/2022 federal and state civil right to counsel bills, organized by enacted, active, and dead bills).

33. Memorandum on Restoring the Department of Justice's Access to Justice Function and Reinvigorating the White House Legal Aid Interagency Roundtable, 86 Fed. Reg. 27793-27796 (May 18, 2021); U.S. DEP'T OF JUST., OFF. OF PUB. AFFS., *Attorney General Launches Review to Reinvigorate the Justice Department's Commitment to Access to Justice* (May 18, 2021), <https://www.justice.gov/opa/pr/attorney-general-launches-review-reinvigorate-justice-department-s-commitment-access-justice> [<https://perma.cc/4YW-276C>] (announcing the Department of Justice's renewed access to justice initiatives under President Biden and Attorney General Merrick Garland); THE WHITE HOUSE, FACT SHEET: BIDEN-HARRIS ADMINISTRATION ANNOUNCES INITIATIVES TO PROMOTE HOUSING STABILITY BY SUPPORTING VULNERABLE TENANTS AND PREVENTING FORECLOSURES (June 24, 2021) [hereinafter *Biden-Harris Housing Facts*], <https://www.whitehouse.gov/briefing-room/statements-releases/2021/06/24/fact-sheet-biden-harris-administration-announces-initiatives-to-promote-housing-stability-by-supporting-vulnerable-tenants-and-preventing-foreclosures/> [<https://perma.cc/LNB6-ZH8X>] (announcing that American Rescue Plan funds for eviction diversion can be used to fund legal services and highlighting the White House's collaboration with legal organizations to develop eviction prevention efforts that include access to counsel).

in dialogue with one another. It focuses on how the health justice framework can inform access to justice efforts in furtherance of health equity. Without health and well-being for historically and currently marginalized people, there can be no justice. Indeed, justice should be seen as a key component and one of the proxies for health status,<sup>34</sup> and access to justice can be furthered through an understanding of its impact on health and well-being.

This Article argues that the health justice framework provides actionable principles through which the access to justice movement can meaningfully advance justice, including health equity, for those marginalized based on their race and socioeconomic status. Part I examines the justice gap and associated disparities, centering on the access to justice movement. Part II explores the core principles of the health justice framework, which has also been developing rapidly. Finally, Part III applies the health justice framework to the access to justice movement. It asserts that access to justice in furtherance of health can be achieved through efforts that (1) facilitate enforcement of current laws that implicate health equity, including access to legal representation for low-income individuals to address health-harming civil legal needs; (2) elevate the power of affected individuals and communities, including through the provision of legal information and advocacy tools to help people understand and assert their rights, and through partnerships with affected communities and organizations; and (3) advance structural law and policy reform towards health equity.

### I. The Justice Gap and the Movement for Access to Justice

Every day, judges across the nation rule on civil justice issues with grave implications. These include deciding whether children stay with their families, whether banks and landlords can take people's homes, and whether survivors of domestic violence can obtain restraining orders. Millions of people lose their cases, and their children, homes, income, and safety, in large part because they lack the knowledge, resources, and support they need to protect their rights.<sup>35</sup>

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34. Ellen M. Lawton & Megan Sandel, *Investing in Legal Prevention: Connecting Access to Civil Justice and Healthcare Through Medical-Legal Partnership*, 35 J. LEGAL MED. 29, 29 (2014) ("Increasingly, the health and legal communities see access to civil legal services as a key intervention to reduce the effects of negative effects of social determinants, improve health, and prevent disease.").

35. Injustice Is an Underlying Condition, *supra* note 12.

### A. The Justice Gap

In 2017, the Legal Services Corporation (“LSC”), a nonprofit established by the federal government to fund civil legal aid organizations serving low-income Americans,<sup>36</sup> released a report entitled “The Justice Gap.”<sup>37</sup> The “justice gap” is defined as the “difference between the number of people experiencing problems that could benefit from some form of legal assistance and the number who receive it.”<sup>38</sup> This gap is borne out of the disparity in access to legal assistance for low-income families.<sup>39</sup> LSC’s report revealed that 71% of low-income families experienced at least one civil legal problem,<sup>40</sup> while a full quarter of low-income households experienced more than six civil legal issues in the year leading up to the report alone.<sup>41</sup> Further astonishing was the revelation that “86% of the civil legal problems reported by low-income Americans received inadequate or no legal help.”<sup>42</sup> In other words, members of low-income communities reportedly had adequate civil legal representation a mere 14% of the time.<sup>43</sup>

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36. *Who We Are*, LEGAL SERVS. CORP., <https://www.lsc.gov/about-lsc/who-we-are> [<https://perma.cc/ZL5F-22P9>]. The Legal Services Corporation is a nonprofit that centers equal access to justice through promoting civil legal assistance to low-income people.

37. The Justice Gap, *supra* note 28. The concept of “justice gap” is centered around unmet legal needs. *See, e.g.*, Deborah L. Rhode, *Whatever Happened to Access to Justice*, 42 LOY. L.A. L. REV. 869, 878–80 (2009) [hereinafter *Whatever Happened*] (“Both national and state studies consistently find that over four-fifths of individual legal needs of low-income individuals remain unmet.”); Russell Engler, *Connecting Self-Representation to Civil Gideon: What Existing Data Reveal About When Counsel Is Most Needed*, 37 FORDHAM URB. L.J. 37, 40–43 (2010) (describing the prevalence of unmet legal needs, particularly in areas involving housing, family, and consumer law areas).

38. Rebecca L. Sandefur, *Bridging the Gap: Rethinking Outreach for Greater Access to Justice*, 37 U. ARK. LITTLE ROCK L. REV. 721, 721 (2015); Danya E. Keene et al., *Reducing the Justice Gap and Improving Health Through Medical-Legal Partnerships*, 40 J. LEGAL MED. 229, 230 (2020) (“The existing gap between the civil legal needs of low-income Americans and the resources available to meet those needs, or the ‘justice gap,’ affects access to critical social needs . . .”).

39. The Justice Gap, *supra* note 28.

40. *Id.* at 7. This rate is even higher for households experiencing domestic violence or sexual assault (97%), for parents or guardians of children under 18 (80%), and for individuals with disabilities (80%). *Id.*

41. *Id.*

42. *Id.* at 6.

43. *Official Press Release from Office of Former Rep. Joe Kennedy (D-MA): Kennedy Introduces Civil Gideon*, LEGISTORM (May 8, 2020), [https://www.legistorm.com/stormfeed/view\\_rss/1487252/member/2918/title/kennedy-introduces-civilgideon.html](https://www.legistorm.com/stormfeed/view_rss/1487252/member/2918/title/kennedy-introduces-civilgideon.html) [<https://perma.cc/9JFH-2D9E>]. In line with this miniscule figure, some scholars estimate the ratio of lawyers providing civil legal services to the entire population of Americans

Sixty-three million Americans have low enough incomes to qualify for free civil legal assistance from an LSC-funded organization,<sup>44</sup> yet over 50% of those seeking help are turned away due to those organizations' limited resources.<sup>45</sup> Moreover, these figures do not include the many millions of Americans who are not below the poverty line threshold for LSC-funded legal aid, but who still cannot afford to pay for legal assistance.<sup>46</sup> LSC-funded legal services organizations receive federal dollars to provide free legal assistance to the approximately one-fifth of Americans who make less than 125% of the federal poverty line.<sup>47</sup> Yet, even before the COVID-19 pandemic, those LSC legal aid agencies were able to sufficiently address the civil legal needs of fewer than 40% of the approximately one million individuals seeking legal assistance annually.<sup>48</sup> The majority were given minimal legal advice or turned away.<sup>49</sup> Jim Sandman, former president of LSC, has noted, "If you go to any metropolitan courthouse or state courthouse . . . what you're going to see is more than 90% of tenants facing eviction without a lawyer," while 90% of landlords are represented by counsel.<sup>50</sup> The same can be said for other unrepresented individuals,

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who qualify for low-income legal aid to be roughly one-to-several thousand. Wallat, *supra* note 31, at 585; Katherine L.W. Norton, *The Middle Ground: A Meaningful Balance Between the Benefits and Limitations of Artificial Intelligence to Assist with the Justice Gap*, 75 U. MIAMI L. REV. 190, 220 (2020) (noting that there is approximately one legal aid lawyer or public defender for every 4.300 persons below the poverty line in the United States).

44. WHITE HOUSE LEGAL AID INTERAGENCY ROUNDTABLE, CIVIL LEGAL AID 101, at 2 (Nov. 5, 2021) [hereinafter *White House Civil Legal Aid*], <https://www.american.edu/spa/jpo/lair/upload/lair-toolkit-civil-legal-aid-101-tab-content-pdf-version.pdf> [<https://perma.cc/WB5U-CQVS>].

45. *Id.*

46. *Id.*; DAVID C. VLADECK, *In Re Aron: The Plight of the "Unrich" in Obtaining Legal Services*, in LEGAL ETHICS STORIES 255, 259–60 (Deborah L. Rhode & David Luban eds. 2005) (illustrating the "epidemic" of legal services unavailable to middle class Americans without the resources to afford expensive legal assistance).

47. Kathryn Joyce, *No Money, No Lawyer, No Justice*, NEW REPUBLIC (June 22, 2020), <https://newrepublic.com/article/158095/civil-legal-system-no-money-no-lawyer-no-justice> [<https://perma.cc/JUC5-REPH>]. These federally funded legal aid organizations comprise about a quarter of all American legal service organizations. *Id.*

48. The Justice Gap, *supra* note 28; *see also* Joyce, *supra* note 47 ("In 2017, LSC released its 'Justice Gap Report,' showing it was able to sufficiently address the civil legal needs of less than 40% of the roughly one million people who come to the agency every year.").

49. The Justice Gap, *supra* note 28; *see also* Joyce, *supra* note 47 (explaining that over 40% of people with civil legal needs are either given minimal legal advice or turned away).

50. Joyce, *supra* note 47.

including most litigants in child support, custody, and domestic violence cases.<sup>51</sup>

Numerous obstacles to accessing counsel and other forms of justice affect low-income people with unmet civil legal needs before they even arrive at the courthouse. First, though many low-income Americans have unmet legal needs, they seek legal assistance for only approximately 20% of their civil legal problems.<sup>52</sup> Studies show that moderate-income people are twice as likely as low-income individuals to take steps to address their civil legal problems.<sup>53</sup> Many who do not seek legal help report concerns about the cost of such help and not knowing where to look for it.<sup>54</sup> Moreover, many individuals experiencing poverty do not pursue legal help because they do not perceive their problems to be legal in nature.<sup>55</sup> A 2014 American Bar Foundation study found that although two-thirds of Americans encounter civil legal problems, less than 10% recognize them as such; instead, more than half interpret their troubles as bad luck or “part of God’s plan.”<sup>56</sup> Many people are unaware of what happens in civil courts, not realizing that these courts often determine if people can keep their housing, income, or children.<sup>57</sup> Indeed, “naming, blaming, and claiming” are necessary steps in the emergence of legal cases: an injured party has to be able to name the injury, blame it on the fault of another, and demand that the other party remedy the injury.<sup>58</sup> Whether someone actually recognizes an experience as a legal issue and turns it into a legal dispute depends on one’s social position—people cannot seek justice if they are unaware they suffered a legal wrong.<sup>59</sup>

These justice gaps can result in deleterious effects for those they impact. For instance, LSC notes that “a full 70% of low-income Americans with civil legal problems reported that at least one of their problems

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51. *Id.*

52. The Justice Gap, *supra* note 28.

53. *White House Civil Legal Aid*, *supra* note 44, at 2.

54. The Justice Gap, *supra* note 28, at 13.

55. *Id.* at 33.

56. REBECCA L. SANDEFUR, ACCESSING JUSTICE IN THE CONTEMPORARY USA: FINDINGS FROM THE COMMUNITY NEEDS AND SERVICES STUDY 9, 14 (2014), [http://www.americanbarfoundation.org/uploads/cms/documents/sandefur\\_accessing\\_justice\\_in\\_the\\_contemporary\\_usa\\_aug\\_2014.pdf](http://www.americanbarfoundation.org/uploads/cms/documents/sandefur_accessing_justice_in_the_contemporary_usa_aug_2014.pdf) [<https://perma.cc/H3DW-3VWQ>]; see also Joyce, *supra* note 47 (citing a similar belief in “God’s plan”).

57. Joyce, *supra* note 47.

58. William Felstiner et al., *The Emergence and Transformation of Disputes: Naming, Blaming, and Claiming*, 15 L. & SOC’Y REV. 631, 636 (1980–81).

59. *Id.*; Robin L. Nobleman, Note, *Addressing Access to Justice as a Social Determinant of Health*, 21 HEALTH L.J. 49, 52 (2014) (emphasizing that the first step in seeking justice is enabling potential litigants to realize they have suffered a legal wrong).

affected them very much or severely.”<sup>60</sup> The inability to effectively resolve civil legal issues is further correlated with negative health outcomes.<sup>61</sup> In one study, a third of people with civil legal issues experienced physical illness or stress-related health issues that they attributed to their legal problems.<sup>62</sup> People who self-identify as having a disability or health condition are also more likely to experience a legal issue and more likely to have multiple, unresolved, persistent legal issues.<sup>63</sup> When low-income people experience high rates of civil legal problems—such as housing, disabilities, and public benefits—and these problems go unresolved, the social exclusion of marginalized groups is perpetuated.<sup>64</sup>

Since the beginning of the COVID-19 pandemic in March 2020,<sup>65</sup> legal services organizations have seen overwhelming demand for help from those facing eviction, experiencing domestic violence, and seeking critical healthcare needs.<sup>66</sup> A July 2020 LSC survey found that the number of people eligible for civil legal assistance increased by 18% in the first three months of the pandemic.<sup>67</sup> Commentators and legal services organizations have made clear that they need increased funding to deal with these shifts.<sup>68</sup> Indeed, the pandemic has flooded the civil legal aid market with new customers. Yet, in order to be eligible for federally funded legal services, a person must still have an income at or below 125% of the federal poverty

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60. The Justice Gap, *supra* note 28, at 13.

61. Nobleman, *supra* note 59, at 73.

62. Pascoe Pleasence et al., *The Health Cost of Civil-Law Problems: Further Evidence of Links Between Civil Law Problems and Morbidity, and the Consequential Use of Health Services*, 5 J. EMP. LEGAL STUD. 351, 353 (2008).

63. Ab Currie, *Civil Justice Problems and the Disability Health Status of Americans*, 21 J.L. & SOC. POL'Y 31, 38–41 (2007).

64. Nobleman, *supra* note 59, at 53 n.19.

65. Jamie Ducharme, *World Health Organization Declares COVID-19 a 'Pandemic.' Here's What that Means*, TIME (Mar. 11, 2020), <https://time.com/5791661/who-coronavirus-pandemic-declaration/> [<https://perma.cc/M95N-XAP3>].

66. LSC Briefing: *The COVID-19 Health Crisis, Civil Legal Needs, and State Courts*, LEGAL SERVS. CORP. (Apr. 20, 2020), <https://www.lsc.gov/media-center/multimedia-gallery/lsc-briefing-covid-19-health-crisis-civil-legal-needs-and-state> [<https://perma.cc/A7YZ-DTXP>]; see also Mary Fairhurst & Fred Rivera, *Coronavirus Will Overwhelm Our Civil Legal-Aid System*, SEATTLE TIMES (Apr. 14, 2020), <https://www.seattletimes.com/opinion/coronavirus-will-overwhelm-our-civil-legal-aid-system/> [<https://perma.cc/T59Y-DE8X>] (describing legal aid providers as being on the “front line” of the COVID-19 pandemic and calling for increased funding).

67. LEGAL SERVS. CORP., *THE IMPACT OF THE COVID-19 PANDEMIC ON LEGAL AID: SURVEY RESULTS: JULY 24, 2020*, at 5 (on file with the *Columbia Human Rights Law Review*).

68. Justin Wise, *Legal Aid Attys Chart Course for 2021 After Spike in Demand*, LAW360 (Dec. 6, 2020), <https://www.law360.com/articles/1334803/legal-aid-attys-chart-course-for-2021-after-spike-in-demand> [<https://perma.cc/SQ8M-GWB7>].

line—\$15,950 for an individual in 2020.<sup>69</sup> This cutoff means that while the pandemic has forced millions of Americans into financial strain, many of these people find themselves in a dangerous middle ground where they need free legal services but do not quite qualify for them.<sup>70</sup>

During the pandemic, the stakes in many issues handled by legal services organizations, such as those related to housing and unemployment, have taken on particular importance because “[t]hose who are homeless have no feasible options to ‘shelter in place . . . .’ Low-wage workers are classified as essential and are not yet provided with appropriate protective equipment and paid leave. We are therefore confronted with mounting examples of already-broken systems that now pose a deadly public safety threat.”<sup>71</sup> An already overworked and inadequately-resourced industry has received a flood of new clients—with increasingly important cases. Thus, the pandemic has turned the inaccessibility of civil legal aid into a national crisis.

Legal services organizations expect the spike in demand for legal services to continue to rise,<sup>72</sup> especially following the Supreme Court’s invalidation of the Centers for Disease Control’s (“CDC”) eviction moratorium, the expiration of many local eviction moratoria, the onset of the highly contagious Omicron variant of the coronavirus, and the exhaustion of federal emergency rental relief assistance in many parts of the country.<sup>73</sup> Also expected is a “wave of consumer debt issues.”<sup>74</sup> Those debt issues may all come to pass around the same time as pandemic-era debt and loan forgiveness programs expire and as individuals further

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69. See *Civil Justice for All*, *supra* note 28, at 2–3.

70. *Id.*

71. Angela P. Harris & Aysha Pamukcu, *Flattening the Curve and Closing the Gap: The Civil Rights of Health During a Global Pandemic*, L. & POL. ECON. (LPE) PROJECT (June 4, 2020), <https://lpeproject.org/blog/flattening-the-curve-and-closing-the-gap-the-civil-rights-of-health-during-a-global-pandemic/> [<https://perma.cc/E6UF-DTTF>].

72. See Wise, *supra* note 68 (observing that the uptick in legal needs of Americans will only compound as the pandemic progresses).

73. Ala. Ass’n of Realtors v. U.S. Dep’t of Health & Hum. Servs., 141 S. Ct. 2320, 2320 (2021); Ala. Ass’n of Realtors v. U.S. Dep’t of Health & Hum. Servs., No. 21-5093, 2021 WL 4057718, at \*1 (D.C. Cir. Sept. 3, 2021); *Questions and Answers About Evictions as the CDC Moratorium Ends*, EVICTION LAB (July 26, 2021), <https://evictionlab.org/questions/#are-renters-protected> [<https://perma.cc/NK99-97DD>] (warning that, with the end of the CDC eviction moratorium, eviction processes are likely to resume, with varying levels of speed depending on landlords); *Governor Hochul Announces Joint Letter to U.S. Treasury Calling for Additional Federal Rental Relief*, N.Y. STATE (Jan. 13, 2022), <https://www.governor.ny.gov/news/governor-hochul-announces-joint-letter-us-treasury-calling-additional-federal-rental-relief> [<https://perma.cc/J3X7-7SXH>] (calling for continued rental and eviction protections for renters during the pandemic).

74. Wise, *supra* note 68.



deteriorate their savings to manage pandemic-created financial hardship.<sup>75</sup> The justice gap is thus only likely to widen.<sup>76</sup>

### B. Racial and Socioeconomic Disparities in Access to Justice

The impact of the justice gap is most powerfully felt by individuals who are marginalized both by virtue of lower socioeconomic status and because of their race. As a result of structural racism, civil courts are “poor people’s courts, [B]lack and brown people’s courts, women’s courts. The higher your income, the less likely you are to deal with them at all.”<sup>77</sup> Scholars have emphasized the role of structural racism in creating and perpetuating poverty among people of color,<sup>78</sup> with clear implications for the justice gap and health justice. They have also documented the unique impacts of racism in and of itself as a stressor that affects health and drives racial health disparities across socioeconomic lines.<sup>79</sup> This Article therefore examines the impacts of the justice gap and health injustice on “marginalized” individuals and communities, including those distinctly harmed by either lower socioeconomic status or racism, those who face compounding harms as a result of both, and those who may also face intersectional subordination based on other grounds, such as national origin, disability, gender, gender identity, and sexual orientation.<sup>80</sup>

The “Civil Justice for All” report<sup>81</sup> argues that the civil justice gap “reinforces the inequalities that already undermine our society.”<sup>82</sup> That is,

75. See also *id.* (observing that formerly incarcerated individuals will have an even harder time finding jobs given the tight labor market).

76. Lincoln Caplan, *Op-Ed: How the COVID-19 Pandemic Has Created Dire Legal Problems for the Poor*, L.A. TIMES (May 19, 2020), <https://www.latimes.com/opinion/story/2020-05-19/legal-services-coronavirus-low-income-clients> [https://perma.cc/3C56-V2JC].

77. Joyce, *supra* note 47. Structural racism is “the ways in which inequities are perpetuated through the racialized differential access to resources, opportunities, and services that are codified in laws, policies, practices, and societal norms.” Bettina Beech et al., *Poverty, Racism, and the Public Health Crisis in America* 3, FRONTIERS IN PUB. HEALTH (Sept. 6, 2021), <https://www.frontiersin.org/articles/10.3389/fpubh.2021.699049/full> [https://perma.cc/8NZQ-273N].

78. Beech et al., *supra* note 77.

79. Jamila Taylor, *Racism, Inequality, and Healthcare for African Americans* 6, CENTURY FOUND. (2019), [https://production-tcf.imgix.net/app/uploads/2019/12/19172443/AfAmHealth\\_Jamila\\_PDF.pdf](https://production-tcf.imgix.net/app/uploads/2019/12/19172443/AfAmHealth_Jamila_PDF.pdf) [https://perma.cc/D3CG-KXTU].

80. Kimberlé Crenshaw has described the “intersectional” forces of subordination and the ways that race, gender, sexuality, disability, and other systems of subordination overlap and interact. See Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex*, U. CHI. LEGAL FORUM 139 (1989).

81. See *Civil Justice for All*, *supra* note 28 and accompanying text.

82. *Id.* at 1.

when low-income people and people of color are unable to access legal information, advice, and legal representation, they are unable to experience justice.<sup>83</sup> Importantly, beyond the justice gap that affects many low-income individuals, “many kinds of civil justice problems disproportionately affect racial minorities—for example, discrimination in housing and employment, as well as immigration-related issues.”<sup>84</sup> In 2019, as the report notes, 58.7% of clients served by LSC-funded legal aid organizations were people of color,<sup>85</sup> even though people of color comprise only 39.9% of the U.S. population.<sup>86</sup> In short, “[I]ack of access to civil counsel disparately impacts racial minorities, women, and other vulnerable groups,”<sup>87</sup> as racial minorities and women are “overly represented among people who qualify for civil legal assistance” and represent a disproportionate number of individuals who meet the federal poverty guidelines.<sup>88</sup>

The events of the last two years have emphasized the connections between health, racial justice, and civil legal needs. For example, “[t]he protests that followed the killing of George Floyd in May 2020 highlighted other kinds of inequality and exposed racial disparities exacerbated by the pandemic: higher rates of unemployment, increased fatality to COVID-19, and greater vulnerability to eviction, among others. All of these subjects are covered under civil law.”<sup>89</sup> While some state-level and other access to justice studies have examined questions of racial equity, scholars have argued that more comprehensive analysis is needed to tackle the role of race and racism in access to justice challenges.<sup>90</sup>

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83. *Id.*

84. *Id.* at 4.

85. *Id.*

86. *Id.* This Article uses the term “Black” and “African American” as used in the underlying sources.

87. COLUM. L. SCH. HUM. RTS. CLINIC, *Access to Justice: Ensuring Meaningful Access to Counsel in Civil Cases: Response to the Fourth Periodic Report of the United States to the United Nations Human Rights Committee*, 64 SYRACUSE L. REV. 410, 413, 422–23 (2014).

88. *Id.*; see also Sandefur, ACCESSING JUSTICE IN THE CONTEMPORARY USA, *supra* note 56, at 9 fig. 3 (showing that nearly 80% of Latinx and Black individuals would experience a civil justice situation in their lifetime, compared to just over 60% of white people, in a small, randomized access to justice study).

89. *Civil Justice for All*, *supra* note 28, at 4.

90. See, e.g., Martha F. Davis, *Race and Civil Counsel in the United States: A Human Rights Progress Report*, 64 SYRACUSE L. REV. 447, 459 (2014) (“Recognizing the absence of research on the racial dynamics of access to justice is the first step toward remedying that situation.”); Rebecca Sandefur, *Access to Civil Justice and Race, Class, and Gender Inequality*, 34 ANN. REV. SOCIO. 339, 350 (2008) (“No major qualitative study has focused expressly on race and disputing, justiciable problems, or contact with civil courts or staff.”); Sara Sternberg Greene, *Race, Class, and Access to Civil Justice*, 101 IOWA L. REV. 1263, 1275 (2016) (“This Article builds on the work of this existing research [on the

### C. The Access to Justice Movement

Access to justice is broadly defined as access to the legal system—including courts, legal representation, and advice from lawyers.<sup>91</sup> The movement focuses largely on providing low-income individuals with access to free or low-cost civil legal representation through legal services attorneys, pro bono lawyers, low-bono practices, and law school clinics.<sup>92</sup> But while some argue that access to justice means access to the tools necessary for the effective resolution of civil legal issues,<sup>93</sup> others advocate for a broader definition—in which access to justice means that individuals who possess legal rights can exercise their ability to demand enforcement of those rights, remedy of wrongs, or resolution of legal disputes.<sup>94</sup> For instance, some scholars have argued that the scope of the solution should go beyond the provision of attorneys, advocating, for example, for the unbundling of legal services, the leveraging of technology to support litigants, the simplification of court processes for pro se litigants, and the development of non-lawyer roles, such as legal navigators, to satisfy the unmet legal demand.<sup>95</sup>

Some scholars posit that a focus on courts, lawyers, and rights impermissibly narrows the scope of advocacy efforts by the access to justice movement. Kathryn Young, a University of Massachusetts sociologist and American Bar Foundation Access to Justice Fellow, has argued that the right question should be: “How can this person get justice?” and not “How can the

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relationship between race and trust in institutions] by examining another context—the civil justice system and its utilization—in which trust is a significant factor.”).

91. See Norton, *supra* note 43, at 204.

92. See A.B.A., TASK FORCE ON ACCESS TO CIVIL JUSTICE: REPORT TO THE HOUSE OF DELEGATES 1, 2–3 (2006), [https://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/ls\\_sclaid\\_06A112A.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_06A112A.authcheckdam.pdf) [<https://perma.cc/V786-HN9B>]; *Civil Justice for All*, *supra* note 28, at 1–5 (listing dedicated funding, increased numbers of legal services lawyers, increased pro bono work by attorneys at large, the inclusion of new advocates, and greater collaboration among legal services providers as critical steps towards closing the justice gap); Russell Engler, *Reflections on a Civil Right to Counsel and Drawing Lines: When Does Access to Justice Mean Full Representation by Counsel, and When Might Less Assistance Suffice?*, 9 SEATTLE J. FOR SOC. JUST. 97, 112 (2010) (prescribing similar strategies).

93. Nobleman, *supra* note 59, at 50.

94. See J. J. Prescott, *Improving Access to Justice in State Courts with Platform Technology*, 70 VAND. L. REV. 1993, 1994 (2017).

95. See Gaurav Sen, *Beyond the JD: How Eliminating the Legal Profession’s Monopoly on Legal Services Can Address the Access-to-Justice Crisis*, 22 U. PA. J.L. & SOC. CHANGE 121, 147 (2019); Kathryn A. Sabbeth, *Simplicity as Justice*, 2018 WIS. L. REV. 287, 291–94 (2018) [hereinafter *Simplicity as Justice*] (examining the simplification of court processes and arguing that the protection of rights should not be sacrificed in furtherance of efficiency and simplification).

law and the courts get this person justice?”<sup>96</sup> She argues that meeting the legal need itself is just the tip of the iceberg, and that an individual’s understanding of justice may require a frame of justice beyond the courts and representation.<sup>97</sup> Deborah Rhode, the late access to justice expert, similarly advocated for *substantive* justice over simple procedural justice, which only focuses on the means a litigant has to access the court.<sup>98</sup> This Article embraces this idea that access to justice should be more than procedural. A person is without justice if structural deficiencies steeped in racism and subordination of people living in poverty lead to unmet legal needs that harm his or her health.

#### D. The Necessity of Access to Justice for Health

When low-income people and people of color are denied justice, they are harmed along the key vectors of social determinants of health. The story of Ms. Johnson, who became homeless because she did not have critical information about her rights or access to legal representation, illustrates the effects of the justice gap in housing. The American Bar Association (“ABA”) calls for greater access to justice in housing cases because legal issues under that umbrella affect the basic human need for shelter<sup>99</sup> and have grave impacts on health. Evictions have been connected to a range of mental and physical health conditions, and even the threat of eviction can worsen health.<sup>100</sup> They cause tremendous stress and displace families—whether into homelessness or into “downward” moves like overcrowded living environments,<sup>101</sup> high-crime areas, and substandard housing conditions.<sup>102</sup> All of these housing situations worsen health.<sup>103</sup> Ms. Johnson’s family was similarly impacted by evictions. Their first eviction forced them into a home with substandard housing conditions that

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96. Kathryn M. Young, *What the Access to Justice Crisis Means for Legal Education*, 11 U.C. IRVINE L. REV. 811, 812–13 (2021).

97. *Id.* at 815.

98. *See Whatever Happened*, *supra* note 37, at 873.

99. The ABA called for a civil right to counsel in legal cases related to basic human needs, including shelter. A.B.A., REPORT: ABA MODEL ACCESS TO JUSTICE ACT, SECTION 2 (“Shelter means a person’s or family’s access to or ability to remain in a dwelling, and the habitability of that dwelling.”).

100. Emily A. Benfer et al., *Eviction Health Inequity, and the Spread of COVID-19: Housing Policy as a Primary Pandemic Mitigation Strategy*, 98 J. URBAN HEALTH 1, 3–4 (2021) [hereinafter *Eviction Health Inequity*].

101. *Id.* at 4–10.

102. *Id.*

103. PAULA BRAVEMAN ET AL., ROBERT WOOD JOHNSON FOUND., EXPLORING THE SOCIAL DETERMINANTS OF HEALTH: HOUSING AND HEALTH 1–3 (2011), <https://www.rwjf.org/en/library/research/2011/05/housing-and-health.html> [https://perma.cc/X2HT-UUT].

worsened her daughter's asthma. Their second eviction, which happened via text message, rendered them homeless and led them to live in their car, another unsafe and unhealthy situation.

Beyond evictions, a broad range of legal issues involve housing, such as access to emergency shelters and housing assistance, substandard housing conditions, and utility shutoffs.<sup>104</sup> The LSC reports that at least 29% of households living in a rented home experience a housing-related civil legal problem each year.<sup>105</sup> These legal difficulties implicate significant racial inequities in housing insecurity, substandard housing, and eviction proceedings. As a result, they also implicate health inequities. Black individuals are 1.7 times likelier than all other racial groups to live in homes with significant infrastructure and living condition concerns.<sup>106</sup> Indeed, studies have consistently shown that non-Hispanic Black Americans are far likelier to live in substandard housing than non-Hispanic whites—disparities which have remained largely unchanged since the 1980s.<sup>107</sup>

These inequities have put Black communities, other communities of color, and low-income communities, at greater risk during the pandemic. Bans on residential evictions and federal emergency rental assistance provided temporary relief, but as those protections are lifted and much of the federal emergency rental relief is exhausted, tens of millions of Americans run the risk of eviction due to their inability to make rent.<sup>108</sup>

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104. *Id.*; *How Legal Services Help the Health Care System Address Social Needs*, NAT'L CTR. FOR MED. LEGAL P'SHIP [hereinafter *How Legal Services Help*], <https://medical-legalpartnership.org/response/i-help/> [<https://perma.cc/F57T-6A9Y>] (demonstrating that legal housing issues are broad in scope, with various necessary solutions).

105. The Justice Gap, *supra* note 28.

106. Dayna Bowen Matthew et al., *Time for Justice: Tackling Race Inequalities in Health and Housing*, BROOKINGS (Oct. 19, 2016), <https://www.brookings.edu/research/time-for-justice-tackling-race-inequalities-in-health-and-housing/> [<https://perma.cc/3UUH-GVNX>].

107. David E. Jacobs, *Environmental Health Disparities in Housing*, 101 AM J. PUB. HEALTH S115, S115–19 (2011). As an example of these disparities, a Washington, D.C. case study examining evictions across the city's geographic sections, known as Wards, found that while only 11% of renter households citywide had an eviction filing in 2018, 25% of households in the predominantly Black Ward 8 had an eviction filing. Moreover, in the predominantly white Ward 2, fewer than 3% of households had an eviction filing. BRIAN J. MCCABE & EVA ROSEN, GEO. MCCOURT SCH. OF PUB. POL'Y, EVICTION IN WASHINGTON, DC: RACIAL AND GEOGRAPHIC DISPARITIES IN HOUSING INSTABILITY 15–16 (Fall 2020), <https://georgetown.app.box.com/s/df0d4mruf59wcvqm6cqo9a8pyu8ukeuk> [<https://perma.cc/W26G-JV7B>]. The term Hispanic is derived from the study and may or may not include a larger group than Latinx people.

108. Emily Benfer et al., *The COVID-19 Eviction Crisis: An Estimated 30-40 Million People in America Are at Risk*, ASPEN INST. (Aug. 7, 2020) [hereinafter *COVID-19 Eviction Crisis*], <https://www.aspeninstitute.org/blog-posts/the-covid-19-eviction-crisis-an-estimated-30-40-million-people-in-america-are-at-risk/> [<https://perma.cc/M9PF->

Overcrowded living environments, to which low-income renters with housing insecurity must often turn, make it difficult for people to engage in COVID-19 mitigation techniques such as social distancing, quarantining, and maintaining enhanced hygiene practices,<sup>109</sup> increasing their risk of infection. These are significant structural deficiencies that drive housing insecurity and bring about unhealthy housing conditions, and these deficiencies and the inequities they drive must be addressed to realize access to justice.

In addition to eviction moratoria and emergency housing relief, which have been critical tools to mitigate racial health disparities during the pandemic,<sup>110</sup> access to counsel is also an important strategy for eviction prevention. Indeed, the effectiveness of moratoria can be increased drastically when “combined with supportive legal and financial measures, such as rental assistance, eviction diversion programs, and civil right to counsel.”<sup>111</sup> Represented tenants are more likely to have knowledge of and exercise their rights under moratoria,<sup>112</sup> and legal representation can also ensure enforcement of other housing laws that protect tenants.<sup>113</sup> Attorneys can help clients prevent or delay evictions, find affordable housing, and protect their rights to safe housing.<sup>114</sup> While low-income individuals and families, especially those of color, are vulnerable to fraud and discrimination within the rental housing market, attorneys can ensure that fair-housing laws are enforced and deploy other strategies to combat housing injustices.<sup>115</sup>

Before the pandemic, the establishment of a civil right to counsel in New York City resulted in eviction prevention. In 2019, “universal counsel for income-eligible tenants prevented the evictions of over 22,000 households,” and 84% of New York tenants with attorneys avoided

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5W72]; see EVICTION LAB, *supra* note 73 (forecasting the increased risk to low-income individuals in families as pandemic protections unwind, particularly to tenants after the expiration and termination of eviction moratoria).

109. *Eviction Health Inequity*, *supra* note 100, at 1 (“Eviction is likely to increase COVID-19 infection rates because it results in overcrowded living environments, doubling up, transiency, limited access to healthcare, and a decreased ability to comply with pandemic mitigation strategies (e.g., social distancing, self-quarantine, and hygiene practices.”).

110. *Id.* at 4–7.

111. *Id.* at 7.

112. *Id.*

113. Pamela Cardullo Ortiz, *How a Civil Right to Counsel Can Help Dismantle Concentrated Poverty in America’s Inner Cities*, 25 STAN. L. REV. 163, 180 (2014).

114. *Id.* at 182.

115. *Id.* at 178.

eviction.<sup>116</sup> System-wide, the extension of universal counsel resulted in a 41% drop in eviction rates, a 34% drop in eviction filings, and a 34% drop in default judgments.<sup>117</sup> More recent data from a 2021 study of the new right to counsel program in Cleveland found that attorneys were able to prevent evictions for 93% of represented tenants.<sup>118</sup> These benefits have spurred a number of scholars to call for a universal civil right to counsel in the eviction context, to ensure access to affordable housing and reduce the justice gap.<sup>119</sup>

A range of other civil legal issues also impact health. For example, legal needs related to public benefits, employment, education, and consumer law impact financial insecurity, which in turn impacts health.<sup>120</sup> Those related to domestic violence, such as protective order cases, can also impact health—as intimate partner violence affects the physical and mental health of survivors, and can lead to loss of income.<sup>121</sup> Divorce and custody legal issues can similarly lead to adverse health outcomes.<sup>122</sup> Moreover, access to healthcare—which can implicate legal problems connected to insurance coverage and access to necessary treatments—is highly correlated with health outcomes.<sup>123</sup>

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116. *Eviction Health Inequity*, *supra* note 100, at 7.

117. *Id.* at 1, 10–13.

118. STOUT, LLC, CLEVELAND EVICTION RIGHT TO COUNSEL ANNUAL INDEPENDENT EVALUATION JANUARY 1 TO DECEMBER 31, 2021, at 9 (Jan. 31, 2022), [https://freeevictionhelpresults.org/wp-content/uploads/2022/01/Stouts-2021-Independent-Evaluation-of-RTC-C\\_FINAL\\_1.31.22.pdf](https://freeevictionhelpresults.org/wp-content/uploads/2022/01/Stouts-2021-Independent-Evaluation-of-RTC-C_FINAL_1.31.22.pdf) [<https://perma.cc/R7SR-ZGLN>].

119. *See* Peterson, *supra* note 5, at 112.

120. *See generally* Neiloy R. Sircar & Eric A. Friedman, *Financial Security and Public Health: How Basic Income & Cash Transfers Can Promote Health*, 13 GLOB. PUB. HEALTH 1878 (2018) (finding critical synergies between financial stability and physical and mental health); Steven Carlson & Brynne Keith-Jennings, *SNAP Is Linked with Improved Nutritional Outcomes and Lower Health Care Costs*, CTR. ON BUDGET & POL'Y PRIORITIES (Jan. 17, 2018), <https://www.cbpp.org/research/food-assistance/snap-is-linked-with-improved-nutritional-outcomes-and-lower-health-care> [<https://perma.cc/6M3D-6Y6J>] (pointing to improved health outcomes resulting from consistent payments from food assistance programs).

121. *See* CA. IPV & HEALTH POL'Y LEADERSHIP COHORT, ADDRESSING INTIMATE PARTNER VIOLENCE AS A SOCIAL DETERMINANT OF HEALTH IN CLINICAL SETTINGS 1, 5 (2018), [https://www.cpedv.org/sites/main/files/webform/addressing\\_ipv\\_as\\_an\\_sdoh\\_in\\_clinical\\_settings.pdf?utm\\_campaign=site\\_mail&utm\\_medium=email&utm\\_source=webform\\_submission](https://www.cpedv.org/sites/main/files/webform/addressing_ipv_as_an_sdoh_in_clinical_settings.pdf?utm_campaign=site_mail&utm_medium=email&utm_source=webform_submission) [<https://perma.cc/W8JA-Z9VS>].

122. *See How Legal Services Help*, *supra* note 104.

123. COMM. ON CONSEQUENCES OF UNINSURANCE, INST. OF MED., CARE WITHOUT COVERAGE: TOO LITTLE, TOO LATE 46 (2002), [https://www.ncbi.nlm.nih.gov/books/NBK220639/pdf/Bookshelf\\_NBK220639.pdf](https://www.ncbi.nlm.nih.gov/books/NBK220639/pdf/Bookshelf_NBK220639.pdf) [<https://perma.cc/N2GP-GPVW>]; Julia C. Prentice et al., *Immigration Status and Health Insurance Coverage: Who Gains? Who Loses*, 95 AM. J. PUB. HEALTH 109, 111–15 (2005) (discussing how barriers to health

The ABA has called for a civil right to counsel in legal issues in all of these areas of basic human need,<sup>124</sup> all of which impact health. Given that many unmet civil legal needs involve areas of law that are known drivers of health inequities, access to justice efforts to meet those legal needs should be leveraged in furtherance of health justice.

#### E. Access to Justice Movement Gaining Traction

The access to justice movement has been developing rapidly in recent years. The “Civil Justice for All” report underscores several critical approaches, including the dedication of significant financial and human resources towards minimizing the civil justice gap.<sup>125</sup> COVID-19’s magnification of social inequity has made this report increasingly relevant,<sup>126</sup> and it has required that policymakers recognize the urgent need for access to justice during the pandemic.

Over the last two years, Congress has initiated various access to justice efforts. More than twenty bills have been introduced, including initiatives calling for access to counsel and requiring that litigants be informed of their rights.<sup>127</sup> In May 2020, former Representative Joseph

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insurance coverage, as well as underinsurance, in immigrant populations result in greater prevalence of negative health outcomes); *Health Justice Strategies*, *supra* note 18, at 143 (“Access to health care in the United States is driven by ability to pay and health insurance. . . . Insurance coverage differs greatly by race with Black, Latino, and Indigenous people often uninsured or underinsured.”).

124. A.B.A., REPORT: ABA MODEL ACCESS TO JUSTICE ACT, *supra* note 99.

125. See *Civil Justice for All*, *supra* note 28 (calling for an increase in the number of legal services lawyers dedicated to serving low-income Americans and the amount of pro bono work nationally, the promotion of cross-disciplinary collaboration with non-lawyers, the engagement of non-legal advocates, the simplification of court processes, and the creation of a national organization and effort to coordinate these steps, collect data on civil justice, and promote effective efforts to improve access to justice); Peterson, *supra* note 5, at 112 (calling for civil programs that close the justice gap and elevate marginalized people’s ability to navigate the civil legal system); (*Under*)*Enforcement of Poor Tenants’ Rights*, *supra* note 7, at 86–89 (same).

126. See *Civil Justice for All*, *supra* note 28.

127. See, e.g., Recognizing the Right to Counsel in Civil Proceedings, H.R. Res. 960, 116th Cong. (as referred to the House Committee on the Judiciary, May 8, 2020) (providing legal representation without cost to low-income individuals facing legal action involving basic human needs, including safety, family, shelter, and sustenance); Fair Access to Legal Counsel Act of 2020, H.R. 6037, 116th Cong. § 2 (as referred to the House Committee on the Judiciary, Feb. 28, 2020) (requiring courts inform an unrepresented individual of her right to request counsel if unable to afford counsel and providing courts discretionary power to appoint such counsel); Payment Choice Act, S. 4145, 116th Cong. § 3(a) (as referred to the House Committee on Financial Services, May 9, 2019) (providing a civil right to counsel to litigants who challenge a business’s refusal to accept cash as payment for goods and services); *2021/2022 Civil Right to Counsel Bills*, NAT’L



Kennedy of Massachusetts's Fourth Congressional District proposed the most wide-ranging legislation, a resolution that gained bipartisan support titled "Recognizing a Right to Counsel in Civil Proceedings," which urged providing legal representation without cost to low-income individuals facing legal action involving basic human needs.<sup>128</sup> The Resolution called upon the federal government to support state and local government efforts to provide low-income individuals a civil right to counsel and reduce the existing justice gap.<sup>129</sup> While this Resolution and a number of other bills did not advance,<sup>130</sup> several currently pending bills have been introduced in the 117th Congress. These bills primarily focus on access to legal representation in immigration proceedings.<sup>131</sup>

The executive branch is also advancing access to justice efforts, as federal agencies increasingly recognize the importance of programs like civil legal aid.<sup>132</sup> In 2012, the Department of Justice ("DOJ") and the White

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COAL. FOR A C.R. TO COUNS., [http://civilrighttocounsel.org/legislative\\_developments/20212022\\_bills](http://civilrighttocounsel.org/legislative_developments/20212022_bills) [<https://perma.cc/GAR7-D593>] (tracking bills and laws throughout the nation aiming to enact civil rights to counsel).

128. Recognizing the Right to Counsel in Civil Proceedings, H.R. Res. 960, 116th Cong. (as referred to the House Committee on the Judiciary, May 8, 2020) (urging legislative rights to counsel in areas related to safety, family, shelter, and sustenance).

129. *Id.*

130. *Id.*

131. *See, e.g.*, REUNITE Act of 2021, H.B. 530, 117th Cong. § 10(a) (as introduced in the House, Mar. 5, 2021) (providing for access to counsel for undocumented immigrants in immigration detention facilities); U.S. Citizenship Act, S.B. 348, 117th Cong. (as referred to the Committee on the Judiciary, Feb. 22, 2021) (guaranteeing appointment of counsel for children and vulnerable adults in immigration removal proceedings); FAIR Proceedings Act, S.B. 901, 117th Cong. (as referred to the House Committee on the Judiciary, Mar. 23, 2021) (requiring appointment of counsel when deemed necessary for children and vulnerable adults in immigration removal proceedings); American Dream and Promise Act of 2021, H.R. 6, 117th Cong. § 102(c)(3)(G)(iii) (as passed by the House, Mar. 18, 2021) (funding the right to counsel for any immigrant seeking judicial review of their immigration status decision); Eviction Prevention Act, H.B. 3580, 117th Cong. (as referred to the Committee on Financial Services and the Committee on the Judiciary, May 28, 2021) (authorizing the Attorney General to provide grants to states and local jurisdictions to provide the right to counsel in eviction actions); CAPTA Reauthorization Act of 2021, S.B. 1927, 117th Cong. (as reported by the Senate HELP Committee) (amending CAPTA to require appointment of counsel for both parents and children in related cases); Affordable HOME Act, S.B. 2234, 117th Cong. (as referred to the Committee on Finance June 24, 2021) (creating federal funding for cities and states that enact a right to counsel for tenants facing eviction proceedings).

132. *See* WHITE HOUSE LEGAL AID INTERAGENCY ROUNDTABLE, EXPANDING ACCESS TO JUSTICE, STRENGTHENING FEDERAL PROGRAMS, FIRST ANNUAL REPORT OF THE WHITE HOUSE LEGAL AID INTERAGENCY ROUNDTABLE (Nov. 2016) [hereinafter White House Roundtable],

House Domestic Policy Council convened the “Legal Aid Interagency Roundtable,”<sup>133</sup> where many federal agencies<sup>134</sup> came together to consider how federal programs can incorporate legal aid into their work.<sup>135</sup> The success of this conference led the White House to establish the Legal Aid Interagency Roundtable (“WHLAIR”) in 2015 under President Obama.<sup>136</sup> WHLAIR recognized that advancing access to civil legal aid was a federal priority because federal policies are designed to prevent and end homelessness, domestic violence, poverty, and hunger—all of which legal aid can mitigate.<sup>137</sup> In May 2021, President Biden announced he would reconvene WHLAIR, which had been inactive under the Trump administration.<sup>138</sup> The White House has indicated that WHLAIR will aim to increase meaningful access to justice for individuals and families, regardless of wealth or status.<sup>139</sup> Also in May 2021, U.S. Attorney General

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<https://www.justice.gov/atj/page/file/913981/download> [https://perma.cc/SX72-SHEV].

133. *Legal Aid Interagency Roundtable*, U.S. DEP’T OF JUST. (Sept. 21, 2016), <https://www.justice.gov/olp/legal-aid-interagency-roundtable> [https://perma.cc/KG9W-QTRP].

134. *Id.* (including the Administrative Conference of the United States (“ACUS”); the Consumer Financial Protection Bureau (“CFPB”); the Corporation for National and Community Service (“CNCS”); the Equal Employment Opportunity Commission (“EEOC”); the Federal Communications Commission (“FCC”); the Federal Trade Commission (“FTC”); the Legal Services Corporation (“LSC”); the National Science Foundation (“NSF”); the Office of Management and Budget (“OMB”); the Social Security Administration (“SSA”); the United States Agency for International Development (“USAID”); the United States Department of Education (“ED”); the United States Department of Health and Human Services (“HHS”); the United States Department of Homeland Security (“DHS”); the United States Department of Housing and Urban Development (“HUD”); the United States Department of Interior (“DOI”); the United States Department of Justice (“DOJ”); the United States Department of Labor (“DOL”); the United States Department of State (“DOS”); the United States Department of the Treasury (“USTD”); the United States Department of Veterans Affairs (“VA”).

135. White House Roundtable, *supra* note 132.

136. Memorandum on Establishment of the White House Legal Aid Interagency Roundtable, 2015 PUB. PAPERS 1177 (Sept. 24, 2015).

137. For example, the Obama era iteration of WHLAIR asked Veterans Administration hospitals to either provide on-site space to legal aid providers or refer homeless veterans to legal aid for matters involving child support, outstanding warrants, fines and other areas of identified civil legal need. *Id.*

138. Memorandum on Restoring the Department of Justice’s Access-to-Justice Function, *supra* note 33.

139. *Id.* In this pursuit, WHLAIR will develop policy recommendations that increase access to justice in federal, state, local, tribal, and international jurisdictions and to improve coordination between federal programs to make programs more efficient and include legal services. See U.S. DEP’T OF HOUS. & URBAN DEV., *Juvenile Reentry Assistance Program*, [https://www.hud.gov/sites/documents/JRAP\\_OVERVIEW.PDF](https://www.hud.gov/sites/documents/JRAP_OVERVIEW.PDF) [https://perma.cc/6REK-9GMJ] (last visited July 30, 2021).

Merrick Garland announced that the DOJ will re-establish the Office of Access to Justice to develop policy initiatives around issues such as enforcement of fines and fees, the removal of language barriers to court access, and civil legal aid.<sup>140</sup> The office will begin developing “a detailed plan for expanding our role in leading access to justice policy initiatives across government.”<sup>141</sup>

Furthermore, a number of access to justice initiatives have advanced at the state and local level. Just in 2021, three states—Washington, Maryland, and Connecticut—established a statewide right to counsel for indigent tenants facing eviction, following the example of several cities that have enacted similar measures in recent years.<sup>142</sup> The National Coalition for a Civil Right to Counsel (“NCCRC”) has documented the numerous federal, state, and local legislative advances in establishing a right to counsel or directly appointing counsel in different legal contexts.<sup>143</sup> According to the NCCRC’s legislation tracker, approximately one hundred new right-to-counsel bills have been enacted since 2016.<sup>144</sup> Several research studies have also demonstrated significant improvement in outcomes for represented tenants in eviction matters.<sup>145</sup> In a growing body

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140. *Attorney General Launches Review to Reinvigorate the Justice Department’s Commitment to Access to Justice*, *supra* note 33; see 28 C.F.R. § 0.33 (2016) (establishing the Office for Access to Justice).

141. *Id.*

142. S.B. 5160, 67th Gen. Assemb., Reg. Sess. (Wash. 2021); H.B. 0018, 442d Gen. Assemb., Reg. Sess. (Md. 2021); H.B. 6531, 2021 Gen. Assemb. (Conn. 2021); N.Y.C., N.Y., Local Law No. 54 of 2021, Council Int. No. 2050-A of 2020; S.F., CAL., ADMIN. CODE ch. 58 (2012).

143. *Civil Right to Counsel Legislation*, *supra* note 32 (containing civil right to counsel bills tracked by the NCCRC); see *General Stories*, NAT’L COAL. FOR A C.R. TO COUNS., [http://civilrighttocounsel.org/press\\_and\\_social\\_media\\_coverage](http://civilrighttocounsel.org/press_and_social_media_coverage) [<https://perma.cc/5332-7BYK>] (containing examples of the right to counsel coverage in the mainstream media).

144. *Civil Right to Counsel Legislation*, *supra* note 32.

145. OPEN JUSTICE OKLA., *Legal Representations & Evictions Outcomes in Tulsa County*, <https://openjustice.okpolicy.org/wp-content/uploads/sites/4/2021/07/Legal-Representation-and-Eviction-Outcomes-in-Tulsa-County-via-Open-JusticeOklahoma.pdf?x67581> [<https://perma.cc/2B8L-3LA9>] (“We conclude that legal representation for a defendant is associated with a 75% increase in the odds of remaining in their home.”); STOUT RISIUS ROSS, INC., *The Financial Cost and Benefits of Establishing a Right to Counsel in Eviction Proceedings Under Intro 214-A* (Jan. 31, 2020), <https://legalaidresearchnlada.files.wordpress.com/2020/01/new-york-214-a-report-stout-risius-ross-2016.pdf> [<https://perma.cc/9GE2-F9VL>] (“The IBO report concluded that there is a 77% reduction in evictions when legal counsel assists in the defense compared to those without legal counsel.”); LEGAL AID SOC’Y OF CLEVELAND, *Right to Counsel Annual Report* (Jan. 31, 2021), <https://laslev.org/wp-content/uploads/January-2021-report-on-initial-6-months-of-Right-to-Counsel-Cleveland-high-res.pdf> [<https://perma.cc/JV4T-Y2ZY>] (“93% of cases represented in Cleveland Housing Court by a Legal Aid attorney, that were seeking to

of scholarship, many scholars have called for the advancement of access to justice efforts.<sup>146</sup> In recent years, the access to justice movement and its field of scholarship have gained traction and are set to further develop as a consequence of the pandemic.<sup>147</sup>

As the justice gap widens and exacerbates health inequity for marginalized Americans, this Article examines how the health justice framework can meaningfully be applied to such access to justice efforts to ensure the health and well-being of communities affected by both the justice gap and health disparities.

## II. Health Justice Framework

Like the access to justice movement, the health justice movement and legal scholarship have gained tremendous traction in recent years.<sup>148</sup>

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avoid eviction or an involuntary move, avoided displacement in the first 6 months of Cleveland's Right to Counsel[.].").

146. See, e.g., Peterson, *supra* note 5, at 64 (arguing that cities and states should adopt a right to counsel in eviction proceedings and work to strengthen existing laws); Jessica K. Steinberg, *Demand Side Reform in the Poor People's Court*, 47 CONN. L. REV. 741, 746-47 (2015) [hereinafter Steinberg, *Demand Side Reform*] (calling for procedural reform of the court system to provide pro se litigants with meaningful participation in the court system); Deborah L. Rhode, *Access to Justice: A Roadmap for Reform*, 41 FORDHAM URB. L.J. 1227, 1228-40 (2014) [hereinafter *Roadmap*] (analyzing causes of the justice gap and identifying strategies for reform, including non-lawyer service providers, expansion of the civil right to counsel, and additional research on access to justice).

147. *Biden-Harris Housing Facts*, *supra* note 33 (announcing executive initiatives to promote housing stability and access-to-justice initiatives related to eviction, including the convening of a White House summit for immediate, community-specific eviction prevention plans in collaboration with the ABA, LSC, and National Conference of Bar Presidents).

148. See, e.g., *Protecting Vulnerable Communities*, *supra* note 12 (describing health justice strategies to address social determinants of health in the wake of the COVID-19 pandemic); Lindsay F. Wiley, *Health Law as Social Justice*, 24 CORNELL J.L. & PUB. POL. 47, 47 (2014) [hereinafter *Health Law as Social Justice*] (noting an upsurge in scholarly interest in the connection between justice and health); *Health Justice Framework*, *supra* note 6 (describing the social and legal roots of poor health and the linkages between health inequity, social injustice, and poverty); Lindsay F. Wiley, *From Patient Rights to Health Justice*, 37 CARDOZO L. REV. 833 (2016) [hereinafter *Patient Rights*] (articulating the health justice model as an alternative or supplement to existing health law models); Lindsay F. Wiley, *Applying the Health Justice Framework to Diabetes as a Community-Managed Social Phenomenon*, 16 HOUS. J. HEALTH L. & POL'Y 191 (2016) [hereinafter *Health Justice & Diabetes*] (applying the health justice framework to diabetes); Lindsay F. Wiley, *Tobacco Denormalization, Anti-Healthism, and Health Justice*, 18 MARQ. BENEFITS & SOC. WELFARE L. REV. 203 (2017) [hereinafter *Tobacco Denormalization*] (applying the health justice framework to tobacco denormalization); ELIZABETH TOBIN-TYLER & JOEL B. TEITELBAUM, *ESSENTIALS OF HEALTH JUSTICE: A PRIMER* 15 (2018) (overviewing the concept of health justice); Makhlof, *supra* note 20 (applying health justice to the issue of

The health justice framework (“health justice”) envisions law and policy as tools for dismantling systemic barriers to health.<sup>149</sup> It has been described as a “jurisprudential and legislative framework for the achievement and delivery of health equity and social justice.”<sup>150</sup>

Public health literature has long explored health disparities and the inequities they symbolize.<sup>151</sup> Health inequity “refers to systemic processes—such as the cycles of poverty, trauma, and marginalization—that result in different opportunities to achieve optimal health and lead to unfair and avoidable differences in health outcomes.”<sup>152</sup> In contrast, health equity necessitates a fair and just opportunity for people to be as healthy as possible,<sup>153</sup> where the goal is “a world in which your wealth, social status, access to power, and zip code are irrelevant to your life expectancy or vulnerability to illness.”<sup>154</sup> The health justice framework builds on this vision of health equity by highlighting the concept of “justice” to emphasize the critical role that law and policy have played in driving health disparities. It thereby recognizes the potential for law and policy to help eradicate health inequities.<sup>155</sup> The health justice paradigm is building momentum in contemporary health law and policy discourse.

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immigrant access to publicly funded health care); Yael Cannon, *The Kids Are Not Alright: Leveraging Existing Health Law to Attack the Opioid Crisis Upstream*, 71 FLA. L. REV. 765, 769 (2019) [hereinafter *The Kids Are Not Alright*] (applying the health justice framework to the opioid crisis); Matthew B. Lawrence, *Against the “Safety Net,”* 72 FLA. L. REV. 49 (2020) (considering the concept of the social safety net through the lens of health justice); *Civil Rights of Health*, *supra* note 23 (using health justice principles to analyze the roles of subordination and structural racism in impacting health equity and advancing a new vision for civil rights to promote health equity); *Injustice Is an Underlying Condition*, *supra* note 12 (examining the health justice framework and advocating for the full enforcement of existing laws to address disparities); Emily Benfer et al., *Setting the Health Justice Agenda: Addressing Health Inequity & Injustice in the Post-Pandemic Clinic*, 28 CLIN. L. REV. 901, 907 (2021) [hereinafter *Setting the Health Justice Agenda*] (proposing principles for health justice to guide post-pandemic law school clinics).

149. See *Protecting Vulnerable Communities*, *supra* note 12.

150. *Health Justice Framework*, *supra* note 6, at 276.

151. See generally Qiang Yao et al., *The Historical Roots and Seminal Research on Health Equity: A Referenced Publication Year Spectroscopy (RPYS) Analysis*, 18 INT’L J. FOR EQUITY IN HEALTH 152 (2019) (describing the importance of health equity research to the wider public health literature).

152. *Setting the Health Justice Agenda*, *supra* note 148, at 907.

153. *Injustice Is an Underlying Condition*, *supra* note 12, at 207–08 (explaining the focus of health justice).

154. *Civil Rights of Health*, *supra* note 23, at 766.

155. *Injustice Is an Underlying Condition*, *supra* note 12, at 207.

### A. Understanding Health Disparities and the Social Determinants of Health at Their Root

A structural understanding of social determinants of health and how they drive racial and socioeconomic health disparities is the foundation of the health justice framework.<sup>156</sup> Social determinants of health are the full set of living conditions that affect people's health, well-being, and quality of life.<sup>157</sup> The World Health Organization ("WHO") defines them as "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."<sup>158</sup> Social determinants analysis helps to identify, and ultimately address, the role social conditions play in health disparities. For example, individuals living in "food deserts"—areas with limited access to healthy, quality food—are more likely to experience malnutrition and food insecurity, which are in turn linked to poor health outcomes.<sup>159</sup> Since many harmful social determinants are more likely to impact lower-income communities and communities of color, they widen the gulf between these communities and those that benefit from white privilege and wealth along a wide range of health and longevity metrics.<sup>160</sup> Inequality and health are therefore directly connected with "upstream" factors, such as structural racism, and have "downstream" effects on health, resulting in poor health outcomes.<sup>161</sup>

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156. *Health Justice Strategies*, *supra* note 18, at 122.

157. *Id.*; see also Scott Burris, *From Health Care Law to the Social Determinants of Health: A Public Health Law Research Perspective*, 159 U. PA. L. REV. 1649, 1649 (2011) ("Research over the past three decades has demonstrated that population health is shaped powerfully by '[t]he contexts in which people live, learn, work, and play'—also called 'social determinants of health' or 'fundamental social causes of disease.'" (quoting Paula A. Braveman et al., *Broadening the Focus: The Need to Address the Social Determinants of Health*, 40 AM. J. PREVENTATIVE MED. S1, S5 (2011))).

158. WORLD HEALTH ORG., SOCIAL DETERMINANTS OF HEALTH, [https://www.who.int/health-topics/social-determinants-of-health#tab=tab\\_1](https://www.who.int/health-topics/social-determinants-of-health#tab=tab_1) [<https://perma.cc/2TVN-CNFB>] (last visited Oct. 31, 2021).

159. See Black, *supra* note 15 (describing how limited access to healthy food increases risk of malnutrition and food insecurity, and that this lack of access disproportionately impacts low-income communities).

160. See CHRISTOPHER KING, GEO. UNIV., HEALTH DISPARITIES IN THE BLACK COMMUNITY: AN IMPERATIVE FOR RACIAL EQUITY IN THE DISTRICT OF COLUMBIA 1–15 (2020).

161. Andis Robeznieks, *3 Key Upstream Factors that Drive Health Inequities*, AMA (May 28, 2021), <https://www.ama-assn.org/delivering-care/health-equity/3-key-upstream-factors-drive-health-inequities> [<https://perma.cc/A742-C8GB>]; *Framework, Bay Area Regional Health Inequities Initiative*, <https://www.barhii.org/barhii-framework> [<https://perma.cc/TR7J-CF4H>] (giving the examples of social and institutional inequities as upstream factors and risk behaviors and mortality as downstream effects) (last visited Jan. 20, 2022).

Health justice generally describes an approach that blends an understanding of social determinants of health with principles of equal justice.<sup>162</sup> In concert with public health approaches, the framework emphasizes a collective—rather than individualistic—understanding of health.<sup>163</sup> Health justice also goes beyond more universal public health approaches and aims to build on and learn from the work of health equity scholars “who have demonstrated sustained commitments to equity research as a primary scientific discipline and praxis” to focus on the elimination of disparities experienced by populations marginalized by historic and ongoing injustices which lead to social, economic, and environmental disadvantage.<sup>164</sup> University of California, Davis law professor Angela Harris and health equity organization Movement Praxis founder Aysha Pamukcu, posit that “[i]n the public health literature, the social groups disproportionately burdened by health disparities are often referred to as ‘vulnerable populations.’ These groups, however, are vulnerable to poor health and premature death not for biological reasons, but for political and social ones . . . Population vulnerability is made, not born.”<sup>165</sup> The health justice approach therefore centers on these populations, examining the injustices that have led to their marginalization and impacted their health, rather than merely describing them as vulnerable.<sup>166</sup> On average, the more inequality within a community, the less healthy its members are likely to be.<sup>167</sup>

In this vein, Daniel Dawes, a health policy expert and Director of Morehouse School of Medicine’s Satcher Health Leadership Institute, advocates for reconceptualizing social determinants of health as the “*political* determinants of health.”<sup>168</sup> Dawes argues that political mechanisms like voting, government, and policy are foundational to the political structure of the United States and therefore contribute to healthcare inequities as “determinants of the determinants.”<sup>169</sup> This approach is consistent with the health justice framework’s emphasis on the role of law and policy in driving health disparities and the determinants at their roots. These political determinants systematically structure relationships, resource allocation, and administration of power in ways that

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162. *Civil Rights of Health*, *supra* note 23, at 807.

163. *Id.*

164. Elle Lett et al., *Health Equity Tourism: Ravaging the Justice Landscape*, 46 J. Med. Sys. 1, 1 (2022).

165. *Civil Rights of Health*, *supra* note 23, at 773–74.

166. *Id.* at 765.

167. *Id.* at 768.

168. DANIEL E. DAWES, *THE POLITICAL DETERMINANTS OF HEALTH* 7 (2020) (emphasis added).

169. *Id.* at 45.

facilitate health inequities for certain marginalized groups.<sup>170</sup> The WHO's Commission on Social Determinants of Health has also emphasized how political determinants of health highlight the ways historical and contemporary political injustices have shaped the social determinants of health.<sup>171</sup>

Health justice necessitates an examination of the racist and classist systems that have and continue to drive health disparities. Harris and Pamucku focus on the role of subordination in health injustice, which they define as a related “set of policies, practices, traditions, norms, definitions, cultural stories, and explanations that function to systematically hold down one social group to the benefit of another social group.”<sup>172</sup> In their vision of a new “civil rights of health,” they argue that contemporary health research needs to recognize race as a social status shaped by a history of subordination, rather than a biological category.<sup>173</sup> Subordination based on markers of social stigma—such as race, class, and gender—serves to foster structural inequity in access to health-promoting opportunities and information,<sup>174</sup> including access to information about legal rights and access to legal representation.

Public health advocates have focused on population-wide interventions to prevent disease and injury. These interventions include, for instance, promoting access to healthy foods and educating people about healthy eating and exercise.<sup>175</sup> But health disparities persist because conventional public health advocacy “has yet to fully confront the centrality of subordination in creating and perpetuating disparities.”<sup>176</sup> In response, the health justice framework addresses these questions directly, acknowledging that health disparities are closely associated with social and economic disadvantages and that “racism is the mechanism by which racial categorizations have biological consequences.”<sup>177</sup> Employing the health justice framework therefore requires identifying health disparities and sources of subordination.

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170. *Id.* at 44.

171. CHANGELAB SOLUTIONS, A BLUEPRINT FOR CHANGEMAKERS: ACHIEVING HEALTH EQUITY THROUGH LAW & POLICY 9 (2019), [http://www.changelabsolutions.org/sites/default/files/2019-04/Blueprint-For-Changemakers\\_FINAL\\_201904.pdf](http://www.changelabsolutions.org/sites/default/files/2019-04/Blueprint-For-Changemakers_FINAL_201904.pdf) [<https://perma.cc/285T-P62T>].

172. *Civil Rights of Health*, *supra* note 23, at 762 note 4.

173. *Id.* at 797.

174. *Id.* at 762.

175. *Id.* at 768.

176. *Id.* at 770.

177. Lett et al., *supra* note 164, at 3. *See generally* Ruqaiyah Yearby, *Structural Racism and Health Disparities: Reconfiguring the Social Determinants of Health Framework to Include the Root Cause*, 48 J. L., MED. & ETHICS 518 (2020).



## B. Leveraging Law and Policy to Mitigate Disparities and Underlying Social Determinants of Health

Health justice recognizes law itself as a determinant of health, as law can either drive, or mitigate, health disparities.<sup>178</sup> Both laws and policies can serve as social determinants. Laws are formalized procedures that society must follow, while policies are approaches to long-term problems that could include goals and activities, which might not necessarily be codified in statutes.<sup>179</sup> Whether effectuated through law or other manifestations of policy, every social determinant that causes poor health “has a nexus with the legal system, which is implicated in nearly every aspect of life.”<sup>180</sup>

Because law and policy shape political and social determinants, health justice demands that they be leveraged to mitigate, and ultimately eliminate, health disparities.<sup>181</sup> Indeed, health justice requires more than an exploration of the legal roots of these problems. It necessitates action. For example, just as segregationist laws and policies created redlining and other tools to relegate communities of color to neighborhoods with poor housing stock,<sup>182</sup> laws and policies have the potential to address these problems and their resulting health disparities. Such action could include enforcement of and changes to zoning and housing codes to create safe, healthy, and affordable housing and facilitate homeownership for subordinated groups.<sup>183</sup> Eliminating disparities requires the use of law and policy to tackle the “causes of the causes” of health disparities.<sup>184</sup>

Consequently, health justice scholars have explored opportunities for law and policy reform, in large part through a “health in all policies” agenda.<sup>185</sup> This approach incorporates health, equity, and sustainability into

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178. *Health Justice Framework*, *supra* note 6, at 306–07.

179. *See* HEALTHY PEOPLE 2030, *supra* note 25.

180. *Health Justice Framework*, *supra* note 6, at 306.

181. *See* *Protecting Vulnerable Communities*, *supra* note 12 (“[L]egal and policy responses must address the social determinants that threaten to exacerbate the health, financial, and social impacts of a public health emergency on low-income, communities of color, and other socially subordinated groups.”); *Injustice Is an Underlying Condition*, *supra* note 12, at 207–08 (emphasizing the need for legal and policy response to address public health disparities).

182. *Health Justice Is Racial Justice*, *supra* note 16.

183. *Id.*

184. *Civil Rights of Health*, *supra* note 23, at 764.

185. *See* HEALTHY PEOPLE 2020, *supra* note 2 (“[P]olicies that positively influence social and economic conditions and those that support changes in individual behavior . . . [can] improve health for large numbers of people in ways that can be sustained over time.”); HEALTH IN ALL POLICIES: PROSPECTS AND POTENTIALS xviii (Timo Stahl et al. eds., 2006) (“[Policies] seek[] to improve health and at the same time contribute to the well-

policymaking across sectors.<sup>186</sup> Scholars have also recognized the inconsistent application of legal standards by courts and the inconsistent enforcement of laws aimed at removing barriers to health—both to the detriment of marginalized groups.<sup>187</sup> In addition to the reformation of laws and policies that drive health inequity, the robust *enforcement* of existing laws implicating social determinants of health is therefore another critical component of health justice.<sup>188</sup> Without proper enforcement, people will continue to experience “health-harming legal needs.”<sup>189</sup>

Health justice legal scholars Emily A. Benfer, Seema Mohapatra, Lindsay F. Wiley, and Ruqaiyah Yearby argue that responses to COVID-19 must include structural, legal, and policy strategies to address systemic disparities in health, supportive and protective interventions to minimize harm, and empowering interventions that bring affected individuals to the forefront of leading, developing, and implementing new approaches.<sup>190</sup> These core principles of the health justice framework can ensure that law and policy interventions facilitate health equity in contexts well beyond COVID-19.<sup>191</sup>

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being and the wealth of the nations through structures, mechanisms and actions planned and managed mainly by sectors other than health.”).

186. CHANGELAB, *supra* note 171, at 3; *Protecting Vulnerable Communities*, *supra* note 12; see HEALTHY PEOPLE 2030, *supra* note 25 (predicating good health on needed advances across multiple fields).

187. *Health Justice Framework*, *supra* note 6, at 306–07; Nicole Summers, *The Limits of Good Law: A Study of Housing Court Outcomes*, 87 U. OF CHI. L. REV. 145, 190 (finding that the vast majority of tenants with meritorious warrant of habitability claims did not receive any benefit from their claims); *(Under)Enforcement of Poor Tenants’ Rights*, *supra* note 7, at 119–220 (pointing to discrepancies in the legal and judicial systems that systematically hurt marginalized groups).

188. *Injustice Is an Underlying Condition*, *supra* note 12, at 218. My work leading up to this Article has been unique in centering the enforcement of extant laws as a core principle of health justice, which I explore in depth in *Injustice Is an Underlying Condition*. *Id.*; see also Cannon, *The Kids Are Not Alright*, *supra* note 148, at 769 (advocating for the enforcement of children’s Medicaid laws to prevent and mitigate opioid abuse); Yael Cannon et al., *A Solution Hiding in Plain Sight: Special Education and Better Outcomes for Students with Social, Emotional, and Behavioral Challenges*, 41 FORDHAM URB. L.J. 403, 496 (2013) (arguing for the implementation of special education laws to improve outcomes for children with social-emotional needs).

189. JENNIFER TROTT & MARSHA REGENSTEIN, SCREENING FOR HEALTH-HARMING LEGAL NEEDS 1 (2016).

190. *Health Justice Strategies*, *supra* note 18, at 122–23.

191. *Id.* at 137.

### C. Health Justice Gaining Traction

The health justice framework has recently gained momentum and developed further within and outside of the legal field. Law school clinics and programs, interdisciplinary institutes, and major national organizations like the American Association of Medical Colleges have either adopted the term “health justice” or engaged in work with similar aims.<sup>192</sup> The federal government has also advanced initiatives embracing the principles of health justice. For example, the Department of Health and Human Services (“HHS”) launched its Healthy People 2030 initiative to set “data driven national objectives to improve health and well-being over the next decade.”<sup>193</sup> Healthy People 2030 leverages law and policy to encourage stakeholders to understand the effects of decisions at the local, state, and federal levels—acknowledging that health-harming social determinants of health are human-made and can be changed.<sup>194</sup> The campaign recognizes that COVID-19 has exposed the longstanding gaps in the social determinants of health,<sup>195</sup> and that there are opportunities for legal

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192. GEO. UNIV. L. CTR., *Georgetown University Health Justice Alliance*, <https://www.law.georgetown.edu/health-justice-alliance/> [https://perma.cc/N97V-UEGT]; LOY. UNIV. SCH. OF L., *Health Justice Project*, <https://www.luc.edu/law/academics/clinical-programs/healthjusticeproject/> [https://perma.cc/P6QF-AGVQ] (describing the “Health Justice Project” partnership between Loyola University Chicago School of Law, Legal Aid Chicago, and Erie Family Health Center); SAINT LOUIS UNIV., INST. FOR HEALING JUST. & EQUITY, <https://ihje.org/> [https://perma.cc/2UGM-LVWB] (last visited Nov. 15, 2021) (discussing a “Health Justice: Engaging Critical Perspectives in Health Law & Policy Initiative” digital symposium). Additionally, in 2020, the Health Law and Policy Program at American University Washington College of Law, ChangeLab Solutions, the St. Louis University Institute for Healing Justice and Equity, and the Satcher Health Leadership Institute at Morehouse School of Medicine launched an initiative that remains ongoing called *Health Justice: Engaging Critical Perspectives in Health Law and Policy*, which brings together scholars and advocates to discuss strategies for securing distributive justice, valuing human dignity, and empowering communities to address the structural and social determinants of health. AM. UNIV. WASH. COL. L., *Health Law and Policy Program*, <https://www.wcl.american.edu/impact/initiatives-programs/health/events/healthjustice2020/> [https://perma.cc/3PC8-YUPD] (last visited Nov. 15, 2021). In 2021, the American Association of Medical Colleges launched a Center for Health Justice to research and take action in this area. AAMC CTR. FOR HEALTH JUST., *supra* note 25.

193. HEALTHY PEOPLE 2030, *supra* note 25. This initiative includes specific objectives categorized as Social Determinants of Health to Improve Economic Stability, Education Access and Quality, Health Care Access and Quality, Neighborhood and Built Environment, and Social and Community Context. U.S. DEP’T OF HEALTH & HUM. SERVS., HEALTHY PEOPLE 2030 BROWSE OBJECTIVES (2021), <https://health.gov/healthypeople/objectives-and-data/browse-objectives> [https://perma.cc/ZU7U-FDE5].

194. Joel Teitelbaum et al., *Law and Policy as Tools in Healthy People 2030*, 27 J. PUB. HEALTH MGMT. & PRAC. S265, S265 (2021).

195. *Id.* at S272.

intervention to address a lack of housing and access to healthy foods.<sup>196</sup> The CDC has also intensified its work in the health justice arena, naming racism as a “serious threat to the public’s health,”<sup>197</sup> supported by research recognizing that racism not only causes health-harming socioeconomic stratification, but that the adversity of racism itself causes poor health and mental health, even when controlling for socioeconomic status.<sup>198</sup>

Proposed legislation in Congress is also bringing health justice aims to the forefront. In 2021, for example, H.R. 379 was introduced in Congress to examine and address social determinants, seeking to authorize the CDC to create a Social Determinants of Health Program.<sup>199</sup> The program would aim to improve health outcomes, while reducing health inequalities, by funding public health agencies across the country to address social determinants of health to implement “innovative, evidence-based, cross-sector strategies.”<sup>200</sup> Also in 2021, a bipartisan group of representatives re-introduced the Social Determinants Accelerator Act,<sup>201</sup> which would charge HHS with establishing an interagency council across at least eight specified federal agencies focused on social determinants of health for high-needs Medicaid patients.<sup>202</sup>

State and local governments have also advanced health justice approaches. Maryland passed Senate Bill 444, which established the Task Force on the Social Determinants of Health in Baltimore City in 2018.<sup>203</sup> The purpose of this task force is to examine negative social factors and create solutions to help improve the living, working, playing, and worshipping

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196. *Id.* at S269.

197. CTRS. FOR DISEASE CONTROL & PREVENTION, *Racism and Health, Racism Is a Serious Threat to the Public’s Health* (2021), <https://www.cdc.gov/healthequity/racism-disparities/index.html> [<https://perma.cc/5KHP-XXG2>]. As part of its efforts, the CDC has, for instance, developed a website entitled “Racism and Health” to house resources and discussion on how to improve public health for people of color. *Id.*

198. Taylor, *supra* note 79.

199. H.R. 379, 117th Cong. (2021).

200. *Id.* Over 450 organizations have endorsed the bill. TRUST FOR AM.’S HEALTH, THE IMPROVING SOCIAL DETERMINANTS OF HEALTH ACT OF 2021 (S. 104/H.R. 379) BACKGROUND 1, 1–2 (2021), <https://www.tfah.org/wp-content/uploads/2020/08/SDOH-bill-fact-sheet.pdf> [<https://perma.cc/28TV-Q3T3>].

201. AM. HOSP. ASS’N, *Social Determinants Accelerator Act Reintroduced in House* (Apr. 14, 2021), <https://www.aha.org/news/headline/2021-04-14-social-determinants-accelerator-act-reintroduced-house> [<https://perma.cc/V62S-SY89>]; H.R. 2503, 117th Cong. (2021) (“This bill establishes the Social Determinants Accelerator Interagency Council to increase coordination among health and social service programs and provide technical assistance to increase the impact of such programs.”).

202. AM. HOSP. ASS’N, *supra* note 201.

203. S.B. 444, 438th Gen. Assemb., Reg. Sess. (Md. 2018).

environments of Baltimore City residents,<sup>204</sup> of whom 62.5% are Black and 21.8% live in poverty.<sup>205</sup> The District of Columbia, Boston, Chicago, and other jurisdictions have also explicitly named racism as a public health crisis and have taken steps to examine and mitigate health disparities.<sup>206</sup> As the pandemic has laid bare long-existing grave disparities in health—against the backdrop of protests and national conversations around racial justice<sup>207</sup>—the health justice movement is accelerating and is poised to play an important role in health law and policy.

### III. Ensuring Access to Justice Advances Health Justice

Recognizing the significant health inequities that result from unmet civil legal needs, health justice principles should guide access to justice interventions. Such an approach addresses the civil justice gap and also seeks to ensure equal opportunities for health and well-being as necessary for justice. Health justice scholarship has called for a variety of approaches to law's advancement of health equity, including structural, supportive, and empowering interventions to respond to the pandemic;<sup>208</sup> commitments to

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204. S.B. 444, 438th Gen. Assemb., Reg. Sess. (Md. 2018).

205. U.S. CENSUS BUREAU, *Quick Facts Baltimore City, Maryland* (2019), <https://www.census.gov/quickfacts/baltimorecitymaryland> [<https://perma.cc/34ZX-RLFP>].

206. See Christine Vestal, *Racism Is a Public Health Crisis, Say Cities and Counties*, PEW (June 15, 2020), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2020/06/15/racism-is-a-public-health-crisis-say-cities-and-counties> [<http://perma.cc/VP2R-T27G>] (reporting the results of multiple public health studies and concluding that pervasive racism is a primary driver of health disparities between Black and white Americans); MAYOR'S OFF., *Mayor Walsh Declares Racism a Public Health Crisis*, CITY OF BOSTON (June 12, 2020), <https://www.boston.gov/news/mayor-walsh-declares-racism-public-health-crisis> [<https://perma.cc/2HNF-63V5>] (discussing Boston's then-Mayor Marty Walsh declaration of racism a public health crisis); Fran Spielman, *Racism Is a Public Health Crisis in Chicago, Mayor Lightfoot Declares*, CHI. SUN TIMES (June 17, 2021), <https://chicago.suntimes.com/city-hall/2021/6/17/22538572/racism-public-health-crisis-lightfoot-chicago-arwady-black-life-expectancy-north-lawndale> [<https://perma.cc/MT4N-R99B>] (discussing Chicago Mayor Lori Lightfoot declaring racism a public health crisis); Council of the D.C., *Res. 23-0602, Sense of the Council to Declare Racism A Public Health Crisis in the District of Columbia Resolution of 2020* (Dec. 18, 2020), <https://www.dcregs.dc.gov/Common/NoticeDetail.aspx?NoticeId=N101600> [<https://perma.cc/NPZ3-C9J4>] (outlining a Washington, D.C. resolution declaring racism a public health crisis).

207. *Health Justice Is Racial Justice*, *supra* note 16; see also Lett et al., *supra* note 164, at 5 (“The reality is, many of the observed inequities are long-standing (e.g. Black infant and maternal mortality) or acute shocks to an already unjust system (COVID-19 racial mortality burden).”).

208. *Health Justice Strategies*, *supra* note 18, at 122.

the fight against subordination and structural racism;<sup>209</sup> patients-to-policy approaches;<sup>210</sup> bringing affected individuals to the forefront of leading, developing, and implementing new interventions;<sup>211</sup> and strategies of community engagement and education.<sup>212</sup> All of these approaches can shape access to justice efforts, advancing the health of marginalized individuals and communities and furthering a broader vision of health equity. This Part applies the health justice framework to access to justice initiatives and proposes three core guiding tenets. In furtherance of health equity, access to justice initiatives should: (1) facilitate enforcement of extant laws that implicate health equity, (2) elevate the power of affected individuals and communities, and (3) advance structural law and policy reform.<sup>213</sup>

By embracing these three tenets, access to justice initiatives can help to eliminate health disparities for marginalized communities.<sup>214</sup> The following Part employs these tenets, applying them to specific access to justice strategies and bringing the two movements in dialogue with one another. If access to justice initiatives aim to facilitate the enforcement of extant laws, elevate the power of affected individuals and communities, and advance structural law and policy reform in pursuit of health equity, they can achieve more than mere “access.”

#### A. Facilitating Enforcement of Extant Laws that Implicate Health Equity

Health justice first requires that access to justice interventions advance health equity by facilitating the enforcement of existing laws that implicate health. While many health justice scholars focus on the need for new or reformed laws and policies, health justice also requires more consistent and robust enforcement of already-existing laws that could promote positive health outcomes.<sup>215</sup> Laws can serve as structural determinants of health when their inconsistent enforcement either imposes

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209. *Civil Rights of Health*, *supra* note 23, at 808.

210. Elizabeth Tobin Tyler & Joel B. Teitelbaum, *Medical-Legal Partnership: A Powerful Tool for Public Health and Health Justice*, 134 PUB. HEALTH REP. 201, 201 (2019) [hereinafter *MLP*].

211. *Health Justice Strategies*, *supra* note 18, at 129.

212. Samantha Morton, *Legal Information and Rights Education as an Element of Care: A Promising Health Justice Strategy*, HEALTH AFFS. (June 7, 2021), <https://www.healthaffairs.org/doi/10.1377/hblog20210603.174251/full/> [<https://perma.cc/F8XK-VA7L>].

213. *Health Justice Strategies*, *supra* note 18, at 122–23.

214. *Id.* at 129.

215. *See Injustice Is an Underlying Condition*, *supra* note 12, at 218–19.

or removes barriers to health justice.<sup>216</sup> That the “law on the streets” frequently does not align with the “law on the books”<sup>217</sup> contributes to barriers to meeting basic human needs where there are critical justice gaps—such as housing, food and income security, healthcare, child custody, and safety.<sup>218</sup> This disparity between written and enforced laws transforms social conditions into unequal distributions of health.<sup>219</sup>

Access to justice can only be achieved if laws that can promote health are effectively leveraged and consistently enforced to eliminate the health disparities that marginalized populations face. Indeed, when laws concerning core needs like food and housing security are enforced haphazardly, the result is widening health disparities.<sup>220</sup> These disparities disproportionately impact low-income people and people of color.<sup>221</sup> Such an understanding of the law aligns with health policy expert Dawes’ reframing from social to political determinants of health, which may more accurately capture the core legal and political nature of many of the social factors that contribute to health inequities.<sup>222</sup> This is because inconsistent application of legal standards often fails to consider an individual litigant’s circumstances and the structures that shape those circumstances, with collective impact. Access to justice initiatives should consider health effects and view inconsistent enforcement and under-enforcement of laws as determinants of health and health equity.<sup>223</sup>

Moreover, enforcement is not only important for the integrity of existing laws, but is also crucial to the success of law reform efforts, for new measures must actually be implemented to benefit marginalized communities. Because low-income litigants face an information asymmetry

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216. *Health Justice Framework*, *supra* note 6, at 306–07.

217. Scott Burris, *Law in a Social Determinants Strategy: A Public Health Law Research Perspective*, 126 PUB. HEALTH REP. 22, 23, 27 (2011); *MLP*, *supra* note 212, at 202 (pointing to the stark differences in the ways laws are written and enforced).

218. A.B.A., REPORT: ABA MODEL ACCESS TO JUSTICE ACT, *supra* note 99.

219. *Id.*

220. *Health Justice Framework*, *supra* note 6, at 329–34 (detailing the function of secondary and tertiary laws in the health justice framework).

221. *Civil Rights of Health*, *supra* note 23, at 820. These laws may include, for instance, housing codes that target lead paint, asbestos, pests, mold, smoke, and carbon monoxide and fair housing laws that prevent discrimination against tenants of color and tenants with housing vouchers. See *Injustice Is an Underlying Condition*, *supra* note 12, at 226–38 (explaining how law and policy can be leveraged to eliminate food insecurity); *id.* at 251–60 (explaining how law and policy can be leveraged to eliminate housing instability).

222. DAWES, *supra* note 168, at 45.

223. *Health Justice Framework*, *supra* note 6, at 307–20 (examining the harmful repercussions of court systems without individualized approaches to social determinants of health).

when they come to the legal system, it is critical that they have access to information about their rights and counsel who can ensure their rights are enforced.<sup>224</sup> The absence of information and representation can have devastating consequences for litigants—even when existing laws and policies protect them—because enforcement is the key to effectiveness. For example, greater enforcement and implementation of new housing programs that were piloted during the pandemic, such as eviction moratoria and a massive federal emergency rental assistance program, could have helped to minimize health inequities magnified by COVID-19.<sup>225</sup>

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224. See Emily A. Benfer et al., *Opinion: The Eviction Moratorium Limbo Laid Bare the System's Extreme Dysfunction*, WASH. POST (Aug. 12, 2021) [hereinafter *Eviction Moratorium*], <https://www.washingtonpost.com/opinions/2021/08/12/eviction-moratorium-court-cdc-congress/> [https://perma.cc/T669-56GU] (describing inequities facing tenants in eviction proceedings).

225. While housing advocates have applauded pandemic-related reforms, such as eviction moratoria and dramatic expansions of rental assistance, they have also decried their under-enforcement for those who need their protection and support the most. *Id.* Prior to the Supreme Court's decision striking down the CDC's eviction moratorium, for example, there were concerns that the law was being under-enforced. See Ala. Ass'n of Realtors v. U.S. Dep't of Health & Hum. Servs., 141 S. Ct. 2320 (2021); Ala. Ass'n of Realtors v. U.S. Dep't of Health & Hum. Servs., No. 21-5093, 2021 WL 4057718, at \*1 (D.C. Cir. Sept. 3, 2021). One Houston reporter observed that, of about one hundred eviction cases taking place while the moratorium was in place, only one tenant successfully invoked the moratorium to block eviction. Chris Arnold, *Despite a New Federal Ban, Many Renters Are Still Getting Evicted*, NPR (Sept. 14, 2020), <https://www.npr.org/2020/09/14/911939055/despite-a-new-federal-ban-many-renters-are-still-getting-evicted> [https://perma.cc/BX 4K-49UM]. Thus, 99% of renters either did not know how to comply with the moratorium or were unaware of the order completely, while judges were unlikely to raise it on their own. Fewer than 4% of Houston renters facing eviction have legal representation, indicating that there was significant room for legal aid in this context. *Id.* Houston is not the only jurisdiction that fails to aid litigants. Recent research indicates that judges often use legal jargon and process control, maintaining legal complexity in their courtrooms, rather than informing pro-se litigants. Anna E. Carpenter et al., *Judges in Lawyerless Courts*, 110 GEO. L.J. 7 (forthcoming 2022) (“[Judges] maintained legal and procedural complexity in their courtrooms... Judges rarely explained court processes, legal concepts, and language as advocates for role reform have widely recommended. Instead, they used legal jargon consistently, often refused to answer litigants’ questions, and sometimes criticized litigants for asking questions or expressing confusion.”). Because low-income litigants face an information asymmetry when they come to the legal system, it is critical that they have access to information about their rights and to counsel who can ensure their rights are enforced. See *Eviction Moratorium*, *supra* note 224 (citing studies on cities with a right to counsel in eviction court showing the vast majority of tenants with counsel retained their homes, but 97% of cases lacked counsel). Another major policy change that has increased the need for enforcement is the disbursement of emergency rental assistance money, allocated in response to COVID-19. While Congress allocated a total of about \$46 billion in emergency rental assistance, a myriad of roadblocks have prevented timely and effective access and use of these funds. *Biden-Harris Housing Facts*, *supra* note 33. These barriers include



Even major positive reforms to law and policy are only meaningful if they are enforced.

Against the backdrop of a massive civil justice gap, access to justice efforts must therefore increase capacity for enforcement of existing laws, where under-enforcement drives health disparities. The access to justice movement advances a number of such pathways, which can serve to increase the enforcement of laws that implicate health justice. The following Section explores proposed strategies.

### 1. Expansion of Access to Counsel for Marginalized Communities

Lawyers are critical to ensuring the enforcement of the laws on the books. They can take action to demand relief, negotiate, mediate, and litigate in court to ensure enforcement.<sup>226</sup> Thus, access to justice strategies should continue to focus on increasing access to counsel for marginalized communities, with an understanding that legal representation can allow for the enforcement of laws that drive health inequities when they are under-enforced.

Access to justice advocates have called for more funding for legal services organizations, especially with the increase in demand related to the pandemic. The American Academy of Arts and Sciences argues that recruiting more legal aid lawyers will be critical to the effort to close the civil justice gap, and that the federal government must invest more money in legal services organizations that support these lawyers.<sup>227</sup> Congress has responded to such calls with increases in funding. In 2020, it appropriated \$50 million for legal aid work to the LSC in the CARES Act.<sup>228</sup> The U.S. Department of the Treasury also informed states that the Emergency Rental Assistance Program funding could be used for legal services related to

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administrative difficulties, including unnecessary and excessive documentation requirements, landlord noncooperation, lack of knowledge about the programs, resource constraints, and political pushback. Michelle D. Laysner et al., *Mitigating Housing Instability During a Pandemic*, 99 OR. L. REV. 445, 482 (2021). Scholars have advocated for greater enforcement and implementation of these critical new programs in order to minimize health inequities magnified by COVID-19. *Id.*

226. See *Injustice Is an Underlying Condition*, *supra* note 12, at 265 (pointing to the importance of lawyers to civil litigants, particularly those from low-income and marginalized communities).

227. *Civil Justice for All*, *supra* note 28.

228. *Id.*

eviction proceedings.<sup>229</sup> Further, a recent White House Eviction Prevention Summit promoted access-to-counsel efforts as a means of preventing evictions.<sup>230</sup>

Access to Justice Commissions—entities that coordinate representatives from state courts, state bars, legal aid providers, and other groups—strive to eliminate barriers to justice for low-income people.<sup>231</sup> These efforts include simplifying court processes for pro se litigants, securing increased funding for legal services,<sup>232</sup> promoting pro bono and law school initiatives serving low-income clients, and advocating for a civil right to counsel.<sup>233</sup> Individual state Access to Justice Commissions have achieved some success in increasing and securing funding from state legislatures and private sources, and in creating changes to court rules.<sup>234</sup> Nonetheless, LSC's February 2021 request of \$350 to \$500 million of additional supplemental funding is evidence that much larger funding increases are necessary to better mitigate the consequences of the pandemic on low-income populations.<sup>235</sup> Scholars advocate for building public support for increased legal services funding, exploration of models to expand legal services to those currently above income eligibility limits,<sup>236</sup> and for policymakers to identify new sources of funding for legal assistance.<sup>237</sup>

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229. *Emergency Rental Assistance Frequently Asked Questions*, U.S. DEP'T OF TREASURY EMERGENCY RENTAL ASSISTANCE PROGRAM (June 24, 2021), [https://home.treasury.gov/system/files/136/ERA\\_FAQs\\_6-24-21.pdf](https://home.treasury.gov/system/files/136/ERA_FAQs_6-24-21.pdf) [<https://perma.cc/NZ3H-VCRD>].

230. *Readout of the Second White House Eviction Prevention Convening*, WHITE HOUSE (July 21, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/07/21/readout-of-the-second-white-house-eviction-prevention-convening/> [<https://perma.cc/HDC7-2BUC>].

231. See A.B.A. RES. CTR. FOR ACCESS TO JUST. INITIATIVES, *Definition of an Access to Justice Commission* (June 2014), [https://www.americanbar.org/groups/legal\\_aid\\_indigent\\_defense/resource\\_center\\_for\\_access\\_to\\_justice/](https://www.americanbar.org/groups/legal_aid_indigent_defense/resource_center_for_access_to_justice/) [<https://perma.cc/9N5Q-ESAF>].

232. April Faith-Slaker, *Access to Justice Commissions—Accomplishments, Challenges, and Opportunities*, MGMT. INFO. EXCH. J. 1, 13 (Fall 2015) (describing access-to-justice projects such as simplifying court forms, implementing court-based self-help centers, designing educational programs, revising the Code of Judicial Conduct, increasing language access, and developing partnerships with public libraries).

233. See *id.*; see also Steinberg, *Demand Side Reform*, *supra* note 146, at 763 (discussing support for right to counsel efforts).

234. Faith-Slaker, *supra* note 232 (arguing states with active commissions showed a clear increase in funding from these sources).

235. LEGAL SERVS. CORP., *LSC and COVID Funding*, <https://www.lsc.gov/about-lsc/lsc-and-covid-19> [<https://perma.cc/KLQ8-7MKP>] (last visited Jan. 20, 2022).

236. See *Whatever Happened*, *supra* note 37, at 907–11 (explaining the issues and potential solutions for legal services funding).

237. *Id.*

Beyond the courts, some access to justice advocates have argued for federal and state agencies and the executive branch as a whole to play a larger role in reducing the justice gap. The WHLAIR and the DOJ Office for Access to Justice (whose duties have been transferred to DOJ's Office of Legal Policy) seek to inform federal and state agencies of the justice gap, legal needs, and legal services.<sup>238</sup> Under the Obama administration, these efforts resulted in the designation of legal services as "fundable services" in more than two dozen federal grant programs, clarification to federal agencies that other programs should fund legal services that would further agency goals, and the creation of partnerships, training, and research about legal aid.<sup>239</sup>

Further, the passage of state and municipal civil right-to-counsel legislation, particularly in eviction cases, has been an important advancement in the access to justice movement and numerous additional bills are pending.<sup>240</sup> While it is beyond the scope of this Article to address the merits of or potential to achieve the civil right to counsel, it is worth noting that some scholars have critiqued these efforts as idealistic, potentially impossible, expensive,<sup>241</sup> and falling short of addressing barriers, such as the inability of many individuals to recognize an issue as legal in the first place.<sup>242</sup> In response, scholars have proposed several criteria to maximize the cost-effectiveness and impact of legal resources. Some advocates suggest a sliding scale financial eligibility and assistance program that would "guarantee all Americans . . . legal advice and assistance equivalent to what a person of reasonable means would purchase to secure legal benefits and [protect legal rights]."<sup>243</sup> Others suggest different forms of limiting criteria,<sup>244</sup> including the ABA House of Delegates, which has advocated for a civil right to counsel when basic human needs are at stake.<sup>245</sup>

The implementation of a right to counsel in eviction proceedings in multiple states and cities has shown that lawyers prevent evictions and

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238. Karen A. Lash, *Executive Branch Support for Civil Legal Aid*, 148 DAEDALUS 160, 162–64 (2019), [https://www.amacad.org/sites/default/files/daedalus/downloads/Wi19\\_Access-to-Justice.pdf](https://www.amacad.org/sites/default/files/daedalus/downloads/Wi19_Access-to-Justice.pdf) [<https://perma.cc/2Q76-K5TJ>].

239. *Id.* at 164.

240. Peterson, *supra* note 5, at 80; *see supra* Part I.

241. *See* Wallat, *supra* note 31, at 600; Sen, *supra* note 95, at 136 ("Still, even if a Civil Gideon were to be enacted, it would require adequate funding to provide legal counsel in substance and not merely in name.").

242. *See* Norton, *supra* note 43, at 218.

243. *Whatever Happened*, *supra* note 37, at 875–77.

244. *Id.* at 896.

245. *See id.* at 892; Peterson, *supra* note 5, at 86–87 (discussing a renewed "civil Gideon" movement).

keep people housed.<sup>246</sup> Even beyond substantive case outcomes, supporters are optimistic that the right to counsel will have beneficial ripple effects on the housing system as a whole and actors within it.<sup>247</sup> Providing litigants free or low-cost counsel in eviction proceedings could save costs down the road for shelter, homelessness, and job loss services, along with their related negative health outcomes.<sup>248</sup>

As access-to-counsel efforts advance, there are real concerns that there are simply not enough lawyers to provide all of these services, even with private attorneys volunteering their services. Advocates who propose solutions to the justice gap have generally decried the voluntary pro bono system as failing to bridge the gap.<sup>249</sup> Given that there is no general power of the courts to require lawyers to provide pro bono services—though judges may hold inherent authority to do so<sup>250</sup>—the number of lawyers providing pro bono services to low-income individuals remains troublingly low.<sup>251</sup> Part of the disparity is the lack of required reporting of time and financial resources spent on pro bono work such that the numbers only reflect the states that require pro bono reporting.<sup>252</sup> Seeing pro bono work as an untapped source of legal services, scholars have appealed to lawyers' sense of professional and moral responsibility to do more pro bono work.<sup>253</sup> Additionally, several states have considered instituting a pro bono service requirement as a condition for bar entry, although only New York has actually implemented such a bar requirement of fifty hours of pro bono work.<sup>254</sup> Other potential solutions to encourage pro bono activity include offering a broader range of opportunities for participation, such as pro bono educational programs, allowing lawyers to substitute pro bono work with

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246. See *Housing Defense as the New Gideon*, *supra* note 8, at 83–85 (discussing that empirical evidence supports the conclusion that tenants are significantly less likely to be evicted from their homes when represented by attorneys in housing court).

247. See *id.* at 87–89.

248. See Peterson, *supra* note 5, at 77, 88–89.

249. See Jodi Nafzger, *Bring on the Pettifoggers: Revisiting the Ethics Rules, Civil Gideon, and the Role of the Judiciary*, 34 NOTRE DAME J.L. ETHICS & PUB. POL'Y 79, 83 (2020).

250. *Id.* at 88.

251. See *id.* at 83 (asserting the nation's 1.3 million lawyers need to engage in pro bono service to close the justice gap for the 12% of the population left without counsel after accounting for legal aid services); Deborah L. Rhode, *Access to Justice*, 69 FORDHAM L. REV. 1785, 1811 (2001) [hereinafter Rhode, *Access to Justice*] (“Efforts to increase the [legal] profession's public service commitments have been met with both moral and practical objections.”).

252. See *Whatever Happened*, *supra* note 37, at 902–05.

253. Rhode, *Access to Justice*, *supra* note 251, at 1811.

254. Nafzger, *supra* note 249, at 84–85; *The Legal Profession—Pro Bono: Bar Admission Requirements*, N.Y. COURTS (Sept. 14, 2012), <http://ww2.nycourts.gov/attorneys/probono/baradmissionreqs.shtml> [<https://perma.cc/LU4E-MZAE>].

donations to legal aid providers, requiring reporting of service, and charging judges with a duty to encourage more pro bono service.<sup>255</sup>

Law schools and legal education reform are also potential avenues to bridge the gap. Generally, law school clinics are seen as favorably contributing to bridging the justice gap, especially when students represent low-income clients. Clinics have the potential to engage and train more law school graduates for legal services and pro bono work.<sup>256</sup> More broadly, law schools can encourage students to get involved in pro bono work during and beyond their school years.<sup>257</sup>

Medical-legal partnerships (“MLPs”) provide another potential pathway for access to justice in furtherance of health equity. MLPs involve a health care model that incorporates lawyers into the clinical health care setting to address health-harming social needs with civil law remedies.<sup>258</sup>

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255. See Nafzger, *supra* note 249, at 105; *Whatever Happened*, *supra* note 37, at 902–05 (discussing how increasing access to pro bono services can increase access to justice, particularly if legal employers feel pressured to improve their size and scope); Rhode, *Access to Justice*, *supra* note 251, at 1811 (describing lawyer hesitations to increase public service commitments and responding that such commitments are critical to the integrity and functioning of the American legal profession).

256. See Young, *supra* note 96, at 817; *Whatever Happened*, *supra* note 37, at 905 (arguing that law schools should further integrate access-to-justice efforts into their pro bono programs and disclose student participation); *Roadmap*, *supra* note 146, at 1254–55 (“Legal education should do more to promote access to justice both by supporting research and by integrating those issues into the curriculum and programmatic activities.”).

257. See *Whatever Happened*, *supra* note 37, at 905; Michelle J. Anderson, *Legal Education Reform, Diversity, and Access to Justice*, 61 RUTGERS L. REV. 1011, 1016–17 (2009) (“[A]ttorneys of color were more likely to serve clients of color, engage in public interest and public service practice, and offer pro bono legal services.”). Anderson argues that law schools’ failure to admit racially, socioeconomically, and professionally diverse students contributes to the access to justice crisis. *Id.*

258. *MLP*, *supra* note 210, at 203. Articles focused on law as a determinant of health and medical-legal partnerships bring a health lens to the “unmet legal needs” conversation. See, e.g., Peter Shin et al., *Medical-Legal Partnerships: Addressing the Unmet Legal Needs of Health Center Patients*, GEO. WASH. U. RCHN CMTY. HEALTH FOUND. (May 4, 2010), [https://hsrc.himmelfarb.gwu.edu/cgi/viewcontent.cgi?article=1006&context=sph\\_hs\\_policy\\_ggrchn](https://hsrc.himmelfarb.gwu.edu/cgi/viewcontent.cgi?article=1006&context=sph_hs_policy_ggrchn) [<https://perma.cc/H682-M488>] (examining how addressing the overlap between poverty and poor health through medical-legal partnerships can effectively tackle unmet legal needs); Joel Teitelbaum & Ellen Lawton, *The Roots and Branches of the Medical-Legal Partnership Approach to Health: From Collegiality to Civil Rights to Health Equity*, 17 YALE J. HEALTH POL’Y, L. & ETHICS 343, 361 (2017) (“Given the paucity of legal aid resources in many communities, medical-legal partnerships presents an opportunity for the legal sector to join forces with the medical and public health sectors . . . .”); Hazel Genn, *When Law Is Good for Your Health: Mitigating the Social Determinants of Health Through Access to Justice*, 72 CURRENT LEGAL PROBLEMS 159, 164–66 (2019) (emphasizing similar benefits to medical-legal partnerships).

MLPs provide an innovative pathway for enforcement of unmet health-harming legal needs and can serve as a means of promoting health justice using an upstream, preventive, and community-based model of holistic health care and legal assistance.<sup>259</sup> MLPs aid low-income individuals in improving their health and access to healthcare<sup>260</sup> while addressing more structural causes of health disparities by focusing on issues that implicate social determinants of health.<sup>261</sup> By seeking enforcement of legal rights for individual patients while also identifying systemic issues at the community level, MLPs simultaneously provide immediate aid and identify areas where longer-term, systemic solutions are necessary, thereby bridging the health justice and access to justice movements.<sup>262</sup> MLPs vary considerably in size and form.<sup>263</sup> They can improve patient health outcomes, mental health, well-being, and adherence to recommended medical treatment, remove barriers to health care for low-income families, and increase access to social supports.<sup>264</sup> MLPs can help enforce laws in pursuit of health equity where there has been “disparate enforcement or unintended consequences of well-meaning laws as implemented.”<sup>265</sup> The American Academy of Arts and Sciences identifies MLPs as the most promising model of collaboration for access to justice, as they help address the “web of issues that people with civil justice problems usually face.”<sup>266</sup>

## 2. Other Access to Justice Approaches to Increase Enforcement Capacity

Some scholars argue that simply supplying more lawyers is not a long-term solution to the justice gap. Instead, they propose allowing non-lawyers to provide legal services, for example, by creating a new class of paraprofessionals called legal technicians or legal navigators.<sup>267</sup> Much like physician assistants and nurse practitioners in medicine, legal technicians would be trained and licensed to provide limited legal services in specific contexts.<sup>268</sup> Washington, D.C. and New York State have begun piloting these

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259. *Setting the Health Justice Agenda*, *supra* note 148, at 910.

260. *MLP*, *supra* note 210, at 202.

261. *Id.* at 203.

262. *Id.*

263. *Id.* at 201.

264. *Id.*; *see also* Keene et al., *supra* note 38, at 229 (describing how MLPs are shown to identify legal needs and improve awareness of legal rights, provide critical free legal services, and support relationships between patients and lawyers).

265. *MLP*, *supra* note 210, at 202.

266. *Civil Justice for All*, *supra* note 28.

267. *See Sen*, *supra* note 95, at 138–44.

268. *Id.*

programs.<sup>269</sup> Critics fear that non-lawyers might provide poor-quality legal advice that could hurt litigants,<sup>270</sup> harm the integrity of the profession, or force competition in the legal market to the detriment of lawyers.<sup>271</sup> Some scholars argue that these concerns could be allayed by strict certification requirements and oversight by lawyers.<sup>272</sup> This approach requires further study to determine whether it would actually improve outcomes for litigants and whether it would facilitate enforcement of extant laws that could improve health equity.

Other scholars advocate for the use of unbundled, discrete legal services instead of full representation as a means of increasing access to counsel.<sup>273</sup> This approach aims to enable litigants to overcome procedural hurdles by providing them the support they need to, for example, file complaints, draft answers, or serve documents on the opposing party, while also increasing litigants' perception of fairness within the court process.<sup>274</sup> However, there is a lack of reliable data on the impact of unbundled legal services,<sup>275</sup> with some research suggesting that this model does not necessarily improve substantive outcomes,<sup>276</sup> especially as it "may be a mismatch for the tremendous complexity of many average, everyday proceedings."<sup>277</sup> Other scholars call for the courts to take on a bigger role in ensuring fairness for unrepresented parties such as simplifying court systems so that pro se individuals are able to better navigate the litigation

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269. Robert Ambrogi, *Washington State Moves Around UPL, Using Legal Technicians to Help Close the Justice Gap*, A.B.A.J. (Jan. 1, 2015), [https://www.abajournal.com/magazine/article/washington\\_state\\_moves\\_around\\_upl\\_using\\_legal\\_technicians\\_to\\_help\\_close\\_the\\_justice\\_gap](https://www.abajournal.com/magazine/article/washington_state_moves_around_upl_using_legal_technicians_to_help_close_the_justice_gap) [https://perma.cc/4392-MB2X] (describing Washington's pilot of a Limited License Legal Technician program, which provides document preparation, procedural advice, and supervised legal research and a subset of New York courts that allow for voluntary court navigators to provide free, limited assistance to litigants in housing and consumer debt cases).

270. *See id.*

271. *See id.*; Rhode, *Access to Justice*, *supra* note 251, at 1807 (describing courts' fear about nonlawyers providing legal advice, indicating broader worries within the legal profession).

272. *See Whatever Happened*, *supra* note 37, at 899; Sen, *supra* note 95, at 138 ("A long-term legal solution to the access-to-justice crisis... can be found with 'legal technicians,' a new category of legal professional in between a paralegal and a lawyer.").

273. *See Norton*, *supra* note 43, at 216; Lauren Sudeall & Ruth Richardson, *Unfamiliar Justice: Indigent Criminal Defendants' Experiences with Civil Legal Needs*, 52 U.C. DAVIS L. REV. 2105, 2152-53 (2019) (noting methods to make the civil justice system more accessible); Rhode, *Access to Justice*, *supra* note 251, at 1814 (same).

274. Steinberg, *Demand Side Reform*, *supra* note 146, at 777-78.

275. *Id.* at 779, 783.

276. *Id.* at 779-86.

277. *Id.* at 786.

process.<sup>278</sup> However, court simplification solutions are less effective if they do not alleviate the power imbalance between a party represented by legal counsel and a pro se party.<sup>279</sup>

In sum, access to justice initiatives need to go beyond procedural changes to afford substantive justice, with an understanding that health and well-being—and equities along those measures—are predicates for justice. Therefore, access to justice efforts should provide pathways for enforcement of extant laws that implicate health, focusing on the needs of marginalized populations.

### B. Elevating the Power of Individuals and Communities Affected by Health Inequity

Legal representation and court-based interventions are necessary but insufficient for health justice. Health justice requires that interventions elevate the power of individuals and communities to take part in initiatives aimed at improving their health status.<sup>280</sup> Efforts that engage, educate, and support marginalized individuals and communities to promote their power are critical to the development and implementation of policies that enhance their well-being.<sup>281</sup>

This Article advocates for the “elevation of power” of historically and currently oppressed individuals and communities rather than their “empowerment” because “there is a fundamental paradox in the idea of people empowering people because the very institutional structure that

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278. See Wallat, *supra* note 31, at 601 (proposing court reforms such as simplifying court forms and altering court rules to help unrepresented litigants attempting to navigate the civil justice system without assistance); *Whatever Happened*, *supra* note 37, at 901 (proposing that judges assume greater responsibility for fairness to unrepresented parties, such as investigating issues, promoting compliance with evidentiary rules, and preventing manifestly unbalanced settlements).

279. Colleen F. Shanahan & Anna E. Carpenter, *Simplified Courts Can't Solve Inequality*, 148 DAEDALUS 128, 131 (2019), [https://www.amacad.org/sites/default/files/daedalus/downloads/Wi19\\_Access-to-Justice.pdf\\_\[https://perma.cc/2Q76-K5T\]](https://www.amacad.org/sites/default/files/daedalus/downloads/Wi19_Access-to-Justice.pdf_[https://perma.cc/2Q76-K5T])]; *Simplicity as Justice*, *supra* note 95, at 297 (“There is democratic value in containing potential abuse by powerful parties.”).

280. *Health Justice Strategies*, *supra* note 18, at 138–39; AAMC CTR. FOR HEALTH JUST., *supra* note 25 (promoting initiatives including the formation of multisector expert partner groups, partnerships with community organizations to build confidence in COVID-19 vaccine initiatives, and community engagement toolkits on topics such as criminal justice, immigration, and health of Native American communities).

281. *Health Justice Strategies*, *supra* note 18, at 138 (“Low-income communities and communities of color must be engaged and empowered as leaders in the development and implementation of laws, policies, or other interventions aimed at protecting or promoting health.”).



puts one group in a position to empower others also works to undermine the act of empowerment.”<sup>282</sup> Rather than focus on the *transfer* of power from lawyers or another group to marginalized communities, the health justice framework seeks to *increase* power<sup>283</sup> to ensure that marginalized people have the tools to find, elevate, and exercise their own rights.<sup>284</sup> This kind of inclusion and promotion of power can be achieved by (1) educating individuals within the community; (2) involving non-legal professionals as partners; and (3) partnering with communities and organizations to promote their leadership.

Health justice calls for educating people from affected communities about their legal rights and providing them the tools necessary to assert those rights. For example, attorneys can help people from marginalized communities understand their basic housing or employment rights, which in turn prepares them to better advocate for themselves in the long-term. Such educational efforts can be seen as a form of preventative lawyering that “equips people with legal information and insight they can use to make informed decisions about their . . . resources, health, well-being, safety and security.”<sup>285</sup> Lawyers serve a crucial educational role in this work, given their unique knowledge of relevant legal rights and remedies in highly regulated fields.

The health justice framework also requires partnerships with non-legal advocates. Non-legal professionals can serve a crucial role in community education and other initiatives to address health needs, thereby elevating the power of affected individuals and communities. Access to justice and health justice scholars alike have encouraged partnerships between civil rights advocates, public health advocates, and community

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282. This Article advocates for access-to-justice efforts to “elevate” the power of historically and currently oppressed individuals and communities, rather than using the term “empowerment,” which can have different meaning and engenders its own critiques because it contemplates the idea of a favored group granting power to another. Judith Gruber & Edison J. Trickett, *Can We Empower Others? The Paradox of Governing of an Alternative Public School*, 15 AM. J. CMTY. PSYCH. 353, 354 (1987).

283. See, e.g., *Civil Rights of Health*, *supra* note 23, at 806 (“[H]ealth justice . . . calls for subordinated communities to speak and advocate for themselves. Embracing social movements as equal partners . . . acknowledges the internal limitations of public health and law. Moreover, allowing marginalized groups an equal voice empowers them against the possibility of abusive alliances . . .”).

284. See Artika Tyner, *Planting People, Growing Justice: The Three Pillars of New Social Justice Lawyering*, 10 HASTINGS RACE & POVERTY L.J. 219, 231 (2013) (“The goal of social justice education is to enable people to develop the critical analytical tools necessary to understand oppression and their own socialization within oppressive systems . . . [and] change oppressive patterns and behaviors in themselves and in the institutions and communities of which they are a part.”).

285. Morton, *supra* note 212.

leaders to address community issues and solutions through an access to justice lens.<sup>286</sup> Interdisciplinary partnerships must explicitly aim to promote the power of affected individuals and communities, rather than confining the collaboration to professionals who serve those communities. By shaping efforts to advance health justice, alongside and with support from health care stakeholders and legal advocates, communities can exercise power “against the possibility of abusive alliances of public health and law.”<sup>287</sup>

Health justice requires that advocates partner with communities to avoid limited recognition of subordination by public health initiatives and their tendency to stigmatize racial or social groups identified as in need of health justice services.<sup>288</sup> Particularly when it comes to battling subordination and systemic racism, advocates argue that the health justice field can draw lessons from other movements like environmental justice and reproductive justice. These movements seek to elevate the power of marginalized communities to speak for themselves, take active leadership roles, and dismantle systemic subordination in their communities on their own terms.<sup>289</sup> Any public health framework for anti-racism must directly involve people of color as leaders to avoid stifling critical voices and grassroots momentum on structural anti-racism change and health equity.<sup>290</sup> By including community members in their own governance through accessible organizations and by promoting their leadership, marginalized communities that might need further organizational infrastructure can be at the center of conversations about their own access to health care.<sup>291</sup>

For example, access to justice efforts can mobilize lawyers to help form and support tenant unions, which can increase bargaining power,

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286. *Civil Rights of Health*, *supra* note 23, at 805.

287. *Id.* at 805–06.

288. *Id.* at 762 n.4 (“[Subordination is] a set of policies, practices, traditions, norms, definitions, cultural stories, and explanations that function to systematically hold down one social group to the benefit of another social group.”).

289. *See id.* at 806–11.

290. *Id.* at 803; Lilliann Paine et al., *Declaring Racism a Public Health Crisis in the United States: Cure, Poison, or Both?*, *FRONTIERS IN PUB. HEALTH* 1, 1–3 (June 18, 2021) (enumerating the risks of performative allyship and emphasizing the need for substantive, long-lasting involvement to achieve anti-racist public health objectives).

291. Ben Palmquist, *Equity, Participation, and Power: Achieving Health Justice Through Deep Democracy*, 48 *J. L. MED. & ETHICS* 393, 397–406 (2020) (suggesting involving community members in health justice initiatives through participatory needs assessments and budgeting programs, as well as community-based monitoring aided by public advocates who represent community members in legislative and regulatory processes).

establish greater autonomy, and facilitate housing security for tenants.<sup>292</sup> These unions give marginalized communities a mechanism through which they can advocate for their own best interests while providing resources to enable their participation, including compensation, childcare, and transportation.<sup>293</sup> Further, policymakers should engage directly with affected communities to better understand their needs and give them an opportunity to drive policies that will have a powerful impact on their health. For instance, health justice scholars have argued that when considering work requirements for Medicaid eligibility, the federal government should consult affected communities directly, as data shows policymakers often disregard the realities of those living in poverty.<sup>294</sup> By engaging individuals from these communities in conversations regarding the practical realities of their socioeconomic conditions, policymakers can better address the justice gap across various issue areas. Applying the health justice principles above, access to justice efforts should similarly elevate the power of affected individuals and communities by educating individuals about legal rights that implicate health and the tools to enforce them, collaborating with non-lawyers, and partnering with community organizations.<sup>295</sup>

### 1. Educating Individuals About Legal Rights that Implicate Health and the Tools to Enforce Them

Access to justice scholars have identified a lack of information about legal rights as one of the major causes of the justice gap. People often do not think of their problems as legal so they do not seek legal assistance.<sup>296</sup> There is a significant disparity in the awareness of legal needs and access to legal advice and resources between lower and higher income individuals.<sup>297</sup> High-income individuals can afford to obtain legal advice at “critical junctures in life, such as getting married or divorced; welcoming a child; negotiating with a school district around special education obligations to a student; leasing or purchasing a home; paying taxes; navigating family-based or employment-based immigration applications; or

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292. *Health Justice Strategies*, *supra* note 18, at 162.

293. *Id.*

294. *Id.* at 170. For example, policymakers could better engage community members in decisions around requirements that Medicaid recipients be employed in order to receive healthcare benefits.

295. Stephen Wexler, *Practicing Law for Poor People*, 79 YALE L.J. 1049, 1056 (1970).

296. Rebecca Sandefur, *What We Know and Need to Know About the Legal Needs of the Public*, 67 S.C. L. REV. 443, 448–49 (2016).

297. Morton, *supra* note 212.

planning to live and die with dignity.”<sup>298</sup> But low-income individuals often lack awareness of their rights and lack access to such legal resources. A preventive law framework like health justice seeks to avoid legal crises that harm health from arising in the first place via awareness and informed decision-making.<sup>299</sup> Access to justice efforts can prevent poor health conditions by promoting participatory parity through the narrowing of knowledge disparities about legal rights and the tools to assert them.<sup>300</sup>

Access to justice scholars advocate for increased public education as a crucial solution to the civil justice gap, arguing that if individuals can recognize their problems as legal issues, they can more effectively exercise their rights by taking advantage of protections provided for in civil law.<sup>301</sup> Trainings on legal rights and strategies for asserting them should be given in the context of community organizing and to the wider population.<sup>302</sup>

In addition to know-your-rights trainings and materials, educational efforts include self-help kiosks and centers that offer information about common legal issues.<sup>303</sup> These efforts have been advanced in the public health context,<sup>304</sup> and their importance applies with equal force to legal rights that implicate health. Community awareness of rights is critical to the enforcement of both longstanding laws and to the success of new reforms. As John Pollock, coordinator of the National Coalition for a Civil Right to Counsel, has stated, “[r]ights are only meaningful if you know that they exist and you know how to enforce them.”<sup>305</sup>

Access to justice scholars argue that collective power can be achieved by developing and disseminating materials to help people

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298. *Id.*

299. *Id.*

300. *Patient Rights*, *supra* note 148, at 874 (“[C]ollective action [should be] grounded in community engagement and participatory parity.”).

301. Wallat, *supra* note 31, at 609; *see also* Alissa Rubin Gomez, *Demand Side Justice*, 28 *GEO. J. ON POVERTY L. & POL’Y* 412, 415, 427 (2021) (arguing that implementing legal literacy into the existing civics and law-related education classes will go a long way towards leading those who do not seek legal intervention to be better informed about their situations).

302. Charles Elsesser, *Community Lawyering – The Role of Lawyers in the Social Justice Movement*, 14 *LOY. J. PUB. INT. L.* 375, 393 (2013).

303. *Civil Justice for All*, *supra* note 28, at 31.

304. Burris, *supra* note 217, at 23–24 (asserting that public health initiatives like risk-reduction education blend agentic versus structural interventions by relying on individual, agentic behavior to change the structural issue of lack of information).

305. David Sherfinski, *U.S. Supreme Court Extends CDC Eviction Ban by One Month. Here’s What to Know*, THOMSON REUTERS FOUND. (July 1, 2021), <https://news.trust.org/item/20210701140504-4nqic> [<https://perma.cc/Y6GR-CETZ>].

understand their rights and educating them for legal confrontation.<sup>306</sup> Sometimes tenants know their rights, but fear asserting them. For example, a tenant may be scared to call a housing inspector to assist with enforcement of the housing code because they fear retaliation. Lawyers can play a supportive role in preparing people to protect their rights and pursue remedies without harmful retaliation. This ensures that people know their alternatives and allows lawyers “to do what poor people want, and not vice versa.”<sup>307</sup>

Numerous courts and legal organizations currently provide self-help and know-your-rights materials to pro se litigants in order to further rights education and legal need awareness.<sup>308</sup> Access to justice scholars have also called for initiatives to systematically overhaul litigation processes and rules, with an intent to dismantle major barriers pro se litigants face as a result of procedural and evidentiary rule hurdles.<sup>309</sup> One aspirational rule would require judges to elicit legally relevant information from litigants, in a structured way that still cabins judicial discretion, in order to allow litigants to establish claims and defenses.<sup>310</sup> Such efforts to arm pro se litigants with knowledge and tools to assert their rights would also reduce the need for counsel in certain cases and amplify other alternatives to full representation.<sup>311</sup>

Access to justice advocates have also explored applications of technology to educate, spread awareness, and share information with unrepresented clients. This includes statewide legal aid and court websites providing links to self-help information and referrals to specific organizations,<sup>312</sup> portals that assist with preparation of legal documents and understanding court procedures,<sup>313</sup> and online programs that assist with document preparation and e-filing, as well as triaging systems to help people understand whether they have actionable issues.<sup>314</sup>

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306. Wexler, *supra* note 295, at 1056.

307. *Id.* at 1063.

308. *See Roadmap, supra* note 146, at 1242–43.

309. *See Steinberg, Demand Side Reform, supra* note 146, at 746.

310. *See id.* at 746, 800–02.

311. *See id.* at 802–03. Notably, these efforts advocate for going beyond the existing rule in the federal courts that requires judges to draw all permissible inferences in favor of a pro se litigant, and actually advocate for requiring judges to proactively ask the litigant to put forth relevant information and elicit additional evidence. *See id.* at 800.

312. *See James E. Cabral et al., Using Technology to Enhance Access to Justice*, 26 HARV. J.L. & TECH. 241, 246–48 (2012).

313. Prescott, *supra* note 94, at 2011.

314. *See Cabral et al., supra* note 312, at 251–52.

Lawyers can also educate the clients they already serve with information about their rights, remedies, and strategies for documenting violations and asserting those rights. For example, when lawyers help clients obtain remediation of substandard housing conditions, they can also teach them how to prevent and address similar issues in the future. Further, lawyers can help their clients understand what a local housing code requires of landlords, how to document violations and request repairs with language and sufficient detail that will allow them to assert and enforce their rights most effectively, and prepare them to testify before legislatures in support of housing hazard prevention and enforcement laws.<sup>315</sup> This type of individual client education can also prepare clients to engage in organizing and building movements, such as rent strikes, allowing them to connect to structural solutions.

## 2. Collaboration with Non-lawyers in Elevating the Power of Affected Individuals and Communities

Education and information sharing with non-lawyer professionals serving marginalized communities are critical to addressing access to justice gaps that harm health. Lawyers can work with health care and other inter-disciplinary partners to provide legal information and help them support marginalized populations.<sup>316</sup> With a proper understanding of the legal rights of the populations they serve, community-based partners across disciplines—such as doctors, nurses, social workers, community health workers, and teachers—can help at-risk individuals identify potential legal issues and access the information, tools, and supports needed to assert their rights.<sup>317</sup> Developmental Understanding and Legal Collaboration for Everyone (“DULCE”), for example, not only provides families of pediatric patients with salient legal information and rights education primers, but also equips healthcare teams to understand and screen for potential sources of legal needs, and to educate the patient families they serve about legal rights.<sup>318</sup> MLPs like DULCE have shown that increasing physician awareness of the legal needs of at-risk patients can help them identify and mitigate legal needs before they have serious consequences on the patient’s

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315. Yael Cannon, *Equipping the Next Generation of Health Justice Leaders*, HARV. L. PETRIE-FLOM DIGIT. SYMP. ON HEALTH JUST. (Sept. 20, 2021), <https://blog.petrieflom.law.harvard.edu/2021/09/20/health-justice-leaders/> [https://perma.cc/K4G2-TYL4].

316. Ellen M. Lawton, *Integrating Healthcare and Legal Services to Optimise Health and Justice for Vulnerable Populations: The Global Opportunity*, in *THE LAW OF THE FUTURE & THE FUTURE OF LAW: VOLUME II*, at 73, 78 (Sam Muller et al. eds., 2012).

317. *How Legal Services Help*, *supra* note 104.

318. Morton, *supra* note 212.

health.<sup>319</sup> Lawyers need partners in promoting the power of marginalized communities and should engage non-lawyer collaborators who also serve those communities towards this aspiration, while centering the needs, goals, and leadership of those communities in their collaborative efforts.

### 3. Partnership with Community Organizations

Partnerships with grassroots and non-profit organizations, comprised of affected community members, are critical to health justice. The community lawyering movement, for example, calls for lawyers to holistically engage with the communities in which they serve to achieve justice.<sup>320</sup> Lawyers can assist communities by engaging in robust collaboration, dialogue, and feedback through which the lawyer and community representatives seek to understand and identify the community's legal needs in order to develop legal solutions.<sup>321</sup> Social change only lasts when the people most affected by poverty, oppression, subordination, and the suppression of power take the lead in organizing, developing leaders, and building power.<sup>322</sup>

The "law and organizing" movement similarly highlights movement politics, community mobilization, and grassroots organizing campaigns,<sup>323</sup> positioning lawyers in a supportive or ancillary role to supplement organizing efforts with their legal skills and expertise.<sup>324</sup> In the related context of "movement lawyering," the lawyer's role is to support social movements and organized communities through power building, authentic partnerships with communities, and multifaceted advocacy.<sup>325</sup> By engaging

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319. *Setting the Health Justice Agenda*, *supra* note 148, at 912.

320. *See* Rose Cuison Villazor, *Community Lawyering: An Approach to Addressing Inequalities in Access to Health Care for Poor, of Color and Immigrant Communities*, 8 N.Y.U. J. LEGIS. & PUB. POL'Y 35, 37–38 (2004).

321. *See* Lisa R. Pruitt & Bradley E. Showman, *Law Stretched Thin: Access to Justice in Rural America*, 59 S.D. L. REV. 466, 480, 498 (2014) (discussing "community conversations," which put the concerns and perspectives of community stakeholders at the center of the work).

322. *Elsesser*, *supra* note 302, at 384.

323. *See* Scott L. Cummings & Ingrid V. Eagly, *A Critical Reflection on Law and Organizing*, 48 UCLA L. REV. 443, 443–50 (2001).

324. *See id.* at 481 ("Organizing is often used as shorthand for a range of community-based practices, such as organization building, mobilization, education, consciousness raising, and legislative advocacy.").

325. Alexi Freeman & Lindsay Webb, *Yes, You Can Learn Movement Lawyering in Law School: Highlights from the Movement Lawyering Lab at Denver Law*, 5 HOWARD HUM. & C.R. L. REV. 55, 57–59 (2020).

communities, access to justice efforts can ensure that those communities—rather than lawyers—can take the lead in movement-building.<sup>326</sup>

Scholars have also explored how lawyers can engage with communities through an anti-subordination lens. “Rebellious lawyering,” a term coined by UCLA law professor Gerald López, involves lawyers working alongside individuals facing subordination and oppression.<sup>327</sup> López calls for an immersive interaction where lawyers situate their work in individual lives and communities, continually revisiting legal and non-legal solutions and strategies to achieve social change.<sup>328</sup> In doing this, lawyers can become not only “resource allies,” but also embrace “co-conspiratorship,” which “returns the hierarchical power of justice back to communities [and] equips community members with the tools needed for their own liberation.”<sup>329</sup> For example, the Haven MLP at Yale Law School worked on a Connecticut-wide campaign to remove immigration barriers for Medicaid.<sup>330</sup> Law students in the MLP sit on and work with the HAVEN Clinic advocacy committee so that they not only understand the policy and political considerations, but take direction from the concerns and ideas of this grassroots organization and its constituent community to find ways to promote their power,<sup>331</sup> putting health justice principles into action.

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326. See Rebecca Sharpless, *More than One Lane Wide: Against Hierarchies of Helping in Progressive Legal Advocacy*, 19 CLINICAL L. REV. 347, 394–402 (2012) (describing how lawyers, rather than clients and communities, leading movements can result in professional-driven movements, preventing problems from being viewed from a holistic, systematic vantage point).

327. Gerald P. López, *Reconceiving Civil Rights Practice: Seven Weeks in the Life of a Rebellious Collaboration*, 77 GEO. L.J. 1603, 1608 (1989).

328. See *id.*; Dina Shek, *Centering Race at the Medical-Legal Partnership in Hawai‘i*, 10 U. MIAMI RACE & SOC. JUST. L. REV. 109, 132 (2019) (“Rebellious lawyering calls on us to break through the trappings of our professions, to listen to and value the narratives and problem-solving of subordinated people, and to develop relationships of shared power and decision-making with the clients and communities we serve.”)

329. Lett et al., *supra* note 164, at 4; see also E. Tammy Kim, *Lawyers as Resource Allies in Workers’ Struggles for Social Change*, 13 N.Y. CITY L. REV. 213, 214–15 (2009) (“[R]esource-ally lawyering [is] . . . imbued with geographic and cultural context as well as a broad vision of social change”); Shek, *supra* note 328, at 133–37 (delineating a similar approach to lawyering and client representation).

330. Silvan Lebrun & Maria Fernanda Pacheca, *Organizations, Healthcare Providers Advocate to Expand Medicaid Eligibility to Undocumented Immigrants*, YALE DAILY NEWS (Mar. 19, 2021), <https://yaledailynews.com/blog/2021/03/19/community-organizations-healthcare-providers-advocate-to-expand-medicaid-eligibility-to-undocumented-immigrants/> [<https://perma.cc/MA8C-HWJE>].

331. *Id.*



### C. Advancing Structural Reform Towards Health Equity

Health justice also requires that access to justice interventions address structural determinants of health equity by reforming laws and policies that harm the health of marginalized communities. These structural responses to health disparities should include interventions that mitigate the “social and political mechanisms that generate, configure and maintain social hierarchies.”<sup>332</sup> Such mechanisms include those that facilitate discrimination, colonization, ableism, poverty, and other forms of subordination.<sup>333</sup> Just as law and policy have historically created and deepened health inequities,<sup>334</sup> these “very same law and policy tools can and should be used to create positive change.”<sup>335</sup>

Many health justice scholars call for a “health in all policies” approach that addresses the far-reaching effects of the social determinants of health by incorporating a health lens into policymaking across sectors.<sup>336</sup> The health justice framework is also an opportunity for health law reform to focus on broader social determinants of health, rather than the narrow lens of health care delivery and financing.<sup>337</sup> Health justice requires a holistic, collective approach, where communal efforts fight for positive health outcomes, rather than requiring individuals to carry the burden of ensuring their own well-being.<sup>338</sup> Through this collective approach, health justice scholar Medha Makhlof of Penn State Dickinson Law argues that marginalized groups like immigrants should be included in the health justice endeavor.<sup>339</sup> HHS Attorney Elizabeth Raterman describes similar efforts as forms of “prevention orientation,” which considers the root

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332. *Health Justice Strategies*, *supra* note 18, at 137.

333. *Id.*

334. CHANGELAB, *supra* note 171, at 12; see Edwin Caro, *Homelessness and Health Justice*, 30 ANNALS HEALTH L. ADVANCE DIRECTIVE 143, 143 (2020) (“Rather than opting for creating supporting measures to aid the homeless, many jurisdictions across the U.S. have enacted legislation that criminalizes the actions homeless people take to survive.”).

335. CHANGELAB, *supra* note 171, at 12.

336. *Id.* at 18; Elizabeth Tobin Tyler, *Aligning Public Health, Health Care, Law and Policy: Medical-Legal Partnership as a Multilevel Response to the Social Determinants of Health*, 8 J. HEALTH & BIOMEDICAL L. 211, 233 (2012) (“[H]ealth care providers should not be expected to act alone in addressing [social determinants of health], but rather should be viewed as critical members of a team that partners them with legal and public health professionals.”).

337. *Health Law as Social Justice*, *supra* note 148, at 51.

338. See Makhlof, *supra* note 20, at 291 (opining that if the purpose of health law is to serve the communal good, laws and policies should be designed to reflect this goal).

339. *Id.* at 239.

causes of disease and aims to address them through education, health, and housing policy.<sup>340</sup>

A wide range of structural reforms in these and other areas should address the systemic causes of inequality that exacerbate the justice gap. Access to justice efforts can address the structural determinants of health equity by mobilizing lawyers and community partners in the identification of legislative reform needed to achieve health equity, advocacy for systemic reform through law and policy change, and a deliberate focus on reform efforts that are anti-subordination and seek to dismantle systems driven by structural racism.

### 1. Identification of Legislative Reforms Needed to Achieve Health Equity

Legislative reform begins with lawyers evaluating laws that may appear at first glance to be outside the health sphere, yet nonetheless implicate social determinants of health. Lawyers must determine whether these laws have a harmful impact on health and on marginalized populations, particularly by driving health disparities. Laws that perpetuate poor health should be eliminated and replaced.<sup>341</sup> As a general strategy for health justice-focused law reform, knowledge about social determinants of health, socioeconomic inequalities, and health inequities should inform and be integrated into lawmaking—with the specific purpose of anticipating and mitigating their negative effects on low-income people and people of color.<sup>342</sup> Failure to incorporate this knowledge risks perpetuating health disparities and poor health outcomes for marginalized communities.<sup>343</sup> Emily Benfer, Senior Policy Advisor to the Biden White House and health justice scholar, lays out a strategic process of evaluating the potential of a proposed law to disproportionately affect the health of low-income individuals, and argues that preventative policies to keep harmful social conditions from occurring in the first place should be prioritized.<sup>344</sup> Examples of this prioritization include procuring funding, mandating inspections, and installing remediation measures to completely eliminate environmental hazards like lead paint from housing, rather than enacting

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340. Elizabeth Raterman, *A Health Justice Perspective of Asthma and COVID-19*, 24 HUM. RTS. BRIEF 50, 50 (2020) (“Prevention orientation is a public health concept that considers the root causes of disease and addresses these to prevent the disease from taking hold or from progressing further.”).

341. See, e.g., *Health Justice Framework*, *supra* note 6, at 324–28 (observing the tendency of nuisance laws to “perpetuate poor health outcomes”).

342. *Id.* at 337.

343. *Id.* at 322, 325.

344. *Id.* at 338, 341.

ameliorative laws that do little to protect a child already poisoned with lead.<sup>345</sup>

Access to justice initiatives must similarly facilitate opportunities to identify laws in need of structural reform. Lawyers providing direct legal services to low-income individuals can proactively identify problems and patterns with existing laws and policies that harm the health of marginalized individuals and communities and advocate for reforms.<sup>346</sup> The MLP movement has advocated for a similar patients-to-policy approach where attorneys representing low-income patients are in a unique position to identify laws in need of reform, call for policy change,<sup>347</sup> and employ on-the-ground practices, data, and individual testimonies collected from clients and community partners to better advocate for law reform.<sup>348</sup> Just as access to justice can facilitate enforcement of extant laws by providing for immediate aid to those in need, direct service lawyering can create a record of evidence for broader structural movements. Thus, near-term direct service legal efforts can support longer-term systemic policy changes while providing immediate, practical relief to individuals experiencing health-related injustice.<sup>349</sup>

## 2. Advocacy for Systemic Reform

Once harmful laws have been identified, lawyers, non-lawyer collaborators, and community members can advocate for structural reforms to achieve health justice. One reason why law and policy reforms are so often emphasized as solutions is that while many laws affect public health outcomes—even those not related to public health—many were not written with these health outcomes in mind. When these laws form barriers to healthy living for subordinated individuals, health justice demands their

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345. See *id.* at 338–41 (describing potential and existing lead-poisoning prevention policies).

346. See Tobin Tyler, *supra* note 336, at 236–39; Megan Sandel et al., *Medical-Legal Partnerships: Transforming Primary Care by Addressing the Legal Needs of Vulnerable Populations*, 29 HEALTH AFFS. 1697, 1699–1702 (2010) (describing examples of medical-legal partnerships addressing community needs by establishing a comprehensive approach to care); *Simplicity as Justice*, *supra* note 95, at 302 (arguing that classifying cases as “simple” is a difficult process and lack of legal representation can lead to the under-litigation of cases and minimize law reform efforts by lawyers, to the detriment of litigants).

347. See Tobin Tyler, *supra* note 336, at 236–39.

348. See *id.*

349. See *id.* at 246 (“[MLP direct services] connect the dots—from patient health to family well-being in social context to community-wide systems to broad scale legal and policy changes.”).

reform.<sup>350</sup> In other words, the laws and policies that structure the societal systems that perpetuate health inequity have to be reformed to undo them.<sup>351</sup>

The work of MLPs and broader access to justice research has documented a shift towards more law reform activities among public interest lawyers. While litigation often plays an important role in public interest law as a means for enforcement of individual rights, it can also be pursued strategically as a means of garnering public attention and documentation of the relevant social cause.<sup>352</sup> This kind of impact litigation, as opposed to a scattered approach to direct legal services, has grown in popularity in recent years. Indeed, “[o]bjectives apart from winning can be critical, such as making a public record, attracting public attention, or imposing sufficient costs and delays that will force defendants to adopt more socially responsible practices.”<sup>353</sup>

Moreover, legislative advocacy among legal services attorneys is on the rise. Data demonstrate that even while the mean percentage of legal services comprised of litigation—including both direct services and impact litigation—decreased from 60% in 1975 to 51% in 2005, “the mean amount of legislative work increased from 7% to 17%, and the research, reports, education and media activities jumped from 12% to 26%.”<sup>354</sup>

Access to justice advocates argue that LSC-funded organizations should be able to lobby for law reform and bring class action litigation to achieve systemic change, since LSC-funded lawyers are currently statutorily prohibited from engaging in most lobbying, political advocacy or organization, or class action litigation.<sup>355</sup> Deborah Rhode writes, “The effect [of the restrictions] is to deprive federally funded attorneys of their most effective methods of law reform and to prevent representation of poor and unpopular clients who most need help.”<sup>356</sup> Access to justice scholars have also called for reforms to preserve and strengthen fee-shifting statutes that

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350. *MLP*, *supra* note 210, at 202.

351. *CHANGELAB*, *supra* note 171.

352. Deborah L. Rhode, *Public Interest Law: The Movement at Midlife*, 60 *STAN. L. REV.* 2027, 2046–47 (2008).

353. *Id.*

354. *Id.* at 2047–48.

355. *Statutory Restrictions on LSC-Funded Programs*, LEGAL SERVS. CORP., <https://www.lsc.gov/our-impact/publications/other-publications-andreports/statutory-restrictions-lsc-funded-programs> [<https://perma.cc/D6JP-6PG2>] (last visited Oct. 11, 2021); see Lincoln Caplan, *The Invisible Justice Problem*, 148 *DAEDALUS* 19, 26 (2019) (detailing the justifications of the LSC restrictions).

356. *Whatever Happened*, *supra* note 37, at 881.

support public interest impact litigation and facilitate structural change.<sup>357</sup> In sum, access to justice efforts must find ways to foster the engagement of lawyers, non-lawyer collaborators, and community members in structural reform initiatives.

### 3. Anti-Subordination Reform Efforts

Current laws and systems are often fundamentally unequipped to challenge the embedded structural discrimination that widen health disparities.<sup>358</sup> A health lens provides a means of addressing racism and concentrated poverty through structural reform. Ruqaiijah Yearby, a law professor and health justice scholar who directs the Saint Louis University Institute for Healing Justice and Equity, proposes a reimagined social determinants of health framework to center structural racism as a root cause of health disparities, arguing that government and public health officials should “aggressively work to end structural racism and revamp all of our systems, especially the public health system, to ensure that racial and ethnic minorities are not only treated equally, but also receive the material support they need to overcome the harms they have already suffered.”<sup>359</sup> Dean of George Washington University School of Law Dayna Bowen Matthew, who critiqued racial inequality in healthcare in her seminal book “Just Medicine,” posits that social problems become quantifiable in health outcomes, demonstrating the far reach of racism.<sup>360</sup> Other scholars point to the downstream effects of racially discriminatory zoning and redlining laws on housing and food insecurity, and related health disparities, arguing that zoning and housing laws should change to undo the impacts of such structural discrimination.<sup>361</sup> Structural initiatives to advance access to justice should focus deliberately on dismantling systems shaped by structural racism, white supremacy, and the subordination of marginalized communities.

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357. See *(Under)Enforcement of Poor Tenants’ Rights*, *supra* note 7, at 143–45 (arguing that fee-shifting laws that support public interest litigation are in need of strengthening).

358. Yearby, *Structural Racism and Health Disparities*, *supra* note 177, at 521; see also *Health Justice Strategies*, *supra* note 18, at 130–32 (“Law is one of the tools used to structure society in a discriminatory way, while institutional and interpersonal discrimination reinforce the discriminatory structure of our society . . .”).

359. Yearby, *Structural Racism and Health Disparities*, *supra* note 177, at 524.

360. Dayna Bowen Matthew, *Lessons from the Other America: Turning a Public Health Lens on Fighting Racism and Poverty*, 49 U. MEM. L. REV. 229, 240 (2018).

361. *Health Justice Is Racial Justice*, *supra* note 16.

#### D. The Health Justice Framework in Practice

To achieve health justice for individuals like Ms. Johnson who are marginalized by virtue of their race and socioeconomic status, access to justice efforts must facilitate enforcement of extant laws, elevate the power of affected individuals and communities, and advance structural law and policy reform to further health equity.

When Ms. Johnson's landlord attempted to evict her via text, she fled her home rather than assert her rights. She could have presented defenses related to inadequate notice and the substandard housing conditions that were impacting her daughter's health, but she was discouraged by her prior eviction experience. Policymakers and access to justice advocates should deploy the health justice framework to address the issues Ms. Johnson's story raises, as she and her children found themselves facing eviction, homelessness, and the many downstream health consequences of these legal determinants of health.<sup>362</sup>

Ms. Johnson's story would likely have ended differently if she had legal representation when she faced eviction. An attorney could have helped her address violations of the housing code due to the mold and roaches in her apartment even before her eviction.<sup>363</sup> Upon learning of a potential eviction, an attorney could have engaged in informal advocacy with the landlord or effectively defended her in eviction court.<sup>364</sup> State and municipal legislatures can drastically improve the chances of success for tenants like Ms. Johnson by ensuring legal representation for the approximately 90% of cases nationwide in which tenants are not able to obtain counsel.<sup>365</sup>

To elevate the power of marginalized individuals and communities by helping them understand and assert their legal rights, access to justice initiatives can utilize know-your-rights, technological, and other educational efforts. Such efforts can ensure that people understand their

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362. Studies show that most tenants facing eviction who are represented by a lawyer—86% in New York City and 93% in Cleveland—remained in their homes. See *Eviction Moratorium*, *supra* note 224.

363. See *(Under)Enforcement of Tenants' Rights*, *supra* note 7, at 113 (detailing potential claims available to tenants whose landlords have breached the implied warranty of habitability).

364. *Id.*

365. See Matthew Desmond, *Tipping the Scales in Housing Court*, N.Y. TIMES (Nov. 29, 2012), <https://www.nytimes.com/2012/11/30/opinion/tipping-the-scales-in-housing-court.html> [<https://perma.cc/3Q6P-3JJG>] ("In many housing courts around the country, 90 percent of landlords are represented by attorneys and 90 percent of tenants are not.").

rights and have the necessary tools to enforce them.<sup>366</sup> These initiatives could have helped Ms. Johnson recognize that she could not be legally evicted through a text message and given her tools, like a sample letter to request housing condition repairs and reimbursement for her expenses on prior repairs. Access to justice initiatives can also partner with non-lawyer professionals, like healthcare and social service professionals, to make sure they understand the rights of low-income individuals they serve and can help them identify violations of those rights. In Ms. Johnson's case, if her child's pediatrician had training about her legal rights as a tenant, when her daughter was suffering from asthma attacks triggered by poor housing conditions, the pediatrician could have provided her with information about her rights and how to access an attorney, or referred her directly to a collaborating attorney in a medical-legal partnership.

Moreover, access to justice interventions should keep communities at the center and promote the leadership of community members, using approaches like rebellious and community lawyering to support grassroots organizations in finding, exercising, and elevating their own power. For example, access to justice advocates can help tenants like Ms. Johnson organize into unions or other grassroots housing coalitions and serve as "co-conspirators" to those organizations, while pushing local, state, and federal governments to consult with individuals who are directly affected by eviction proceedings to inform their policymaking.<sup>367</sup> By engaging with policymakers and other stakeholders and sharing the health effects that housing insecurity had on her family, Ms. Johnson herself could play a role in making housing policy more responsive to the real-life consequences of unjust eviction proceedings.

Finally, to address the structural causes of inaccessibility to health justice, there are many potential legislative and policy reforms that can address the housing insecurity and unhealthy housing conditions that are connected with health disparities. While the Supreme Court has struck down the CDC's eviction moratorium, access to justice efforts can call on Congress and state and municipal legislatures to institute further tenant protections, expand affordable housing, and provide additional funding for emergency rental relief programs.<sup>368</sup> State legislatures can reform eviction laws to require landlords to seek rent relief, attempt mediation, and engage

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366. See *Injustice Is an Underlying Condition*, *supra* note 12, at 252, 255 (noting that tenants are often unaware of their legal rights and, therefore, do not raise these issues).

367. *Eviction Moratorium*, *supra* note 249 ("[W]e recommend that the federal government create a task force on the human right to housing that will include the voices of people most affected by this crisis.").

368. *Id.*

in other eviction diversion efforts before moving forward with any eviction proceedings.<sup>369</sup> Housing code laws can be amended to provide for greater prevention and enforcement mechanisms—such as proactive lead inspections by local regulatory agencies—and courts can allow for housing condition cases to be brought affirmatively by tenants.<sup>370</sup> With an understanding of how structural racism has relegated communities of color to neighborhoods with poor housing stock through redlining, restrictive covenants, and other policies to lure developers and advance gentrification, access to justice advocates can advance zoning law reforms, affordable housing, and home ownership initiatives through efforts that are deliberately aimed at undermining subordination.<sup>371</sup>

Such structural reforms would prevent individuals like Ms. Johnson from experiencing health-harming housing conditions and facing eviction proceedings in the first place. These reforms could also help her family avoid the severe tolls on physical and mental health that stem from homelessness.

#### CONCLUSION

Ms. Johnson's story shows the undeniable interconnectedness of access to justice and health justice. COVID-19 has laid bare these connections and spotlighted the urgency of both forms of justice. The pandemic and resulting recession have highlighted longstanding and new grave health inequities and the alarming consequences of our nation's ongoing justice gap. The time is now to consider the nexus of these movements and pursue access to justice in furtherance of health equity. As the Director of Maryland's Access to Justice Commission acknowledged:

[E]ven before COVID-19, people were losing their cases, not because they did anything wrong, but because they did not have the legal information or help they needed. COVID-19 has made that problem worse, and unless we act now, the consequences of injustice will endanger public health,

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369. *Id.*

370. *See Health Justice Framework, supra* note 6, at 339 (“At a minimum . . . 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.”); Peterson, *supra* note 5, at 108–12 (“Tenants can also bring affirmative actions against their landlords for failure to maintain the unit, but usually habitability issues are not raised until an eviction hearing, which is often too late.”).



hamper economic recovery, and be disproportionately harmful to [B]lack families.<sup>372</sup>

The access to justice and health justice movements are both gaining momentum. Each can benefit from the other; each can help reinforce the imperative that the other makes clear. The scholarship and advocacy in these fields must be in dialogue. This Article starts that conversation by applying the health justice framework to access to justice efforts to envision how they can ensure substantive and meaningful justice, which must include health and well-being for marginalized individuals and communities. With the two movements in conversation, access to justice can be envisioned as a predicate for health and equity.

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372. MD. OFF. OF THE ATT'Y GEN., ATTORNEY GENERAL'S COVID-19 ACCESS TO JUSTICE TASK FORCE, [https://www.marylandattorneygeneral.gov/Pages/A2\]C/default.aspx](https://www.marylandattorneygeneral.gov/Pages/A2]C/default.aspx) [<https://perma.cc/K4K2-GNGF>] (last visited Oct. 11, 2021).