

THE PERSISTENT PUBLIC HEALTH EMERGENCY

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May 11, 2023 was ostensibly a day of celebration. With infections and deaths from COVID-19 down, the federal government announced the end of the official Public Health Emergency three years after its initial declaration. But the conclusion of the Public Health Emergency also signaled the termination of unprecedented health *protection* measures—outside the realm of healthcare—such as eviction and utility shutoff moratoria and emergency rental and utility assistance. These COVID-era measures successfully cut eviction filings nationally by more than half and provided people in many jurisdictions with the protections and assistance needed to maintain their electricity, heat, water, and gas. Now that those measures have ended, evictions and residential utility shutoffs are again rampant, surpassing pre-pandemic levels in numerous places. For marginalized and minoritized communities that have long disproportionately experienced evictions and utility disconnections and their connected health harms, the health emergency persists.

This Article scrutinizes legal drivers of health outside of healthcare—specifically in the areas of housing and residential energy access—and applies the theoretical lens of health justice to glean lessons from legal interventions in those areas during and after the COVID-19 Public Health Emergency. Drawing upon the critical

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theoretical perspectives that a health justice analysis necessitates, it contends that as contagion risks represented an alignment of interests among those who have long been marginalized and those with more privilege, the country engaged in a significant experiment in a time of crisis—taking unprecedented action in halting many evictions and utility disconnections and providing historic levels of emergency rental and utility assistance. Although these measures had positive impacts, they were ultimately temporary and inadequate. Instead of seizing on the opportunities for more transformative reform that can arise from a crisis, such COVID-era measures failed to lead to a meaningful disruption of the status quo. This Article concludes by arguing that to achieve health justice, reforms must be sustained, structural, and led by the communities who endure daily the legally constructed public health emergency of health inequity.

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INTRODUCTION

The United States has a longstanding and ongoing health inequity emergency that requires transformative reform. The end of the COVID-19 Public Health Emergency (COVID PHE) provides an important opportunity to interrogate the legal constructs of health equity and extract lessons for meaningful change.

On May 11, 2023, with infection rates and deaths from COVID-19 (COVID) down, the federal government announced the end of the official Public Health Emergency (PHE) three years after it was initially declared at the start of the pandemic.¹ However, in tandem with this good news came deep worries from Black,² Indigenous,

1. *White House Daily Briefing*, C-SPAN (May 11, 2023), <https://www.c-span.org/video/?528037-1/white-house-daily-briefing> (transcript on file with the *Columbia Human Rights Law Review*); *White House Briefing on Coronavirus Response*, C-SPAN (Jan. 31, 2020), <https://www.c-span.org/video/?468862-1/white-house-briefing-coronavirus-response> (transcript on file with the *Columbia Human Rights Law Review*).

2. This Article capitalizes “Black” to reflect the idea that “capitalizing Black gives Black people the power to define themselves, their identity, and their specific history that reflects centuries of injustice . . . it recognizes that there are systems of power that operate to marginalize Black Americans, and it offers a way, through language, to combat that marginalization . . . although not homogeneous, Black people share an ethnic and racialized identity, experiencing anti-blackness throughout multiple systems and institutions. Capitalizing Black is about claiming power.” Anne Price, *Spell It with a Capital “B,”* Oct. 1, 2019, INSIGHT CENTER FOR COMMUNITY ECONOMIC DEVELOPMENT (Oct. 1, 2019), <https://insightcced.medium.com/spell-it-with-a-capital-b-9eab112d759a> [<https://perma.cc/QCX6-V3N9>]; see also David Lanham, *A Public Letter to the Associated Press: Listen to the Nation and Capitalize Black*, BROOKINGS INSTITUTION, at <https://www.brookings.edu/articles/a-public-letter-to-the-associated-press-listen-to-the-nation-and-capitalize-black/> [<https://perma.cc/6N5Z-FNKQ>]. This Article similarly capitalizes “White.” Various periodicals and journals do not capitalize “white” out of concern they may legitimize the beliefs of White supremacists. See David Bauder, *AP Says It Will Capitalize Black but Not White*, ASSOCIATE PRESS (July 20, 2020, 9:58 AM), <https://apnews.com/article/entertainment-cultures-race-and-ethnicity-us-news-ap-top-news-7e36c00c5af0436abc09e051261fff1f> [<https://perma.cc/KXS4-US78>] (“We agree that white people’s skin color plays into systemic inequalities and injustices, and we want our journalism to robustly explore these problems,” John Daniszewski, the AP’s vice president for standards, said in a memo to staff Monday. “But capitalizing the term white, as is done by white supremacists, risks subtly conveying legitimacy to such beliefs.”). While those concerns may be legitimate, this Article capitalizes White because not doing so, despite capitalizing “Black,” risks implying that Whiteness is the standard or norm. See Ann Thuy Nguyen & Maya Pendleton, *Recognizing Race in Language: Why We Capitalize ‘Black’ and ‘White,’* CTR. FOR THE STUDY OF SOC. POL’Y (Mar. 23, 2020) (“We believe that it is important

Latine,³ and other communities of color, who faced disproportionately higher rates of COVID infection, hospitalization, and mortality, as well as greater economic struggles flowing from the pandemic.⁴ For communities that have been minoritized and marginalized, the termination of the PHE signaled the end of important COVID-related healthcare provisions, such as the end of guaranteed free vaccinations and testing and more flexible telehealth.⁵ It also signaled the end of

to call attention to White as a race as a way to understand and give voice to how Whiteness functions in our social and political institutions and our communities.”); Mantiangai Sirleaf, *Rendering Whiteness Visible*, 117 AM. J. INT’L L. 2024, 2024, 2026 (2023) (arguing that capitalizing White does not ignore racism’s complex roots but rather encourages deep reflection on such history and that “[t]he move to capitalize White challenges global conventions informed by anti-Blackness and White supremacy that seek to race certain groups of people and leave Whiteness untouched”).

3. For gender inclusivity, the Author has chosen to use “Latine” as an alternative to “Latinx,” as “Latinx” has been criticized for falling outside of Spanish pronunciation conventions and representing an imperialist Anglicization of the Spanish language. See Evan Odegard Pereira, *For Most Latinos, Latinx Does Not Mark the Spot*, N.Y. TIMES (June 15, 2021), <https://www.nytimes.com/2021/06/15/learning/for-most-latinos-latinx-does-not-mark-the-spot.html> (on file with the *Columbia Human Rights Law Review*) (criticizing “Latinx” as “an Anglicization of [Spanish] language”); Ana Maria del Rio-Gonzalez, *To Latinx or Not to Latinx: A Question of Gender Inclusivity Versus Gender Neutrality*, 111 AM. J. PUB. HEALTH 1018, 1018–19 (2021) (describing Latinx as “an imperialist imposition of the English language’s gender neutrality as the grammatical gold standard”); Samantha Schmidt, *A Language for All*, WASH. POST (Dec. 5, 2019), <https://www.washingtonpost.com/dc-md-va/2019/12/05/teens-argentina-are-leading-charge-gender-neutral-language/> [<https://perma.cc/6CUN-PV8B>] (highlighting efforts by the Latine community to promote gender neutrality through the gender-neutral “e”).

4. Latoya Hill, Samantha Artiga & Nambi Ndugga, *COVID-19 Cases, Deaths, and Vaccinations by Race/Ethnicity as of Winter 2022*, KAISER FAM. FOUND. (Mar. 7, 2023), <https://www.kff.org/coronavirus-covid-19/issue-brief/covid-19-cases-deaths-and-vaccinations-by-race-ethnicity-as-of-winter-2022> [<https://perma.cc/TQ6A-SLMS>]; Connor Maxwell & Danyelle Solomon, *The Economic Fallout of the Coronavirus for People of Color*, CTR. FOR AM. PROGRESS (Apr. 14, 2020), <https://www.americanprogress.org/article/economic-fallout-coronavirus-people-color> [<https://perma.cc/9D65-ZM9P>]; Okechukwu D. Anyamele, Saundra M. McFarland & Kenneth Fiakofi, *The Disparities on Loss of Employment Income by US Households During the COVID-19 Pandemic*, 5 J. ECON. RACE & POL’Y 115, 115 (2022).

5. Selena Simmons-Duffin, *The COVID Public Health Emergency Ends This Week. Here’s What’s Changing*, NPR (May 8, 2023), <https://www.npr.org/sections/health-shots/2023/05/08/1174167601/the-covid-public-health-emergency-ends-this-week-heres-whats-changing> [<https://perma.cc/N7KD-9VMS>] (noting that due to the PHE termination, the federal government will no longer provide free tests and vaccines to the public);

protections and supports, created by law, *outside* the realm of healthcare that have an outsized impact on the health of people of color, driving racial health inequities.

A wide and growing body of research shows that as much as eighty percent of health is not driven by biology or the care provided at the doctor's office, but by the social determinants of health—or the conditions in which people live, work, eat, play, learn, and age—and the political and structural drivers that shape them.⁶ For example, housing, financial and food insecurity, inadequate education, and unemployment are well-documented drivers of poor health.⁷ These and other structural determinants of health demonstrate that “our health is not just an individual matter; it is deeply influenced by institutional and structural forces that shape who has access to the opportunities and resources needed to thrive.”⁸

Racism itself has been shown to harm health by exacting a toll on the body known as “weathering,” which is early health deterioration

Cynthia Cox et al., *The End of the COVID-19 Public Health Emergency: Details on Health Coverage and Access*, KAISER FAM. FOUND. (Feb. 3, 2023), <https://www.kff.org/policy-watch/the-end-of-the-covid-19-public-health-emergency-details-on-health-coverage-and-access/> [<https://perma.cc/79KQ-PJPD>] (noting that due to the PHE termination, some telehealth flexibilities that were available during the PHE will end).

6. WORLD HEALTH ORG., STRATEGIC MEETING ON SOCIAL DETERMINANTS OF HEALTH: FINAL MEETING SUMMARY 3 (Sept. 12–13, 2019); *see generally* DANIEL E. DAWES, *THE POLITICAL DETERMINANTS OF HEALTH* (2020).

7. Sally Magnan, *Social Determinants of Health 101 for Health Care: Five Plus Five*, NAT'L ACAD. MED. PERSP., 1, 1 (2017) (discussing the relationships between social determinants of health, social risk factors, and health-related social needs, including housing, finances, food insecurity, education, and employment, on health outcomes); Maureen Black, *Household Food Insecurities: Threats to Children's Well-Being*, SES INDICATOR (June 2012), <https://www.apa.org/pi/ses/resources/indicator/2012/06/household-food-insecurities> [<https://perma.cc/3AVK-ZYDX>] (describing the consequences of household food insecurity on children's health and well-being); Morgan Baskin, *Doctors Blame D.C.'s High Asthma Rates in Part on 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>] (listing specific factors, such as mold and bug-infestations that are more likely to affect low-income families and lead to poor health); Yael Cannon, *Closing the Health Justice Gap: Access to Justice in Furtherance of Health Equity*, 53 COLUM. HUM. RTS. L. REV. 517, 523 (2022) (“[H]ousing and food insecurity, low-wage employment and unemployment, and inadequate education are well-known drivers of poor health.”).

8. Angela P. Harris & Aysha Pamukcu, *The Civil Rights of Health: A New Approach to Challenging Structural Inequality*, 67 UCLA L. REV. 758, 762 (2020).

resulting from social, economic, and political subordination. Such weathering helps to explain why a range of racial health inequities persist across socioeconomic status.⁹

Poverty also distinctly drives health inequities.¹⁰ Because laws, policies, and practices driven by structural racism and White supremacy—such as redlining, exclusionary zoning laws, and restrictive housing covenants—have disproportionately relegated Black people and other people of color to a lower socioeconomic status, poverty in the United States is highly racialized.¹¹ People of color, people with low income, and those who fall into both categories (and experience compounding health harms by virtue of this intersectionality) have lower life expectancies and experience poorer health because of these social and structural forces.¹²

Law is a key mechanism of such forces, driving racial and socioeconomic health disparities. For example, when housing codes are under-enforced, tenants can experience significant health harms, such as respiratory health conditions resulting from mold, rodents, roaches, and other housing hazards in rental homes.¹³ Tax, consumer,

9. 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 830, 830 (2006); Nambi Ndugga & Samantha Artiga, *Disparities in Health and Health Care: 5 Key Questions and Answers*, KAISER FAM. FOUND. (Apr. 21, 2023), <https://www.kff.org/racial-equity-and-health-policy/issue-brief/disparities-in-health-and-health-care-5-key-question-and-answers/#> [https://perma.cc/LUA2-HZSS] (noting that “[racial] disparities occur across socioeconomic status”).

10. 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, 281–82 (2015).

11. Jeremy Townsley & Unai Miguel Andres, *The Lasting Impacts of Segregation and Redlining*, SAVI (June 24, 2021), <https://www.savi.org/lasting-impacts-of-segregation/> [https://perma.cc/3C6B-V9SV]

12. Benfer, *supra* note 10, at 278–79; Ndugga & Artiga, *supra* note 9; see also Cannon, *supra* note 7, at 523.

13. Allyson Gold, *No Home for Justice: How Eviction Court Perpetuates Health Inequity Among Low-Income and Minority Tenants*, 24 GEO. J. ON POVERTY L. & POLY 59, 61 (2016) (discussing the harmful relationship between health outcomes like asthma and household conditions like vermin and pest infestation and building code violations); Emily A. Benfer & Allyson E. Gold, *There’s No Place Like Home: Reshaping Community Interventions and Policies to Eliminate Environmental Hazards and Improve Population Health for Low-Income and Minority Communities*, 11 HARV. L. & POLY REV. S2, S41 (2017) (noting that haphazard enforcement of lead regulations in Chicago leave families with no recourse until injury occurs); see also Henry Gomory et al., *When It’s Cheap to File an Eviction Case, Tenants Pay the Price*, EVICTION LAB (June 6, 2023), <https://evictionlab.org/tenants-pay-for-cheap-evictions> [https://perma.cc/W5AV-

employment, and public benefits laws, policies, and systems, for example, can play a role in driving economic and food insecurity, which are also closely tied to health.¹⁴ These are examples of the impact of the negative “legal determinants of health,” and these conditions disproportionately harm people of color and people with low income.¹⁵

During the COVID PHE, policymakers built on the momentum of the official declaration of a public health emergency to enact reforms outside of the healthcare realm aimed at curtailing the spread of COVID. The supports and protections they instituted were tremendous in scope and breadth. For example, policymakers provided historic levels of emergency rental assistance and halted evictions through federal, state, and municipal moratoria, allowing many people across the country to stay in their homes even when they could not afford to pay the rent.¹⁶ Because shutoffs for nonpayment of utility bills were also paused in many jurisdictions, the lights were on, the refrigerators, stoves, and ovens were working, the heat was running on cold days and the air conditioning on hot days, and water for handwashing and showering flowed from faucets to help people wash off germs and stay

GRC7] (reporting that landlords in segregated Black neighborhoods rarely made repairs to their units); see Lucy Tompkins & Alexa Ura, *At the Fringes of Houston's Prosperity, the City's Eviction Machine Is Running Full Throttle*, TEX. TRIB. (June 8, 2023, 5:00 AM), <https://www.texastribune.org/2023/06/08/houston-evictions-jackson-square> [<https://perma.cc/U77Q-XHWD>] (describing a tenant family whose daughter developed a respiratory infection while they were living in a mold-ridden apartment).

14. See Yael Cannon, *Injustice is an Underlying Condition*, 6 U. PA. J.L. & PUB. AFFS. 201, 219–20 (2020).

15. Lawrence O. Gostin et al., *The Legal Determinants of Health: Harnessing the Power of Law for Global Health and Sustainable Development*, 393 LANCET 1857, 1857 (2019) (“[T]he term legal determinants of health . . . demonstrates the power of law to address the underlying social and economic causes of injury and disease.”).

16. Peter Hepburn et al., *COVID-era Policies Cut Eviction Filings by More Than Half*, EVICTION LAB (May 3, 2023), <https://evictionlab.org/covid-era-policies-cut-eviction-filings-by-more-than-half> [<https://perma.cc/NCQ9-P8R3>]; see Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19, 85 Fed. Reg. 55,292 (Sept. 4, 2020) (issuing a federal eviction moratorium); American Rescue Plan Act of 2021, 15 U.S.C. § 9058c(a)(1) (allocating \$21.55 billion in emergency rental assistance); COVID-19 Response Emergency Amendment Act of 2020, D.C. Act 23-247 § 308 (2020) (banning evictions for the duration of Washington, D.C.’s official public health emergency). In August 2021, the Supreme Court found the CDC’s final order unconstitutional and struck it down. See *generally* Alabama Ass’n of Realtors v. Dep’t of Health & Hum. Servs., 141 S. Ct. 2485 (2021).

healthy.¹⁷ Families were better able to put more food on the table for their kids because of higher amounts of food stamps benefits, expansions of free school lunches, and expanded unemployment benefits.¹⁸ The enhanced and more widely available Child Tax Credit (CTC) helped child poverty plummet.¹⁹ People could access healthcare without interruption because Medicaid kept people continuously enrolled without requiring onerous recertification paperwork.²⁰ All of these conditions are drivers of health.

17. SANYA CARLEY, KLEIMAN CTR. FOR ENERGY POL'Y, ENERGY INSECURITY DURING THE TIME OF COVID 4–5 (2023) (finding that the 34 disconnection moratoria across U.S. states and Washington, D.C. were effective at avoiding the “heat-or-eat” dilemma); Nino C. Monea, *Tenant Protections in the COVID-19 Pandemic*, 22 J.L. SOC'Y 38, 85–87 (2022) (describing the differences in various state utility shutoff moratoria).

18. Adrienne R. Brown, Katherine G. Giefer & Michael D. King, *Roughly 32 Million People Now Receiving Less Government Food Assistance*, U.S. CENSUS BUREAU (Apr. 27, 2023), <https://www.census.gov/library/stories/2023/04/impact-of-the-end-of-extra-snap-benefits.html> [<https://perma.cc/FJ8Z-SJD3>] (reporting that some households received almost \$900 more in monthly SNAP benefits because of pandemic-era enhancements); Lestina Dongo & Lindsay Monte, *National School Lunch Program Still Important Part of Safety Net*, U.S. CENSUS BUREAU (Apr. 4, 2022), <https://www.census.gov/library/stories/2022/04/less-hunger-in-at-risk-households-during-pandemic-expansion-of-school-meals-program.html> [<https://perma.cc/NT8Z-YQFE>] (describing changes to the school lunch program such as waived eligibility requirements and EBT cards for eligible families whose children's schools were partially or fully closed); NICK GWYN, CTR. ON BUDGET & POL'Y PRIORITIES, HISTORIC UNEMPLOYMENT PROGRAMS PROVIDED VITAL SUPPORT TO WORKERS AND THE ECONOMY DURING PANDEMIC, OFFER ROADMAP FOR FUTURE REFORM 2 (Mar. 24, 2022), <https://www.cbpp.org/sites/default/files/3-24-22bud.pdf> [<https://perma.cc/U76C-G4LD>] (finding that pandemic unemployment programs kept 4.7 million people above the poverty line in 2020).

19. *Policy Basics: The Child Tax Credit*, CTR. ON BUDGET AND POL'Y PRIORITIES (Dec. 7, 2022), <https://www.cbpp.org/research/federal-tax/the-child-tax-credit> [<https://perma.cc/T945-2EES>] (establishing the link between the Child Tax Credit and the child poverty rate, reporting that the expanding Child Tax Credit lowered the child poverty rate to a record low of 5.2%).

20. Alice Burns et al., *How Many People Might Lose Medicaid When State Unwind Continuous Enrollment?*, KAISER FAM. FOUND. (Apr. 26, 2023), <https://www.kff.org/medicaid/issue-brief/how-many-people-might-lose-medicaid-when-states-unwind-continuous-enrollment> [<https://perma.cc/G2P9-C7NF>] (reporting that the rate of uninsured people fell to a historic low during the pandemic, with an estimated twenty million more people enrolled in Medicaid between February 2020 and March 2023); see also Elizabeth F. Emens, *Disability Admin: The Invisible Costs of Being Disabled*, 105 MINN. L. REV. 2329, 2348 n.71 (2021) (citing Amelia, *Why Doesn't the World Care?*, NEW HORIZONS UN-LIMITED INC.: DISABILITY EXPERIENCES: WRITINGS & PERSPS. (July 17, 2013), <http://www.new-horizons.org/pexame.html> [<https://perma.cc/C7MF-RXFP>] (describing the harmful impacts of onerous certification and recertification

Indeed, during the COVID PHE, the country engaged in a significant experiment with the legal determinants of health that had the potential to open the door to structural changes and the mitigation of health inequity. These pandemic-era interventions had far-reaching positive impacts on the well-being of many Americans and the potential to provide data, blueprints, and insights for the broader and longer-term advancement of health equity. Executive, legislative, and judicial branches of federal, state, and municipal governments could have closely examined these unprecedented measures, gleaned lessons from them, and translated those lessons into meaningful action to create a robust legal landscape for sustained, structural reform to mitigate health inequity. These unprecedented COVID-era measures could have been an important step toward health justice.

Instead, as the COVID PHE officially expired, federal, state, and municipal governments largely allowed these adjacent measures to also expire, terminate, or wind down. As a headline in the *New York Times* proclaimed, “America Pulled Children Out of Poverty. Now It’s Set to Reverse Course With a Vengeance.”²¹ The end of these pandemic-era relief measures will have cascading health harms that will continue to disproportionately hurt and kill people of color, people living in poverty, and those experiencing intersectional harms as people of color living in poverty.²² Following the COVID PHE expiration, many people in those communities face immense challenges to their housing, energy, food, and economic security and continue to be less healthy, with huge intrinsic and financial costs to society.²³

The health-harming challenges experienced by marginalized communities is not new; rather, it is an entrenchment of a grave status quo where the lives of certain people are devalued. Communities of color have long faced conditions, facilitated by law and policy, that disproportionately harm their health and drive grave health inequities. Black, Latine, and Indigenous people not only experience

requirements on people who need certain government benefits, including Medicaid)).

21. Nikhil Goyal, *America Pulled Children Out of Poverty. Now It’s Set to Reverse Course with a Vengeance.*, N.Y. TIMES (Sept. 25, 2023), at <https://www.nytimes.com/2023/09/25/opinion/us-child-poverty.html> (on file with the *Columbia Human Rights Law Review*).

22. See *infra* Part II.

23. See Thomas A. LaVeist et al., *The Economic Burden of Racial, Ethnic, and Educational Health Inequities in the US*, 329 JAMA 1682, 1682 (finding that in 2018, the economic burden of racial and ethnic health inequities was greater than \$420 billion).

higher rates of conditions like asthma, certain cancers, heart disease, diabetes, and preterm birth, but they also die younger and more often from these conditions.²⁴

Law, policy, and the systems they shape are at the root of these health inequities. For example, eviction laws and landlord-tenant courts are structured in a way that has long allowed people of color, and especially Black women, to experience higher rates of eviction, leading to the well-documented stress, trauma, and health harms created by evictions.²⁵ These inequities are not new.

Disproportionate infection, hospitalization, and mortality rates from COVID in Black, Indigenous, and Latine communities served to shine a light on these longstanding racial health disparities, which created the conditions that allowed COVID to wreak havoc unequally.²⁶ Without housing security, for example, many families were more vulnerable to homelessness and overcrowded housing, which can contribute to the spread of COVID. For communities of color,

24. Nambi Ndugga, Latoya Hill & Samantha Artiga, *Key Data on Health and Health Care by Race and Ethnicity*, KAISER FAMILY FOUND. (Mar. 15, 2023), <https://www.kff.org/racial-equity-and-health-policy/report/key-data-on-health-and-health-care-by-race-and-ethnicity> [https://perma.cc/X6X9-WGAC]; Maureen R. Benjamins et al., *Comparison of All-Cause Mortality Rates and Inequities Between Black and White Populations Across the 30 Most Populous US Cities*, 4 JAMA NETWORK OPEN 1, 1 (2021), <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2775299> (finding a 24% higher all-cause mortality rate among Black populations than among White populations across the United States).

25. Peter Hepburn, Renee Louis & Matthew Desmond, *Racial and Gender Disparities Among Evicted Americans*, 7 SOCIO. SCI. 649, 659 (2020) (“[B]lack and Latinx renters in general, and women in particular, are disproportionately threatened with eviction and disproportionately evicted from their homes—and thus disproportionately exposed to the many documented negative consequences of eviction.”); Matthew Desmond & Rachel Tolbert Kimbro, *Eviction’s Fallout: Housing, Hardship, and Health*, 94 SOC. FORCES 295, 316–17 (2015); Gracie Himmelstein & Matthew Desmond, *Eviction and Health: A Vicious Cycle Exacerbated by a Pandemic*, HEALTH AFFS. (Apr. 1, 2021), <https://www.healthaffairs.org/doi/10.1377/hpb20210315.747908/full> [https://perma.cc/4T4B-6H8L].

26. Hill et al., *supra* note 4; Sheila Foster, Yael Cannon & Gregg Bloche, *Health Justice Is Racial Justice: A Legal Action Agenda for Health Disparities*, HEALTH AFFS. BLOG (July 2, 2020), <https://www.healthaffairs.org/content/forefront/health-justice-racial-justice-legal-action-agenda-health-disparities> [https://perma.cc/RCV6-TEKZ]; JOHN FABIAN WITT, AMERICAN CONTAGIONS 128 (2020) (“[COVID-19’s] spread was abetted by housing insecurity, economic inequities, crowded living conditions, poor access to health care, mass incarceration, and myriad other artifacts of disadvantage.”).

the public health emergency did not begin or end with the COVID pandemic; it is simply ongoing.

Pandemics provide a lens through which broader society and its legal constructs can be understood.²⁷ With the official termination of the COVID pandemic Public Health Emergency, this Article interrogates the legal constructs of health inequity at this critical moment. The Article argues that the COVID PHE was a missed opportunity to study, adapt, and build on pandemic-era laws and policies to inform and drive the sustained, structural reform necessary to advance health equity.

In Part I, the Article introduces the burgeoning health justice scholarly framework and movement toward eradicating health equity through law. After providing background on the official declaration of COVID-19 as a PHE, this Part argues that examining the COVID PHE through a health justice lens is critical to glean lessons that inform the potential for law to address health disparities.

In Part II, the Article applies a health justice theoretical lens to the COVID PHE and its expiration to interrogate the eviction and utility shutoff moratoria and emergency rental and utility assistance. The Article focuses on these measures, among myriad other measures that ended with the PHE termination, because there is strong evidence of both the health-promoting impacts of these measures while they were in place *and* the health-harming impacts of their expiration. Moreover, the perpetuation of housing injustice before, during, and after the pandemic serves as a helpful paradigm through which to deconstruct more broadly the legal determinants of health inequity and examine the longstanding and structural nature of inequities that required substantial action long before the COVID PHE.

Next, in Part III, the Article applies the health justice framework's emphasis on critical theoretical perspectives to deconstruct the "emergency" and "crisis" nature of such legal responses during the pandemic. On one hand, the term "crisis" accurately depicted the COVID pandemic and the potential for widespread evictions and utility shutoffs. The use of that term was necessary to justify unprecedented action such as eviction and utility shutoff moratoria (and other historic health-promoting actions like the enhanced CTC and Supplemental Nutrition Assistance Program (SNAP) benefits). However, crisis conceptualization creates the façade

27. WITT, *supra* note 26, at 120 (citing FRANK M. SNOWDEN, EPIDEMICS AND SOCIETY: FROM THE BLACK DEATH TO THE PRESENT 7 (2019)).

of a neutral, natural phenomenon. An analysis of this governmental action—and inaction—requires an understanding that such framing also obscures the chronic, deep-rooted, and ongoing nature of housing and health injustice.

Indeed, substantial housing reform measures, including large-scale emergency rental and utility assistance and eviction and utility shutoff moratoria, were not enacted before the pandemic even as Black women and children, along with other subordinated communities, had been long disproportionately experiencing the trauma and profound health harms of eviction. Instead, those historic reforms were instituted only when the interests of those who were historically more privileged converged with the interests of the marginalized,²⁸ as contagion risks and strains on hospital resources meant that evictions became a threat even to those who would remain safely housed. These pandemic-era moratoria and assistance measures had tremendous positive impacts, but as they ended, without meaningful sustained and structural reform, their positive effects vanished, and their expirations exacted tremendous health harms. That these reforms ultimately proved to be temporary and illusory further underscores the disregard for long-harmed communities and the entrenched nature of health and housing injustice.

Finally, in Part IV, the Article responds to the health justice framework's call for leveraging law and policy to explicitly dismantle health-harming systems of subordination by arguing that structural reforms in the legal determinants of health, including housing and residential energy injustice, are necessary to address the persistent public health inequity crisis. Rather than simply expiring, effective COVID-era measures should have been studied, adapted, and sustained, with leadership and guidance from affected communities, as well as improved and built upon with additional transformative initiatives. This Part draws insights from the scattered longer-term reform efforts that did emerge from the COVID pandemic and ultimately provides actionable principles for community-led reforms to meaningfully advance health justice. The Article concludes by addressing potential critiques of such health justice-oriented approaches.

28. See Derrick Bell, *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 HARV. L. REV. 518, 523 (1980). For further discussion of Derrick Bell's "interest convergence" theory, see *infra* Section III.B.

I. A HEALTH JUSTICE DECONSTRUCTION OF THE PANDEMIC PHE

This Part introduces the health justice framework and examines the official declaration of COVID-19 (COVID) as a Public Health Emergency (PHE). It argues that interrogating the COVID PHE through the health justice framework's critical lens is essential to translate lessons from this PHE into systemic health equity reform.

A. The Health Justice Framework

The health justice framework aims to eradicate health disparities caused by subordination, centering marginalized populations in the development and implementation of law and policy both within healthcare and across legal determinants of health outside of healthcare.²⁹ It is both a scholarly framework and a “movement for power building and transformational change to eliminate health inequities and secure distinctively collective interests in access to

29. Tomar Pierson-Brown, *It's Not Irony, It's Interest Convergence: A CRT Perspective on Racism as Public Health Crisis Statements*, 50 J.L. MED. & ETHICS 693, 693 n.3, 694 n.5 (2022); see also Medha D. Makhlof, *Health Justice for Immigrants*, 4 U. PA. J.L. & PUB. AFFS. 235 (2019) (applying the health justice framework to Medicaid policy and lack of access to healthcare for immigrants); Elizabeth Y. McCuskey, *The Body Politic: Federalism as Feminism in Health Reform*, 11 ST. LOUIS U. J. HEALTH L. & POL'Y 303, 310–12 (2018) (assessing health insurance regulation through a health justice lens); Valerie Blake & Elizabeth McCuskey, *Employer-Sponsored Reproduction*, 124 COLUM. L. REV. 273, 348 (2024) (considering how employer-sponsored health insurance can promote health justice goals and reproductive autonomy); Heather Payne & Jennifer D. Oliva, *Warranting Health Equity*, 70 UCLA L. REV. 1030, 1041 (2023) (explaining that health justice “characterizes the widespread and health-harming socioeconomic conditions prevalent in low-income and racialized communities . . . as the *social determinants of health*”); Benfer & Gold, *supra* note 13, at S44 (explaining that health justice “envisions the integration of the knowledge of social determinants of health into policies, laws, legal systems, social structures, and funding rubrics”); Benfer, *supra* note 10, at 278, 337 (describing the range of social determinants of health that result in poor health for individuals and health inequity); Lindsay F. Wiley, *From Patient Rights to Health Justice: Securing the Public's Interest in Affordable, High-Quality Health Care*, 37 CARDOZO L. REV. 833, 833 (2016) (describing four key commitments of the health justice framework, including this model's emphasis on collective interests in decisions about medical treatment and access to healthcare); Matthew B. Lawrence, *Against the “Safety Net,”* 72 FLA. L. REV. 49, 64 (2020) (using the health justice framework to critically examine the safety net as hiding the social and structural determinants of health and health inequality); see generally DAYNA BOWEN MATTHEW, JUST HEALTH: TREATING STRUCTURAL RACISM TO HEAL AMERICA (2022); ELIZABETH TOBIN-TYLER & JOEL B. TEITELBAUM, ESSENTIALS OF HEALTH JUSTICE: A PRIMER (2018).

health care and health living conditions.”³⁰ Health equity has been defined as all individuals having a legitimate and equal opportunity to reach their full health potential without disadvantage due to social circumstances.³¹ Health *justice* supplements this vision by centering the role of law and the ideas of justice and power.³² The framework focuses on the role of laws, policies, institutions, and systems in creating and perpetuating—but also mitigating and eradicating—inequity and subordination in healthcare and public health.³³

A health justice approach broadens health law. Because “all policy is health policy,” the framework necessitates an examination of laws and policies that might not immediately seem connected to health.³⁴ It therefore widens the conceptualization of health law to ensure that it is concerned with all of the social, political, and structural determinants of health.³⁵ In other words, because health justice centers the interrogation of health inequity and the role of law in driving it,³⁶ health justice requires analyses not only of healthcare systems and laws, but also of broader patterns of subordination throughout society that implicate health.³⁷

30. Lindsay F. Wiley et al., *Introduction: What is Health Justice?*, 50 J.L. MED. & ETHICS 636, 636 (2022); see also Emily Benfer et al., *Setting the Health Justice Agenda: Addressing Health Inequality & Injustice in the Post-Pandemic Clinic*, 28 CLINICAL L. REV. 45, 47 (2021).

31. Yael Cannon, *Unmet Legal Needs as Health Justice*, 56 U. RICH. L. REV. 801, 809–10 (2022).

32. *Id.* at 810.

33. Wiley et al., *supra* note 30, at 636; see Emily A. Benfer & Lindsay F. Wiley, *Health Justice Strategies to Combat COVID-19: Protecting Vulnerable Communities During a Pandemic*, HEALTH AFFS. BLOG (Mar. 19, 2020), <https://www.healthaffairs.org/content/forefront/health-justice-strategies-combat-covid-19-protecting-vulnerable-communities-during> [https://perma.cc/Y56B-DZWB]; see also Cannon, *supra* note 7, at 545 (“The health justice framework . . . envisions law and policy as tools for dismantling systematic barriers to health.”).

34. Rachel R. Hardeman, Eduardo M. Medina & Rhea W. Boyd, *Stolen Breaths*, 383 NEW ENG. J. MED. 197, 198 (2020); see Thalia González, Alexis Etow & Cesar De La Vega, *A Health Justice Response to School Discipline and Policing*, 71 AM. U. L. REV. 1927, 1928 (2022) (raising racialized and gendered discipline and policing in the U.S. educational system as a health justice priority); CHANGELAB SOLUTIONS, A BLUEPRINT FOR CHANGEMAKERS: ACHIEVING HEALTH EQUITY THROUGH LAW & POLICY 18 (2019); see also Cannon, *supra* note 7, at 573.

35. Lindsay F. Wiley, *Health Law as Social Justice*, 24 CORNELL J.L. & PUB. POL’Y 47, 87 (2014); see also Cannon, *supra* note 31, at 810.

36. Benfer, *supra* note 10, at 277–78 (2015); see also Cannon, *supra* note 31, at 807.

37. Wiley et al., *supra* note 30, at 638.

This broad conceptualization means that racial, economic, housing, environmental, educational, and other forms of justice are necessary for health justice, such that these concerns are placed at the center of health law, rather than relegated to one of its subsets.³⁸ Health justice builds on the momentum of other justice movements and theories, such as environmental justice, which “has been a leader in challenging negative health impacts caused by the unequal geographic distribution of environmental hazards.”³⁹ Health justice also draws on and centers critical perspectives, such as approaches from Critical Race Theory, to uncover the subordination and inequity in our current structures and identify opportunities for meaningful reform.⁴⁰

B. The COVID Public Health Emergency

The federal government has multiple channels through which it can declare a public health emergency, several of which were utilized during the COVID pandemic. These declarations were critical to the government’s ability to respond effectively to the pandemic and opened the door to other measures outside of the realm of healthcare to contain contagion risks and protect public health.

On January 31, 2020, with six confirmed cases of the coronavirus in the United States, Secretary of the U.S. Department of Health and Human Services (HHS) Alex Azar declared under Section 319 of the Public Health Service Act that a public health emergency existed and that the government would institute temporary measures to detect and contain the virus.⁴¹ This declaration allowed the federal government to take appropriate responsive action, such as utilizing the Public Health Emergency Fund for response efforts.⁴²

38. *Id.* at 636; see Wiley, *supra* note 35, at 52; Foster et al., *supra* note 26.

39. Harris & Pamukcu, *supra* note 8, at 820.

40. Chandra Ford & Collins Airhihenbuwa, *Critical Race Theory, Race Equity, and Public Health: Toward Antiracism Praxis*, 100 AM. J. PUB. HEALTH S30, S30 (2010); see also Yael Cannon & Nicole Tuchinda, *Critical Perspectives to Advance Educational Equity and Health Justice*, 50 J.L. MED. & ETHICS 776, 777 (2022).

41. *White House Briefing on Coronavirus Response*, *supra* note 1; Admin. for Strategic Preparedness & Response, *Determination That a Public Health Emergency Exists*, U.S. DEPT OF HEALTH & HUM. SERVS. (Jan. 31, 2020), <https://aspr.hhs.gov/legal/PHE/Pages/2019-nCoV.aspx> [<https://perma.cc/Y5M5-EF29>]; see also Simmons-Duffin, *supra* note 5. Generally, under Section 319 of the Public Health Service Act, the HHS Secretary can declare a PHE upon determining that a disease, disorder, or significant infectious disease outbreak presents a public health emergency. 42 U.S.C. § 247d(a).

42. 42 U.S.C. § 247d(b)(1); see also *A Public Health Emergency Declaration*, DEPT. OF HEALTH & HUM. SERV.: ADMIN. FOR STRATEGIC PREPAREDNESS &

Then, on March 13, 2020, President Trump issued a determination that the ongoing COVID-19 pandemic also constituted an emergency under the Stafford Disaster Relief and Emergency Assistance Act (Stafford Act),⁴³ as well as a national emergency under the National Emergencies Act and Social Security Act.⁴⁴ Since then, more than 1.1 million Americans have died from COVID, upwards of 6 million have been hospitalized, and the entire nation has experienced a recession, school and business closures, and other significant forms of disruption to daily life.⁴⁵

While scholars have noted that what constitutes a public health “emergency” is opaque, there is consensus that such “[e]mergency declarations can generate publicity and spur political

RESPONSE, <https://aspr.hhs.gov/legal/PHE/Pages/Public-Health-Emergency-Declaration.aspx> [<https://perma.cc/2789-8CA4>].

43. See Letter from President Donald J. Trump on Emergency Determination Under the Stafford Act (Mar. 13, 2020), <https://trumpwhitehouse.archives.gov/briefings-statements/letter-president-donald-j-trump-emergency-determination-stafford-act/> [<https://perma.cc/ENG8-B3TQ>]; 42 U.S.C. §§ 5121–5207 (issuing a determination that the ongoing COVID-19 pandemic constituted an emergency under section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act).

44. See Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak (Mar. 13, 2020), <https://trumpwhitehouse.archives.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/> [<https://perma.cc/4M82-G36Y>]; 50 U.S.C. §§ 1601 et seq.; 42 U.S.C. § 1320b-5. When the President also declares an emergency under the Stafford Act or the National Emergencies Act, the HHS Secretary can waive or modify requirements for programs like Medicare, Medicaid, and the Children’s Health Insurance Program (CHIP) under section 1135 of the Social Security Act. 42 U.S.C. §§ 1320b-5(b), (g)(1)(A); see also *A Public Health Emergency Declaration*, *supra* note 42.

45. *COVID Data Tracker*, CDC (Aug. 3, 2023, 4:01 PM), <https://web.archive.org/web/20230803090426/https://covid.cdc.gov/covid-data-tracker/#datatracker-home> [<https://perma.cc/6SAZ-JUJ7>]; *Burbio’s K-12 School Opening Tracker*, BURBIO, <https://about.burbio.com/school-opening-tracker> [<https://perma.cc/FU44-DYL3>] (finding that 62% of schools were conducted virtually at the beginning of the 2020-2021 school year); CONG. BUDGET OFF., INTERIM ECONOMIC PROJECTIONS FOR 2020 AND 2021 3 (2020), <https://www.cbo.gov/system/files/2020-05/56351-CBO-interim-projections.pdf> [<https://perma.cc/6MML-BMHR>] (discussing the impact of COVID-19 and related public health measures on business closures); Josh Zumbrun, *Coronavirus Slump Is Worst Since Great Depression. Will It Be as Painful?*, WALL ST. J. (May 10, 2020, 9:00 AM), <https://www.wsj.com/articles/coronavirus-slump-is-worst-since-great-depression-will-it-be-as-painful-11589115601> (on file with the *Columbia Human Rights Law Review*); see also Simmons-Duffin, *supra* note 5.

progress when legislative gridlock . . . has thwarted needed action.”⁴⁶ During the COVID pandemic, the federal government utilized this emergency authority to facilitate critical interventions, such as emergency use authorizations by the U.S. Food and Drug Administration and other agency actions to rapidly develop, approve, and disseminate new vaccines and treatments for COVID-19⁴⁷ and federal requirements that private insurers provide COVID testing at no cost to enrollees.⁴⁸

In response to economic and public health concerns, policymakers also built on the momentum of the COVID PHE declarations and enacted laws and policies *outside* the healthcare realm. These measures leveraged the legal determinants of health and included several important steps urged by advocates and scholars of health justice as the pandemic was in full force.⁴⁹

46. Rebecca Haffajee, Wendy E. Parmet & Michelle M. Mello, *What Is a Public Health “Emergency”?*, 371 NEW ENG. J. MED. 986, 988 (2014); *see also* James G. Hodge et al., *Redefining Public Health Emergencies: The Opioid Epidemic*, 58 JURIMETRICS 1, 8, 11–15 (2017); Christopher Nelson et al., *Conceptualizing and Defining Public Health Emergency Preparedness*, 97 AM. J. PUB. HEALTH S9, S11 (2007).

47. *Covid-19 Vaccines*, DEPT. OF HEALTH & HUM. SERV., <https://www.hhs.gov/coronavirus/covid-19-vaccines/index.html> [<https://perma.cc/FES4-53DK>]; Allan Tran & Theodore J. Witek, Jr., *The Emergency Use Authorization of Pharmaceuticals: History and Utility During the COVID-19 Pandemic*, 35 PHARM. MED. 203, 203 (2021).

48. *Fact Sheet: End of the COVID-19 Public Health Emergency*, DEPT. OF HEALTH & HUM. SERV. (May 9, 2023), <https://www.hhs.gov/about/news/2023/05/09/fact-sheet-end-of-the-covid-19-public-health-emergency.html> [<https://perma.cc/5HKV-5WWN>]; Lauren J. Young, *U.S. COVID Public Health Emergency is Ending. Here’s What That Means*, SCI. AM. (May 9, 2023), <https://www.scientificamerican.com/article/u-s-covid-public-health-emergency-is-ending-heres-what-that-means> [<https://perma.cc/6VWV-U9EN>]; Simmons-Duffin, *supra* note 5.

49. *See, e.g.*, Emily 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, 128–29 (2020) (calling for state and local government leaders to institute eviction moratoria, extend protections against utility shut-off, and expand worker benefits and protections for sick leave).

Key Legal Determinants of Health During the COVID-19 Public Health Emergency
Eviction and utility shutoff moratoria
Emergency rental and utility assistance
Expansion of unemployment benefits
Expansion of sick leave and family leave
Increased SNAP benefits
Enhancements to the Child Tax Credit

The table above shows examples of legal measures outside of healthcare implemented in response to the pandemic and resulting recession. They served to promote and protect health and well-being directly, as well as economic security, which is an important driver of health and well-being.⁵⁰

More than three years later, with COVID deaths and hospitalizations at much lower levels, the official public health emergency ended on May 11, 2023.⁵¹ Most of the adjacent protections and supports enacted to address such legal determinants of health that were still in place at that time also terminated, expired, or began winding down in short order.

C. A Health Justice Examination of the PHE

Critical examination of the COVID PHE through a health justice lens imparts important lessons for how law can serve to eradicate health inequity well beyond a pandemic. This Article builds on the work of scholars interrogating the contours of Public Health Emergencies through the lens of health law and healthcare,⁵² as well as the work of those who called for health justice responses at the height of the COVID pandemic.⁵³ It does so by drawing on critical theoretical perspectives to engage in a health justice analysis following the end of the COVID PHE to uncover the missed potential for sustained reforms outside of healthcare to advance health equity.

50. *See supra* Introduction.

51. *White House Daily Briefing*, *supra* note 1; Simmons-Duffin, *supra* note 5.

52. *See, e.g.*, Haffajee et al., *supra* note 46; *see also* Hodge et al., *supra* note 46; Nelson et al., *supra* note 46.

53. *See, e.g.*, Benfer et al., *supra* note 49.

Legal historian John Fabian Witt and housing law scholar Kathryn Sabbeth have both scrutinized legal responses to the pandemic.⁵⁴ In *American Contagion*, John Fabian Witt's discussion of pandemics provides a particularly useful framework for understanding the social and legal constructs of these phenomena. Witt argues that "to study epidemics in a society 'is to understand that society's structure' and 'its political priorities.'"⁵⁵ He describes epidemics as "proceed[ing] as a set of feedback loops between germs and society."⁵⁶ That is, the way that a society reacts to a health crisis like an epidemic sheds light on what and who it deems valuable and what and who it discounts. Sabbeth applies Witt's insights and explores how they parallel the legal system's responses to the eviction "crisis" stoked by the pandemic.⁵⁷

Historical practices, events, and structures affect modern responses to public health crises like pandemics,⁵⁸ which in turn affect the actual "social experience of disease and infection."⁵⁹ These experiences may then be used to inform responses to later public health crises. Law shapes these structures, both in how it creates and maintains societal conditions that predate a pandemic and later drives people's experience when it hits. These forces are evident in the responses of policymakers and courts to a pandemic, within and outside of the realm of healthcare.

For example, racially motivated mistreatment is typical for public health emergencies, and epidemics have historically been used as an excuse to perpetuate racial violence and oppression, as was the case with the HIV/AIDS crisis and several bubonic plague outbreaks in the early twentieth century.⁶⁰ Then in 2020, even as the coronavirus

54. See generally WITT, *supra* note 26; Kathryn Sabbeth, *Eviction Courts*, 18 U. ST. THOMAS L.J. 359, 400 n.121 (2022) (quoting Alabama Ass'n of Realtors v. Dep't of Health & Hum. Servs., 141 S. Ct. 2485, 2489 (2021)).

55. WITT, *supra* note 26, at 120 (citing FRANK M. SNOWDEN, EPIDEMICS AND SOCIETY: FROM THE BLACK DEATH TO THE PRESENT 7 (2019)).

56. *Id.* at 7.

57. Sabbeth, *supra* note 54, at 361–62, 373, 401.

58. WITT, *supra* note 26, at 7–9.

59. *Id.* at 9.

60. *Id.* at 43–44, 109–10, 133–34; Leslie E. Gerwin, *Planning for Pandemic: A New Model for Governing Public Health Emergencies*, 37 AM. J.L. & MED. 128, 136 (2011) ("The history of government response to serious threats of disease has frequently included narratives about majorities marginalizing minority populations and government derogating the rights and destroying the property of the marginalized populations."); Wendy K. Mariner, George J. Annas & Wendy E. Parmet, *Pandemic Preparedness: A Return to the Rule of Law*, 1 DREXEL L. REV.

“poured in” to the United States from European travelers, the country’s travel ban focused on China,⁶¹ and additional subsequent public health measures specifically targeted Chinese individuals.⁶² The discriminatory framing of COVID resulted in racist violence and harassment towards people of Asian descent.⁶³ In line with such framing, initial emergency responses prevented asylum seekers and foreign workers from entering the country and impacted the ability of non-citizen students to study at universities in the United States.⁶⁴

The focus on geography, race, and ethnicity by policymakers not only led to harassment on the street, but also harmful and discriminatory treatment in healthcare. For example, a hospital in New Mexico had a secret policy of singling out pregnant women who appeared to be Native American for COVID testing and then separating them from their newborns while awaiting the results, a practice that is both traumatic and harmful to the health of the baby.⁶⁵ One of the social and legal constructs of the COVID pandemic was the cultivation of a biased and inequitable environment through legal responses.

As COVID spread, it was clear that longstanding—and new—inequities were leading to alarming racial disparities in the health impacts of the pandemic. Black and Indigenous communities in particular experienced higher rates of COVID-19 infections, hospitalizations, and deaths.⁶⁶ For example, despite making up a much smaller share of the population, African Americans accounted for almost a quarter of the country’s COVID deaths by June 2020.⁶⁷ By late spring of 2020, five Native American tribes were individually experiencing higher infection rates than any single state.⁶⁸

341, 355–57 (2009) (describing authoritarian public health measures such as quarantines and forced vaccinations that were directed at low-income people of color in multiple infectious disease outbreaks).

61. WITT, *supra* note 26, at 109–10.

62. *Id.* at 134.

63. *Id.* at 133.

64. *Id.* at 109.

65. Bryant Furlow, *A Hospital’s Secret Coronavirus Policy Separated Native American Mothers from their Newborns*, PROPUBLICA (June 13, 2020, 5:00 AM), <https://www.propublica.org/article/a-hospitals-secret-coronavirus-policy-separated-native-american-mothers-from-their-newborns> [https://perma.cc/KCH8-XRR2].

66. WITT, *supra* note 26, at 108, 127.

67. *Id.* at 127.

68. *Id.*

Law has long developed social conditions that enable diseases like cancer, heart disease, and diabetes—and now COVID—to disproportionately impact Black communities and other communities of color. Marginalized and minoritized communities were particularly impacted because COVID’s “spread was abetted by housing insecurity, economic inequities, crowded living conditions, poor access to health care, mass incarceration, and myriad other artifacts of disadvantage,”⁶⁹ all shaped by law and policy and in some cases by the absence of legislative, administrative, and judicial action. The disparities in COVID infections, hospitalizations, and deaths spotlighted these longstanding inequities.⁷⁰ Angry that her sickest patients tended to be Black and Latine, Dr. Roopa Dhatt, an American physician and Executive Director of Women in Global Health, observed that “this is not new . . . COVID-19 does not discriminate, but societies do.”⁷¹

Longstanding disparities have persisted for many years without meaningful legal responses. But with the widespread reach of the COVID pandemic, harmful legal determinants of health that disproportionately threatened marginalized and minoritized communities began to raise concerns for the broader population, as infections could spread beyond those communities and strain a healthcare system to which the White and wealthy also needed access.

Against that backdrop, law was leveraged through substantial federal, state, and municipal action well beyond traditional healthcare system measures to stop the spread of COVID. While historically the government has neglected to address harmful legal determinants of health that impact communities of color, reforms were instituted when necessary to protect COVID contagion risks to the broader public, including those with privilege and power. The rollbacks of protective COVID-era measures once the contagion risks diminished underscore that their focus was on preventing catastrophic contagion outcomes for the broader public, without the necessary attention to communities that remain highly vulnerable to health harms due to disproportionate rates of housing insecurity and health conditions.

Those communities are now highly vulnerable again in the wake of those rollbacks; their health and security have not been

69. *Id.* at 128.

70. Foster et al., *supra* note 26.

71. ‘COVID-19 Doesn’t Discriminate, but Societies Do’, *Say Women Frontliners*, UN NEWS (Mar. 8, 2021), <https://news.un.org/en/story/2021/03/1086692> [<https://perma.cc/FY53-C7DC>].

prioritized in governmental decision-making. In these ways, the PHE shows how closely the persistence of health disparities is tied to White supremacy, structural racism, and capitalist power structures that prioritize profit over housing stability, health, and well-being in the housing system.

Analysis of several supportive pandemic-era programs provides insights into the ways in which substantial action was finally taken during the PHE in areas of established inequity for minoritized and marginalized communities not to address their longstanding needs, but when it became necessary to protect the health, well-being, and economic security of the broader public. For example, although long a critical unmet need driving racial health disparities, during the COVID PHE, expanded sick leave and family leave were provided through various laws. These measures allowed people to stay home to recover and care for family members who were ill instead of coming to work where they could spread the virus.⁷² For many workers, these protections helped keep them and their families safe from COVID and allowed them to maintain employment.⁷³

Yet, numerous exceptions and exemptions meant that many other workers—disproportionately low-wage earners—were not covered and faced an impossible choice between high contagion risks or unemployment.⁷⁴ For example, in April 2020, the Trump Administration designated the meatpacking industry to be “critical infrastructure.” This designation allowed low-wage employees to be deemed “essential” and thus required to work throughout the pandemic, despite the risk of infection, to the benefit of the powerful

72. Families First Coronavirus Response Act, Pub. L. No. 116-127, § 5102, 134 Stat. 178, 195 (2020); Ben Penn, *Paid-Leave Promise Turns ‘Mirage’ for Most Workers in Pandemic*, BLOOMBERG L. (May 27, 2020, 6:01 AM), <https://www.bloomberglaw.com/bloomberglawnews/bloomberglaw-news/X7R86U64000000?> (on file with the *Columbia Human Rights Law Review*).

73. Stefan Pichler, Katherine Wen & Nicolas R. Ziebarth, *COVID-19 Emergency Sick Leave Has Helped Flatten the Curve in the United States*, 39 HEALTH AFFS. 2197, 2202 (2020); see also Jack Smalligan, Chantel Boyens & Casey Simmons, *A National Paid Sick Leave Policy Could Provide a Lifeline for Americans During and After COVID-19*, URB. INST.: URB. WIRE BLOG (Dec. 29, 2020), <https://www.urban.org/urban-wire/national-paid-sick-leave-policy-could-provide-lifeline-americans-during-and-after-covid-19> [<https://perma.cc/LYK4-9F4E>].

74. MICHAEL KARPMAN, DULCE GONZALEZ & GENEVIEVE M. KENNEY, URB. INST., PARENTS ARE STRUGGLING TO PROVIDE FOR THEIR FAMILIES DURING THE PANDEMIC 10 (May 2020), https://www.urban.org/sites/default/files/publication/102254/parents-are-struggling-to-provide-for-their-families-during-the-pandemic_2.pdf [<https://perma.cc/S72J-XBEE>]; see also Penn, *supra* note 72.

companies and executives in that industry.⁷⁵ This is a long-standing pattern; workers in low-wage, consumer-facing roles have often been obligated to work at the expense of their own health, even while those who may be better able to afford time off are compensated.⁷⁶ The protections and supports that were provided proved short-lived and failed to engender more structural reforms that would protect and support all workers and their families—regardless of income—in ways that remain necessary for their health and well-being post-PHE.

Moreover, when the COVID-related recession threatened the economic security of wider swaths of the population, enhanced food stamps, CTCs, and other robust measures were instituted. Enhancements to SNAP, for instance, provided increased benefits amounts, additional program flexibilities, and pauses on work requirements,⁷⁷ providing over \$600 in additional benefits for some families.⁷⁸ These emergency allotments kept over four million people above the poverty line in 2021.⁷⁹

As those programs expired, reductions and losses in SNAP increased the risk of food insecurity.⁸⁰ Food insecurity contributes to

75. See CLARE BAMBRA, JULIA LYNCH & KATHERINE E. SMITH, *THE UNEQUAL PANDEMIC COVID-19 AND HEALTH INEQUITIES* 89–90 (2021); Exec. Order No. 13,917, 85 Fed. Reg. 26,313, 26,313 (Apr. 28, 2020); Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response (Mar. 19, 2020), <https://www.cisa.gov/sites/default/files/publications/CISA-Guidance-on-Essential-Critical-Infrastructure-Workers-1-20-508c.pdf> [<https://perma.cc/PQQ5-76LM>].

76. Isabela Salas-Betsch, *Universal Paid Sick Time Would Strengthen Public Health and Benefit Businesses*, *CTR. FOR AM. PROGRESS* (May 15, 2023), <https://www.americanprogress.org/article/universal-paid-sick-time-would-strengthen-public-health-and-benefit-businesses/> [<https://perma.cc/J6GV-87F9>].

77. Brown et al., *supra* note 18; *FNS Response to COVID-19 Public Health Emergency*, U.S. DEP'T AGRIC., <https://www.fns.usda.gov/coronavirus> [<https://perma.cc/A28S-PJDS>].

78. LAURA WHEATON & DANIELLE KWON, *URB. INST.*, *EFFECT OF THE REEVALUATED THRIFTY FOOD PLAN AND EMERGENCY ALLOTMENTS ON SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM BENEFITS AND POVERTY* 7 (2022).

79. Dottie Rosenbaum, Katie Bergh & Lauren Hall, *Temporary Pandemic SNAP Benefits Will End in Remaining 35 States in March 2023*, *CTR. ON BUDGET & POL'Y PRIORITIES* (Feb. 6, 2023), https://www.cbpp.org/research/food-assistance/temporary-pandemic-snap-benefits-will-end-in-remaining-35-states-in-march#_ftn2 [<https://perma.cc/Z9E7-GW3K>].

80. Leighton Ku, Erin Brantley & Sydney Pryor, *SNAP Will Also Unwind*, *HEALTH AFFS. FOREFRONT* (July 14, 2022), <https://www.healthaffairs.org/doi/10.1377/forefront.20220712.461768> [<https://perma.cc/U2CP-8H2Q>]; see also Nancy Chen & Kerry Breen, *Pandemic-era*

poorer health for people of all ages, including increases in emergency room visits⁸¹ and harmful coping strategies to offset budget constraints, such as difficult decisions between “heat or eat”⁸² or foregoing medical expenses.⁸³ However, these ongoing health risks to people with low income have not merited the same expansion of the social safety net that the pandemic did.

In addition, the CTC expansion during the pandemic PHE kept over two million children above the poverty line,⁸⁴ with CTC-eligible families experiencing improved food security, increased access to healthy food, and declines in evictions.⁸⁵ Food security, access to nutritious food, and housing stability are all closely linked to positive health outcomes.⁸⁶ Nonetheless, the CTC expansion was not implemented to achieve such positive health markers until a global pandemic arose. In just the first month after its expiration, there were increases in the monthly child poverty rate.⁸⁷

Though housing instability has long caused health harms for marginalized and minoritized communities, historic and unprecedented housing measures like eviction moratoria and emergency rental assistance programs⁸⁸ were not instituted to address the needs of tenants from those communities before the COVID pandemic. Indeed, such reforms were only enacted when evictions became a potential threat to a much broader swath of the population

SNAP Benefits End for Millions of Americans as Costs Rise, CBS NEWS (Mar. 1, 2023, 9:18 AM), <https://www.cbsnews.com/news/food-stamps-snap-benefits-rising-costs-food-pandemic/> [https://perma.cc/C6VQ-KTWR].

81. Ku et al., *supra* note 80.

82. Cannon, *supra* note 14, at 219–20 (2020) (“Food insecurity has cascading effects for low-income Americans; it can force a choice between buying food or paying rent and other important bills, such as utilities payments. This choice, sometimes called ‘heat or eat,’ is impossible because people need all of these necessities to thrive.”).

83. FOOD RSCH. & ACTION CTR., *THE ROLE OF THE SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM IN IMPROVING HEALTH AND WELL-BEING* 3 (2017).

84. *Policy Basics: The Child Tax Credit*, *supra* note 19.

85. Leah Hamilton et al., *The Impacts of the 2021 Expanded Child Tax Credit on Family Employment, Nutrition, and Financial Well-Being* 4 (Glob. Econ. & Dev. at Brookings, Working Paper No. 173, 2022).

86. *Id.* at 4.

87. Zachary Parolin, Sophie Collyer & Megan Curren, *Absence of Monthly Child Tax Credit Leads to 3.7 Million More Children in Poverty in January 2022*, COLUM. UNIV. CTR. ON POVERTY & SOC. POL’Y 1 (2022).

88. Emily A. Benfer et al., *COVID-19 Housing Policy: State and Federal Eviction Moratoria and Supportive Measures in the United States During the Pandemic*, 33 HOUS. POL’Y DEBATE 1390, 1391 (2023).

due to the pandemic-era recession and also risked spreading COVID and straining healthcare resources in ways that could impact even those who were not themselves at any risk of eviction.⁸⁹ In other words, in addition to the rise of economic insecurity as a result of the recession, contagion risks and related burdens on the healthcare system now gave even those who were economically secure and comfortably housed reason to worry that evictions of others could spread COVID and ultimately impact them. Such concerns led to the initiation of eviction moratoria and rental assistance programs, which did have positive impacts. These measures temporarily helped reduce homelessness and mitigated the looming eviction crisis, but then lawmakers allowed them to expire and evictions exploded, sometimes beyond pre-pandemic levels.⁹⁰

In fact, despite the positive impacts of *many* of these different types of pandemic-era measures, they all began winding down or were terminated completely before or upon the expiration of the COVID PHE in May 2023. While these measures had powerful short-term impacts on health, their termination without sustained, structural change to truly disrupt the status quo represented a missed opportunity to set the country on a pathway toward racial and socioeconomic health equity.

II. THE INTERLOCKING HOUSING AND HEALTH EQUITY CRISES

Among the various PHE legal determinants of health inequity, this Article applies the health justice framework to an interrogation of shifting legal landscapes of housing and health inequity before, during, and after the COVID PHE. This Part examines the pandemic-related eviction and utility shutoff moratoria and emergency rental and utility assistance programs. It argues that a critical interrogation of these temporary reforms through a health justice lens provides a foundation for analysis of this country's persistent public health inequity

89. *CDC Issues Eviction Moratorium Order in Areas of Substantial and High Transmission*, CDC NEWSROOM (Aug. 3, 2021) (instituting national eviction moratorium to prevent spike in COVID transmissions and resulting public health consequences); *see also* Emily A. Benfer et al., *Eviction, Health Inequity, and the Spread of COVID-19: Housing Policy as a Primary Pandemic Mitigation Strategy*, 98 J. URB. HEALTH 1, 2 (2021) (discussing the connection between eviction and COVID-19 infection rates).

90. *See infra* Section III.C.1 for examples of this trend in different states as COVID-era eviction moratoria were repealed.

emergency and the potential for legal determinants of health to mitigate it.

A. PHE Housing Measures

1. Eviction Moratoria

In spring 2020, amidst the rapid spread of the coronavirus, Americans were advised to stay home, businesses shut down across the nation, and millions of people were laid off within only a few weeks.⁹¹ These job losses hit the retail, service, and tourism sectors—industries that employ large numbers of low-wage workers who are renters—particularly hard.⁹² Facing a dearth of job openings, many of these renters, especially those with limited savings, would be at immediate risk of eviction if they could not pay the following month’s rent.⁹³ At one point, this threat encompassed approximately 40 million people.⁹⁴

Policymakers began to worry that these evictions would lead to a rise in homelessness and transience, with people doubling up their households and overcrowding with family members or friends. This would hinder people’s ability to socially distance and would create “conditions that foster the spread of COVID-19.”⁹⁵ If many housing-insecure families were to lose access to housing and seek refuge in overcrowded and underfunded homeless shelters, the COVID risks would be heightened for everyone, especially considering the potential strain on hospitals and healthcare systems.⁹⁶

91. *The President’s Coronavirus Guidelines for America*, TRUMP WHITE HOUSE ARCHIVES (Mar. 16, 2020) (directing Americans to stay home when feeling sick, to quarantine household when a member tests positive for COVID-19, to self-isolate if elderly or immunocompromised, and to avoid social gatherings, dining out, and discretionary travel); Hepburn et al., *supra* note 16.

92. Hepburn et al., *supra* note 16.

93. *Id.*

94. Sabbeth, *supra* note 54, at 371.

95. Hepburn et al., *supra* note 16; *see* Benfer et al., *supra* note 88, at 1393; *see also* Sabbeth, *supra* note 54, at 373 (“The frequent consequences of eviction—being pushed into crowded living arrangements, common spaces like shelters or public streets, or substandard housing units—raise more acute risks of illness and even death.”).

96. Michelle D. Layser et al., *Mitigating Housing Instability During a Pandemic*, 99 OR. L. REV. 445, 457 (2021) (arguing that “unmitigated housing instability has the potential to undermine the public health response to COVID-19”).

With concerns increasing about the impact that evictions could have on the spread of COVID-19, and with the authority of the Public Health Emergency as a foundation providing momentum, justification, and support, forty-three states and the District of Columbia established eviction moratoria in the early weeks of the pandemic, as did many county and municipal governments.⁹⁷

The federal government also took unprecedented measures by instituting two eviction moratoria aimed at preventing COVID infection among the broader public, as evidenced by the legislative and administrative history. First, as part of the Coronavirus Aid, Relief, and Economic Security (CARES) Act, the federal government issued a 120-day moratorium on eviction filings for nonpayment of rent and on charging fees or penalties related to nonpayment of rent for buildings financed, subsidized, or otherwise supported by the federal government.⁹⁸

In addition to the economic concerns related to Americans losing their homes,⁹⁹ and in the context of a broader public health strategy that involved social distancing and keeping people at home and out of public spaces as much as possible,¹⁰⁰ the legislative history of that moratorium indicates that protecting the public health—and particularly preventing the spread of COVID-19—was a major goal. For example, according to the Congressional Research Service, the legislation was designed to alleviate the “public health consequences of

97. Benfer et al., *supra* note 88, at 1390; Emily A. Benfer et al., *Assessing State Eviction Prevention Policies in Response to COVID-19*, EVICTION LAB (June 10, 2022), <https://evictionlab.org/assessing-state-eviction-prevention-covid-19> [https://perma.cc/UWA6-Y2ND].

98. Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, § 4024(b), 134 Stat. 281, 493–94 (2020); *see also* Sabbeth, *supra* note 54, at 386 (noting that the moratorium was limited to filings to recover possession of covered properties—about 33 to approximately 45% of rental properties in the United States—for nonpayment of rent or other fees).

99. 166 CONG. REC. S1926 (daily ed. Mar. 23, 2020) (statement of Sen. Brown) (“You all know the statistics—40 percent of Americans don’t have \$400 discretionary money in their pockets that they can use in an emergency to fix their car or whatever. If they go several weeks without pay, they will be evicted; they will be foreclosed on.”).

100. *The President’s Coronavirus Guidelines for America*, *supra* note 91 (directing Americans to stay home when feeling sick, to quarantine household when a member tests positive for COVID-19, to self-isolate if elderly or immunocompromised, and to avoid social gatherings, dining out, and discretionary travel).

tenant displacement during the COVID-19 outbreak.”¹⁰¹ Arguing in favor of the moratorium, Senator Durbin alluded to the “risk of being cast out on the street during a public health crisis.”¹⁰² Senator Menendez questioned if allowing evictions to continue would “serve the public health in the midst of a pandemic.”¹⁰³ Other contemporary legislation proposing federal eviction moratoria also centered public health priorities, emphasizing that “evictions in the current environment would increase homelessness and housing instability which would be counterproductive towards the public health goals of keeping individuals in their homes to the greatest extent possible.”¹⁰⁴

After the initial CARES Act moratorium expired in July 2020, President Trump issued an executive order, citing the CDC’s research on the connections between unemployment, eviction, homelessness, and increased COVID infection, “to minimize, to the greatest extent possible, residential evictions and foreclosures during the ongoing COVID-19 national emergency.”¹⁰⁵ Pursuant to this executive order, the CDC then issued an emergency action, which temporarily halted evictions.¹⁰⁶

While the CARES Act was driven in large part by economic factors, “the CDC [o]rder aimed specifically at slowing the spread of disease.”¹⁰⁷ The CDC explicitly issued its moratorium as a strategy to curb the spread of COVID within households and across families, neighborhoods, and broader geographical areas and relied on data indicating that mass evictions would contribute to the inter-household and interstate spread of COVID.¹⁰⁸ The agency order explained that

101. MAGGIE MCCARTY & DAVID H. CARPENTER, CONG. RSCH. SERV., CARES ACT EVICTION MORATORIUM 1 (Apr. 7, 2020).

102. 166 CONG. REC. S1864 (daily ed. Mar. 20, 2020) (statement of Sen. Durbin).

103. 166 CONG. REC. S1910 (daily ed. Mar. 22, 2020) (statement of Sen. Menendez).

104. Rental Eviction Moratorium Act of 2020, H.R. 6347, 116th Cong. § 2(a)(6) (2020); *see also* Workforce Emergency Response Act of 2020, H.R. 6379, 116th Cong. § 102(a)(6) (2020); Emergency Housing Protections and Relief Act of 2020, H.R. 7301, 116th Cong. § 103(a) (2020).

105. Exec. Order No. 13,945, 85 Fed. Reg. 49,935, 49,936 (Aug. 8, 2020).

106. Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19, 85 Fed. Reg. 55,292, 55,296 (Sept. 4, 2020).

107. Sabbath, *supra* note 54, at 388 (describing how the CDC order expanded categories of covered evictions to prevent evictions where displacement would threaten health while the CARES Act focused on evictions for nonpayment of rent).

108. Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19, 85 Fed. Reg. at 55,292–93.

eviction moratoria facilitate self-isolation, allow government authorities to more easily implement stay-at-home and social distancing measures, and reduce the possibility of homelessness, which creates a higher risk of being infected with COVID.¹⁰⁹ In a statement from the White House, the Trump Administration explained that “[i]t is essential during the pandemic that Americans have an effective place to quarantine, isolate, and social distance, and evicting people from residences undermines that objective.”¹¹⁰

The order was initially set to expire on December 31, 2020, but was extended several times as COVID continued to surge. For example, in the summer of 2021, as cases of the Delta variant of the coronavirus were surging, the CDC again halted some evictions in order to stop the spread of COVID.¹¹¹ The agency issued another eviction moratorium to “[m]itigat[e] the spread of COVID-19 within crowded, congregate or shared living settings, or through unsheltered homelessness; [and] [m]itigat[e] the further spread of COVID-19 from one state or territory into any other state or territory.”¹¹² This eviction moratorium was restricted to U.S. counties “experiencing substantial and high levels of community transmission levels” of COVID.¹¹³ The efficacy of the CARES Act and CDC order moratoria was limited by other weaknesses in implementation, including barriers to accessing necessary information, vulnerability to loopholes, and non-compliance by eviction court judges.¹¹⁴

While federal, state, and local eviction moratoria covered most tenants,¹¹⁵ most of these moratoria were rescinded or expired without renewal by late summer of 2020.¹¹⁶ Then, in August 2021, the Supreme

109. *Id.*

110. *President Donald J. Trump Is Working to Stop Evictions and Protect Americans’ Homes During the COVID-19 Pandemic*, TRUMP WHITE HOUSE ARCHIVES (Sept. 1, 2020), <https://trumpwhitehouse.archives.gov/briefings-statements/president-donald-j-trump-working-stop-evictions-protect-americans-homes-covid-19-pandemic> [<https://perma.cc/2Z8Q-H2V9>].

111. Temporary Halt in Residential Evictions in Communities with Substantial or High Transmission of COVID-19 to Prevent the Further Spread of COVID-19, 86 Fed. Reg. 43,244, 43,244 (Aug. 6, 2021).

112. *Id.*

113. *Id.* (footnotes omitted).

114. Sabbeth, *supra* note 54, at 389, 391–92.

115. Peter Hepburn et al., *Protecting the Most Vulnerable: Policy Response and Eviction Filing Patterns During the COVID-19 Pandemic*, 9 RUSSELL SAGE FOUND. J. SOC. SCI. 186, 188 (2023).

116. *Id.* at 188 (citing Benfer et al., *supra* note 88); Hepburn et al., *supra* note 16.

Court found the CDC's final order unconstitutional and struck it down.¹¹⁷ Despite its explicit COVID-protection aims, the Court determined that the moratorium was too indirectly related to interstate infection to fall within the CDC's authority under Section 361 of the Public Health Service Act.¹¹⁸ The majority decided that "[t]he equities do not justify"¹¹⁹ upholding the moratorium, weighing financial harm and the rights of property owners above housing stability and public health.¹²⁰ The opinion strikingly notes that the moratorium has put landlords "at risk of irreparable harm" but makes no mention of the harms resulting from eviction, housing insecurity, and homelessness.¹²¹ Justice Breyer's dissent pointed out that property owners were, in fact, likely to ultimately recover any owed rental income from Congress's \$46.5 billion rental assistance allocation.¹²² Moreover, research also indicates that even strong eviction moratoria had limited effects on rent collection rates, with tenants continuing to prioritize making rent payments as much as possible, even when it created extreme hardship.¹²³

Both the Supreme Court's decision and the expiration and termination of the other federal, state, and municipal eviction moratoria—without subsequent or supplementary robust and structural reforms—served to maintain and entrench the pre-pandemic status quo that failed to address the grave inequities of the country's eviction systems and the intertwined health harms. They additionally made clear that the priorities that lay behind ostensibly progressive housing protections were property owners and their capital.¹²⁴

117. *Alabama Ass'n of Realtors v. Dep't of Health & Hum. Servs.*, 141 S. Ct. 2485 (2021).

118. *Id.* at 2488.

119. Sabbeth, *supra* note 54, at 400 n.121 (quoting *Alabama Ass'n of Realtors*, 141 S. Ct. at 2489).

120. *Id.* (citing *Alabama Ass'n of Realtors*, 141 S. Ct. at 2489, 2492 (Breyer, J., dissenting)) (arguing that the Supreme Court's reasoning represents the political priorities that the nation's institutions seek to protect, namely the financial interests of landlords and maintain and those which are deemed acceptable to neglect, or housing rights of tenants and the broader public health).

121. *Alabama Ass'n of Realtors*, 141 S. Ct. at 2489, 2489.

122. Sabbeth, *supra* note 54, at 400 (citing *Alabama Ass'n of Realtors*, 141 S. Ct. at 2492 (Breyer, J., dissenting)).

123. Hepburn et al., *supra* note 115, at 204 (describing research that found that tenants took on debt to avoid falling behind on rent—even with active moratoria).

124. *See id.*

In the weeks after that decision, an estimated 9.9 million adult renters were living in households at least one month behind on rent, and more than four in ten adults behind on rent believed eviction was at least somewhat likely in the next two months.¹²⁵ As discussed below, some states and municipalities—and, to some extent, the federal government—took scattered measures to address these ongoing concerns,¹²⁶ but the end of the CDC’s eviction moratorium and state and municipal moratoria across the country represented a missed opportunity to institute widespread transformative change.¹²⁷ Evictions had grave public health consequences before the COVID pandemic, and those threats to public health persist.

2. PHE Rental Assistance

The federal government also provided historic levels of rental assistance to prevent evictions through the American Rescue Plan.¹²⁸ The legislation funded the Emergency Rental Assistance program, which made emergency rental and utility bill assistance available to households at risk of losing their homes and/or facing utility disconnections due to the pandemic.¹²⁹

In promoting the American Rescue Plan, the Biden Administration emphasized the public health risks of evictions, arguing that “[f]ailing to take additional action will lead to a wave of evictions and foreclosures in the coming months, overwhelming emergency shelter capacity and increasing the likelihood of COVID infections.”¹³⁰ The federal eviction moratoria slowed eviction proceedings and gave households more time to seek relief and access

125. Erik Gartland, *Millions Still Months Behind on Rent After Eviction Moratorium Ends*, CTR. ON BUDGET POL’Y & PRIORITIES (Sept. 24, 2021), <https://www.cbpp.org/blog/millions-still-months-behind-on-rent-after-eviction-moratorium-ends> [https://perma.cc/S8JE-ZLLF].

126. See *infra* Section IV.A.

127. See *infra* Part III for further discussion.

128. American Rescue Plan Act of 2021, Pub. L. No. 117-2, § 3202, 135 Stat. 4, 54–67.

129. American Rescue Plan Act of 2021, Pub. L. No. 117-2, § 3201(d)(1)(A)(i), 135 Stat. 4, 56; see also *FY 2022 Impact Evaluation of the Emergency Rental Assistance (ERA) Program*, U.S. DEPT. HOUS. & URB. DEV., https://www.hud.gov/program_offices/spm/gmombgmt/grantsinfo/fundingopps/fy22_impacteval [https://perma.cc/9BMC-PQAW].

130. *President Biden Announces American Rescue Plan*, WHITE HOUSE (Jan. 20, 2021), <https://www.whitehouse.gov/briefing-room/legislation/2021/01/20/president-biden-announces-american-rescue-plan> [https://perma.cc/2DT8-7CUL].

such emergency rental assistance.¹³¹ Low-income renters, whose income is at or below fifty percent Average Median Income, received over eighty percent of the rental assistance funds.¹³² According to data from the U.S. Department of Treasury, these programs made approximately 7 million rental or utility assistance payments across the country by July 2022.¹³³ Ultimately, rental assistance stabilized tenancies by paying landlords rental arrears and rent going forward, allowing those landlords to pay their mortgages and property taxes.¹³⁴

As with other contemporary reforms, as discussed below, despite their positive impacts and the clear ongoing need, the widespread emergency rental assistance program did not continue after the COVID PHE and failed to lead to more sustained structural reform to promote housing security.¹³⁵

3. PHE Utility Shutoff Moratoria and Assistance

In addition to challenges paying rent throughout the pandemic, many people also fell behind on utility bills, such as electricity, gas, and water bills, and were in danger of experiencing or experienced disconnection.¹³⁶ Between May and August 2020, 3.8 million Americans could not pay an energy bill in at least one month, and 1.2 million had their electricity disconnected.¹³⁷ One study found that six

131. Noah Kazis, *Can Affordable Housing Be a Safety Net? Lessons from a Pandemic*, 132 YALE L.J.F. 412, 436 (2022).

132. Peter Hepburn et al., *Preliminary Analysis: Eviction Filing Patterns in 2021*, EVICTION LAB (Mar. 8, 2022), <https://evictionlab.org/us-eviction-filing-patterns-2021> [<https://perma.cc/DK8Y-6AN2>].

133. *Fact Sheet: White House Summit on Building Lasting Eviction Prevention Reform*, WHITE HOUSE (Aug. 2, 2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/08/02/fact-sheet-white-house-summit-on-building-lasting-eviction-prevention-reform/> [<https://perma.cc/BAF8-BVZR>].

134. Sam Gilman, *The Return on Investment of Pandemic Rental Assistance: Modeling a Rare Win-Win-Win*, 18 IND. HEALTH L. REV. 293, 312 (2021).

135. See *infra* Part III for further discussion.

136. Shelley Welton & Joel B. Eisen, *Covid-19 and Energy Justice: Utility Bill Relief in Virginia*, 57 U. RICH. L. REV. 155, 157 (2022).

137. *Survey of Household Energy Insecurity in Time of COVID: Preliminary Results of Wave-2, and Wave-1 and Wave-2 Combined*, IND. UNIV. ENERGY JUST. LAB (Sept. 22, 2020), https://energyjustice.indiana.edu/doc/09232020_wave_2.pdf [<https://perma.cc/T24S-CM38>] [hereinafter *Survey of Household Energy Insecurity in Time of COVID*].

utility companies accounted for ninety-four percent of all documented shutoffs.¹³⁸

In both residential energy insecurity and disconnection rates, racial disparities abound. For example, 26.7% of Black respondents and 27.4% of Hispanic respondents could not pay an energy bill, compared to only 14.3% of White respondents.¹³⁹ In the summer of 2020, Black households with low income were two times more likely, and Latine households with low income were five times more likely to receive a disconnection notice than White households with low income.¹⁴⁰

During the pandemic, when people were sheltering in place and spending much more time at home, they experienced intensified health harms from living without heat, air conditioning, refrigeration, and light.¹⁴¹ Moreover, water shutoffs are especially concerning during any pandemic because they leave people in unsanitary conditions where they cannot wash their hands.¹⁴² Unlivable conditions resulting from utility disconnections can force people to leave their homes, essentially becoming a “constructive eviction.”¹⁴³ In several states, tenants are prohibited from remaining in units without working utilities and are required to leave.¹⁴⁴

When utility disconnections force people out of their homes, they cannot socially distance, quarantine, or isolate. Instead, they are put out on the streets, in shelters, or in overcrowded living situations, which raises the risk of contracting and spreading diseases like COVID.¹⁴⁵ Utility shutoffs also create dangerous living situations, like

138. JEAN SU & CHRISTOPHER KUVEKE, CTR. FOR BIOLOGICAL DIVERSITY, BAILOUT WATCH, POWERLESS IN THE PANDEMIC: AFTER BAILOUTS, ELECTRIC UTILITIES CHOSE PROFITS OVER PEOPLE 3 (2021).

139. *Survey of Household Energy Insecurity in Time of COVID*, *supra* note 137.

140. *Id.*

141. Audrey Henderson, *Power Shutoffs Deepened Pandemic Toll While Utilities Collected Millions in Relief*, ENERGY NEWS NETWORK (Nov. 8, 2021), <https://energynews.us/2021/11/08/power-shutoffs-deepened-pandemic-toll-while-utilities-collected-millions-in-relief/> [<https://perma.cc/9HL3-YWAD>].

142. Xue Zhang, Mildred E. Warner & Mary Grant, *Water Shutoff Moratoria Lowered COVID-19 Infection and Death Across U.S. States*, 62 AM. J. PREVENTATIVE MED. 149, 152 (2022) (“[H]andwashing is . . . critical for reducing COVID-19 spread.”).

143. Kathryn A. Sabbeth, *(Under)Enforcement of Poor Tenants’ Rights*, 17 GEO. J. ON POVERTY L. & POL’Y 97, 108 (2019); Henderson, *supra* note 141.

144. Henderson, *supra* note 141.

145. *Id.*

the use of space heaters that can lead to fires.¹⁴⁶ These dangers were a particular concern during the peaks of the COVID pandemic when the healthcare system was already overburdened, with many hospitals at or over capacity.¹⁴⁷

There was no federal moratorium to protect people from utility disconnections. However, in the summer and fall of 2020, a patchwork of states and cities implemented temporary moratoria on utility disconnections for non-paying customers affected by the pandemic,¹⁴⁸ leveraging their local and state law authority to declare a PHE and respond to utility shutoff concerns.¹⁴⁹ In July 2020, fifty-six

146. MARCUS FRANKLIN ET AL., NAACP, LIGHTS OUT IN THE COLD: REFORMING UTILITY SHUT-OFF POLICIES AS IF HUMAN RIGHTS MATTER 14 (March 2017) <https://naacp.org/resources/lights-out-cold> [<https://perma.cc/F422-A6RE>].

147. See Nigel Chiwaya & Corky Siemaszko, *Florida Hospitals Face ICU Bed Shortage as State Passes 300,000 COVID-19 Cases*, NBC NEWS (July 15, 2020, 6:46 PM), <https://www.nbcnews.com/news/us-news/florida-hospitals-face-icu-bed-shortage-state-passes-300-000-n1233899> [<https://perma.cc/QXZ3-SM4N>] (reporting that, in Florida, 54 hospitals had zero ICU beds available—including ten in Miami-Dade county—and forty hospitals had less than ten percent of ICU beds available); Lauren Leatherby et al., *There's No Place for Them to Go: I.C.U. Beds Near Capacity Across U.S.*, N.Y. TIMES (Dec. 9, 2020), <https://www.nytimes.com/interactive/2020/12/09/us/covid-hospitals-icu-capacity.html> (on file with the *Columbia Human Rights Law Review*) (documenting that one in ten Americans lived in areas where intensive care beds were full, or where fewer than five percent of beds were available); Kelli Kennedy & Philip Marcelo, *There Are Only So Many Beds: COVID-19 Surge Hits Hospitals*, AP NEWS (Aug. 5, 2021, 4:30 PM), <https://apnews.com/article/joe-biden-health-florida-coronavirus-pandemic-38917e4fd073c8142df15de2d8102a24> [<https://perma.cc/RG4M-R39H>] (describing the effect of the Delta variant on hospital capacity across the county, including in Mississippi where only six ICU beds were available in the entire state).

148. *Map of Disconnection Moratoria*, NAT'L ASS'N OF REGUL. UTIL. COMM'RS (Sept. 9, 2021), <https://www.naruc.org/compilation-of-covid-19-news-resources/map-of-disconnection-moratoria> [<https://perma.cc/YP9W-VU9E>]; Henderson, *supra* note 141; Tami Luhby, *Utility Shutoffs Loom as Energy Prices Soar and Moratoriums End. But Help is Available*, CNN (April 24, 2022, 8:05 AM), <https://www.cnn.com/2022/04/24/politics/us-gas-electric-moratoriums-end-liheap/index.html> [<https://perma.cc/B28V-SZMD>].

149. See, e.g., *Utility Shutoffs Allowed with Restrictions by Pennsylvania Public Utilities Commission*, PHILA. ENERGY AUTH. (Nov. 12, 2020), <https://philaenergy.org/utility-shutoffs-allowed-with-restrictions-by-pennsylvania-public-utilities-commission/> [<https://perma.cc/C4ME-V84L>] (noting that the Pennsylvania Public Utilities Commission instituted a utility shutoff moratorium in March 2020); COVID-19 Response Emergency Amendment Act of 2020, D.C. Act 23-247 §§ 303–305 (2020) (prohibiting disconnection of utility services during the COVID PHE); N.Y. COMP. CODES R. & REGS. tit. 9 § 8.202 (2020) (invoking executive authority “to temporarily suspend or modify any statute, local law, [or

percent of Americans were covered by a COVID moratorium on utility shutoffs.¹⁵⁰

Many jurisdictions established clear connections between the utility shutoff moratoria and COVID-related public health measures. For example, early in the pandemic, Illinois Governor J.B. Pritzker urged the Illinois Commerce Commission (ICC) to initiate a moratorium on utility shutoffs across the state for the duration of its COVID-related state of emergency.¹⁵¹ Governor Pritzker raised the possibility of “negative public health outcomes” resulting from the inability to pay utility bills and suggested that access to utilities “will help slow the spread of the disease and protect the public,” specifically indicating that access to water is necessary for handwashing.¹⁵² Days later, the ICC issued an emergency order that initiated a moratorium on utility shutoffs.¹⁵³ Like Governor Pritzker, the ICC highlighted the impacts that utility disconnection would have on the broader public’s health, also noting that the “frequent hand washing” recommended to limit the spread of COVID-19 requires running water.¹⁵⁴ The Commission further emphasized that access to functioning lights, electric appliances, and heat is particularly necessary when residents are required or requested to stay home because of the pandemic.¹⁵⁵ In myriad ways, residential energy access is critical to health.

Moreover, the American Rescue Plan of 2021 offered critical financial assistance with utilities, home energy costs, and arrears¹⁵⁶ by allocating \$21.55 billion¹⁵⁷ to the Emergency Rental Assistance (ERA) program.¹⁵⁸ Of the 1.95 million unique households that had received assistance through the ERA program by June 2022, fourteen percent

ordinance . . . during a State disaster emergency, if compliance . . . would prevent, hinder, or delay action necessary to cope with the disaster emergency”).

150. *Winter and COVID-19 Utility Shut-off Moratoriums*, NAT’L ENERGY ASSISTANCE DIRS. ASS’N (Mar. 15, 2021), <https://neada.org/wintercovid19moratoriums/> [<https://perma.cc/SPN8-YAPE>].

151. Letter from Governor J.B. Pritzker to Chairman Carrie Zalewski, Illinois Com. Comm’n (Mar. 13, 2020), [https://www.icc.illinois.gov/downloads/public/ICC Letter Governor Pritzker 31320.pdf](https://www.icc.illinois.gov/downloads/public/ICC%20Letter%20Governor%20Pritzker%2031320.pdf) [<https://perma.cc/7E5X-VCY9>].

152. *Id.*

153. Moratorium on Disconnection of Utility Services during the Public Health Emergency, Docket No. 20-0309 (Emergency Interim Order Mar. 18, 2020), <https://www.icc.illinois.gov/downloads/public/edocket/518600.pdf> [<https://perma.cc/99CZ-4TPS>].

154. *Id.*

155. *Id.*

156. American Rescue Plan Act of 2021, 15 U.S.C. § 9058c(d)(1)(A)(i)(II)–(III).

157. American Rescue Plan Act of 2021, 15 U.S.C. § 9058c(a)(1).

158. Consolidated Appropriations Act, 2021, 15 U.S.C. § 9058a.

received utility assistance, and twenty-seven percent received assistance with utility arrears.¹⁵⁹ The American Rescue Plan also provided an additional \$4.5 billion in funding to the Low Income Home Energy Assistance Program (LIHEAP), more than doubling the program's average yearly funding.¹⁶⁰ The Biden White House supplied further financial support with the \$350 billion State & Local Fiscal Recovery Fund, through which state and local jurisdictions had the discretion to fund more energy relief measures.¹⁶¹ The Administration also called on utility companies to facilitate assistance to struggling families and to voluntarily pause disconnections, with fourteen utilities ultimately making commitments.¹⁶²

When the utility shutoff moratoria and financial assistance ended, many households still had tremendous need for utility assistance and faced threats to their health. However, subsequent structural reforms failed to materialize once the risks to the wider public had dissipated.

4. Positive Impacts of COVID-Era Housing Measures

COVID-era eviction moratoria, emergency rental assistance, utility shutoff moratoria, and utility assistance measures were important to public health and proved impactful when they were in place.

For example, the extended federal eviction moratorium provided immediate relief for 6.5 million renter households who were behind on their rent and at an increased risk of eviction, lowering

159. GRANT A. DRIESSEN, MAGGIE MCCARTY & LIBBY PERL, CONG. RSCH. SERV., PANDEMIC RELIEF: THE EMERGENCY RENTAL ASSISTANCE PROGRAM 18 (Jan. 10, 2023).

160. *FACT SHEET: Biden Administration Deploys American Rescue Plan Funds to Protect Americans from Rising Home Heating Costs; Calls on Utility Companies to Prevent Shut Off This Winter*, WHITE HOUSE (Nov. 18, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/11/18/fact-sheet-biden-administration-deploys-american-rescue-plan-funds-to-protect-americans-from-rising-home-heating-costs-calls-on-utility-companies-to-prevent-shut-offs-this-winter/> [https://perma.cc/8J7X-NGQU].

161. *Id.*

162. *Id.*; *Biden Administration Announces State-by-State Funding to Add Home Energy Costs*, WHITE HOUSE (Jan. 7, 2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/01/07/biden-administration-announces-state-by-state-funding-to-address-home-energy-costs/> [https://perma.cc/TW7K-WAD4].

eviction filings.¹⁶³ Across the country, eviction moratoria, especially those that halted the earliest stages of the eviction process, significantly reduced eviction filings,¹⁶⁴ though variations in how states interpreted and implemented moratoria affected tenants' overall level of protection.¹⁶⁵ The reduction in filings was largely clustered in high-eviction neighborhoods.¹⁶⁶ The eviction filing rate in high-eviction neighborhoods fell to only one in twelve tenants, compared to one in six pre-pandemic.¹⁶⁷

In fact, research shows that eviction filings were around forty-nine percent of historical averages just before the federal moratorium's termination by the Supreme Court, with at least 1.55 million fewer filings than average rates over the course of the program's lifespan.¹⁶⁸ Overall, the federal CDC moratorium reduced total evictions by fifty-one percent.¹⁶⁹

The largest absolute reductions in occurred in majority Black and low-income neighborhoods, where filing rates were more than halved.¹⁷⁰ Black women in particular experienced the greatest decline in eviction filing rates,¹⁷¹ which actually reversed the gender gap in eviction between Black women and men.¹⁷² However, even where rates of eviction filings were lower than historical patterns, inequities remained, with majority-Black neighborhoods still experiencing “a

163. NAT'L LOW INCOME HOUS. COAL., FEDERAL MORATORIUM ON EVICTIONS FOR NONPAYMENT OF RENT 1 (Aug. 2021).

164. Benfer et al., *supra* note 88, at 1390.

165. *Id.* at 1407.

166. Hepburn et al., *supra* note 115, at 203.

167. Hepburn et al., *supra* note 16.

168. Jacob Haas et al., *Preliminary Analysis: Eviction Filing Trends After the CDC Moratorium Expiration*, EVICTION LAB (Dec. 9, 2021) <https://evictionlab.org/updates/research/eviction-filing-trends-after-cdc-moratorium/> [<https://perma.cc/QPN5-FQMP>] (reporting numbers on eviction filings before, during, and after the federal eviction moratorium); Jasmine Rangel et al., *Preliminary Analysis: 11 Months of the CDC Moratorium*, EVICTION LAB (Aug. 21, 2021), <https://evictionlab.org/eleven-months-cdc> [<https://perma.cc/3ESJ-L86C>] (“The CDC eviction moratorium, as it ran between September 4, 2020 and July 31, 2021, helped to prevent at least 1.55 million eviction filings across the country.”).

169. *Research Finds Eviction Moratorium and ERA Reduced Evictions*, NAT'L LOW INCOME HOUS. COAL. (July 18, 2022), <https://nlihc.org/resource/research-finds-eviction-moratorium-and-era-reduced-evictions> [<https://perma.cc/K57M-PQ4C>] (citing Katharine Marcal, Patrick J. Fowler & Peter S. Hovmand, *Feedback Dynamics of the Low-Income Rental Housing Market: Exploring Policy Responses to COVID-19* (2022) (preprint)).

170. Hepburn et al., *supra* note 16; Hepburn et al., *supra* note 115, at 203.

171. Hepburn et al., *supra* note 16.

172. Hepburn et al., *supra* note 115, at 200.

higher median filing rate than among majority-White neighborhoods before the pandemic.”¹⁷³

Initial data and analyses suggest that eviction prevention policies, such as moratoria, were important in controlling the spread of COVID and reducing mortality,¹⁷⁴ indicating that policies specifically designed to stop displacement and the resulting spread of COVID appear to have worked.¹⁷⁵ State-level eviction moratoria were also associated with improved mental health among renters.¹⁷⁶ Moreover, jurisdictions like Washington, D.C. saw homelessness decrease from their pre-pandemic levels, which is especially important in light of the wide range of health harms and early mortality associated with homelessness.¹⁷⁷

Emergency rental assistance also had many positive impacts, including helping more than 8 million renters stay in their homes.¹⁷⁸ A study from the Joint Center for Housing Studies at Harvard University found numerous short-term benefits for recipients of COVID-era emergency rental assistance, including lower likelihood of being

173. *Id.* at 203.

174. Benfer et al., *supra* note 88, at 1393.

175. *Id.*

176. See generally Abdinasir K. Ali & George L. Wehby, *State Eviction Moratoriums During the COVID-19 Pandemic Were Associated with Improved Mental Health Among People Who Rent*, 41 HEALTH AFFS. 1583 (2022).

177. HOMELESSNESS IN THE DISTRICT OF COLUMBIA: RESULTS FROM THE JANUARY 27, 2021 POINT-IN-TIME COUNT, CMTY. P'SHIP FOR THE PREVENTION OF HOMELESSNESS (Apr. 27, 2021), <https://community-partnership.org/wp-content/uploads/2021/06/Homelessness-in-the-District-of-Columbia-4.27.21.pdf> [<https://perma.cc/ZEL5-JNV8>] (indicating a 19.9% decline in the number of people experiencing homeless in Washington, D.C. compared to in January 2020); Bruce D. Meyer, Angela Wyse & Iliana Logani, *Life and Death at the Margins of Society: The Mortality of the U.S. Homeless Population*, NATIONAL BUREAU OF ECONOMIC RESEARCH 2 (March 2023), <https://www.nber.org/papers/w31843#> [<https://perma.cc/C3PA-RDPW>] (reporting on findings that “non-elderly people who have experienced homelessness face 3.5 times the mortality risk of people who are housed” and “a 40-year-old homeless person has a mortality risk similar to a housed person who is nearly 20 years older and a poor housed person who is nearly 10 years older”).

178. *The American Rescue Plan (ARP): Top 15 Highlights from 2 Years of Recovery*, THE WHITE HOUSE (March 10, 2023), <https://www.whitehouse.gov/briefing-room/statements-releases/2023/03/10/the-american-rescue-plan-arp-top-15-highlights-from-2-years-of-recovery/> [<https://perma.cc/485Q-GZFF>] [hereinafter *ARP: Top 15 Highlights*].

behind on rent, facing eviction, experiencing poor mental health, and confronting food insecurity.¹⁷⁹

Federal, state, and municipal measures to keep utilities on were also important to public health. Water shutoff moratoria provided a temporary lifeline to water, which was critical to handwashing and protection from the spread of COVID.¹⁸⁰ A study by Duke University researchers found that utility disconnection moratoria reduced COVID cases by 4.4 percent and COVID-related deaths by 7.4 percent.¹⁸¹ Disconnection moratoria early in the pandemic helped families keep their utilities connected and enabled them to spend funds on food and other basic needs.¹⁸² Such moratoria were far-reaching, with four million fewer households being threatened with disconnection in 2020 than in 2015.¹⁸³ With the Biden Administration's Emergency Rental Assistance, over 200,000 payments were made to households that owed utility debt between January and June 2021; over 140,000 prospective utility payments were disbursed in the same period.¹⁸⁴

The housing and utility reforms instituted during the pandemic clearly had tremendous positive impacts. However, as described below, despite these impacts and the ongoing dire eviction risks and threats to utility access for many households across the country, these programs and protections did not continue after the

179. WHITNEY AIRGOOD-OBRYCK, *THE SHORT-TERM BENEFITS OF EMERGENCY RENTAL ASSISTANCE* 10 (2022), https://www.jchs.harvard.edu/sites/default/files/research/files/harvard_jchs_short_term_era_benefits_airgood-obrycki_2022.pdf [<https://perma.cc/9XLN-58SN>].

180. Zhang et al., *supra* note 142, at 149.

181. *Moratoria on Utility Shutoffs and Evictions Reduced COVID-19 Infection Rates, Duke Analysis Finds*, DUKE NICHOLAS INST. (Jan. 26, 2021), <https://nicholasinstitute.duke.edu/articles/moratoria-utility-shutoffs-and-evictions-reduced-covid-19-infection-rates-duke-analysis> [<https://perma.cc/6872-K66X>] (citing Kay Jowers et al., *Housing Precarity & the COVID-19 Pandemic: Impacts of Utility Disconnection and Eviction Moratoria on Infections and Deaths Across U.S. Counties*, NAT'L BUREAU OF ECON. RSCH. (Jan. 2021)).

182. CARLEY, *supra* note 17, at 5.

183. Diana Hernández, *Energy Insecurity and Health: America's Hidden Hardship*, HEALTH AFFS. (June 29, 2023), <https://www.healthaffairs.org/doi/10.1377/hpb20230518.472953/> [<https://perma.cc/SUV2-QEAE>].

184. *FACT SHEET: Biden Administration Deploys American Rescue Plan Funds to Protect Americans from Rising Home Heating Costs; Calls on Utility Companies to Prevent Shut Off This Winter*, THE WHITE HOUSE (Nov. 18, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/11/18/fact-sheet-biden-administration-deploys-american-rescue-plan-funds-to-protect-americans-from-rising-home-heating-costs-calls-on-utility-companies-to-prevent-shut-offs-this-winter/> [<https://perma.cc/DMX4-3EU2>].

COVID PHE.¹⁸⁵ The country essentially engaged in a massive and unprecedented public health policy experiment¹⁸⁶ that could have provided many important lessons to drive transformational change. Instead, most of those measures ended abruptly, their positive effects vanishing and new harms taking their place. For many people—disproportionately people of color with low income—the public health emergency persists.

B. Longstanding and Structural Housing and Health Injustice

A critical examination of the COVID PHE housing and residential energy access measures—and the missed opportunities for meaningful public health reform that they represent—must begin with a recognition that interconnected housing injustice and health inequity did not emerge during the pandemic. While the terminology of emergency and crisis connotes something new and emergent, health-harming and exigent housing injustice and health inequity long predated the COVID pandemic.¹⁸⁷

1. Interlocking Structures of Housing and Health Inequity

Long before COVID, housing insecurity, evictions, and homelessness were public health crises for marginalized and minoritized communities. Tenants with low income have historically experienced immense struggles with housing affordability.¹⁸⁸ For

185. See *infra* Part III for further discussion.

186. *Alabama Ass'n of Realtors v. Dep't of Health & Hum. Servs.*, 141 S. Ct. 2485, 2489 (2021) (emphasizing the unprecedented nature of the eviction moratorium by noting that since the statute's enactment in 1944, no regulation or policy premised on section 361(a) of the Public Health Service Act “has even begun to approach the size or scope of the eviction moratorium”).

187. DAVID MADDEN & PETER MARCUSE, *IN DEFENSE OF HOUSING: THE POLITICS OF CRISIS* 9 (2016) (describing how the “housing crisis” is in fact the norm among working-class and poor communities); Deena Greenberg, Carl Gershenson & Matthew Desmond, *Discrimination in Evictions: Empirical Evidence and Legal Challenges*, 51 HARV. C.R.-C.L. L. REV. 115, 139 (2016) (citing COLUM. L. SCH. HUM. RTS. INST. & NE. UNIV. SCH. L. PROGRAM ON HUM. RTS. & GLOB. ECON., *EQUAL ACCESS TO JUSTICE: ENSURING MEANINGFUL ACCESS TO COUNSEL IN CIVIL CASES, INCLUDING IMMIGRATION PROCEEDINGS* 1 (2014)) (discussing that the limited supply of legal services creates a “crisis in unmet civil legal needs that disproportionately harms racial and ethnic minorities, women, and immigrants,” including in cases of eviction).

188. DRIESSEN ET AL., *supra* note 159, at 1.

example, the Joint Center for Housing Studies reported that in 2018, nearly half (forty-eight percent) of all renters were cost-burdened, meaning they pay more than thirty percent of their income in rent.¹⁸⁹ These rates substantially increase for lower-income tenants, of whom eighty percent are cost-burdened, as well as Black and Latine renters, of whom fifty-five percent and fifty-three percent, respectively, are cost-burdened.¹⁹⁰

Housing instability is correlated with malnutrition,¹⁹¹ cardiovascular disease, hypertension, diabetes,¹⁹² and extreme stress¹⁹³ and leads people to forego healthcare and health costs.¹⁹⁴ Caregivers experiencing housing instability have increased odds of poor health and maternal depression.¹⁹⁵ Children experiencing housing instability are more likely to have poor health and higher rates of hospitalization.¹⁹⁶

In addition to rent burden and housing insecurity, people of color are also more likely to experience evictions and subsequent health harms.¹⁹⁷ Research from the Eviction Lab at Princeton University shows that Black renters are more likely to face eviction filings than their White peers and that Black and Latine renters are more likely to face serial eviction filings at the same address than their White peers.¹⁹⁸ In addition, Black and Latine women renters experience eviction at higher rates than their male peers.¹⁹⁹ Moreover, of all combinations of race and gender among tenants, Black women

189. *Id.*

190. *Id.*

191. Samiya A. Bashir, *Home Is Where the Harm Is: Inadequate Housing as a Public Health Crisis*, 92 AM. J. PUB. HEALTH 733, 733 (2002).

192. Kristine D. Gu, Katherine C. Faulkner & Anne N. Thorndike, *Housing Instability and Cardiometabolic Health in the United States: A Narrative Review of the Literature*, 23 BMC PUB. HEALTH 1, 23 (2023).

193. Cannon, *supra* note 14, at 241–42.

194. Megan Sandel et al., *Unstable Housing and Caregiver and Child Health in Renter Families*, 141 PEDIATRICS 1, 1, 4, 6–7 (2018).

195. *Id.*

196. *Id.*; Bruce Ramphal, Ryan Keen & Sakurako S. Okuzuno, *Evictions and Infant and Child Health Outcomes: A Systematic Review*, 6 JAMA NETWORK OPEN 1, 1, 8 (2023) (discussing research finding that exposure to eviction is associated with adverse perinatal outcomes, worse parent-rated health in childhood and more hospitalizations).

197. NAT'L ACADS. OF SCIS., ENG'G, & MED., *RENTAL EVICTION AND THE COVID-19 PANDEMIC: AVERTING A LOOMING CRISIS* 11 (2022) [hereinafter *RENTAL EVICTION AND COVID-19*].

198. Hepburn et al., *supra* note 25, at 649.

199. *Id.*

experience the highest rate of eviction filings,²⁰⁰ as “structural racism, sexism, and classism interact perniciously, creating a housing market that disproportionately places Black women and their children at the highest risk for eviction.”²⁰¹ The eviction rate for Black women is nearly twice as high as it is for White women.²⁰² Evictions themselves breed new barriers and challenges that further segregation and widen existing racial and economic disparities.²⁰³

Evictions also result in powerful health harms. An eviction “is a severely consequential and traumatic event”²⁰⁴ that rips necessities away from people, forces them into uncertain and sometimes dangerous situations, and has well-documented correlations with poor health and higher rates of all-cause mortality.²⁰⁵ Simply a threat of eviction has been shown to cause tremendous stress resulting in negative health impacts.²⁰⁶

Eviction is associated with increased risks of poor maternal health, preterm birth and low birth weight, and infant mortality.²⁰⁷ Mothers who have been evicted experience higher levels of material hardship and depression, an effect lasting at least two years after an eviction in some cases.²⁰⁸ In addition, childhood eviction is associated with developmental risks, food insecurity, worse academic performance, poor parent-rated child health, and increased

200. Benfer et al., *supra* note 89, at 5 (“Of all gender and race combinations, Black women renters are at the highest risk [for eviction filings].”).

201. Ramphal et al., *supra* note 196, at 10; *see also* Hepburn et al., *supra* note 25, at 659 (finding the same racial and gender disparities among Black and Latine female renters and exploring their relationship to other racial inequalities).

202. Himmelstein & Desmond, *supra* note 25, at 2 (“The risk for eviction is 2 percent higher for women than men, and the eviction filing rate against Black women is nearly twice the filing rate against White women.”).

203. Sabbeth, *supra* note 54, at 366.

204. Matthew Desmond & Nicol Valdez, *Unpolicing the Urban Poor: Consequences of Third-Party Policing for Inner-City Women*, 78 AM. SOCIO. REV. 117, 137 (2012).

205. Yerko Rojas, *Evictions and Short-Term All-Cause Mortality: A 3-Year Follow-up Study of a Middle-aged Swedish Population*, 62 INT’L J. PUB. HEALTH 343, 346 (2017); Himmelstein & Desmond, *supra* note 25; *see also* Kathryn A. Sabbeth & Jessica K. Steinberg, *The Gender of Gideon*, 69 UCLA L. REV. 1130, 1149 (2023); Samantha Batko & Amy Rogin, *The End of the National Eviction Moratorium Will Be Costly for Everyone*, URB. INST. (June 24, 2021), <https://www.urban.org/urban-wire/end-national-eviction-moratorium-will-be-costly-everyone> [<https://perma.cc/3P2X-9N8B>].

206. Cannon, *supra* note 14, at 240–42.

207. Ramphal et al., *supra* note 196, at 8.

208. Desmond & Kimbro, *supra* note 25, at 316–17; *see also* Himmelstein & Desmond, *supra* note 25.

hospitalization rates.²⁰⁹ Because evictions have particularly harmful health impacts for mothers and children, disproportionate eviction rates among Black women and their children are especially concerning for their health.

Even proximity to eviction is unhealthy; living in neighborhoods with high eviction rates has a negative effect on maternal and perinatal health.²¹⁰ “[E]ach eviction imposes additional burdens on family and social support networks that are often in a similar situation and in the same community.”²¹¹ The negative health implications of living in counties where eviction is common are most severe for non-Hispanic Black women and their infants.²¹² Such disparate health impacts “provide a gruesome illustration of how, like eviction, disease is not merely natural but socially constructed.”²¹³ In these ways, evictions represent an institutional system of gendered and racialized violence.²¹⁴

209. Katie Moran-McCabe & Scott Burris, *Eviction and the Necessary Conditions for Health*, 385 N. ENG. J. MED. 1443, 1443 (2021); see also Himmelstein & Desmond, *supra* note 25; Ramphal et al., *supra* note 196, at 8; Kathryn M. Leifheit et al., *Eviction in Early Childhood and Neighborhood Poverty, Food Security, and Obesity in Later Childhood and Adolescence: Evidence from a Longitudinal Birth Cohort*, 11 SSM – POPULATION HEALTH 1, 6 (2020), (“[F]ive-year-old children evicted in early childhood had over twice the prevalence of low food security compared to children with no evictions.”).

210. Emily W. Harville, Maeve E. Wallace & Katherine P. Theall, *Eviction as a Social Determinant of Pregnancy Health: County-Level Eviction Rates and Adverse Birth Outcomes in the United States*, 30 HEALTH & SOC. CARE CMTY. 5579, 5581 (2022) (describing the study’s findings that “living in the counties in the highest quartile of eviction was associated with a 12–13% increased odds of LBW [low birthweight]”); see also Alexa A. Freedman et al., *Living in a Block Group with a Higher Eviction Rate is Associated with Increased Odds of Preterm Delivery*, 76 J. EPIDEMIOLOGY & CMTY. HEALTH 398, 401 (2022) (“Our results suggest that those living in areas with higher eviction rates are more likely to deliver preterm and to deliver an SGA infant than those living in areas with lower eviction rates.”).

211. RENTAL EVICTION AND COVID-19, *supra* note 197.

212. Harville et al., *supra* note 210, at 5581 (finding that “not only were NH [Non-Hispanic B]lack women more likely to live in counties where eviction was common, but that the negative health implications of living in such an area were most severe for NH [B]lack women and their infants”).

213. Sabbeth, *supra* note 54, at 371.

214. Sabbeth & Steinberg, *supra* note 205, at 1145 (describing the disproportionate impact of evictions on Black women); see also Tonya L. Brito et al., *Racial Capitalism in the Civil Courts*, 122 COLUM. L. REV. 1243, 1268 (2022) (asserting that civil courts legitimize and perpetuate the violence of racial capitalism).

2. Interlocking Structures of Energy Access and Health Inequity

Both challenges paying energy bills²¹⁵ and utility disconnections²¹⁶ have long disproportionately impacted households of color. Before the pandemic, Black and Latine households in particular disproportionately experienced utility disconnection.²¹⁷ Data showed that “Black households earning less than 150% [of the] federal poverty level were twice as likely to have their electricity shut off as [W]hite families with comparable income levels.”²¹⁸ Such energy insecurity has cascading harmful effects.

Energy insecurity is generally defined as challenges to the affordability of utility bills and the resulting inability to meet basic household energy needs adequately.²¹⁹ Energy insecurity can lead to threats of disconnection and actual shutoffs, which can create “stress, hunger, respiratory illness, and heat and fire risks.”²²⁰ Utility disconnections lead to sickness when homes get too cold,²²¹ loss of power to medical devices,²²² food insecurity due to the inability to

215. DIANA HERNÁNDEZ, YUMIKO ARATANI & YANG JIANG, NAT’L CTR. FOR CHILDREN IN POVERTY, *ENERGY INSECURITY AMONG FAMILIES WITH CHILDREN 4* (2014) (analyzing 2011 data to find that 35% of Black families and 21% of Hispanic families experience economic energy insecurity, compared to 14% of White families); see also Maria Castillo & Caitlin Odom, *What Do We Know about Utility Shutoffs of Vulnerable Families during COVID-19?*, RMI (Mar. 16, 2022), <https://rmi.org/what-do-we-know-about-utility-shutoffs-of-vulnerable-families-during-covid-19> [<https://perma.cc/F2CQ-DZNF>] (reporting racial disparities in the ability to pay energy bills in the first wave of the pandemic).

216. Chandra Farley et al., *Advancing Equity in Utility Regulation*, Future Elec. Util. Regul. Rep. No. 12, 20–21 (Lisa Schwartz ed., 2021), https://eta-publications.lbl.gov/sites/default/files/feur_12_-_advancing_equity_in_utility_regulation.pdf [<https://perma.cc/WG8E-N3TT>].

217. Megan Leonhardt, *Nearly 35 Million Households Will Lose Their Utility Shutoff Protections Over the Next Month*, CNBC (Aug. 27, 2020, 5:30 AM), <https://www.cnbc.com/2020/08/27/millions-of-households-will-lose-their-utility-shutoff-protections-in-the-next-month.html> [<https://perma.cc/VC37-CA3R>].

218. *Id.*

219. Welton & Eisen, *supra* note 136, at 157.

220. GABRIELA SANDOVAL & MARK TONEY, TURN, *LIVING WITHOUT POWER: HEALTH IMPACTS OF UTILITY SHUTOFFS IN CALIFORNIA 5* (2018), https://downloads.ctfassets.net/ntcn17ss1ow9/2AXQK5Lv4gwQkgD88LAGDY/f9b42f76d4d3bde79c4e84060bce9710/2018_TURN_Shut-Off-Report_FINAL.pdf [<https://perma.cc/D9VJ-3LV3>].

221. FRANKLIN ET AL., *supra* note 146, at 14 (citing JO-ANN CHOATE & MARK WOLFE, NAT’L ENERGY ASSISTANCE DIRS. ASS’N, 2009 NATIONAL ENERGY ASSISTANCE SURVEY (2010)).

222. *Id.* at 14–15.

refrigerate and/or cook food, and health and safety risks when families turn to dangerous alternative light or heating sources, such as space heaters.²²³ A 2009 survey found that due to high energy bills, nineteen percent of households with lower incomes had someone become sick because their home was too cold.²²⁴ Thirty-two percent of home heating fires and seventy-nine percent of home heating fire deaths involved space heaters.²²⁵

Because utility loss is so stressful and dangerous, families may sacrifice other basic necessities, such as food and healthcare, in order to afford their energy bills.²²⁶ The above study also found that as a result of high energy bills, twenty-four percent of households with lower incomes went without food for at least one day, thirty-seven percent went without medical or dental care, and thirty-four percent did not fill a prescription or rationed their medicine.²²⁷ These tradeoffs only lead to compounding health harms.

As a result of such harms, racial disparities in utility disconnections and residential energy access contribute to longstanding and persisting health inequities facing communities of color.

III. INTERROGATING THE COVID PHE AND HOUSING CRISIS RESPONSE

The terms “crisis” and “emergency” may be useful and indeed accurate and necessary in certain cases. Throughout the COVID pandemic, the official declaration of a PHE was undoubtedly crucial to providing federal, state, and local governments with the momentum, support, and justification to take actions both within and outside the realm of healthcare that were necessary to address the pandemic and

223. *Id.* at 14 (citing NAT'L FIRE PROTECTION ASS'N, SPACE HEATERS INVOLVED IN 79 PERCENT OF FATAL HOME HEATING FIRES (2010)).

224. *Id.* (citing JO-ANN CHOATE & MARK WOLFE, NAT'L ENERGY ASSISTANCE DIRS. ASS'N, 2009 NATIONAL ENERGY ASSISTANCE SURVEY (2010)).

225. *Id.* (citing NAT'L FIRE PROTECTION ASS'N, SPACE HEATERS INVOLVED IN 79 PERCENT OF FATAL HOME HEATING FIRES (2010)).

226. Castillo & Odom, *supra* note 215 (“[F]amilies that face the possibility of disconnection may make dangerous trade-offs by forgoing expenditures on essentials such as food in what is known as the “heat or eat” dilemma.”).

227. FRANKLIN ET AL., *supra* note 146, at 13–14 (citing JO-ANN CHOATE & MARK WOLFE, NAT'L ENERGY ASSISTANCE DIRS. ASS'N, 2009 NATIONAL ENERGY ASSISTANCE SURVEY (2010)).

the resulting recession.²²⁸ However, a health justice analysis requires a critical examination of this framing in order to glean insights into the role of legal determinants in health inequity. This Part engages in this examination and concludes that protective and supporting housing and energy access measures taken during and after the COVID PHE, the swift rollback of such measures when they no longer benefited those with racial and socioeconomic privilege, and the lack of meaningful systemic reform represented a missed opportunity to address persistent health injustice.

A. Contextualizing Crisis

Given that the COVID pandemic created a threat to public health unparalleled in modern American history, in many ways, the terminology of the Public Health Emergency and the eviction crisis were accurate, apt, and indeed necessary to support the COVID-era measures discussed in this Article. Undoubtedly, emergency and crisis framing can be used to call attention to new dimensions of existing terrains and justify calls for resources. The terminology of the PHE and the housing crisis helped to underscore the “urgency and gravity” of the situation.²²⁹ Such framing was used to educate the broader public about these issues and served as a “rallying cry” to inspire unprecedented, historic, and substantial measures, such as eviction moratoria and emergency rental assistance.²³⁰ Federal emergency rental assistance was critical to preventing a “housing crisis of unparalleled magnitude.”²³¹

Just as such framing was important for garnering resources and protections that ultimately saved lives during the height of the pandemic, it is also important to scrutinize the “crisis” framing and the

228. See Haffajee et al., *supra* note 46, at 988 (“Emergency powers laws may be used . . . to send a signal to legislatures that a problem urgently requires attention.”); Response in Opposition to Applicants’ Emergency Application to Vacate the Stay Pending Appeal at 1–2, *Alabama Ass’n of Realtors v. Dep’t of Health & Hum. Servs.*, 141 S. Ct. 2485 (2021) (No. 21A23) (noting that the CDC extended the eviction moratorium “based on the evolving public health challenges posed by an unprecedented pandemic”).

229. Sabbeth, *supra* note 54, at 399.

230. 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/> [<https://perma.cc/GJL8-U2PS>]; see also Stuart Hall & Doreen Massey, *Interpreting the Crisis*, 44 *SOUNDINGS* 57, 57 (2010).

231. Kriston Capps, *What Happens When the Eviction Bans End?*, CITYLAB (May 29, 2020), <https://www.citylab.com/equity/2020/05/pay-rent-eviction-ban-coronavirus-housing-crisislandlord/612277> [<https://perma.cc/C7VP-7YLG>].

pandemic measures through a critical lens that acknowledges the roles of racism, capitalism, and other subordinating forces that shape legal structures that drive health inequity. The crisis and emergency framing that facilitated the dramatic housing and utility protections also obfuscated interconnected, longstanding housing and health injustices that have persisted for generations and the structural, deep-rooted, and entrenched nature of these challenges.²³² For many people in marginalized and racially minoritized communities, crisis is not a mere buzzword, but a “daily reality,” which signifies “the chaos, fear, and disempowerment they experience.”²³³ As Sabbeth and other critical legal scholars have argued, the narrative of “crisis” can obscure the fact that housing rights and resources have long been “a terrain of struggle”—or a fundamentally skewed site of social relation production—for marginalized and minoritized communities²³⁴ that necessitates more than temporary emergency action.²³⁵

Crisis framing can belie the fact that pandemics, including the COVID pandemic, and our responses to them are legally constructed and structurally determined.²³⁶ Structural racism and racialized poverty have long driven health, housing, and energy injustice. In fact, they are chronic and persistent crises that, rather than being met with the same urgency, are often accepted as systemic issues that will always be there in the background. The framing of COVID as the “crisis” and racial and socioeconomic injustice as structural reflect a predetermination of our disparate responses to these challenges.

Moreover, crisis framing can suggest that a system is currently and temporarily broken, that there is a short-term glitch in an otherwise functioning system.²³⁷ However, as Sabbeth argues in her article *Eviction Courts*, housing injustice before, during, and after the COVID pandemic represents a fundamental and deeply ingrained “conflict over whether housing is a home or is real estate.”²³⁸ Drawing on insights from Witt’s *American Contagions*, Madden and Marcuse’s *In Defense of Housing*, Jenkins and Leroy’s *Histories of Racial Capitalism*, and other social science literature,²³⁹ Sabbeth critiques the

232. Sabbeth, *supra* note 54, at 399.

233. MADDEN & MARCUSE, *supra* note 187, at 11.

234. Ruth Margaret Buchanan, *Context, Continuity, and Difference in Poverty Law Scholarship*, 48 U. MIA. L. REV. 999, 1002, 1008 (1994).

235. See Sabbeth, *supra* note 54, at 400–01.

236. See *id.* at 401.

237. *Id.* at 399–400 (citing MADDEN & MARCUSE, *supra* note 187, at 9).

238. *Id.* at 400 (citing MADDEN & MARCUSE, *supra* note 187, at 12, 37).

239. See *id.* at 373, 399–401.

narrative of the “eviction crisis” during the pandemic as potentially shrouding the fact “that housing resources and rights are and have long been contested”²⁴⁰ and the ways in which a housing shortage is deeply embedded in our political economy.²⁴¹ Similarly, legal determinants at the root of the health inequity crisis are a feature, not a bug.²⁴² Health disparities have long arisen from the economic, racialized, and gendered dimensions of the distribution of housing and other vital necessities for health.²⁴³

These structural dimensions of the housing system have been highlighted by Sabbeth, Madden, and Marcuse, and other housing scholars, who have argued that eviction courts have long been “sites of social struggle” where various sociopolitical priorities are in conflict.²⁴⁴ The housing system is a broad “political-economic problem,” which gets its shape from the results of conflict between various groups and classes.²⁴⁵ In this terrain of struggle, tenants facing eviction—most often people of color with low income—fight to keep their homes and protect their health. In turn, landlords—most often large corporate entities—frequently aim to squeeze as much profit and capital from their properties as possible, prioritizing this financial goal above the interests of their tenants,²⁴⁶ even as housing injustice literally sickens and even kills people of color. By prioritizing the provision of rental assistance directly to landlords during the PHE, the structural dimensions of the system and its values were made evident.

Crisis framing further allows powerful actors in an unjust housing system to escape accountability because it conjures images of a natural phenomenon, a neutral situation, or an accident that just

240. *Id.* at 399.

241. *Id.* at 400.

242. *Id.* at 400–01 (citing MADDEN & MARCUSE, *supra* note 187, at 9) (“The second important aspect of Madden and Marcuse’s critique of the ‘crisis’ terminology is the reminder that none of this is a temporary circumstance. The housing crisis is not abnormal. It is not a bug but a feature.”).

243. *Id.*

244. *Id.*

245. David Madden & Peter Marcuse, *The Permanent Crisis of Housing*, JACOBIN (Oct. 2, 2016), <https://jacobin.com/2016/10/housing-crisis-rent-landlords-homeless-affordability#> [<https://perma.cc/LHW4-5S5P>].

246. Jennifer Ludden, *Corporate Landlords Used Aggressive Tactics to Push out More Tenants Than Was Known*, NPR (July 28, 2022, 4:36 PM), <https://www.npr.org/2022/07/28/1114128514/corporate-landlords-used-aggressive-tactics-to-push-out-more-tenants-than-was-known> [<https://perma.cc/VA3G-67JE>]; MADDEN & MARCUSE, *supra* note 187, at 64 (“Eviction represents the violent assertion of the rights of property owners over the needs of tenants.”).

happened. The image of neutrality allows decisions and other structures in the law to be “depicted as objective, preordained, or even God-given,” despite the fact that the decisions and structures are made and enforced by humans.²⁴⁷ For instance, housing law may present itself as a neutral arbiter that “denies that it is an active or interested participant” in the conflicts that it hears.²⁴⁸ The law purports to balance the interests of tenants seeking to protect their health and home and those of landlords seeking to profit, even as courts devote just minutes to each eviction case and proceedings disproportionately favor landlords, who have legal representation far more often than tenants.²⁴⁹

Health injustice has many of these same features. For example, health equity experts recognize that disparities are similarly not neutral and inevitable, but rather structurally constructed and preventable.²⁵⁰ They have roots in “a carefully crafted system functioning as planned, successfully implementing social policies—many of which are rooted in racism.”²⁵¹ The crisis conceptualization during the COVID PHE, while an apt description for that moment and its many challenges, also served to eclipse such important forces in the legal determinants of health equity and risked ignoring the roles that structural racism, White supremacy, and racial capitalism play in laws and institutions that harm the health of minoritized and marginalized communities. The crisis framing also obfuscates the fact that other legal determinants of health beyond evictions, such as the school-to-prison pipeline and the family regulation system that separates many

247. David Kairys, *Introduction*, in *THE POLITICS OF LAW: A PROGRESSIVE CRITIQUE* 1, 12 (Basic Books ed., 1998).

248. Patricia Ewick, *Consciousness and Ideology*, in *THE BLACKWELL COMPANION TO LAW AND SOCIETY* 80, 85 (2004).

249. Cannon, *supra* note 31, at 857 (describing the imbalance of power between tenants and landlords in housing court, including how landlords have long been permitted by judges to obtain eviction judgments without providing admissible evidence); see Sabbeth, *supra* note 54, at 370–71.

250. 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, 518 (2020) (“[D]isparities persist because of the failure to account for and address structural racism, the root cause of racial health disparities.”).

251. Andis Robeznieks, *Health Inequity’s No Accident, and Fixing It Will Take Real Purpose*, *AMA* (Feb. 14, 2022), <https://www.ama-assn.org/delivering-care/health-equity/health-inequity-s-no-accident-and-fixing-it-will-take-real-purpose> [<https://perma.cc/57HK-YHY8>].

children of color from their parents, are also entrenched structures that cause racialized trauma and violence.²⁵²

In fact, evictions and other legal determinants of health inequity exact “slow violence.”²⁵³ Environmental justice scholar Rob Nixon has used this term to describe the gradual harms resulting from environmental crises and the inattention paid to them, “in contrast with the sensational, spectacle-driven messaging” that often impels public activism.²⁵⁴ Nixon argues that slow violence is readily ignored by hard-charging capitalism and exacerbates the vulnerability of people who are poor and involuntarily displaced, eroding life-sustaining conditions.²⁵⁵ Legal determinants of health in housing, economic, family policing, criminal, disability and other forms of injustice similarly operate as slow violence.

The end of the PHE provides an important moment for such health justice analysis. “While the unfolding and eventual end point of a crisis tends to appear, retrospectively, as a *fait accompli*,” in reality, that is far from the case.²⁵⁶ For communities that experience the harms of racial health inequities, exposing the façades of inevitability and neutrality is important to the pursuit of justice. To be understood as a determinant of health inequity, the housing law and other legal systems must be recognized as systematically constructed to favor the economically, racially, and socially privileged—who then have more opportunities to achieve health.²⁵⁷

252. Cannon, *supra* note 31, at 838–39 (discussing how the trauma caused by the child welfare system is most often inflicted on Black families); Yael Zakai Cannon, *Medical-Legal Partnership as a Model for Access to Justice*, 75 STAN. L. REV. ONLINE 73, 83 (2023) (describing how preventative legal models can forestall evictions, involvement of the family regulation system, and entry into the criminal justice system and therefore avoid “harm and racialized violence”) [hereinafter Cannon, *MLPs as a Model*]; see generally DOROTHY ROBERTS, *TORN APART: HOW THE CHILD WELFARE SYSTEM DESTROYS BLACK FAMILIES—AND HOW ABOLITION CAN BUILD A SAFER WORLD* (2022).

253. See generally ROB NIXON, *SLOW VIOLENCE AND THE ENVIRONMENTALISM OF THE POOR* (2011) (describing the “slow violence” resulting from climate change, toxic drift, deforestation, oil spills, and the environmental aftermath of war).

254. *Id.*

255. *Id.* at 4.

256. John Whitlow, *If You Can Unmake It Here: Crisis, Contingency, and Law in the Making and Unmaking of Neoliberal New York*, S. ATL. Q. 339, 340 (2022).

257. Amna A. Akbar, *Non-Reformist Reforms and Struggles Over Life, Death, and Democracy*, 132 YALE L.J. 2497, 2508 (2023); see also Angela P. Harris, *Foreword: The Jurisprudence of Reconstruction*, 82 CALIF. L. REV. 741, 746 (1994) (“[T]he crits sought to show that legal doctrine is contradictory; that legal rules are indeterminate; and that the operation of legal institutions is systematically biased

As the official COVID PHE ended, the country was at a crossroads. The pandemic and the crises it prompted could have been leveraged to attack the slow and ongoing violence wrought by structural housing injustices that involuntarily displace people, erode life-sustaining conditions for those who are already subordinated, and exacerbate health disparities. Instead, the crisis framing engendered reforms that fell short of disrupting the status quo, leaving people further vulnerable to both ongoing and new forms of slow violence.

B. Interest Convergence

This Section applies the concept of “interest convergence” to pandemic-era housing and utility measures and draws on other critical legal theory principles to engage in the foundational health justice analysis necessary to envision and facilitate meaningful reform.

Introduced by pioneering Critical Race Theory scholar Derrick Bell, the concept of interest convergence asserts that expansive change will not occur until the interests of the marginalized align with those of the powerful.²⁵⁸ While Bell’s original assertion that advances in racial justice are possible only when the interests of White and Black communities align has been critiqued as essentialist (because there is no common set of goals for people who identify as part of these groups), interest convergence analysis has been applied to a variety of contexts because “the theory has more to say about the nature of power and oppression than it does about a particular (or overgeneralized) racial prerogative.”²⁵⁹

Protective and supportive measures in the legal determinants of health, including in the areas of housing and utility access, are representative of interest convergence. While the health of Black communities and other minoritized and marginalized communities has long been harmed by housing injustice, significant changes in such laws during the pandemic PHE were ultimately only enacted when the pandemic-era recession and contagion risks made evictions and utility disconnections a risk to both the marginalized and the historically privileged, aligning their interests.

in favor of economically and socially privileged elites.” (footnotes omitted)); Ewick, *supra* note 248, at 85.

258. Derrick Bell was a preeminent legal scholar in the field of Critical Race Theory and coined the term “interest convergence.” Bell, *supra* note 28, at 523; Pierson-Brown, *supra* note 29, at 694–95.

259. Pierson-Brown, *supra* note 29, at 695.

Moreover, the presence of an interest convergence does not necessarily mean that all groups share the same motivation for their support of a particular reform. Rather, it represents the idea that reform happens because it provides a benefit to the powerful that the status quo does not. For the short period in which protective pandemic-era housing and utility measures were in place, both marginalized and privileged groups benefitted from contagion containment, while those directly at risk of eviction and utility disconnection, who were disproportionately from minoritized and marginalized communities, also benefitted from protection from the many other harms of being displaced and losing utilities.

In *The Miner's Canary*, Lani Guinier and Gerald Torres provide a helpful analogy for understanding how the longstanding harms experienced by communities of color are used to inform the need for change when those with more privilege begin confronting similar issues.²⁶⁰ They argue that racial inequalities are indicative of broader social problems that harm all Americans and that society is like a coal mine, with racial minorities as the canaries and White and wealthy Americans as the miners.²⁶¹ The canary is highly sensitive to noxious gases in the mine and suffers the harms of those gases first. After realizing that the canary's suffering might indicate that the environment of the mine is harmful and is a threat to the miners themselves, the miners take note and realize a change is needed.²⁶² In other words, Black, Indigenous, and other communities of color often "suffer the problem first," with the White and wealthy able to "heed the warning and figure out how to fix or change the environment" in response.²⁶³

The housing protections and supports instituted during the COVID PHE, and their health justice dimensions, exemplify the Miner's Canary paradigm. At the onset of the pandemic, Black people and people from other racially minoritized communities were getting sick and dying of COVID at higher rates. Policymakers then saw that eviction and utility shutoffs could accelerate due to the growing recession and escalate the pandemic to even higher rates of infection and mortality for White and wealthier communities, especially if

260. See generally LANI GUINIER & GERALD TORRES, *THE MINER'S CANARY: ENLISTING RACE, RESISTING POWER, TRANSFORMING DEMOCRACY* (2003).

261. *Id.*

262. Catherine R. Squires, *Coloring in the Bubble: Perspectives from Black-Oriented Media on the (Latest) Economic Disaster*, 64 AM. Q. 543, 564 (2012) (citing GUINIER & TORRES, *supra* note 260).

263. *Id.* (citing GUINIER & TORRES, *supra* note 260).

hospitals reached or exceeded capacity as a result. Against this backdrop, with those with socioeconomic and racialized privilege also having seen the health and other harms that housing insecurity, evictions, homelessness, and utility shutoffs inflict on marginalized and minoritized communities, policymakers instituted substantial and unprecedented reforms, such as moratoria and rental and utility assistance. These measures benefitted those who were both newly vulnerable to eviction because of the quickly unfolding pandemic recession, as well as those who would not face an eviction threat during the pandemic but would be harmed if others were evicted due to cascading contagion risks and strained hospital resources. In other words, reforms were instituted swiftly and robustly when the socially, racially, and economically privileged members of society discovered they were vulnerable to the same health threats as subordinated communities.

The Miner's Canary effect was evident with another housing crisis—the foreclosure crisis of 2008—where the early wave of foreclosures beginning in 2006 “did not cause much alarm because ‘the people affected were low[-]income, mainly African American and immigrant (Hispanics) or women single-headed households.’”²⁶⁴ Policymakers and financial institutions failed to recognize this trend as serious or relevant enough to take meaningful action. In fact, the longevity and maintenance of power by large financial institutions relied on such inequity, which was a hallmark of the status quo.²⁶⁵

However, “[p]anic began to spread when foreclosures hit ‘[W]hite middle-class’ households . . . and it was only . . . when Lehman Brothers declared bankruptcy that the crisis became official.”²⁶⁶ In essence, the rising rate of foreclosures was viewed as a

264. Paula Chakravarty & Denise Ferreira da Silva, *Accumulation, Dispossession, and Debt: The Racial Logic of Global Capitalism—An Introduction*, 64 AM. Q. 361, 365–66 (2012) (quoting DAVID HARVEY, *THE ENIGMA OF CAPITAL 1* (2010)).

265. *Id.* at 366 (citing DAVID HARVEY, *THE ENIGMA OF CAPITAL 17* (2010)) (“Household debt sky-rocketed, but this required that financial institutions both support and promote the debts of working people whose earnings were not increasing. . . . Financial institutions, awash with credit, began to debt-finance people who had no steady income.”); see also MADDEN & MARCUSE, *supra* note 187, at 51–52 (“Profit seeking without regard for external social consequences is intrinsic to the way [corporations] are set up. Residential inequality . . . will always result from a housing system dominated by these kinds of . . . property owners following the same logic.”).

266. Chakravarty & da Silva, *supra* note 264, at 365–66 (quoting DAVID HARVEY, *THE ENIGMA OF CAPITAL 1* (2010)).

crisis worthy of action only when the status quo was disrupted and big banks declared bankruptcy;²⁶⁷ “[w]hereas the banks were ‘too big to fail,’ the disproportionate number of people of color with mortgage woes seemed doomed to failure.”²⁶⁸

Critical scholars like Dustin Jenkins, Justin Leroy, and Kathryn Sabbeth have called to question the crisis framing of the 2008 recession and mortgage crisis.²⁶⁹ They argue that the terminology of crisis suggests that communities of color have not been trapped for many years in cycles of debt and dispossession, asking, “a crisis for whom?”²⁷⁰ The same questions can be applied to the crisis framing and legal responses to the COVID pandemic-related emergency and eviction crisis, as this terminology risks obscuring longstanding health disparities that transcend the COVID-related “crises” that were only declared as such when contagion risks and a widespread recession meant that the interests of the marginalized converged with those of the privileged.²⁷¹

Legal responses to infectious disease have historically shown that reform happens when there is an interest convergence and reform is necessary to protect those with economic power and White privilege.²⁷² For example, David Madden and Peter Marcuse examined reforms enacted in New York City in 1867 to improve conditions in tenements, arguing that while these reforms benefitted tenement residents, who were largely members of ethnic minorities, they were enacted in order to alleviate “elites’ twin fears of disease and uprising.”²⁷³ Drawing on observations by Friedrich Engels,²⁷⁴ Madden

267. *Id.* at 366 (“[I]t was only in September 2008 when Lehman Brothers declared bankruptcy that the crisis became official . . .”).

268. Squires, *supra* note 262 at 546.

269. See Sabbeth, *supra* note 54, at 401; Destin Jenkins & Justin Leroy, *Introduction: The Old History of Capitalism*, in *HISTORIES OF RACIAL CAPITALISM* 1, 21 n.3 (2021).

270. Jenkins & Leroy, *supra* note 269, see also MADDEN & MARCUSE, *supra* note 187, at 9; Sabbeth, *supra* note 54, at 401.

271. Jenkins & Leroy, *supra* note 269.

272. See, e.g., MADDEN & MARCUSE, *supra* note 187, at 121–22 (describing how fear of contagious disease was a driver of nineteenth-century regulations to improve housing conditions and how “[t]enement reform grew out of this genteel fear of the illnesses associated with poverty”); Pierson-Brown, *supra* note 29, at 700.

273. MADDEN & MARCUSE, *supra* note 187, at 121–22.

274. Friedrich Engels’s work on sociopolitical theory and economy in *THE HOUSING QUESTION* remains prescient even 150 years later. See Glyn Robbins, *150 Years Ago, Friedrich Engels Correctly Assessed What’s Wrong with Housing Under Capitalism*, *JACOBIN* (July 25, 2022), <https://jacobin.com/2022/07/housing-question-capitalism-friedrich-engels> [<https://perma.cc/A4FH-7FMA>].

and Marcuse argue that reform was pursued only when elites themselves were faced with the negative consequences of dangerous housing conditions, including the spread of disease and the threat of an uprising, despite the historic relegation of subordinated and poor communities to housing that facilitates injury, death, and illness.²⁷⁵

Further demonstrating that the COVID pandemic-era housing reforms were instituted when they symbolized an interest convergence with those with more privilege and power, those reforms were cut short when the broader public no longer faced heightened contagion risk connected to eviction and disconnected utilities. Although eviction and utility shutoff moratoria and financial assistance were substantial and historic reforms that were critical to public health during the COVID PHE, their rollbacks leave marginalized and minoritized groups highly vulnerable.

Some might argue that the pandemic was so different than prior public health challenges that it changed public priorities such that these pandemic-era measures were effectuated not simply out of an instrumental means of protecting the privileged, but out of a desire to protect people, including those from marginalized communities, from a fundamentally different type of public health emergency. Indeed, the COVID pandemic did present policymakers with a fundamentally different public health emergency than any the nation had faced in modern history and all people required protection from contagion.

But governmental action during the COVID PHE also must be scrutinized through the lens of health justice, applying critical theoretical perspectives to interrogate the role of structural racism, racialized poverty, and other subordinating forces in driving chronic and unaddressed health disparities. Legal determinants of health inequity, including evictions and utility shutoffs, exacted tremendous harm prior to the pandemic and the government failed to act. Instead, as discussed above in Part II, the legislative and administrative history of these dramatic pandemic actions reveals that reform occurred only when the interests of the privileged aligned with the interests of the marginalized—that is, when eviction threatened to impact many more

275. MADDEN & PETER MARCUSE, *supra* note 187, at 9–10 (quoting FRIEDRICH ENGELS, *THE HOUSING QUESTION* 17 (1872)) (“The so-called housing shortage . . . is not something peculiar to the present; it is not even one of the sufferings peculiar to the modern proletariat in contradistinction to all earlier oppressed classes. On the contrary, all oppressed classes in all periods suffered more or less uniformly from it.”).

people, including people with more socioeconomic and racialized privilege, during the course of the pandemic recession and when eviction became a COVID contagion risk. And once those threats were mitigated with the slowing spread and severity of the COVID pandemic, the reforms were then rolled back without meaningful systemic changes necessary for those who have long borne the harms of eviction and utility disconnection.

C. Temporary and Inadequate Reform

Law and Political Economy and housing scholar John Whitlow²⁷⁶ has called attention to moments in history “characterized by an array of deep and interlocking crises” where the status quo is destabilized, which he argues are moments that should be examined “through the prism of law.”²⁷⁷ Crises can leave “the political field . . . cracked open” and in need of stabilization, which can create the conditions needed for meaningful change.²⁷⁸

Pandemics in particular provide an opportunity for radical social reform, including reforms impacting the legal determinants of health equity. Prior public health crises have shown that “calamity can be an occasion for making intolerable social conditions visible – and for reforming them . . . Savvy political leaders grasped the ways in which public health could sometimes align the interests of rich and poor, [W]hite and Black, citizen and immigrant,” and have used them as a foundation for reform.²⁷⁹ The interest convergence resulting from contagion risks can be turned into opportunities for reform of laws and systems, ultimately removing people from harmful conditions like poverty and mitigating health inequity.²⁸⁰

276. John Whitlow is a scholar of Law and Political Economy (LPE) and housing and a contributor to the LPE Project. The LPE Project interrogates and illuminates the role of law in building and promoting capitalism, while exploring the relationship between market supremacy and systems of injustice, a framework that is helpful in interrogating the connections between housing and health injustice. See *About LPE*, LPE PROJECT, <https://lpeproject.org/about> [<https://perma.cc/RL83-ANXJ>]; see also Jedediah Britton-Purdy et al., *Building a Law-and-Political-Economy Framework: Beyond the Twentieth-Century Synthesis*, 129 YALE L.J. 1784, 1792 (2020) (“Attention to political economy today requires attentiveness to the ways in which economic and political power are inextricably intertwined with racialized and gendered inequity and subordination.”).

277. Whitlow, *supra* note 256, at 340.

278. *Id.*

279. WITT, *supra* note 26, at 140.

280. *Id.*; Pierson-Brown, *supra* note 29, at 695–96 (“Under the theory of interest convergence, there will be no racial progress unless the interests of the

Legal responses to the COVID PHE involved unprecedented measures that had positive public health impacts and provided opportunities to study, explore, and initiate such longer-term policy and legal interventions. Despite some shortcomings, in light of their breadth and the data showing their dramatic positive impacts on well-being when they were in place, these measures could have opened the door for a concerted and transformational set of efforts to advance health justice.

However, COVID PHE legal responses did not lead to sustained, meaningful, and structural reform.²⁸¹ Although eviction and utility shutoff moratoria and emergency assistance were historic and substantial measures, they ultimately failed to address the structural injustices of the housing systems.

Derrick Bell has argued that reforms resulting from interest convergence are often limited in nature, either materially or temporally, especially as they are designed with the aims of the powerful in mind.²⁸² And while interest convergence has been critiqued as difficult to validate, health and racial justice scholar Tomar Pierson-Brown has posited that evidence of such alignment can be identified when “there are attractive reasons beyond the aims of justice” for the action (such as contagion containment) and it “does not involve the distribution of power to the disenfranchised group.”²⁸³ Similarly, COVID-era housing and utility access protections and assistance programs failed to meaningfully attack health inequity and distribute power in ways that are necessary for health justice.

In some ways, these measures may have left communities that had long experienced health inequity in a worse condition. Crisis framing that prompts short-term, inadequate reform risks not only being performative, but, even worse, providing the illusion of

marginalized align with the interests of those in power.”); *see also* Benfer & Wiley, *supra* note 33.

281. *Coronavirus Relief Bill: What Congress Left Out*, SPOTLIGHT ON POVERTY & OPPORTUNITY, <https://spotlightonpoverty.org/coronavirus-relief-bill-what-congress-left-out> [https://perma.cc/T24Y-5KT7].

282. Bell, *supra* note 28 (“[T]his principle of ‘interest convergence’ provides: The interest of [B]lacks in achieving racial equality will be accommodated only when it converges with the interests of [W]hites.”); *see also* RICHARD DELGADO & JEAN STEFANCIC, *CRITICAL RACE THEORY: AN INTRODUCTION* 9 (4th ed. 2023) (“Because racism advances the interests of both [W]hite elites (materially) and working-class [W]hites (psychically), large segments of society have little incentive to eradicate it.”).

283. Pierson-Brown, *supra* note 29, at 695 (citing Justin Driver, *Rethinking the Interest-Convergence Thesis*, 105 NW. U. L. REV. 149 (2011)).

substantive action that can shut down opportunities for sustainable change.²⁸⁴ The White House lauded the American Rescue Plan by quoting eviction expert Matthew Desmond as describing the Plan as “the most important eviction prevention policy in American history” and the “deepest investment the federal government has made in low-income renters since the nation launched its public housing system.”²⁸⁵ The Plan did provide historic and unprecedented rental assistance, yet it is also critical that we resist creating a false narrative that transformative housing inequity reform has already been accomplished.

Such reforms can also create a false feeling of security for people who are most vulnerable to the slow violence of inequitable systems.²⁸⁶ Still reeling from the pandemic and the recession, many people fell far behind on their rent and utility bills, especially during the moratoria when nonpayment did not lead to eviction and utility disconnection. For a short time, people relied on these protections and supports and had the security of knowing that they could keep their home and their power on, regardless of their income and their ability to pay. But the illusion of meaningful change was in and of itself harmful. Against a backdrop of high interest rates and inflation, rising housing and energy costs, and a tumultuous economic post-pandemic period that disproportionately affected over-burdened communities, those protections swiftly disappeared, and landlords and utility companies are coming to collect.²⁸⁷

The Sections below examine the harms associated with the temporary and inadequate nature of pandemic-era eviction moratoria, rental assistance, and utility shutoff moratoria.

1. Inadequacy of Pandemic-Era Eviction Moratoria

While eviction filings slowed due to unprecedented pandemic-era moratoria and rental assistance, they have “come roaring back,”

284. Pierson-Brown, *supra* note 29, at 700.

285. *ARP: Top 15 Highlights*, *supra* note 178.

286. For further discussion of “slow violence,” see *supra* notes 253–255 and accompanying text.

287. Aparna Jayashankar & Anthony Murphy, *High Inflation Disproportionately Hurts Low-Income Households*, FED. RSRV. BANK OF DALL. (Jan. 10, 2023), <https://www.dallasfed.org/research/economics/2023/0110> [<https://perma.cc/2P3T-5V3V>] (discussing the disproportionate effects of inflation on low-income households).

even surpassing pre-pandemic levels in some places.²⁸⁸ When the Supreme Court struck down the CDC's eviction moratorium in August 2021, hundreds of thousands of tenants were at risk of losing shelter,²⁸⁹ and preliminary data showed an increase in eviction filings immediately following that decision.²⁹⁰ The Eviction Lab observed 20.4% more cases filed in the subsequent three months than over the final three months that the moratorium was in place.²⁹¹

Rates of eviction filings also rose markedly with the repeal of state and local eviction moratoria.²⁹² In fact, eviction filings are more than fifty percent higher than pre-pandemic averages in some cities. For example, in Minneapolis, in March 2023, eviction filings were up 106 percent from the pre-pandemic average, while in Houston, eviction filings were fifty percent higher than their pre-pandemic levels.²⁹³ Following the lifting of the eviction moratorium in New York, forty of the state's sixty-two counties had higher eviction filings in 2022 than before the pandemic, including two counties with eviction filings that more than doubled compared to 2019.²⁹⁴

Not only have evictions resumed as business as usual, but researchers at the Eviction Lab estimate that many renters with low income are, in fact, in a worse situation than they were pre-pandemic. The foreseeable struggles associated with the end of pandemic

288. Michael Casey & R.J. Rico, *Eviction Filings Are 50% Higher than They Were Pre-pandemic in Some Cities as Rents Rise*, ASSOCIATED PRESS (June 17, 2023, 12:22 AM), <https://apnews.com/article/evictions-homelessness-affordable-housing-landlords-rental-assistance-dc4a03864011334538f82d2f404d2afb> [https://perma.cc/R2NX-KAVX] (reporting that cities such as Houston and Minneapolis-St. Paul were experiencing over fifty percent increases in the eviction rate).

289. Adam Liptak & Glenn Thrush, *Supreme Court Ends Biden's Eviction Moratorium*, N.Y. TIMES (Nov. 7, 2021), <https://www.nytimes.com/2021/08/26/us/eviction-moratorium-ends.html> [https://perma.cc/9RP5-3EB6].

290. Haas et al., *supra* note 168.

291. *Id.*

292. Hepburn et al., *supra* note 115, at 202.

293. Adam Barnes, *Eviction Filings Soar Above Pre-Pandemic Levels in Some Cities*, THE HILL (June 21, 2023, 11:02 AM), <https://thehill.com/business/4060319-eviction-filings-soar-above-pre-pandemic-levels-in-some-cities> [https://perma.cc/9CX5-NWYK]; *Minneapolis-Saint Paul, Minnesota*, EVICTION LAB, <https://evictionlab.org/eviction-tracking/minneapolis-saint-paul-mn> [https://perma.cc/3ZCA-4RC2]; *Houston, Texas*, EVICTION LAB, <https://evictionlab.org/eviction-tracking/houston-tx> [https://perma.cc/3GBW-QLQH].

294. Casey & Rico, *supra* note 288.

resources have only been amplified by rent increases, enduring affordable housing shortages, the difficulty of finding steady work, and the fact that wages have not kept pace with the rising costs of basic necessities like food.²⁹⁵ Many people continue to face illegal evictions and challenges after experiencing an eviction because the “Scarlet E” on credit reports makes it difficult for tenants to rent again or achieve financial security.²⁹⁶ Tenants often lack access to legal counsel to fight evictions.²⁹⁷ After an eviction, there are few places to go, as affordable housing for tenants remains scarce. The National Low Income Housing Coalition estimates that the nation is short 7.3 million affordable housing units.²⁹⁸ Without alternatives, the increase in evictions is leading to an increase in homelessness.²⁹⁹

Experts estimate that many of the collateral positive impacts that the eviction moratoria created will diminish or reverse now that evictions have resumed, including but not limited to rises in food insecurity, as well as illnesses and death not only from COVID, but from a reduced quality of living.³⁰⁰ Initial data show that within just twelve weeks of the end of the CDC moratorium, people living in low-income and high-rent-burdened areas and people with “co-morbidities” (the simultaneous presence of two or more diseases or medical

295. *Id.*

296. 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.”); Alieza Durana & Matthew Desmond, *A Massive Wave of Evictions Is Coming. Temporary Bans Won’t Help*, WASH. POST (Apr. 8, 2020, 9:24 AM), <https://www.washingtonpost.com/outlook/2020/04/08/eviction-coronavirus-rent-homelessness> [<https://perma.cc/GZ6S-5GL3>].

297. Camila Vallejo, *2022: The Year We Refused to Go Back to Normal*, EVICTION LAB (Feb. 7, 2023), <https://evictionlab.org/2022-the-year-we-refused-to-go-back-to-normal> [<https://perma.cc/2JWS-F49X>] (citing *Tenant Right to Counsel*, NAT’L COAL. FOR A CIV. RIGHT TO COUNS., http://civilrighttocounsel.org/highlighted_work/organizing_around_right_to_counsel [<https://perma.cc/2CNU-XNEB>] (“Tenants facing eviction are often entering an uneven field. Nationally, 81% of landlords benefit from legal representation while 3% of tenants have the same benefit . . .”); see also *Status Map*, NAT’L COAL. FOR A CIV. RIGHT TO COUNS., <http://civilrighttocounsel.org/map> [<https://perma.cc/Y8MH-PHC2>] (showing that 33 states lack any kind of right to counsel for eviction cases).

298. Casey & Rico, *supra* note 288.

299. *Id.*

300. Khushbu Patel, *COVID-19 Policies & Their Impact on Housing and Health Outcomes in the City of Chicago*, 24 DEPAUL J. HEALTH CARE L. 3, 25 (2023).

conditions in a patient), were more than twice as likely to face risks of contracting COVID than if the moratorium had continued.³⁰¹

These harms disproportionately impact people of color. Structural racism and poverty have relegated many people of color to lower socioeconomic status, high rent burden, and higher rates of comorbidities, along with lower access to healthcare.³⁰² These conditions create vulnerabilities not only to contracting COVID, but to serious infection and fatality.³⁰³ Researchers predict that the expiration of eviction moratoria will ultimately result in an exacerbation of already disparate racial and ethnic COVID outcomes due to disproportionately high rates of evictions in Black and Latine communities.³⁰⁴

Despite their promise and potential, pandemic-era eviction moratoria and other housing-related reforms were inadequate to address entrenched affordability challenges, financial fragility, and deep inequities that predated the pandemic because they were not designed to structurally reform the shortcomings of eviction courts and systems.³⁰⁵ Even while measures like eviction moratoria were in place, eviction courts continued to operate and indeed continued to evict tenants, both because of longstanding problems with those courts and with landlord-tenant laws that leave tenants unfairly vulnerable to eviction and because judges ignored the moratoria or failed to effectively enforce them in many places.³⁰⁶ For the numerous people whose evictions were executed, it was “as if no federal law was in place.”³⁰⁷ Future reform must look past the setting of eviction court,

301. Sebastian Sandoval-Olascoaga, Atheendar S. Venkataramani & Mariana C. Arcaya, *Eviction Moratoria Expiration and COVID-19 Infection Risk Across Strata of Health and Socioeconomic Status in the United States*, 4 JAMA NETWORK OPEN 1, 6 (2021).

302. Kathryn M. Leifheit et al., *Expiring Eviction Moratoriums and COVID-19 Incidence and Mortality*, 190 AM. J. EPIDEMIOLOGY 2563, 2568 (2021).

303. *Id.*

304. *Id.*

305. Vincent J. Reina & Yeonhwa Lee, *COVID-19 and Emergency Rental Assistance: Impact on Rent Arrears, Debt, and the Well-Being of Renters in Philadelphia*, 9 RUSSELL SAGE FOUND. J. SOC. SCI. 208, 208–09 (2023).

306. Sabbeth, *supra* note 54, at 392, 395 (describing that the moratoria did not cover all cases, included loopholes and exceptions which were interpreted broadly, and were rejected by courts sua sponte).

307. *Id.* at 363.

which serves to maintain an oppressive status quo, and contemplate more transformative change.³⁰⁸

2. Inadequacy of Pandemic-Era Rental Assistance

Pandemic-era emergency rental assistance was also substantial, historic, and highly impactful for those who received it in the time when it was made available, but similarly proved too short-lived and inadequate to challenge problematic power structures. The \$46 billion federal program enacted by Congress to prevent evictions during COVID-19 “distributed cash so quickly” that many states began running out of money, endangering millions of tenants who depended on that support.³⁰⁹ Data collected between December 29, 2021, and January 10, 2022, found that over 11.5 million adult renters were behind on rent, with nearly half of whom reporting that they were either very or somewhat likely to face eviction in the next two months.³¹⁰

In addition to the need for greater funds, rental assistance programs were also inadequate in other ways, especially as tenants experienced barriers to accessing this assistance. Only a third of applicants had received the needed assistance in the first six months; between August 2021 and early February 2022, over thirty-three percent of applicants had received assistance, another thirty-eight percent were awaiting a decision, and twenty-five percent had been denied.³¹¹ Lack of awareness, lack of in-home internet access to complete rental assistance applications, concerns about eligibility, onerous documentation requirements, and landlord unwillingness all

308. *Id.* at 364 (“This social order is one in which housing is a scarce and unstable resource for subordinated people, and such scarcity generates profit for those who benefit from the commodification of real estate. A hierarchy between owners and tenants, perpetuated by the courts, sustains these dynamics.”).

309. Sophie Kasakove & Glenn Thrush, *Federal Rental Assistance Is Running Out, with Tenants Still in Need*, N.Y. TIMES (Jan. 9, 2022), <https://www.nytimes.com/2022/01/07/us/federal-rental-assistance-evictions.html> [https://perma.cc/98XD-D7DR].

310. *Robust COVID Relief Achieved Historic Gains Against Poverty and Hardship, Bolstered Economy*, CTR. ON BUDGET & POL’Y PRIORITIES (Feb. 24, 2022), <https://www.cbpp.org/research/poverty-and-inequality/robust-covid-relief-achieved-historic-gains-against-poverty-and> [https://perma.cc/VKE7-EBMM].

311. Alexander Hermann, *Emergency Rental Assistance Has Helped Stabilize Struggling Renters*, JOINT CTR. FOR HOUS. STUD. OF HARV. UNIV. (Apr. 6, 2022), <https://www.jchs.harvard.edu/blog/emergency-rental-assistance-has-helped-stabilize-struggling-renters> [https://perma.cc/67RH-UM9V].

prevented emergency rental assistance from reaching more eligible households.³¹²

Moreover, calls for additional rental assistance have failed to gain traction in Congress.³¹³ Proposed state measures have also failed. For example, advocates in New York pushed for legislation requiring landlords to justify evictions and a limit on rent increases to three percent or 1.5 times inflation, but that advocacy was unsuccessful.³¹⁴ In Texas, as federal assistance dried up and housing prices skyrocketed, advocates raised concerns about a record 270,000 eviction filings across the state in 2022.³¹⁵ They called for the state legislature to direct some of the state's \$32 billion budget surplus into rental assistance and expansive tenant protections, but those calls were unsuccessful.³¹⁶

While rental assistance was urgently needed and proved impactful, it also fell short of a structural and material reconceptualization of a housing system long characterized by deep inequity. Coupled with the Supreme Court's invalidation of the CDC eviction moratoria, rental assistance to landlords provided further evidence of interest convergence in that these initiatives failed to redistribute power, including fair and just opportunities for health and well-being. Sabbeth has argued that although eviction moratoria might seem to suggest that securing housing for renters was prioritized, the landlord-focused structure of pandemic-era rental assistance and the Supreme Court's striking down of the CDC eviction moratorium evidenced a prioritization of landlords' financial interests over tenants' well-being and a "steadfast commitment to maintaining tenants' obligation to pay rent, and landlords' entitlement to collect it."³¹⁷

In other words, government allocation of "unprecedented" amounts of rental assistance provided important support for landlords, whose coffers were threatened by massive amounts of unpaid rent, and

312. *Id.*

313. Casey & Rico, *supra* note 288; *see, e.g.*, Housing Emergencies Lifeline Program Act of 2022, H.R. 6696, 117th Cong. (2022).

314. Casey & Rico, *supra* note 288; *see* S. 305, 2023-2024 S., Reg. Sess. (N.Y. 2023), <https://legislation.nysenate.gov/pdf/bills/2023/S305>.

315. Casey & Rico, *supra* note 288.

316. *Id.*; TEX. HOUSERS, LOW-INCOME HOUSING AT THE 88TH TEXAS LEGISLATURE IN REVIEW 2 (June 30, 2023); *see* H.B. 3079, 88th Leg., Reg. Sess. (Tex. 2023) (creating and funding a pilot program providing free legal representation to indigent defendants in eviction suits); H.B. 2516, 88th Leg., Reg. Sess. (Tex. 2023) (establishing new tenant rights and protections).

317. Sabbeth, *supra* note 54, at 374.

essentially enshrined tenants' obligation to pay rent and landlords' corresponding entitlement to collect rent, rather than safeguard tenants' health and safety.³¹⁸ Rather than initiating transformative programs, such as canceling rent and supporting smaller landlords who show financial hardship, the U.S. government instead reinforced the burdens that exist for tenants in order to keep landlords financially whole.³¹⁹ In this context, our "political priorities" are made clear; the issuance of rental assistance was not so much a break from the past but a way to uphold it.³²⁰ The pandemic resurfaced the longstanding tension between providing stable shelter to tenant families and maximizing profit for property owners.³²¹ But pandemic-era measures failed to redistribute power in a way that could create the conditions necessary for health equity.

3. Inadequacy of Utility Shutoff Moratoria and Assistance

The short-term utility disconnection moratoria and assistance programs have also failed to result in structural change. While the moratoria halted the immediate loss of essential utility services, they ultimately failed to address the hardship of unpaid energy bills for families with low incomes. Utility companies have disconnected U.S. households more than 5.7 million times since 2020 while paying out billions to shareholders and top executives.³²² In 2022, electricity and gas disconnections jumped compared to the year before, as many people had accrued unpaid bills, shutoff moratoria were lifted, and fossil fuel prices were volatile.³²³

LIHEAP funding has historically been unable to reach all eligible families and pay home energy bills in full.³²⁴ Even with the

318. *Id.* at 374.

319. *Id.* at 374–75.

320. *Id.*

321. Sabbeth, *supra* note 54, at 400.

322. SELAH GOODSON BELL ET AL., CTR. FOR BIOLOGICAL DIVERSITY, POWERLESS IN THE UNITED STATES: HOW UTILITIES DRIVE SHUTOFFS AND ENERGY INJUSTICE 3–4 (2022).

323. *Id.* at 3.

324. *LIHEAP Math Is Simple: More Funding, More Families Get Help*, NEADA, <https://neada.org/served-eligible2022/> [<https://perma.cc/GGZ4-C4MZ>] (Nov. 22, 2021); MARK WOLFE, NEADA, HIGH COST OF HEAT THIS WINTER WILL MEAN A COLD HOLIDAY SEASON FOR MANY FAMILIES 3 (2019); *see also* Mark Wolfe, Opinion, *Opinion: Struggling US Families Face a Wave of Power Shutoffs if Congress Doesn't Act*, CNN BUS. PERSP. (Apr. 28, 2022, 11:47 AM),

Biden Administration delivering almost \$8 billion in funding for LIHEAP by February 2022,³²⁵ the program remained insufficient to meet the urgent utility needs of Americans; between January and October 2022, available data show that utilities disconnected power to households more than 1.5 million times across Washington, D.C. and the 30 states.³²⁶ These disconnections hurt households of color in particular.³²⁷

Along with the resumption of evictions and utility shutoffs and the end of federal emergency rental and utility assistance programs, communities with low incomes are concurrently facing increases in rent, inflation, high energy bills, and economic struggles from the pandemic.³²⁸

4. Lessons from the Inadequacies of PHE Programs

Despite the harms of the temporary nature of these measures, the official COVID public health state of “emergency” should not have been extended indefinitely. Scholars have cautioned against the overuse of states of emergency and related emergency powers, arguing that “[i]f this crucial tool is used too readily, public health officials may find themselves like the boy who cried wolf.”³²⁹ Stretching the definition of “emergency” too far may also lead to due process concerns and public skepticism toward public health officials.³³⁰

Moreover, pandemic-era measures should not necessarily be adopted wholesale, but should be critically examined, studied, and used as a springboard for more structural, sustained reform. Because these measures were not enacted with a desire to address inequity but rather out of an interest convergence in that temporary crisis moment, they were also materially inadequate; merely retaining these programs without structural change will not truly disrupt the status quo.

<https://www.cnn.com/2022/04/28/perspectives/utility-bills-power-shutoffs/index.html> [<https://perma.cc/7EUT-XJK6>].

325. *White House Announces Additional Actions to Help Families Afford Energy Bills, Building on Historic Investments*, WHITE HOUSE (Feb. 1, 2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/02/01/white-house-announces-additional-actions-to-help-families-afford-energy-bills-building-on-historic-investments/> [<https://perma.cc/6HR8-RX77>].

326. GOODSON BELL ET AL., *supra* note 322, at 3.

327. *Id.* at 3, 16.

328. Casey & Rico, *supra* note 288.

329. Haffajee et al., *supra* note 46, at 988.

330. *Id.*

Pierson-Brown critically examines through a similar lens the growing trend among jurisdictions of declaring racism a public health crisis. She argues that such statements were made because of interest convergence and are rarely accompanied by substantial investment in anti-racist public policy or meaningful empowerment of people of color.³³¹ Pierson-Brown argues that the irony of a symbolic statement of crisis,

when there was the capacity to take consequential action, is better understood as interest convergence. Interest convergence hypothesizes that anti-subordination efforts will fail unless they are sufficiently aligned with the interests of dominant power. It suggests that the inability of these limited alignments to realize the end-goals of marginalized groups, reflects a passive intent to maintain the status quo.³³²

COVID-era housing and utility access measures need to be critically examined to extract lessons and design and implement more transformative action. This Article aims to glean such lessons from existing data and also calls for further study and analysis. Without such interrogation and action, the evolution and dissolution of these measures ultimately reflects a passive intent to maintain the status quo, with ongoing slow violence as a result.³³³

IV. STRUCTURAL REFORMS TO ADDRESS THE PERSISTENT PUBLIC HEALTH INEQUITY CRISIS

As people reckon with the increase of evictions and utility disconnections after falling behind on rental and utility bill payments during the moratoria, the crisis persists, albeit in new forms. This Part elicits insights from the scattered longer-term housing and utility reform efforts that resulted from the COVID pandemic and ultimately argues that effectively addressing persistent health inequity requires sustained, structural, community-led reforms that meaningfully disrupt the status quo.

331. Pierson-Brown, *supra* note 29, at 693.

332. *Id.* at 694–95.

333. *See supra* notes 250–255 and accompanying text.

A. Insights from Longer-Term Reform Efforts

The scattered longer-term eviction prevention measures instituted during the pandemic can provide important insights for potential further reform. The National Low Income Housing Coalition has identified 200 measures nationwide that have passed since January 2021, including a right to legal counsel for tenants in eviction cases, mandatory mediation before eviction cases reach court, and the sealing of eviction records.³³⁴

For example, Philadelphia launched a major eviction diversion program, through which seventy percent of the 5,000 participating tenants in the initial program were able to resolve their cases outside of court.³³⁵ The city also initiated a guaranteed legal assistance program, known as a right-to-counsel program, that has doubled the rates of represented tenants and provided \$30 million in rental assistance for tenants with less than \$3,000 in rental arrears.³³⁶ These efforts helped Philadelphia keep eviction filings down; in July 2023, filings were forty-five percent below pre-pandemic averages.³³⁷

Seattle similarly has a right-to-counsel law entitling anyone served with an eviction summons to legal counsel, even if they cannot afford an attorney.³³⁸ It has also taken a historic step in implementing a post-COVID eviction moratorium to prevent the harms of evicting children and educators; households with students, educators, or other

334. Casey & Rico, *supra* note 288.

335. PHILA., PA., CODE § 9-811 (2022); *Philadelphia's Nationally Acclaimed Eviction Diversion Program Is Now Law*, PHILA. CITY COUNCIL (Dec. 16, 2021), <https://phlcouncil.com/philadelphias-nationally-acclaimed-eviction-diversion-program-is-now-law> [<https://perma.cc/4TGT-3SAP>] (announcing that eviction diversion program has a 93% success rate in avoiding evictions); *see also id.*

336. PHILA., PA., CODE § 9-808 (2019); *City Expands Right to Counsel for Eligible Philadelphia Tenants into Two Additional Zip Codes*, CITY OF PHILA. (Jan. 26, 2023), <https://www.phila.gov/2023-01-26-city-expands-right-to-counsel-for-eligible-philadelphia-tenants-into-two-additional-zip-codes> [<https://perma.cc/JEQ2-7S9K>] (announcing the expansion of the Right to Counsel one year after its official rollout); CITY OF PHILA., RIGHT TO COUNSEL ANNUAL REPORT 3 (2022); *see also* Casey & Rico, *supra* note 288.

337. *Philadelphia, Pennsylvania*, EVICTION LAB, <https://evictionlab.org/eviction-tracking/philadelphia-pa> [<https://perma.cc/N86J-PDRM>]; *see also* Casey & Rico, *supra* note 288.

338. *Unlawful Detainer Eviction*, CITY OF SEATTLE, <https://www.seattle.gov/rentinginseattle/renters/moving-out/unlawful-detainer-eviction> [<https://perma.cc/PZ53-NRM3>].

employees of schools and childcare facilities cannot be evicted during school-year months from September through June.³³⁹

In New York City, the eviction rate was rising steadily following the end of the state moratorium, with marshals removing nearly 4,400 households from their units in the year following the expiration.³⁴⁰ However, the city's right to counsel was one of several important reforms leading to a drop in eviction filings, which were thirty-three percent lower in May 2023 than pre-pandemic averages.³⁴¹

Nearly thirty cities have used federal funds to expand access to counsel for tenants facing eviction.³⁴² Right-to-counsel advocates have argued that many more individuals require greater access to legal assistance.³⁴³ Indeed, “[l]egal aid attorneys have been proven to reduce disruptive displacement and achieve better outcomes for their clients compared to the alternative of lack of representation.”³⁴⁴ Tenants can also benefit from assistance from non-legal navigators and other non-legal partners, who can help tenants identify their legal needs and provide them with legal information, resources, and support.³⁴⁵

Now that the COVID PHE has ended, researchers have provided evidence that some policies instituted during the COVID PHE, like the expanded Child Tax Credit and expanded emergency rental assistance, could be extended and codified to help reduce child poverty and homelessness and achieve other conditions necessary for health justice in the long-term.³⁴⁶ It is less costly for the government to

339. *Eviction Assistance, CITY OF SEATTLE*, <https://www.seattle.gov/rentinginseattle/eviction-assistance> [https://perma.cc/7A29-RC22]; SEATTLE, WASH., MUN. CODE § 22.205.090, https://library.municode.com/wa/seattle/codes/municipal_code [https://perma.cc/9UFT-CNGR].

340. David Brand, *NYC Eviction Rate Continues to Rise Since Ban Was Lifted, as Homelessness Surges*, *GOTHAMIST* (Jan. 18, 2023), <https://gothamist.com/news/nyc-eviction-rate-continues-to-rise-since-ban-was-lifted-as-homelessness-surges> [https://perma.cc/8PQ3-KEVY].

341. Casey & Rico, *supra* note 288.

342. *ERASE State and Local Tenant Protections Database*, NAT'L LOW INCOME HOUS. COAL., <https://nlihc.org/tenant-protections> [https://perma.cc/U6H3-8MTZ] (last modified Aug. 4, 2023).

343. See, e.g., Ericka Petersen, *Building a House for Gideon: The Right to Counsel in Evictions*, 16 *STAN. J. C.R. & C.L.* 63 (42020).

344. Gilman, *supra* note 134, at 311.

345. Cannon, *MLPs as a Model*, *supra* note 252, at 82.

346. See Ian Berlin & William G. Gale, *Let the Child Tax Credit Work*, BROOKINGS (July 7, 2022), <https://www.brookings.edu/articles/let-the-child-tax-credit-work/> [https://perma.cc/MU2P-H2LW] (arguing and providing evidence that the benefits of making the expanded Child Tax Credit permanent would outweigh

pay a household's rent than to bear the cost of "rehousing, health care, foreclosure, landlord debts, and all of the downstream impacts of displacement and homelessness."³⁴⁷ In fact, research shows that "[for] every dollar invested in a rental assistance program that covers tenants for up to two years, the government could see \$1.08 in savings (2.08 times the initial investment), and society could see upwards of \$3.66 in benefits (4.66 times the initial investment)."³⁴⁸ Lessons should be gleaned from such research, as well as research into other reform efforts, such as eviction diversion, mediation, and right-to-counsel programs, to help shape the path forward.³⁴⁹

In continuing the success of the federal pandemic emergency assistance programs, roughly 180 state and municipal jurisdictions developed or strengthened rental assistance or eviction diversion programs.³⁵⁰ Federal legislation was introduced in Congress to fund permanent emergency rental assistance modeled on the pandemic-era program, including the Eviction Crisis Act that would have created several eviction-related grant programs and shielded certain eviction records from consumer reports.³⁵¹ Moreover, the Stable Families Act would provide short-term financial assistance to stabilize rents for families with extremely low incomes at risk of eviction.³⁵² U.S. Representative Ayanna Pressley of Massachusetts has urged Congress to pass such robust legislation, arguing that "[t]he disturbing rise of evictions to pre-pandemic levels is an alarming reminder of the need for us to act — at every level of government — to keep folks safely housed."³⁵³ In early 2023, the Biden Administration issued a blueprint for tenants' rights that called for good-cause eviction protections, eviction diversion programs, and immediate sealing of eviction case

the costs); see also Ashley Burnside, *Ending Child Poverty: Lessons from a One-Year Expansion of the Child Tax Credit*, NONPROFIT Q. (Jan. 18, 2023), <https://nonprofitquarterly.org/ending-child-poverty-lessons-from-a-one-year-expansion-of-the-child-tax-credit/> [<https://perma.cc/GLX4-CVAR>] (highlighting the expanded Child Tax Credit's beneficial effects on reducing child poverty).

347. Gilman, *supra* note 134, at 320.

348. *Id.* at 324.

349. Kazis, *supra* note 131, at 417.

350. *ERASE State and Local Tenant Protections Database*, *supra* note 342.

351. DRIESSEN ET AL., *supra* note 159, at 19; Eviction Crisis Act of 2021, S.2182, 117th Cong. (2022).

352. Stable Families Act of 2022, H.R.8327, 117th Cong. (2022).

353. Casey & Rico, *supra* note 288; see H.R. 5038, 118th Cong. (2023) (re-introducing a bill "[t]o create a database of eviction information, establish grant programs for eviction prevention and legal aid, and limit the use of housing court-related records in consumer reports").

filings until a judgment for eviction is entered.³⁵⁴ While this blueprint provides a roadmap for some of the needed reforms, housing advocates critiqued the White House for failing to take urgent actions like implementing enforceable renter protections against price-gouging, source-of-income discrimination, and no-cause evictions.³⁵⁵

Regarding utility access challenges, there are scattered reform efforts of note. For example, after shorter-term utility disconnection moratoria expired, Chicago passed a ban on residential water shutoffs and similar legislation has been introduced in Washington, D.C.³⁵⁶ The D.C. Water is Life Amendment Act of 2024 would ban water shutoffs and expand access to utility repayment programs.³⁵⁷

Federally, while the Bipartisan Infrastructure Investment and Jobs Appropriations Act provided additional utility assistance through the LIHEAP program,³⁵⁸ advocates have underscored that there continues to be high levels of unmet need, as the program is only able

354. DOMESTIC POL'Y COUNCIL & NAT'L ECON. COUNCIL, THE WHITE HOUSE BLUEPRINT FOR A RENTERS BILL OF RIGHTS (Jan. 2023).

355. *NLIHC President and CEO Diane Yentel Statement on Biden-Harris Administration Blueprint for a Renters Bill of Rights*, NAT'L LOW INCOME HOUS. COAL. (Jan. 25, 2023), <https://nlihc.org/news/nlihc-president-and-ceo-diane-yentel-statement-biden-harris-administration-blueprint-renters> [<https://perma.cc/XY95-8VSD>]; Letter from Diane Yentel, President, Nat'l Low Income Hous. Coal., & Shamus Roller, Exec. Dir., Nat'l Low Income Hous. Coal., to Hon. Janet Yellen, Sec'y, Dep't of the Treasury, Hon. Marcia Fudge, Sec'y, Dep't of Hous. & Urb. Dev., Hon. Susan Rice, Dir., Domestic Pol'y Council, Hon. Sandra L. Thompson, Dir., Fed. Hous. Fin. Agency, Hon. Deanne Criswell, Adm'r, Fed. Emergency Mgmt. Agency, & Gene Sperling, Am. Rescue Plan Coordinator & Senior Advisor to the President (Aug. 16, 2022), https://nlihc.org/sites/default/files/Urgently-Needed-Admin-Actions-to-Protect-Renters-and-People-Experiencing-Homelessness_FINAL.pdf. [<https://perma.cc/J5MF-YXTL>] [hereinafter Letter from Diane Yentel & Shamus Roller].

356. Alice Yin, *Water Shutoffs for Bill Nonpayment Now Banned for Chicago's Residential Customers*, CHI. TRIB. (July 21, 2022, 1:57 PM), <https://www.chicagotribune.com/2022/07/21/water-shutoffs-for-bill-nonpayment-now-banned-for-chicagos-residential-customers/> (on file with the *Columbia Human Rights Law Review*); D.C. B. 25-0675, 25th Council (D.C. 2024).

357. D.C. B. 25-0675, 25th Council (D.C. 2024).

358. U.S. Dept. Health & Hum. Servs., *LIHEAP DCL 2024-02 First LIHEAP Funding Announced Award of FY 2024* (Oct. 24, 2023), at <https://www.acf.hhs.gov/ocs/policy-guidance/liheap-dcl-2024-02-first-liheap-funding-announced-award-fy-2024> [<https://perma.cc/9E55-SLUX>] (announcing LIHEAP grant opportunities for federal Fiscal Year 2024 to states, territories, and tribal, in part as a result of additional funding through the *Bipartisan Infrastructure Investment and Jobs Appropriations Act* (IIJA), (Public Law 117-58)).

to serve one in six eligible households with regular congressional appropriations each year.³⁵⁹

The destabilization and progress created by the pandemic PHE necessitates further research into the impacts of COVID-era housing and utility measures and where adaptation, extension, and permanent codification of any of those measures could be beneficial. For example, Eviction Lab experts have called for research into which overlapping policies, such as increased rental assistance and eviction moratoria, were most significant in reducing eviction filing rates; the costs and benefits of rental assistance; the political viability of longer-term eviction moratoria and rental assistance programs; and how increased residential stability resulting from avoided evictions and decreased churn in housing affected people's health and well-being, children's educational attainment, and the collective efficacy of neighborhood cohesion.³⁶⁰ Researchers have challenged government leaders and utility companies to examine and institute preventative measures that build resilience and help families avoid energy insecurity in the first place.³⁶¹ These measures might include investment in "weatherization," efforts to make energy-efficient appliances more accessible and affordable, longer-term and robustly funded utility assistance programs, and even a nationwide prohibition on all utility disconnections, an option contemplated in a recent Congressional Research Service report.³⁶²

More transformative structural reforms that go beyond COVID-era measures must be instituted, and the hard work necessary to overcome political and other barriers to such reform must be done. As Sabbeth advises, "[l]et the end of the eviction moratoria be a time to grapple seriously with the social purposes our courts can and should serve, and then let us ask ourselves what legal changes will move us in that direction."³⁶³

359. *An Open Letter to Congressional Appropriations Committees in Support of the Low Income Home Energy Assistance Program (LIHEAP)*, NAT'L ENERGY & UTIL. AFFORDABILITY COAL., <https://neuac.org/all-parties-letter/> [<https://perma.cc/3SZF-FAR5>] (urging Congress to provide adequate funding for LIHEAP for federal Fiscal Year 2025).

360. Hepburn et al., *supra* note 115, at 203–05.

361. CARLEY, *supra* note 17, at 5–6.

362. *Id.* at 6 ("Weatherization is a form of preventative assistance . . . in which a household seals open cracks and adds extra insulation, which can result in an immediate reduction in their energy bills."); ASHLEY J. LAWSON & CLAIRE MILLS, CONG. RSCH. SERV., *ELECTRIC UTILITY DISCONNECTIONS* 18 (Jan. 31, 2023).

363. Sabbeth, *supra* note 54, at 404.

For example, longstanding rental assistance programs, including housing vouchers, are underfunded to the point that just one-quarter of eligible households receive aid.³⁶⁴ This lack of funding means that people eligible for benefits spend years on waiting lists, continuing to experience homelessness and other forms of housing instability all the while.³⁶⁵ Longer-term efforts must include a significant expansion of federally-funded housing voucher programs to enable most eligible families to receive benefits. This change, research shows, could lower child poverty by three percent³⁶⁶ and reduce the risk of returning to homelessness or experiencing other forms of housing instability like doubling up for recipients using vouchers to leave shelter.³⁶⁷

Research also shows that any rental assistance programs must effectively reach and support households at the greatest risk of homelessness, including tenants with extremely low incomes and those most at risk of eviction and homelessness,³⁶⁸ without placing undue administrative burdens on those renters or their landlords.³⁶⁹ Moreover, in addition to being provided to and marketed towards low-income and traditionally underserved communities, including communities of color and mom-and-pop landlords who own a disproportionate amount of the naturally occurring affordable housing, rental assistance programs need to offer easy-to-complete application processes with low documentation burdens and distribute funds at a negotiated rate quickly.³⁷⁰ Such reforms would not only advance housing justice, but because of the many interconnections between housing and health equity, would also serve to advance health justice.

364. Sonya Acosta, *Lawmakers Should Prioritize Adequate Funding for Rental Assistance for People Struggling to Afford Housing in Housing Appropriations Legislation*, CTR. ON BUDGET & POLY PRIORITIES (June 14, 2023), <https://www.cbpp.org/blog/lawmakers-should-prioritize-adequate-funding-for-rental-assistance-for-people-struggling-to> [https://perma.cc/7XXC-FV56].

365. *Id.*

366. NAT'L ACADS. OF SCI. ENG'G & MED., *A ROADMAP TO REDUCING CHILD POVERTY* 153–54 (2019).

367. Claudia D. Solari, Douglas Walton & Jill Khadduri, *How Well Do Housing Vouchers Work for Black Families Experiencing Homelessness? Evidence from the Family Options Study*, 693 ANNALS AM. ACAD. POL. & SOC. SCI. 193, 195 (2021).

368. Samantha Batko & Amy Rogin, *The End of the National Eviction Moratorium Will Be Costly for Everyone*, URB. INST. (June 24, 2021), <https://www.urban.org/urban-wire/end-national-eviction-moratorium-will-be-costly-everyone> [https://perma.cc/YZQ2-UCEF].

369. RENTAL EVICTION AND COVID-19, *supra* note 197, at 7.

370. Gilman, *supra* note 134, at 320.

Ultimately, longer-term solutions should build on the momentum and lessons from COVID-era measures to advance transformative change that reflects the priorities of affected communities. Significant structural reforms are needed to respond to the calls of community organizers and advocates for housing to be reimagined as a human right, not an opportunity for exploitation or profit,³⁷¹ including consistent access to stable and safe affordable housing and pathways to home ownership. Black people and other people of color are highly under-represented in homeownership,³⁷² which is critical not only to wealth creation³⁷³ but is also correlated with improved health and well-being.³⁷⁴ Fundamentally, health justice demands the radical reimagining of the current profit-driven rental housing system, in which safe, healthy, and affordable housing and opportunities for home ownership remain elusive for many people from marginalized and minoritized communities.³⁷⁵

B. Community-Led Reforms

What would meaningful, substantial, structural, and sustained change look like? The answers must come from affected communities themselves. Policymakers need to engage with those communities to investigate and understand the nature of the health equity crisis, the role of law in facilitating it, and the costs of failing to address it. Health justice requires elevating the power of affected communities to drive

371. *The People's Platform Manifesto*, ONE DC, <https://www.onedconline.org/peoplesplatform> [<https://perma.cc/33NS-RNB7>].

372. See DEDRICK ASANTE-MUHAMMED ET AL., *THE EVER-GROWING GAP: WITHOUT CHANGE, AFRICAN-AMERICAN AND LATINO FAMILIES WON'T MATCH WHITE WEALTH FOR CENTURIES* 7–8 (2016) (noting that only 41% of Black households and 45% of Hispanic households own their homes as compared to 71% of White households).

373. See generally DOROTHY A. BROWN, *THE WHITENESS OF WEALTH: HOW THE TAX SYSTEM IMPOVERISHES BLACK AMERICANS—AND HOW WE CAN FIX IT* (2021) (discussing the connection between homeownership and wealth accumulation).

374. See WILLIAM M. ROHE & MARK LINDBLAD, *REEXAMINING THE SOCIAL BENEFITS OF HOMEOWNERSHIP AFTER THE HOUSING CRISIS* 45 (2013) (“[T]here is considerable evidence that positive homeownership experiences result in greater participation in social and political activities, improved psychological health, positive assessments of neighborhood, and high school and post-secondary school completion.”).

375. Juliet Brodie & Larisa Bowman, *Lawyers Aren't Rent*, 75 *STAN. L. REV. ONLINE* 132, 132, 145 (2023), <https://www.stanfordlawreview.org/online/lawyers-arent-rent/> [<https://perma.cc/4J5B-ZRSZ>].

the health justice agenda³⁷⁶ to ensure that community members can develop and implement solutions that will address both the structural and systematic barriers to health.³⁷⁷

Undoing health inequity necessitates weakening and destabilizing the power relations that undergird health inequity, especially as the same communities that experience the harms of health disparities also experience the impacts of a wide range of laws, policies, and systems that deny them health-protective opportunities.³⁷⁸ Marginalized and minoritized communities also face barriers to collective action and limitations on their power to hold policymakers and institutions accountable for more equitable outcomes. They should be supported by health justice advocates and researchers as they continue to organize in the aftermath of the pandemic PHE.³⁷⁹ As Stomp the Slumlords, a grassroots tenant advocacy organization, notes in reflection on the pandemic and post-pandemic period:

In drawing up the balance sheets of the cancel rent struggle, we have to count these moral and practical lessons about how to confront an unjust and hostile social order as one of the most important assets. The cancel rent movement was successful enough as a defensive fight . . . On the other hand, none of the things we won did much to alter the balance of power between landlords and tenants over the long run . . . But the lessons learned, the organization built, and the leadership developed in the course of the struggle really could alter the long-term balance of power.³⁸⁰

Building community power promotes health on multiple levels. It can protect health directly, such as when a community prevents the placement of a toxic waste facility in its neighborhood.³⁸¹ It can also benefit health more indirectly; community action fosters social support

376. Cannon, *supra* note 31, at 813; Benfer, *supra* note 10, at 338; Wiley, *supra* note 35, at 87; Benfer et al., *supra* note 49, at 128–29.

377. Cannon, *supra* note 31, at 813; Benfer et al., *supra* note 30, at 47; Benfer et al., *supra* note 49, at 128–29.

378. Jamila Michener, *Health Justice Through the Lens of Power*, 50 J.L. MED. & ETHICS 656, 659 (2022).

379. *Id.*; Anthony Iton, Robert K. Ross & Pritpal S. Tamber, *Building Community Power to Dismantle Policy-Based Structural Inequity in Population Health*, 41 HEALTH AFFS. 1763, 1769 (2022).

380. STOMP OUT SLUMLORDS, ORGANIZING AFTER CRISIS: HOW TO KEEP GOING—AND KEEP WINNING 14 (2023).

381. Iton et al., *supra* note 379, at 1765.

and inclusion, which creates trust among community members, reduces alienation, and improves mental health.³⁸² Research has shown that people can better achieve their health goals by engaging with others in similar circumstances.³⁸³ In contrast, the absence of community power can lead to a collective sense of mistrust, distress, and poorer mental and physical health.³⁸⁴

The elevation of community power also allows for meaningful reform, or what legal scholar Amna Akbar has characterized as “non-reformist” reforms.³⁸⁵ Such reforms are not just about changing the rules and norms that govern social relations, but instead about promoting collective power and the assumption of leadership of society to currently subordinated communities.³⁸⁶ Non-reformist reforms require the health justice agenda to be community-led and developed through collective action grounded in community engagement, empowerment, anti-subordination, and participatory parity.³⁸⁷

Health justice scholars Ruqaiyah Yearby, Seema Mohaptra, Brietta Clark, and Lindsay Wiley point to the work of community-led organizations that have engaged in collective action to advance health equity, such as the Poor People’s Campaign, the Black Panther Party, the Young Lords, and the AIDS Coalition to Unleash Power (ACT-UP).³⁸⁸ For example, at the height of the Civil Rights Movement, the Black Panther Party and the Young Lords created free healthcare clinics in their neighborhoods that laid the foundation for federally qualified health centers, while ACT-UP successfully campaigned for access to HIV and AIDS treatment.³⁸⁹ Long before the COVID-19 pandemic, these organizations seized on historic crises and emergencies to lay the groundwork for law and policy to further health justice. This work continues with organizations like the Praxis Project, which is engaged in community capacity-building for health, justice, and racial equity, and the Asian Pacific Environment Network, which is led by members of immigrant and refugee communities working to

382. *Id.*

383. Glenn Laverack, *Improving Health Outcomes through Community Empowerment: A Review of the Literature*, 24 J. HEALTH POPULATION & NUTRITION 113, 115 (2006).

384. Iton et al., *supra* note 379, at 1765.

385. Akbar, *supra* note 257, at 2571–72.

386. *Id.*

387. Wiley et al., *supra* note 30, at 637.

388. *Id.*

389. *Id.*

develop an alternative agenda for environmental, social, and economic justice that impacts health.³⁹⁰

In the health justice research and scholarly arena, strategies to center affected communities as leaders in developing law-based solutions for health inequity can include community-based participatory research that “address[es] health inequities by engaging with communities impacted by inequitable research relationships, structural racism, and other forms of systemic oppression.”³⁹¹ Such research methods optimize the translation of research into action, including through law and policy,³⁹² and facilitate the iterative process of praxis. Developed by scholars of critical legal theories such as Critical Race Theory, praxis is an approach “through which the knowledge gained from theory, research, personal experiences, and practice inform one another,” an approach that can strengthen health justice theory and action.³⁹³

Building power for health justice also requires the promotion of the political capacity of the people who are disproportionately harmed by health inequities.³⁹⁴ Law reform through community-led policymaking is, therefore, an important component of putting the theory of health justice into practice. The processes that develop, evaluate, and reform the laws and policies with the power to shape health must center community decision-making and control.³⁹⁵

Policymakers, advocates, and researchers (and other professionals committed to health equity) should partner with communities to provide them with the opportunities and support needed to set and achieve health justice priorities.³⁹⁶ Those who make and influence law and policy must engage in the important work of relinquishing their power and privilege and centering communities by creating partnerships with community power-building organizations,

390. *Id.*

391. P. Paul Chandanabhumma et al., *Examining the Influence of Group Diversity on the Functioning of Community-Based Participatory Research Partnerships: A Mixed Methods Study*, 71 AM. J. CMTY. PSYCH. 242, 243 (2023).

392. Nicholas Freudenberg & Emma Tsui, *Evidence, Power, and Policy Change in Community-Based Participatory Research*, 104 AM. J. PUB. HEALTH 11, 11 (2014); *see also* Wiley et al., *supra* note 30, at 638.

393. Cannon & Tuchinda, *supra* note 40, at 783.

394. Michener, *supra* note 378, at 659.

395. Wiley et al., *supra* note 30, at 638.

396. MANUEL PASTOR ET AL., USC DORNSIFE EQUITY RSCH. INST., A PRIMER ON COMMUNITY POWER, PLACE, AND STRUCTURAL CHANGE 6 (2020); CHANGE LAB SOLUTIONS, STRATEGIES FOR EQUITABLE POLICYMAKING APPLYING LAW & POLICY FRAMEWORKS TO IMPROVE HEALTH 11–12 (2023).

such as grassroots coalitions.³⁹⁷ These organizations cultivate solidarity among affected community members and allies, promote political consciousness about pressing issues among community members, develop strategic campaigns that build on research and experience to address priorities, and organize and lead collective action among community members to transform policies, structures, and systems towards sustained health and racial equity.³⁹⁸

Health justice scholars, researchers, practitioners, and advocates can serve as resources and allies for community organizers and members by helping them gather and marshal information that supports strategic action and navigate the power dynamics that shape a given policy field.³⁹⁹ They can share lessons from practice and research to advance a community's work to influence and reform law and policy through litigation, administrative action, planning, and policymaking.⁴⁰⁰

To make this type of collaboration concrete, the Praxis Project has organized a set of working principles for health justice advocates and leaders seeking to center communities and community-led organizations in the design, promotion, implementation, and evaluation of policies and initiatives.⁴⁰¹ First, communities know what is needed for residents to survive and thrive, and therefore, community participation in policymaking must begin at inception.⁴⁰² At the intersection of housing and health justice, this can involve grassroots organizers and community members envisioning healthy homes and neighborhoods and then developing and directing the resources necessary to create the requisite conditions for safe, affordable housing

397. *Working Principles for Health Justice and Racial Equity*, THE PRAXIS PROJECT (2020), <https://www.thepraxisproject.org/our-principles> [<https://perma.cc/A5FD-BRP8>]; Lili Farhang & Xavier Morales, *Building Community Power to Achieve Health and Racial Equity: Principles to Guide Transformative Partnerships with Local Communities*, NAT'L ACAD. MED. (2022), <https://nam.edu/building-community-power-to-achieve-health-and-racial-equity-principles-to-guide-transformative-partnerships-with-local-communities/> [<https://perma.cc/R5BC-ZWS8>].

398. Farhang & Morales, *supra* note 397; Paul W. Speer, *Community Organizing Practices in a Globalizing Era: Building Power for Health Equity at the Community Level*, 19 J. HEALTH PSYCH. 159, 161 (2022).

399. Speer, *supra* note 398, at 161.

400. Iton et al., *supra* note 379, at 1768; Harris & Pamukcu, *supra* note 8, at 807 n.190.

401. *Working Principles for Health Justice and Racial Equity*, *supra* note 397.

402. *Id.* at 3.

and housing security.⁴⁰³ For example, grassroots organization ONE DC has developed a platform and advocacy campaigns driven by principles that include equitable development that prioritizes people over property and the rights of return and reclamation for housing for people who have been displaced by gentrification and development in Washington, D.C.⁴⁰⁴ Such organizations have called for universal access to short- and long-term housing assistance for all who need it, the preservation and expansion of housing affordable to the people with the lowest incomes, and strengthened protections for tenants.⁴⁰⁵

Moreover, authentic community participation must be integrated into policy-making in a genuine and respectful manner that does not reproduce past traumas;⁴⁰⁶ indeed, “evidence-based” and “trauma-informed” approaches are needed to avoid displacing lived experience with academic or professional expertise.⁴⁰⁷

Support should be provided to ensure that full participation in the governance process is accessible for community members, such as through compensation, transportation, child care, translation services, meals, and flexible meeting times and scheduling.⁴⁰⁸

Community-led work should not stop at the design of reforms to the legal determinants of health equity. The implementation, community oversight, and evaluation of solutions require ongoing leadership by community members to ensure transparency in decision-making and alignment with local priorities and the outcomes needed for equity.⁴⁰⁹

The responses to the COVID PHE were a missed opportunity to center the voices and ideas of marginalized and minoritized communities to enact structural and sustained reform to the legal determinants of health equity. As the harms of health inequity are unduly borne by communities facing substantial barriers to the creation and influence of law and policy, continual and consistent shifts

403. Harris & Pamukcu, *supra* note 8, at 803 n.177.

404. *The People’s Platform Manifesto*, ONE DC, <https://www.onedconline.org/peoplesplatform> [<https://perma.cc/33NS-RNB7>].

405. *See id.*; Letter from Diane Yentel & Shamus Roller, *supra* note 355.

406. *Working Principles for Health Justice and Racial Equity*, *supra* note 397, at 3.

407. *Id.*

408. *Id.*

409. *Id.* at 3–4.

in power relations to promote community leadership are requisites for health justice.⁴¹⁰

CONCLUSION

Approaches like expanded Child Tax Credits (CTCs) and rental assistance are vulnerable to critique as financially unfeasible. However, the data are unambiguous: rental assistance promotes housing security and is cost-effective,⁴¹¹ and the enhanced CTC lowered child poverty in this nation dramatically and promoted the financial and food security of many families.⁴¹² In essence, these are preventive approaches that preempt eviction and homelessness and their lifelong—and expensive—impacts. These strategies not only have intrinsic value, but they also yield financial benefits in preventing a wide array of downstream costs, including emergency room visits and chronic and complex health conditions that contribute to the nation's tremendous healthcare expenditures.

Investments in legal structures that promote the health and well-being of children are particularly impactful. The research of Nobel Laureate economist James Heckman and his colleagues shows the powerful societal return on investment for every dollar spent on high-quality early childhood education.⁴¹³ In calling for increases in such investments, the Biden Administration pointed to that research team's findings that "every dollar invested in a high-quality, birth-to-five years old program for children from families experiencing the most economic disadvantage resulted in \$7.30 in benefits as children grew up healthier, were more likely to graduate high school and college, and earned more income as adults."⁴¹⁴ Life course health development research also shows that interventions that promote the health of children are particularly impactful and have cascading positive effects into adulthood because childhood is a period of life when the body and

410. Michener, *supra* note 378, at 659; Iton et al., *supra* note 379, at 1769; Laverack, *supra* note 383.

411. Gilman, *supra* note 134, at 320, 324.

412. *Policy Basics: The Child Tax Credit*, *supra* note 19.

413. Jorge Luis Garcia et al., *The Life-Cycle Benefits of an Influential Early Childhood Program* (Nat'l Bureau of Econ. Rsch, Working Paper No. 22993, 2016).

414. *FACT SHEET: The American Families Plan*, WHITE HOUSE (Apr. 28, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/04/28/fact-sheet-the-american-families-plan/> [https://perma.cc/29DD-Y6CH] (citing *id.*); see generally *id.*

brain are especially vulnerable and developmentally dynamic.⁴¹⁵ That research also shows that health-*threatening* factors in childhood can have harmful impacts well into adulthood and across generations.⁴¹⁶ But in the United States, a significant number of children—and a significant number of Black children in particular—experience the lifelong health harms that result from eviction during that vulnerable time in their lives. Indeed, more than ten percent of all children below age five living in rental housing in the United States are threatened with eviction annually and more than twenty-five percent of Black households with children experience an eviction filing annually.⁴¹⁷ Law must be leveraged to facilitate upstream approaches, such as those that promote the housing security of children, to *prevent* such costly threats to health.

There are also arguments that government measures to promote the economic, housing, and energy security of low-income families are politically unviable and would not be embraced by more conservative politicians. While the political landscape will certainly present challenges, it is worth noting that there have been signs of bipartisan support for efforts that could advance housing and health justice. During the PHE, it was President Trump who issued an Executive Order instituting an eviction moratorium after the expiration of the Congressional CARES Act moratorium on evictions.⁴¹⁸ Moreover, polls show bipartisan support in forty major cities for municipal measures providing a right to counsel for tenants in eviction matters and the enactment of such initiatives in municipalities in states with more varied political leanings, like Kentucky, Ohio, Missouri, Minnesota, and Colorado, could serve to further build on that momentum.⁴¹⁹ And in February 2024, a new

415. See, e.g., Neal Halfon et al., *Lifecourse Health Development: Past, Present and Future*, 18 *MATERNAL & CHILD HEALTH J.* 344, 355 (2014); Neal Halfon & Miles Hochstein, *Life Course Health Development: An Integrated Framework for Developing Health, Policy, and Research*, 80 *MILBANK Q.* 433, 436 (2002).

416. See, e.g., Halfon et al., *supra* note 415, at 355; Halfon & Hochstein, *supra* note 415, at 436.

417. Nick Graetz et al., *Who is Evicted in America*, EVICTION LAB (Oct. 3, 2023), <https://evictionlab.org/who-is-evicted-in-america/> [<https://perma.cc/83G7-VTRU>].

418. Exec. Order No. 13,945, 85 Fed. Reg. 49,935, 49,937 (Aug. 8, 2020).

419. *Tenant Right to Counsel*, NAT'L COAL. FOR A CIV. RIGHT TO COUNS., http://civilrighttocounsel.org/highlighted_work/organizing_around_right_to_counsel [<https://perma.cc/M9P5-SM3C>]; *The Estimated Economic Impact of an Eviction Right to Counsel in South Carolina*, STOUT app. A, <https://www.stout.com/en/services/transformation-change consulting/eviction-right-to-counsel-resources> [<https://perma.cc/F8X3-VHKL>]; Bilal Baydoun & Sean McElwee, *Poll: Across Dozens of U.S. Metros, Voters Want Bold Mayoral Action*,

version of an expanded CTC passed the House of Representatives with wide bipartisan support.⁴²⁰ Although support in the House was achieved through a compromise championed by Republicans that restored corporate tax breaks and the measure failed to pass the Senate, data show that the expanded CTC would significantly benefit children living in rural areas, including in many states that are Republican strongholds.⁴²¹ Even though the political battles are steep, hopefully lawmakers across the aisle will increasingly recognize that approaches to advance health justice have benefits that reach many swaths of the nation's population.

There are also arguments against more expansive efforts to minimize evictions based on the challenges faced by landlords. For example, RAND economist George Zuo argues that landlords in Los Angeles, who were harmed by non-payment of rent and rental price freezes amid inflation, are in need of revenue and stability.⁴²² He specifically questions the utility of paying lawyers to contest and delay evictions, a policy he claims "further antagonizes landlords and sends tenants the message that they might be able to get away with not paying rent."⁴²³ However, as long as eviction courts continue as most are currently structured, where ninety percent of landlords but fewer than ten percent of tenants are represented,⁴²⁴ attorneys or non-attorney legal navigators are necessary to help tenants assert and

THE APPEAL (Apr. 29, 2021), <https://theappeal.org/the-lab/polling-memos/across-dozens-of-u-s-metros-voters-want-bold-mayoral-action/> (finding that seventy percent of Republicans surveyed in forty major cities supported a right to counsel for eviction proceedings.).

420. See H.R. 7024, 118th Cong. (2024); see also Stephanie Hingtgen, *House-Passed Bipartisan Tax Bill's Child Tax Credit Expansion Would Especially Help Children Living in Rural Areas*, CTR. ON BUDGET & POL'Y PRIORITIES (Feb. 5, 2024), <https://www.cbpp.org/blog/house-passed-bipartisan-tax-bills-child-tax-credit-expansion-would-especially-help-children> [<https://perma.cc/N3T4-3BE4>].

421. Hingtgen, *supra* note 420; Clare Foran et al., *House Passes Bipartisan Tax Bill that Expands Child Tax Credit*, CNN (Jan. 31, 2024, 9:08 PM), <https://www.cnn.com/2024/01/31/politics/house-vote-tax-bill-child-tax-credit/index.html> [<https://perma.cc/QN4P-3EVC>]; Andrew Duehren, *Senate Rejects Bipartisan Tax Deal*, N.Y. TIMES (Aug. 1, 2024), <https://www.nytimes.com/2024/08/01/us/politics/senate-tax-bill.html> (on file with the *Columbia Human Rights Law Review*).

422. George Zuo, *Opinion: Renting in L.A. Could Go from Bad to Worse*, L.A. TIMES (Feb. 13, 2024), <https://www.latimes.com/opinion/story/2024-02-13/los-angeles-rent-increases-evictions-homelessness> [<https://perma.cc/7GGM-UZXY>].

423. *Id.*

424. See 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-nojustice> [<https://perma.cc/G5U4-4HYN>].

enforce their rights.⁴²⁵ In Los Angeles, a 2019 study found that ninety-five percent of landlords and only three percent of tenants were represented by lawyers in Los Angeles eviction court.⁴²⁶ Further, even evictions for nonpayment of rent could implicate tenants' rights, as "[n]ot all nonpayment evictions are valid. Many are pretextual, procedurally invalid or the result of uninhabitable conditions."⁴²⁷

Zuo also raises concerns that providing tenants with legal counsel could lead to an exodus of smaller landlords from the market who cannot or will not participate in a "survival of the fittest" rental market.⁴²⁸ However, that exodus is already playing out. Most rental units in the United States are not owned by "Mom and Pop landlords," but by corporations.⁴²⁹ In Los Angeles, over two-thirds of rental units are owned by "speculative investment vehicles" and fewer than twenty-five percent are owned by individual landlords, which only deepens the power imbalance faced by tenants, who are most likely to be up against corporate entities and their legal counsel in the eviction process.⁴³⁰ Furthermore, studies of right-to-counsel initiatives consistently show that they prevent displacement and maintain tenancies and that they yield a strong return on investment in the form of savings on shelter, educational, health, and other costs.⁴³¹

There is no doubt that "lawyers aren't rent," nor are they the necessary pathways to homeownership or jobs with a living wage.⁴³² To advance housing and health justice, right-to-counsel, legal navigation, and other access to justice initiatives should be paired with mediation

425. See Sabbeth, *supra* note 143, at 108.

426. Barbara Schultz, *Letters to the Editor: Landlords Have Attorneys, Renters Almost Always Don't. That's a Recipe for Injustice*, L.A. TIMES (Feb. 19, 2024, 3:00 AM), <https://www.latimes.com/opinion/letters-to-the-editor/story/2024-02-19/landlords-have-attorneys-renters-almost-always-dont> [<https://perma.cc/5KUJ-XBFB>].

427. *Id.*

428. Zuo, *supra* note 422.

429. Alexander Ferrer, *Over Two Thirds of All Los Angeles Rentals Are Now Owned by Speculative Investment Vehicles*, KNOCK LA (Mar 10, 2021), <https://knock-la.com/los-angeles-rental-speculation-4022d16a0d28/> [<https://perma.cc/K33Y-GSXG>].

430. *Id.*

431. See, e.g., STOUT, COST-BENEFIT ANALYSIS OF PROVIDING A RIGHT TO COUNSEL TO TENANTS IN EVICTION PROCEEDINGS 79 (2019); *Eviction Right to Counsel Resource Center*, STOUT, <https://www.stout.com/en/services/transformation-change-consulting/eviction-right-to-counsel-resources> [<https://perma.cc/VEU7-NHVT>].

432. See Brodie & Bowman, *supra* note 375, at 132.

and other eviction diversion efforts, as well as emergency and long-term rental assistance.⁴³³

Nonetheless, to achieve health equity, the housing market that promotes profit-generating rents will require even more radical reform.⁴³⁴ Ultimately, the various arguments against investing in housing justice lead to an important and vexing question: what is the meaning of justice in a nation with such deeply ingrained disparities in needs as fundamental, basic, and vital as health and housing?

This Article pushes us to ask these questions at a critical moment. Even as the pandemic itself continues and new strains of the virus emerge,⁴³⁵ the end of the official federal PHE is an important opportunity for reflection and analysis. Indeed, the fluctuations in the legal determinants of health during and after the PHE require critical examination through the theoretical lens of health justice. “How a virus travels and how we respond reveals more about our society” than about the disease itself.⁴³⁶ Indeed, there are social and legal constructs to pandemics and other PHEs, including the COVID pandemic, that must be surfaced to provide important insights into the broader legal constructs of health equity. This Article’s interrogation of the intertwined, ongoing, structural crises of housing and health injustice before, during, and after the COVID PHE reveals that “[l]ike the pandemic, the housing shortage is socially (and legally) constructed.”⁴³⁷ The same is true for health inequity more broadly; it is legally constructed and must, therefore, be eliminated through law and structural transformation to address its root causes.

The termination of the official COVID public health emergency declaration provides an important moment to interrogate these legal constructs of health inequity. The crisis was declared officially over, but what about those who were in crisis long before the pandemic? Those who continue to be in crisis? Those who have been relegated by legal structures to a perpetual state of crisis?

433. Schultz, *supra* note 426.

434. Cannon, *MLPs as a Model*, *supra* note 252, at 86.

435. See, e.g., *No, the COVID-19 Pandemic Isn't Over*, CLEVELAND CLINIC (May 24, 2023), <https://health.clevelandclinic.org/is-the-pandemic-over> [<https://perma.cc/ST7K-9HCT>]; Kathy Katella, *3 Things to Know About FLiRT, the New Coronavirus Strains*, YALE MED. (June 7, 2024), <https://www.yalemedicine.org/news/3-things-to-know-about-flirt-new-coronavirus-strains> [<https://perma.cc/XQR3-NKHJ>].

436. Sabbeth, *supra* note 54, at 401 (citing WITT, *supra* note 26).

437. *Id.*

Crisis framing is not inherently problematic. In fact, it can be helpful when it accounts for and makes visible structural inequities and when it is used to engender meaningful reform. To be useful, crisis framing needs to be conceptualized not just as a descriptor of episodic and extreme events that ignores longstanding, deeply ingrained systemic problems. It also needs to be wielded as a means for calling attention to catastrophes that are in fact a result of structural slow violence.

Some scholars have called attention to a different set of concerns with emergency law regimes, arguing that governments seize on moments of “emergency” and “crisis” to evade the rule of law and commit abuses of power amidst emergent threats that in fact outlast the emergency. In those situations, harmful exceptions to the legal status quo ultimately become normalized, resulting in dangerous consequences. For example, Giorgio Agamben has highlighted the dangers of the “state of exception,” through which exceptions to the law in states of emergency become permanent and “[t]he normative aspect of law . . . be obliterated and contradicted with impunity by a government violence that . . . nevertheless still claims to be applying the law.”⁴³⁸ Similarly, David Luban, a scholar of law and philosophy, has criticized the application of the law of war, which offers lesser human rights protections than laws in peacetime, to the ongoing “War on Terrorism” because emergency action to deal with unprecedented threats could ultimately and dangerously normalize what are meant to be exceptional measures.⁴³⁹ He argues that while human rights may be suspended in times of emergency to deal with unprecedented threats, suspending human rights during the “War on Terrorism” would be dangerously normalizing what is meant to be an exceptional measure.⁴⁴⁰

While those scholars shine a light on harmful legal exceptions that outlast states of emergency and come to represent sustained state violence, this Article examines a different type of challenge: the initiation during a time of emergency of helpful, health-*protective* measures that offered the potential for promotion of health equity—if only they had been adapted and sustained to outlast the pandemic PHE. Unprecedented and exceptional COVID PHE measures that served as potential drivers of health equity, such as housing and utility

438. GIORGIO AGAMBEN, *STATE OF EXCEPTION* 87 (Kevin Attell trans. 2005)

439. David Luban, *The War on Terrorism and the End of Human Rights*, 22 *PHIL. & PUB. POL'Y Q.* 9, 13 (2002).

440. *Id.* at 13–14.

access protections and assistance and enhanced CTC and SNAP supports, were impactful for a moment in time. However, following their expirations, the positive effects of these measures are vanishing and many families around the country are experiencing profound threats to their health and well-being. Such measures during the COVID PHE, and their termination, provided missed opportunities to glean lessons, some of which are explored in this Article, and take meaningful action to advance health justice. The fact that such protective measures did not lead to more sustained reform, in contrast with the extension of human rights suspensions during the “War on Terrorism” can be explained by the forces of racism, economic inequality, and other forms of subordination that keep more transformative health justice reforms from becoming similarly normalized. That pandemic-era emergency measures, if adapted for the long-term and sustained, could benefit people without White privilege or economic power and disrupt the status quo of racial and economic inequity helps to explain why they were more short-lived than human rights suspensions that protect existing power structures.

The destructive moments of the COVID PHE, when the virus was raging, offered a period of interest convergence resulting from contagion risks that could have given rise to structural change to mitigate conditions that facilitate health disparities. The ongoing reconstructive moment that the country continues to experience in the aftermath of the PHE offers another such opportunity for meaningful transformation.

Interlocking racial, housing, economic, food, educational, and criminal injustices persist for marginalized and minoritized groups, driving health injustice.⁴⁴¹ Structural, sustained, community-led transformation is necessary to terminate the ongoing health equity emergency.

441. See generally Cannon, *supra* note 14.