

Housing is Health: Prioritizing Health Justice and Equity in the U.S. Eviction System

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Abstract:

The public health field has long recognized the association between housing and health. In one of the most poignant examples of housing as a social determinant of health, the COVID-19 pandemic amplified the link between an individual's housing instability and community-wide health. "Housing is health" became the justification for halting the eviction system: Policymakers nationwide adopted moratoria, eviction protections, emergency rental assistance, and other housing supports with the goal of protecting community-wide health. These robust measures resulted in unprecedented low eviction filing rates and extensive benefits to individual and public health. Today, with the lapse of pandemic interventions, the eviction crisis is reemerging as a pervasive threat to public health. Eviction filing rates have returned to or surpassed historical averages in jurisdictions across the United States. Policymakers across the country are called to address the eviction system as an urgent public health priority.

This Article applies the World Health Organization Conceptual Social Determinants of Health model and the Health Justice Framework to the United States eviction system to demonstrate how it operates a structural determinant of health inequity that severely harms historically marginalized groups. Eviction disproportionately affects Black renters, who are filed against at more than five times the rate of white renters. Overwhelmingly, Black women and families with

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young children are evicted at the highest rates. In a typical year, 7.6 million people—40 percent of whom are children—live in households that receive one or more eviction filings and are at risk of housing loss. For all of these people, interaction with the ostensibly neutral eviction system is associated with severe and lasting health harms across the life course. This Article extensively documents the public health and social science evidence demonstrating that housing is health and linking eviction to negative health outcomes. It provides evidence-based examples of structural determinants in the eviction system—including court processes, laws, policies, and landlord management and screening practices—that comprise the scaffolding of health inequity. Finally, this Article offers a model for achieving health equity and housing stability through the application of the Health Justice Framework to the U.S. eviction system.

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INTRODUCTION

The COVID-19 pandemic underscored the interdependence between individual and community level health outcomes, as well as the social and structural determinants of health—such as eviction—that thwart best attempts to control the spread of disease. The pandemic precipitated pandemic-related job and wage loss and subsequent evictions due to nonpayment of rent. Eviction placed tenants at heightened risk of contracting COVID-19 and, in turn, the risk of infection in the entire community increased.¹ In recognition of the cascading health effects of individual housing loss on the community, policymakers nationwide issued eviction moratoria to prevent widespread eviction and its health consequences at the outset of the pandemic.² The Centers for Disease Control and Prevention (CDC) and policymakers in twenty-seven states and the District of Columbia justified eviction moratoria on the relationship between eviction and the spread of COVID-19.³ For example, the New Jersey governor provided a public health justification for the statewide eviction moratorium: “housing security and stability are important to public health, particularly as homelessness can increase vulnerability to COVID-19; and . . . removals of residents pursuant to evictions . . . can increase the risk to those residents of contracting COVID-19, which in turn increases the risks to the rest of society and endangers public health.”⁴ Indeed, multiple studies demonstrated that eviction-related housing insecurity and the lifting of moratoria were associated with increased COVID-19 infection and mortality,⁵ with one study estimating that the lifting of eviction moratoria in the first six months of the pandemic resulted in 433,700 excess COVID-19 cases and 10,700 excess deaths by September 20, 2020.⁶ Despite the demonstrated relationship between COVID-19 transmission and eviction, the vast majority of policymakers narrowed eviction protections or allowed moratoria to lapse by the end of 2020, at the height of the pandemic and before vaccines were available. At a time when health justice and equity should have been prioritized, the failure to attain it was evident throughout the COVID-19 pandemic.

Extreme racial and socioeconomic health inequity and the health threat of

1 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 (2021).

2 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 (2022) [hereinafter *COVID-19 Housing Policy*].

3 *Id.*

4 *Id.*

5 Sebastian Sandoval-Olascoaga et al., *Eviction Moratoria Expiration and COVID-19 Infection Risk Across Strata of Health and Socioeconomic Status in the United States*, 4 JAMA NETWORK OPEN e2129041 (2021).

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

eviction on the individual and community levels is not contained to pandemics. Eviction consistently functions as a social and structural determinant of health inequity. It is undisputed that housing loss related to eviction is associated with numerous negative physical and mental health outcomes, including increased risk of premature death, and particularly harmful effects on children, elderly people, and people with disabilities.⁷ For women, it is associated with physical and sexual assault and future housing precarity. Eviction is particularly devastating to children, resulting in emotional trauma, developmental delay, lead poisoning, food insecurity, and decreased life expectancy. For infants who are born during or soon after their mothers experience an eviction, it leads to adverse birth outcomes, such as low birthweight or pre-term birth. Eviction also narrows a family's housing options, forcing renters with a history of an eviction filing to move into substandard housing in disadvantaged, higher crime neighborhoods divorced from resources, transportation, and access to opportunity. In this way, eviction dismantles pillars of resiliency, locking families out of safe and decent housing, disrupting employment and education, and preventing access to well-resourced schools and communities.

The negative impact of eviction reverberates through whole communities, destabilizing neighborhoods, dismantling social networks, straining non-evicted households that provide temporary shelter and other material support,⁸ and increasing the rate of violent crime, among other harms at the neighborhood level.⁹ Ultimately, eviction deepens long-standing patterns of economic and housing instability and poor health among historically marginalized groups. Majority-Black communities, which have the highest rates of eviction,¹⁰ are particularly vulnerable to the increased cycles of crime, poverty, and community disinvestment precipitated by eviction. However, policy makers have yet to adopt eviction prevention as a public health strategy beyond the pandemic. By Fall of 2023, any remaining eviction prevention measures, such as federal Emergency Rental Assistance and changes to the eviction court processes, ended at the state and local

⁷ See *infra* Section II.B.

⁸ Danya E. Keene et al., *Filling the Gaps in an Inadequate Housing Safety Net: The Experiences of Informal Housing Providers and Implications for Their Housing Security, Health, and Well-Being*, 8 *SOCIUS* (2022); Gabriel L. Schwartz et al., *Eviction as a Community Health Exposure*, 340 *SOC. SCI. & MED.* 116496 (2024).

⁹ See Schwartz et al., *supra* note 8; Danya E. Keene et al., “A Little Bit of a Security Blanket”: Renter Experiences with COVID-19-Era Eviction Moratoriums, 97 *SOC. SERV. REV.* 423 (2023); Daniel C. Semenza et al., *Eviction and Crime: A Neighborhood Analysis in Philadelphia*, 68 *CRIME & DELINQUENCY* 707 (2022); Danya Keene, *The Affordable Rental Housing Crisis and Population Health Equity: A Multidimensional and Multilevel Framework*, 100 *J. URB. HEALTH* 1212 (2023).

¹⁰ Breanca Merritt & Morgan D. Farnworth, *State Landlord-Tenant Policy and Eviction Rates in Majority-Minority Neighborhoods*, 31 *HOUS. POL’Y DEBATE* 562 (2021).

levels, with few exceptions.¹¹

This Article posits that the “housing is health” principle should not be limited to the pandemic, but rather the pandemic should serve as a catalyst to adopt eviction prevention as a major public health aim that is critical to health equity among historically marginalized populations, as well as our collective health. The public health field frequently tackles social issues, like eviction and housing displacement, that function as social determinants of poor health. For example, public health strategies and evaluation methods are frequently employed to address interpersonal and gun violence,¹² food insecurity,¹³ homelessness,¹⁴ early childhood education inequity and barriers to educational attainment,¹⁵ and built environment deficiencies,¹⁶ among other social issues.

This Article proposes the Health Justice Framework, which emphasizes social justice and health equity, as a holistic approach to understanding the roots and effects of the eviction crisis, as well as viable interventions that promote housing stability and health equity. The health justice frame complements and widens other relevant frames (e.g., access to justice, right to housing, economic, or race) to surface the full extent of the problem and robust interventions. The broader and historical scope offered by health justice principles prevents partial issue spotting or solutions that can occur when other frames are applied in isolation. For example, non-health frames might surface the need for a tenant right to counsel that provides attorneys for eviction defense or rental subsidies and rent caps to increase housing affordability. A health justice lens would also surface the need to address

11 Some states (and the District of Columbia) created their own emergency rental assistance programs that persist even after their federal ERA funding ran out. *See, e.g., Emergency Rental Assistance Program*, D.C. DEP’T OF HUM. SERV., <https://dhs.dc.gov/service/emergency-rental-assistance-program> (last visited Sept. 13, 2023); *Illinois Court-Based Rental Assistance Program*, ILL. HOUS. DEV. AUTH., <https://www.illinoishousinghelp.org/cbrap> (last visited Sept. 13, 2023).

12 *See, e.g.,* Michael Decker et al., *An Integrated Public Health Approach to Interpersonal Violence and Suicide Prevention and Response*, 133 PUB. HEALTH REPS. 655 (2018); Daniel W. Webster, *Public Health Approaches to Reducing Community Gun Violence*, 151 AM. ACAD. OF ARTS & SCI. (2022).

13 *See, e.g.,* Emmanuel Ezekekwa, *Community-Based and System-Level Interventions for Improving Food Security and Nutritious Food Consumption: A Systematic Review*, 17 J. HUNGER & ENV’T NUTRITION 149 (2021).

14 *See, e.g.,* Marybeth Shinn et al., *Efficient Targeting of Homelessness Prevention Services for Families*, 103 AM. J. PUB. HEALTH S324 (2013); Thomas Byrne, Benjamin F. Henwood & Brynn Scriber, *Residential Moves Among Housing First Participants First*, 45 J. BEHAV. HEALTH SVCS. & RSCH. 124 (2018).

15 *See, e.g.,* Patrice L. Engle et al., *Strategies for Reducing Inequalities and Improving Developmental Outcomes for Young Children in Low-Income and Middle-Income Countries*, 378 LANCET 1339 (2011); Guthrie Gray-Lobe, Parag A. Pathak & Christopher R. Walters, *The Long-Term Effects of Universal Preschool in Boston*, 138 Q. J. ECON. 363 (2022).

16 *See, e.g.,* Ethan M. Berke & Anne Vernez-Moudon, *Built Environment Change: A Framework to Support Health-Enhancing Behavior Through Environmental Policy and Health Research*, 68 J. EPIDEMIOLOGY CMTY. HEALTH 586 (2014).

substandard housing conditions, barriers to access, power structures, and lack of enforcement mechanisms, among others. The health justice lens expands the problem identification to include an assessment of socioeconomic and political contexts, the historical underpinnings, as well as the role of discrimination and power hierarchy. In health justice, any solution defers to the needs and goals of the affected community.

This Article first combines literature from public health and housing fields with the World Health Organization (WHO) Conceptual Social Determinants of Health (SDOH) model to demonstrate the public health context of the eviction system. This examination highlights how eviction laws, policies, practices, and courts operate as structural determinants of health inequity among historically marginalized groups. It then applies the Health Justice Framework to the eviction system to develop a multi-pronged policy strategy to address eviction and health inequity, thereby offering a point of intervention and roadmap for remedying the crisis. Part I describes the Health Justice Framework and its relationship to the SDOH. Parts II, III and IV demonstrate how eviction is a structural and intermediary determinant of health inequity within the WHO Conceptual SDOH Framework. Part II describes how eviction is a driver of poor health that disproportionately affects historically marginalized people. Part III describes the relationship between eviction and the intermediary determinants of health. Part IV demonstrates how eviction courts, laws, policies, and practices operate as structural determinants of health inequity. Finally, Part V applies the Health Justice Framework and demonstrates how courts and policy makers can achieve health equity and eviction prevention.

I. THE HEALTH JUSTICE FRAMEWORK

It is widely documented that the “unequal health status of marginalized populations is primarily a product of systemic forces, not individual behavior.”¹⁷ The World Health Organization’s Conceptual SDOH model demonstrates how hierarchies of power influence social, economic, and political mechanisms that, in turn, shape health status. The model was developed to surface the deepest roots of health differences, pathways from those root causes to stark differences in health status at the population level, and points of intervention to reduce health inequity.¹⁸ The WHO identified multiple mechanisms that impact health and well-being, including socioeconomic and political contexts, structural determinants of health

¹⁷ Jamila Michener, *Health Justice Through the Lens of Power*, 50 J. LAW, MED. & ETHICS 656, 657 (2022).

¹⁸ See generally WORLD HEALTH ORGANIZATION, A CONCEPTUAL FRAMEWORK FOR ACTION ON THE SOCIAL DETERMINANTS OF HEALTH (2010).

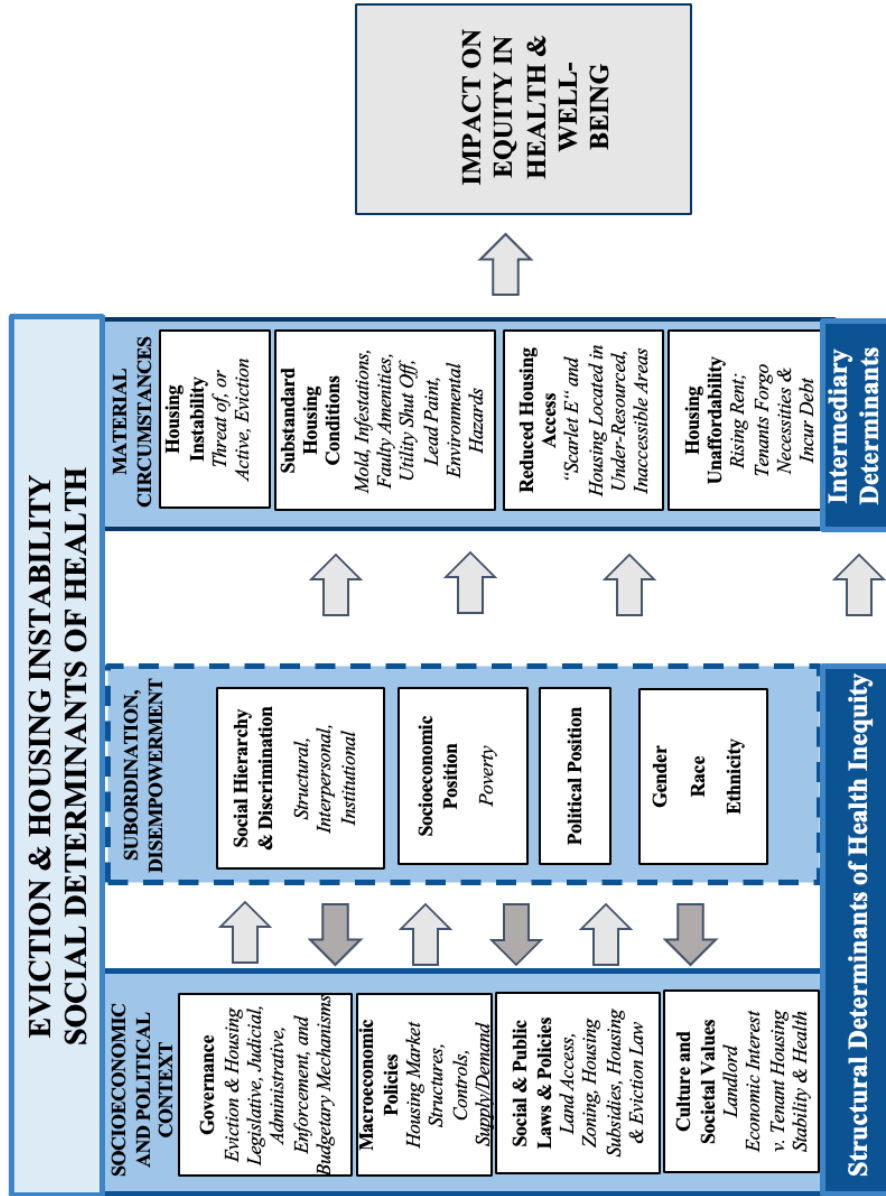
inequity, and intermediary determinants of health.²¹ The socioeconomic and political contexts include public policy and social policies that affect factors like housing access. Structural determinants are those that “generate or reinforce social stratification in the society and that define individual socioeconomic position [and] configure health opportunities of social groups based on their placement within hierarchies of power, prestige and access to resources.”¹⁹ They, in turn, influence the extent to which individuals have access to intermediary determinants, such as education, employment, housing, food access, and health care, and, ultimately, inequity in health and well-being.

The WHO Conceptual SDOH model provides a mechanism for parsing the roots of the United States’ eviction crisis and its effect on health equity among historically marginalized and race-class subjugated populations (Figure 1). The model divides SDOH into 1) structural determinants and 2) intermediary determinants. In the context of eviction, the structural determinants of health inequity include the United States’ sordid history of exclusionary, racially discriminatory, and inequitable housing policy that led to the subjugation of communities of color. These structural determinants influence the intermediary determinants of health inequity, as seen in the widespread racial disparities in access to necessities, wealth, and material resources. Despite advances in landlord-tenant law, the passage of Civil Rights and Fair Housing Acts, today, that disparity continues and is perpetuated most clearly by structural determinants of health inequity. In particular, structural determinants in the form of laws, policies, and practices that comprise the eviction system serve as the scaffolding of health inequity. As described in this Article, the ostensibly race-neutral eviction court process, landlord practices, and state and local landlord-tenant laws, or lack thereof, (i.e., socioeconomic and political context) are drivers of racial exclusion and de facto segregation (i.e., social hierarchy and discrimination). For example, the eviction system overwhelmingly preferences the economic and property interests of landlords over the rights and health of tenants, and defaults to forcible removal of tenants over the provision of financial supports and legal protections. Since the eviction system disproportionately affects Black people, especially Black women with children, it perpetuates the disempowerment of communities of color and health inequity across generations.

¹⁹ *Id.* at 30.

²⁰ Adapted from WORLD HEALTH ORGANIZATION, A CONCEPTUAL FRAMEWORK FOR ACTION ON

Figure 1. Relationship Between Eviction & Health, Adapted from the World Health Organization Conceptual SDOH Model²⁰



THE SOCIAL DETERMINANTS OF HEALTH 35 (2010).

The Health Justice Framework responds to each prong of the WHO Conceptual SDOH model to address the structural determinants of health inequity, especially those caused by racial discrimination and other forms of subordination, like eviction. I first developed the Health Justice Framework a decade ago,²¹ in tandem with Professor Lindsay Wiley,²² and revisited the Framework with health law experts and professors Lindsay Wiley, Ruqaijah Yearby, and Seema Mohapatra, during the COVID-19 pandemic.²³ The Framework has since been applied, expanded, and refined.²⁴ It has been adopted by the Association of American Medical Colleges²⁵ and the focus of conferences and symposia,²⁶ policy briefs, academic books,²⁷ and full journal volumes,²⁸ resulting in a robust body of

21 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, 325 (2015) [hereinafter *Health Justice*].

22 See Lindsay F. Wiley, *Health Law as Social Justice*, 24 CORNELL J. L. PUB. POL'Y 47 (2014).

23 Emily A. Benfer et al., *Health Justice Strategies to Combat the Pandemic: Eliminating Discrimination, Poverty, and Health Inequity During and After COVID-19*, 19 YALE J. HEALTH POL'Y, L., & ETHICS 122 (2019) [hereinafter *Health Justice Strategies*].

24 See, e.g., *id.*; Emily A. Benfer et al., *Setting the Health Justice Agenda: Addressing Health Inequity & Injustice in the Post-Pandemic Clinic*, 28 CLINICAL L. REV. 45 (2021) [hereinafter *Post-Pandemic Clinic*]; Medha D. Makhlof, *Health Justice for Immigrants*, 4 U. PA. J. L. & PUB. AFFS. 235 (2019); Angela P. Harris & Aysha Pamukcu, *The Civil Rights of Health: A New Approach to Challenging Structural Inequality*, 67 UCLA L. REV. 758 (2020); Matthew B. Lawrence, *Against the "Safety Net,"* 72 FLA. L. REV. 49 (2020); Robyn M. Powell, *Applying the Health Justice Framework to Address Health and Health Care Inequities Experienced by People with Disabilities During and After COVID-19*, 96 WASH. L. REV. 93 (2021); Thalia González, Alexis Etow & Cesar De La Vega, *A Health Justice Response to School Discipline and Policing*, 71 AM. UNIV. L. REV. 1927 (2021); 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 (2015) [hereinafter *Patient Rights to Health Justice*]; Lindsay F. Wiley, *Applying the Health Justice Framework to Diabetes as a Community-Managed Social Phenomenon*, 16 HOUS. J. HEALTH L. & POL'Y 191 (2016); Lindsay F. Wiley, *Tobacco Denormalization, Anti-Healthism, and Health Justice*, 18 MARQ. BENEFITS & SOC. WELFARE L. REV. 203 (2016); Lindsay F. Wiley, *Universalism, Vulnerability, and Health Justice*, 70 UCLA L. REV. DISCOURSE 204 (2022); *Health Justice*, *supra* note 21; ELIZABETH TOBIN-TYLER & JOEL B. TEITELBAUM, *ESSENTIALS OF HEALTH JUSTICE: A PRIMER* (2018); Yael Cannon, *Injustice is an Underlying Condition*, 6 U. PA. J. L. & PUB. AFFS. 201 (2020); Ruqaijah Yearby & Seema Mohapatra, *Systemic Racism, the Government's Pandemic Response, and Racial Inequities in COVID-19*, 70 EMORY L. J. 1419 (2020); Lindsay F. Wiley et al., *Health Reform Reconstruction*, 55 U.C. DAVIS L. REV. 657 (2021) [hereinafter *Health Reform Reconstruction*]; DAYNA BOWEN MATTHEW, *JUST HEALTH: TREATING STRUCTURAL RACISM TO HEAL AMERICA* (2022); Lindsay F. Wiley et al., *Introduction: What is Health Justice?*, 50 J.L. MED. & ETHICS 636 (2022) [hereinafter *What is Health Justice?*].

25 *Center for Health Justice*, ASS'N OF AM. MED. COLL., <https://www.aamchealthjustice.org> (last visited Jul. 29, 2023).

26 *Health Justice Conference Videos*, AM. UNIV. HEALTH L. & POL'Y PROGRAM (Oct. 2, 2020), <https://www.wcl.american.edu/impact/initiatives-programs/health/events/healthjustice2020/videos>.

27 TOBIN-TYLER & TEITELBAUM, *supra* note 24.

28 J. LAW, MED. & ETHICS, *HEALTH JUSTICE: ENGAGING CRITICAL PERSPECTIVES IN HEALTH LAW AND POLICY* (2022), <https://www.cambridge.org/core/journals/journal-of-law-medicine-and-ethics/issue/11F662007A2A91DCCFB43267147417A0>.

scholarship.²⁹

The achievement of health justice requires that all persons have equal ability to be free from the social determinants³⁰ that jeopardize their health and well-being.³¹ At the same time, it requires equal access to opportunity and the ability to fully participate in society.³² This necessarily requires addressing the socioeconomic and political contexts, including laws and policies that are rooted in power imbalance, and structural discrimination by social class, gender, race, and ethnicity.³³ Where the WHO Conceptual SDOH model identifies root causes and pathways of intervention, the Health Justice Framework offers the principles and models for identifying solutions and implementing interventions. (Figure 2) Applied to eviction, it is a holistic approach to increasing housing stability and health equity among historically marginalized individuals and communities.³⁴

The Framework emphasizes four key tenets to addressing the structural determinants of health inequity: (1) community empowerment and community-driven structural change, wherein imbalanced power dynamics are shifted and historically marginalized populations drive solutions; (2) truth and reconciliation that emphasizes investigating and healing the historical mechanisms of structural racism undergirding health inequity; (3) the development of laws and policies that address the structural determinants of health inequity, including the social, political, and legal mechanisms of subordination; and (4) the provision of supports and legal protections to ensure that material and environmental circumstances transition from negative to positive determinants of health.³⁵ (Figure 2)

29 For a description of the health justice scholarship, see *What is Health Justice?*, *supra* note 24.

30 The social determinants of health are defined as the conditions in which people are born, grow, work, play, and live. *Social Determinants of Health*, WORLD HEALTH, http://www.who.int/social_determinants/sdh_definition/en (last visited Jul. 28, 2023).

31 For an overview of the health justice approach to policymaking, see *Health Justice Strategies*, *supra* note 23.

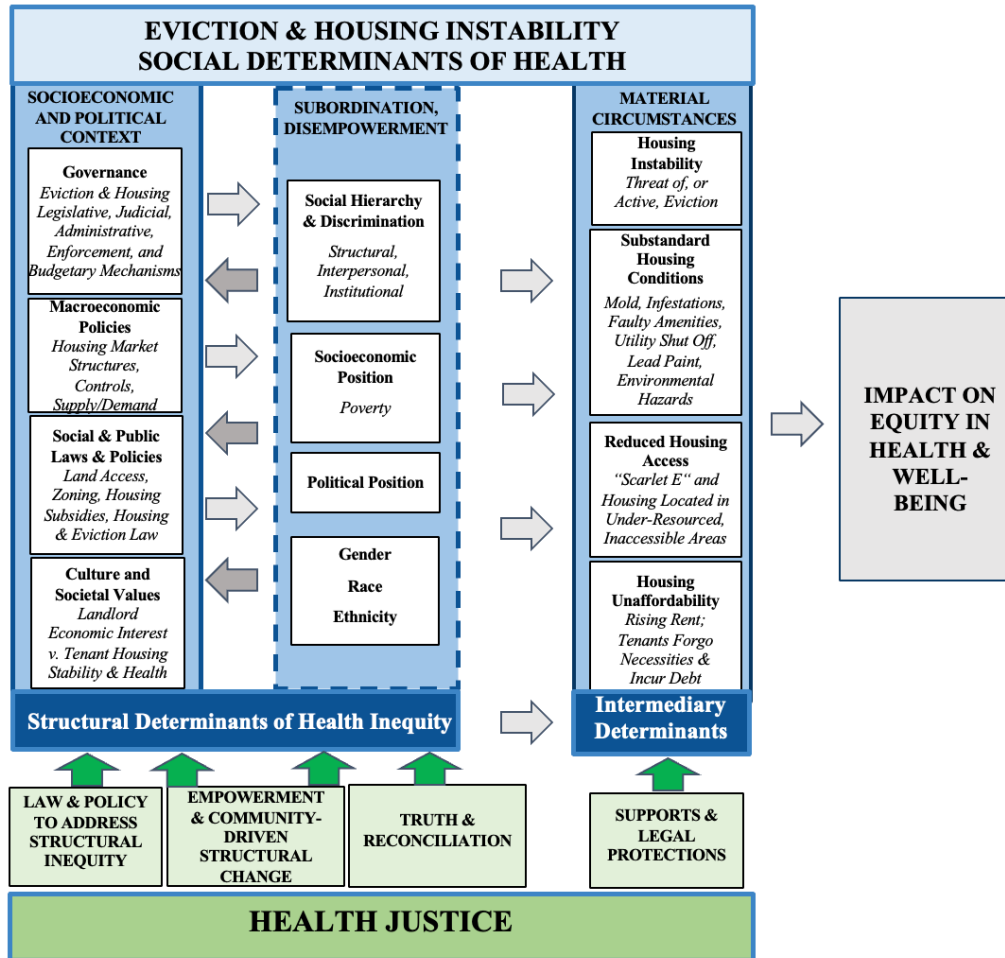
32 *Id.* at t 281; see also Paula Braveman et al., *What is Health Equity?*, 4 BEHAV. SCI. & POL'Y 1 (2018) (“Health equity . . . requires removing obstacles to health such as poverty and discrimination and their consequences, which include powerlessness and lack of access to . . . housing.”).

33 Structural discrimination is a form of discrimination that is embedded in and throughout laws, policies, institutional practices, and entrenched norms. Where discrimination is race-based, it is structural racism. See *Health Justice Strategies*, *supra* note 23; Paula A. Braveman, et al. *Systemic and Structural Racism: Definitions, Examples, Health Damages and Approaches to Dismantling*, 41 HEALTH AFFS. 171 (2022).

34 *Health Justice Strategies*, *supra* note 23.

35 This definition of health justice describes the developing framework laid out in: *Health Justice*, *supra* note 21, at 278–79; see also Ruqaiyah Yearby, *The Social Determinants of Health, Health Disparities, and Health Justice*, 50 J. LAW, MED. & ETHICS 641 (2022); Michener, *supra* note 17; Wiley, *supra* note 22; *Health Justice Strategies*, *supra* note 23; *What is Health Justice?*, *supra* note 24; *Patient Rights to Health Justice*, *supra* note 24; *Health Reform Reconstruction*, *supra* note 24; *Post-Pandemic Clinic*, *supra* note 24.

Figure 2. Health Justice Framework & Housing as a Social Determinants of Health³⁶



36 Adapted from *Health Justice Strategies*, supra note 23; see also Yearby, supra note 35.

II. THE EFFECT OF EVICTION ON HEALTH EQUITY & WELL-BEING

A. *Disparities in Eviction by Race, Ethnicity, and Familial Status*

Inequity in the eviction system is seen most starkly in the disproportionate rate of eviction filings and judgments against Black and other historically marginalized people and communities.³⁷ Between 2007 and 2016, Black renters were filed against at more than five times the rate of white renters, with 22.4 percent of Black adult renters filed against for eviction, compared to 4.2 percent of white adult renters.³⁸ Racial disparities in eviction are evidenced in numerous studies.³⁹ Generally, Black renters face eviction at higher rates than other groups. In one study, Black renters were filed against at twice the rate of white renters in seventeen out of thirty-six examined states.⁴⁰ Another study determined that Black households are more than twice as likely as white households to be evicted.⁴¹ In another study, approximately 80 percent of people facing eviction in multiple cities were Black.⁴²

Black women are evicted at higher rates than any other group, with 1 in 5 Black female renters reporting that they have experienced eviction compared with 1 in 12 Hispanic women and 1 in 15 white women.⁴³ In the seminal study of

37 Peter Hepburn, Renee Louis & Matthew Desmond, *Racial and Gender Disparities Among Evicted Americans*, EVICTION LAB (Dec. 16, 2020), <https://evictionlab.org/demographics-of-eviction>; Peter Hepburn, Renee Louis & Matthew Desmond, *Racial and Gender Disparities Among Evicted Americans*, 7 SOCIO. SCI. 649 (2020); Matthew Desmond, *Eviction and the Reproduction of Urban Poverty*, 118 AM. J. SOC. 88, 91 (2012) [hereinafter *Eviction and the Reproduction of Urban Poverty*]; Matthew Desmond et al., *Evicting Children*, 92 SOC. FORCES 303, 303 (2013) [hereinafter *Evicting Children*].

38 Nick Graetz et al., *A Comprehensive Demographic Profile of the U.S. Evicted Population*, 120 PROCEEDINGS NAT'L ACAD. SCI. USA e2305860120 (2023) ("Our estimates indicate that, between 2007 and 2016, 22.4% of Black adult renters were living in a household filed against for eviction, and roughly one in ten were evicted each year (Fig. 3). By contrast, the average annual eviction filing and eviction rates for white adult renters were 4.2% and 2.5%, respectively. Eviction filing and eviction rates for Hispanic adult renters were comparable to those for white renters. Asian renters consistently had the lowest eviction filing and eviction rates.").

39 Deena Greenberg et al., *Discrimination in Evictions: Empirical Evidence and Legal Challenges*, 51 HARV. C.R.-C.L. L. REV. 115 (2016); BENJAMIN F. TERESA, RVA EVICTION LAB, *THE GEOGRAPHY OF EVICTION IN RICHMOND: BEYOND POVERTY* (2017).

40 Sophie Beiers et al., *Clearing the Record: How Eviction Sealing Laws Can Advance Housing Access for Women of Color*, ACLU (Jan. 10, 2020), <https://www.aclu.org/news/racial-justice/clearing-the-record-how-eviction-sealing-laws-can-advance-housing-access-for-women-of-color>.

41 Matthew Desmond et al., *Discrimination in Eviction and Legal Challenges*, 51 HARV. C.R.-C.L. L. REV. 117, 117 (2016).

42 Cities studied included New York, Chicago, Baltimore, Philadelphia, Los Angeles, and Oakland. See Chester Hartman & David Robinson, *Evictions: The Hidden Housing Problem*, 14 HOUS. POL'Y DEBATE 461, 467 (2003).

43 Rachel Dovey, *What 80 Million Eviction Records Can Tell City Leaders*, NEXT CITY (Apr.

eviction in Milwaukee conducted by Dr. Matthew Desmond, founder of the Eviction Lab at Princeton University, women from Black neighborhoods made up only 9.6 percent of the city's population but accounted for 30 percent of evicted tenants.⁴⁴ During the pandemic, a study of eviction in Arkansas revealed that 50 percent of evictions were of single women,⁴⁵ even though female-led households only constituted approximately 16 percent of all households in the state.⁴⁶ Notably, Black women saw the highest rates of COVID-19 hospitalization in communities nationally, constituting approximately 7 percent of the population, and 10 percent of the population hospitalized.⁴⁷

The high rate of eviction among Black women is, in part, explained by the fact that women from impoverished majority-Black neighborhoods are the leaseholder the majority of the time and have a harder time making rent than male leaseholders from other neighborhoods.⁴⁸ The higher rates of eviction suffered by Black women compared to other groups is mirrored by the higher rates of incarceration suffered by Black men compared to other groups.⁴⁹ As Dr. Desmond has observed, "Poor Black men are locked up while poor Black women are locked out."⁵⁰

Familial status is also a contributing factor to eviction risk. The single greatest predictor of eviction is the presence of a child, with Black families at the highest risk.⁵¹ According to one study, an astounding 14.8 percent of all children and 28.9 percent of children in families living below the poverty line experience an eviction by the time they are fifteen.⁵² In a recent national study of eviction filings, 32.9

9, 2018), <https://nextcity.org/daily/entry/what-80-million-eviction-records-can-tell-city-leaders>.

44 *Eviction and the Reproduction of Urban Poverty*, *supra* note 37; see also Matthew Desmond, *Poor Black Women Are Evicted at Alarming Rates, Setting Off a Chain of Hardship*, MACARTHUR FOUND. (Mar. 2014), https://www.macfound.org/media/files/hhm_research_brief_-_poor_black_women_are_evicted_at_alarming_rates.pdf [hereinafter *Poor Black Women are Evicted at Alarming Rates*].

45 Ninette Sosa, *A Closer Look: Arkansas Evictions During COVID-19; Tenant Stories*, KNWA FOX24 (Aug. 3, 2020, 5:36 PM CDT), <https://www.nwahomepage.com/news/a-closer-look/a-closer-look-arkansas-evictions-during-covid-19-tenant-stories>.

46 *Arkansas: Families*, CENSUS REPORTER, <https://censusreporter.org/profiles/04000US05-arkansas> (last visited Sep. 12, 2023) (visualization of data collected through the U.S. Census Bureau's 2021 American Community Survey 1-Year Estimates).

47 Suman Pal et al., *Gender and Race-Based Health Disparities in COVID-19 Outcomes Among Hospitalized Patients in the United States: A Retrospective Analysis of a National Sample*, 10 VACCINES 2036 (2022).

48 *Eviction and the Reproduction of Urban Poverty*, *supra* note 37.

49 In 2018, 2,272 per 100,000 Black men were imprisoned under the jurisdiction of state or federal correctional officials, compared to 392 per 100,000 white men and 88 per 100,000 Black women. E. ANN CARSON, BUREAU JUST. STATS., PRISONERS IN 2018 16 (2020).

50 *Poor Black Women Are Evicted at Alarming Rates*, *supra* note 44, at 3.

51 *Evicting Children*, *supra* note 37, at 303.

52 Ian Lundberg & Louis Donnelly, *A Research Note on the Prevalence of Housing Eviction Among Children Born in U.S. Cities*, 56 DEMOGRAPHY 391 (2019).

percent of the population threatened with eviction was below age fifteen.⁵³ Children under five make up 9 percent of people living in rental units, but 12 percent of renters affected by an eviction filing each year. Of all children aged zero to four living in renting households, 5.7 percent were evicted each year, with 12.4% of Black children aged 0 to 4 evicted annually.⁵⁴ Eviction among families can be partially attributed to the landlord's misperception that children contribute to overcrowding, noise, defacement of property; increase the potential for additional costs and scrutiny of the property if a child is lead poisoned; are responsible for increased gang activity and the presence of law enforcement and/or Child Protective Services.⁵⁵ A study conducted of this phenomenon found that on average a household with children owed slightly less than the households without children and on average committed fewer lease violations, yet the probability of receiving an eviction judgment was 16 to 17 percent higher for households with children.⁵⁶

Housing instability and eviction burdens additional historically marginalized and vulnerable groups. Individuals with disabilities are disproportionately represented in eviction filings; in a questionnaire of 670 households (or 1,657 people) who had evictions filed against them, approximately 40 percent reported having a disability.⁵⁷ LGBTQ status can increase risk of eviction.⁵⁸ In the 2015 U.S. Transgender Survey, transgender adults reported facing eviction at a rate approximately five times higher than the general population.⁵⁹ Undocumented immigrants may also be more likely to experience eviction due to extreme rates of rent burden. In Los Angeles, 71 percent of undocumented immigrants were rent burdened compared to 55 percent of U.S. born citizens.⁶⁰ Intersectionality across

⁵³ Nick Graetz et al., *A Comprehensive Demographic Profile of the US Evicted Population*, 120 PNAS e2305860120 (2023).

⁵⁴ *Id.*

⁵⁵ *Evicting Children*, *supra* note 37, at 306.

⁵⁶ *Id.* at 314–17.

⁵⁷ See Matt Koz, *Issue Spotlight: Who is Being Evicted?*, TENANT RES. CTR. (Apr. 25, 2023), https://www.tenantresourcecenter.org/issue_spotlight_who_is_being_evicted. See also Jaboa Lake, Valerie Novack & Mia Ives-Ruble, *Recognizing and Addressing Housing Insecurity for Disabled Renters*, CENTER FOR AM. PROGRESS (May 27, 2021), <https://www.americanprogress.org/article/recognizing-addressing-housing-insecurity-disabled-renters>; *Advancing Tenant Protections: Source-of-Income Protections*, NAT'L LOW INCOME HOUS. COAL. (Feb. 7, 2023), <https://nlihc.org/resource/14-1-advancing-tenant-protections-source-income-protections>.

⁵⁸ Maya Brennan, *Five Facts About Housing Access for LGBTQ People*, URBAN INST. (June 13, 2018), <https://housingmatters.urban.org/articles/five-facts-about-housing-access-lgbt-people>.

⁵⁹ SANDY E. JAMES ET AL., NAT'L CTR. FOR TRANSGENDER EQUAL., *THE REPORT OF THE 2015 U.S. TRANSGENDER SURVEY* (2015); CAITLIN ROONEY ET AL., CTR. FOR AM. PROGRESS, *DISCRIMINATION AGAINST TRANSGENDER WOMEN SEEKING ACCESS TO HOMELESS SHELTERS* (2016).

⁶⁰ USC DORNSIFE CENTER FOR THE STUDY OF IMMIGRANT INTEGRATION, *STATE OF IMMIGRANTS*

race, class, and gender is also common among people at heightened risk of eviction, resulting in increased exposure to structural discrimination and health inequity.⁶¹

B. Eviction as a Major Driver of Poor Health

As social science and public health research demonstrates, eviction is a well-documented SDOH that has a negative effect on health and well-being with high health care expenditures and steep societal costs and community impacts.⁶² (Table 1) Eviction disrupts employment,⁶³ education,⁶⁴ social networks,⁶⁵ access to services,⁶⁶ and negatively impacts long-term health outcomes for adults and children.⁶⁷ Eviction is associated with unemployment,⁶⁸ diminished mental and physical health, depression,⁶⁹ suicidal ideation,⁷⁰ suicide,⁷¹ increased risk of

IN LA COUNTY 46 (2020). It should also be noted that undocumented immigrants may be particularly vulnerable to informal evictions, due to their understandable hesitance to challenge landlord actions in court. Albinson Linares & Juliana Jiménez, *Evictions are on the Rise – and It’s Harder for Those Who Are Undocumented*, NBC NEWS (Aug. 16, 2023, 2:44 PM) <https://www.nbcnews.com/news/latino/evictions-are-rise-impacting-many-undocumented-latinos-rcna99478>.

61 See, e.g., Megan Buckles, *10 Policies to Improve Economic Security for Black Women With Disabilities*, CTR. FOR AM. PROGRESS (Feb. 15, 2022), <https://www.americanprogress.org/article/10-policies-to-improve-economic-security-for-black-women-with-disabilities>; see Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241 (1991).

62 Lauren A. Taylor, *Housing and Health: An Overview of the Literature*, HEALTH AFFS. (June 7, 2018), <https://www.healthaffairs.org/doi/10.1377/hpb20180313.396577/full>; Kim M. Blankenship et al., *Structural Racism, the Social Determination of Health, and Health Inequities: The Intersecting Impacts of Housing and Mass Incarceration*, 113 AM. J. PUB. HEALTH S58 (2023).

63 Matthew Desmond & Rachel Tolbert Kimbro, *Eviction’s Fallout: Housing, Hardship, and Health*, 94 SOC. FORCES 295, 316 (2015); Matthew Desmond & Carl Gershenson, *Housing and Employment Insecurity Among the Working Poor*, 63 SOC. PROBS. 46 (2016).

64 *Evicting Children*, *supra* note 37, at 320.

65 *Id.*

66 Taylor, *supra* note 62.

67 Robert Collinson et al., *Eviction and Poverty in American Cities*, NAT’L BUREAU OF ECON. RSCH. (2022), https://www.nber.org/system/files/working_papers/w30382/w30382.pdf.

68 Desmond & Gershenson, *supra* note 63.

69 Desmond & Kimbro, *supra* note 63.

70 Hugo Vásquez Vera et al., *The Threat of Home Eviction and its Effects on Health Through the Equity Lens: A Systematic Review*, 175 SOC. SCI. & MED. 199, 202 (2017).

71 Katherine A. Fowler et al., *Increase in Suicides Associated with Home Eviction and Foreclosure During the US Housing Crisis: Findings from 16 National Violent Death Reporting System States, 2005–2010*, 105 AM. J. PUB. HEALTH 311 (2015).

sexually transmitted diseases,⁷² HIV sexual risk,⁷³ drug overdose,⁷⁴ increased mortality,⁷⁵ homelessness, decreased access to medical care, and other negative outcomes.⁷⁶ In addition, eviction is associated with respiratory disease⁷⁷ and increased COVID-19 infection and mortality.⁷⁸ The mere threat of eviction can increase stress levels, anxiety, and depression, and weaken the immune system, which can increase the risk of comorbidities.⁷⁹ (Table 1)

For women, eviction is associated with physical and sexual assault, increased drug use, and behaviors that increase contraction of sexually transmitted diseases.⁸⁰ Eviction among women is also associated with future housing displacement.⁸¹ Evicted mothers experience higher levels of depression, stress, and greater material hardship than mothers who are stably housed.⁸² (Table 1)

For children, eviction functions as a major life event that has damaging effects long after they are forced to leave their homes.⁸³ It negatively affects emotional

72 Linda M. Niccolai, Kim M. Blankenship & Danya E. Keene, *Eviction from Renter-Occupied Households and Rates of Sexually Transmitted Infections: A County-Level Ecological Analysis*, 46 SEXUALLY TRANSMITTED DISEASES 63 (2019).

73 Allison K. Groves et al., *Housing Instability and HIV Risk: Expanding Our Understanding of the Impact of Eviction and Other Landlord-Related Forced Moves*, 25 AIDS BEHAV. 1913 (2021).

74 Ashley C. Bradford & David W. Bradford, *The Effect of Eviction on Accidental Drug and Alcohol Mortality*, 55 HEALTH SERV. REV. 9 (2020); *Homelessness as a Public Health Law Issue: Selected Resources*, CTR. DISEASE CONTROL & PREVENTION <https://www.cdc.gov/phlp/publications/topic/resources/resources-homelessness.html> (last updated Apr. 23, 2020).

75 Nick Graetz et al., *The Impacts of Rent Burden and Eviction on Mortality in the United States, 2000-2019*, 340 SOC. SCI. & MED. 116398 (2024); see also Desmond & Kimbro, *supra* note 63; Thomas Kottke et al., *Access to Affordable Housing Promotes Health and Well-Being and Reduces Hospital Visits*, 22 PERMANENTE J. 1, 2-3 (2017).

76 See Benfer et al., *supra* note 1; Collinson et al., *supra* note 67.

77 Paula Braverman et al., *How Does Housing Affect Health?*, ROBERT WOOD JOHNSON FOUND. (May 1, 2011), <https://www.rwjf.org/en/library/research/2011/05/housing-and-health.html>.

78 Kathryn M. Leifheit et al., *Expiring Eviction Moratoriums and COVID-19 Incidence and Mortality*, 190 AM. J. EPIDEMIOLOGY 2503 (2021).

79 Vera et al., *supra* note 70; Gabriel L. Schwartz et al., *Eviction, Healthcare Utilization, and Disenrollment Among New York City Medicaid Patients*, 62 AM. J. PREVENTIVE MED. 157 (2022).

80 See Nihaya Daoud et al., *Pathways and Trajectories Linking Housing Instability and Poor Health Among Low-Income Women Experiencing Intimate Partner Violence (IPV): Toward a Conceptual Framework*, 56 WOMEN HEALTH 208 (2016); Alexandra B. Collins et al., *Surviving the Housing Crisis: Social Violence and the Production of Evictions Among Women Who Use Drugs in Vancouver, Canada*, 51 HEALTH & PLACE 174 (2018); Niccolai, Blankenship & Keene, *supra* note 72.

81 Craig Evan Pollack, Kathryn M. Leifheit & Sabriya L. Linton, *When Storms Collide: Evictions, COVID-19, and Health Equity*, HEALTH AFF. FOREFRONT (Aug. 4, 2020), <https://www.healthaffairs.org/content/forefront/storms-collide-evictions-covid-19-and-health-equity>.

82 Desmond & Kimbro, *supra* note 63.

83 See generally Emily A. Benfer, *U.S. Eviction Policy is Harming Children: The Case for*

and physical well-being;⁸⁴ increases the likelihood of lead poisoning⁸⁵ and food insecurity;⁸⁶ leads to academic decline and delays;⁸⁷ and is linked to increased all-cause mortality.⁸⁸ Strongly associated with adverse childhood experiences, eviction increases long-term negative health impacts, including increased risk of cardiovascular disease in adulthood and decreased life expectancy.⁸⁹ In a recent study that concluded eviction is a perinatal, pediatric, and adult health concern, researchers found that for young children, eviction was associated with significantly greater odds of poor health, developmental risk, and hospital admission from the emergency department.⁹⁰ Newborn infants whose mothers were evicted during their pregnancy are more likely to have low birth weight, preterm birth, shorter gestation, neonatal intensive care unit stays, extended hospitalization, and a trend toward increased infant mortality.⁹¹ In this way, eviction has negative effects across the life course and creates intergenerational harm. Because eviction often increases household instability, which is particularly damaging to children and impacts their educational development and well-being for years,⁹² the harm of exposure may be chronic and long-term. (Table 1)

In addition to the devastating effects of eviction—from homelessness to the

Sustainable Eviction Prevention to Promote Health, HARV. L. SCH. BILL OF HEALTH (Nov. 2, 2022), <https://blog.petrieflom.law.harvard.edu/2022/11/02/pandemic-eviction-policy-children>; Benfer et al., *supra* note 1.

84 See Matthew Desmond, *Unaffordable America: Poverty, Housing, and Eviction*, 22 FAST FOCUS 1, 1–6 (2015) [hereinafter *Unaffordable America*]; Kottke et al., *supra* note 75; see also Stephen Gaetz et al., *Youth Homelessness and Housing Stability: What Outcomes Should We Be Looking For?*, 32 HEALTHCARE MGMT. F. 73 (2019).

85 Francisca García-Cobián Richter et al., *An Integrated Data System Lens Into Evictions and Their Effects*, 31 HOUS. POL'Y DEBATE 762 (2021).

86 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–POP. HEALTH 100575 (2020).

87 Diana H. Gruman et al., *Longitudinal Effects of Student Mobility on Three Dimensions of Elementary School Engagement*, 79 CHILD DEV. 1833 (2008); Gabriel L. Schwartz et al., *Childhood Eviction and Cognitive Development: Developmental Timing-Specific Associations in an Urban Birth Cohort*, 292 SOC. SCI. & MED. 114544 (2022).

88 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 (2017).

89 Maxia Dong et al., *Childhood Residential Mobility and Multiple Health Risks During Adolescence and Adulthood: The Hidden Role of Adverse Childhood Experiences*, 159 ARCHIVES PEDIATRICS & ADOLESCENT MED. 1104, 1107 (2005).

90 Diana B. Cutts et al., *Eviction and Household Health and Hardships in Families with Very Young Children*, 150 PEDIATRICS 1 (2022).

91 Kathryn M. Leifheit et al., *Severe Housing Insecurity During Pregnancy: Association with Adverse Birth and Infant Outcomes*, 17 INT'L J. ENV. RSCH. & PUB. HEALTH 8659 (2020); Gracie Himmelstein & Matthew Desmond, *Association of Eviction with Adverse Birth Outcomes Among Women in Georgia, 2000 to 2016*, 175 JAMA PEDIATRICS 494 (2021).

92 HEATHER SANDSTROM & SANDRA HUERTA, URBAN INST., THE NEGATIVE EFFECTS OF INSTABILITY ON CHILD DEVELOPMENT: A RESEARCH SYNTHESIS 6 (2013).

life-long detrimental health impacts to increased risk of death⁹³—eviction haunts families as they attempt to piece their lives back together, which can include seeking employment, securing childcare, identifying new schools, and coping with financial and personal loss. Renters who attempt to move forward with their lives after eviction are often met with barriers when they search for a new home.⁹⁴ Eviction records can result in the denial of housing⁹⁵ and damage to credit scores if the landlord reports nonpayment to credit agencies or pursues debt collection related to unpaid rent, which in turn negatively affects employment opportunities (where credit checks are used to evaluate employees), one’s ability to obtain home and auto insurance, eligibility for a mortgage, financial aid for educational purposes, home and car purchases, and other activities that involve credit.⁹⁶ This has the effect of pushing tenants with a history of an eviction filing to substandard housing in higher crime and higher poverty neighborhoods that have under-resourced schools, are removed from necessities, and lack employment opportunities, among other critical sources of livelihood.⁹⁷ Children living in inadequate homes and low-income communities are at increased risk of behavioral and developmental problems, infectious and chronic diseases, and injury.⁹⁸ (Table 1)

93 See *supra* Section II.B.

94 *Eviction Filings Are Barrier to Finding Future Housing—Even for Tenants Who Are Not Evicted*, HOUS. ACTION IL. (Mar. 7, 2018), <https://www.lcbh.org/news/eviction-filings-are-barrier-to-finding-future-housing>.

95 See *infra* Section IV.C.7.

96 Jasmin Suknanan, *Does Getting Evicted Lower Your Credit Score? Here’s What You Need to Know*, CNBC (Nov. 28, 2023) <https://www.cnbc.com/select/how-eviction-affects-credit>; Robert Collinson et al., *Eviction and Poverty in American Cities*, NAT’L BUREAU ECON. RSCH. (2022). Credit checks in employment have independently been criticized as a “vicious cycle” with a “greater impact on minority job applicants.” Sharon Goott Nissim, *Stopping a Vicious Cycle: The Problems with Credit Checks in Employment and Strategies to Limit Their Use*, 18 GEO. J. L. & POL’Y 45, 46 (2010).

97 Matthew Desmond & Tracey Shollenberger, *Forced Displacement from Rental Housing: Prevalence and Neighborhood Consequences*, 52 DEMOGRAPHY 1751 (2015); Matthew Desmond, Carl Gershenson & Barbara Kiviat, *Forced Relocation and Residential Instability Among Urban Renters*, 98 SOC. SERV. REV. 227 (2015).

98 *Housing’s and Neighborhoods’ Role in Shaping Children’s Future*, U.S. DEP’T OF HOUS. & URB. DEV. (2014), <https://www.huduser.gov/portal/periodicals/em/fall14/highlight1.html>.

Table 1. Eviction as a Structural Determinant of Health Inequity: Conditions Associated with Eviction

Physical Health	Mental Health	Associated Conditions Among Women	Associated Conditions Among Children	Exposure to Hazardous Living Conditions	Barriers to Livelihood
All-Cause Mortality	Depression	Physical Assault	Lead Poisoning	Lead	Falling Credit Scores, Inaccess to Credit
Respiratory Disease	Anxiety	Sexual Assault	Educational Barriers, Academic Delay and Decline	Mold	Downward Moves
High Blood Pressure	Toxic Stress	Drug Use, Drug Exposure, and Related Harms	Food Insecurity	Poor Ventilation	Unemployment, Reduced Earnings
Self-Rated Poor General Health	Mental Health Hospitalization	Pre-term Pregnancies	Emotional Trauma	Infestations	Residential Instability
Coronary Heart Disease	Exposure to Violence	Future Housing Displacement	Risk of Chronic Diseases in Adulthood	Crowding	Homelessness
Sexually Transmitted Infections, HIV Risk	Suicide	Material Hardship	Low Birthweight and Preterm Birth	Asbestos	Inability to Access Social Services
Drug Use, Overdose			Neonatal Intensive Care Unit Stays	Higher Crime	Greater Debt
Increased Emergency Room and Hospital Visits and Admissions			Adverse Childhood Experiences		Social Network Disruption
COVID-19 infection, mortality			All-Cause Mortality, Decreased Life Expectancy		Decreased Medical Care
Weakened Immune System					

III. EVICTION AND THE INTERMEDIARY DETERMINANTS OF HEALTH

In the WHO Conceptual SDOH model, the intermediary determinants are antecedent to structural determinants of health inequity. Intermediary determinants are the material circumstances that influence equity in health and well-being. They include the physical and neighborhood environment and the ability to afford necessities, among other factors. In the housing context, housing instability and reduced access, substandard conditions, unaffordability, and location all impact health.

A. *Housing Instability and Reduced Housing Access*

Housing instability due to eviction, in particular, has a negative impact on health equity. Eviction is widespread throughout the United States. The Eviction Lab at Princeton University determined that between 2000 and 2018, over 69.7 million eviction cases were filed in the U.S., an average of 3.6 million eviction filings annually against 2.7 million unique households, affecting 9 percent of renter households.⁹⁹ The prevalence of eviction filings and judgments varies by city and state and, on average, North Charleston, South Carolina has the highest rate of eviction filings (16.5 percent) and New York City, New York, the highest volume (36,343 eviction cases filed).¹⁰⁰ In many cities, a small share of landlords are responsible for the majority of eviction filings and drive the local eviction crisis.¹⁰¹ Some of the highest annual eviction filing rates are observed in Maryland, South Carolina, and Georgia, indicating that eviction risk is not primarily a concern of high-cost or high-population metropolitan areas.¹⁰² Indeed, eviction risk is common in suburban contexts¹⁰³ and eviction rates and housing inequality have increased in suburban communities over time.¹⁰⁴

99 Ashley Gromis et al., *Estimating Eviction Prevalence Across the United States*, 119 PNAS e2116169119 (2022); Juan Pablo Garnham, Carl Gershenson & Matthew Desmond, *New Data Release Shows that 3.6 Million Eviction Cases Were Filed in the United States in 2018*, EVICTION LAB (July 11, 2022), <https://evictionlab.org/new-eviction-data-2022>.

100 EVICTION LAB, *Top Evicting Large Cities in the United States*, <https://evictionlab.org/rankings/#/evictions> (last visited July 27, 2023).

101 Devin Rutan & Matthew Desmond, *Top Evicting Landlords Drive U.S. Eviction Crisis*, EVICTION LAB (Apr. 5, 2021), <https://evictionlab.org/top-evicting-landlords-drive-us-eviction-crisis>.

102 *Id.*

103 Peter Hepburn et al., *Uncovering the Suburban Eviction Crisis*, EVICTION LAB (Mar. 23, 2022), <https://evictionlab.org/suburban-eviction>; Peter Hepburn, Devin Q. Rutan & Matthew Desmond, *Beyond Urban Displacement: Suburban Poverty and Eviction*, 59 URB. AFFS. REV. 759 (2023).

104 Devin Q. Rutan, Peter Hepburn & Matthew Desmond, *The Suburbanization of Eviction: Increasing Displacement and Inequality Within American Suburbs*, 9 RSF: THE RUSSELL SAGE FOUND. J. SOC. SCIS. 104 (2023); Devin Q. Rutan, Peter Hepburn & Matthew Desmond, *The Growing*

Eviction is also prevalent in federally assisted and public housing.¹⁰⁵ Residents of public housing complexes with majority Black tenants are disproportionately threatened with eviction compared to those with majority white residents.¹⁰⁶ This is especially damaging, as eviction not only results in displacement, but also leads to the loss of federally assisted housing—a rare and “life-saving” benefit.¹⁰⁷

According to Dr. Matthew Desmond, “eviction diminishes one’s chance of securing affordable housing in a decent neighborhood, stymies the ability to secure housing assistance, and often leads to homelessness and increased residential mobility. All of these factors lead to reproduction of urban poverty.”¹⁰⁸ As described herein, because many landlords reject applicants with a history of eviction (“Scarlet E”), these renters are left with few options and are often forced into run-down properties.¹⁰⁹ For children and young adults named as defendants in an eviction case, they are practically excluded from the housing market before they are legally able to enter a binding lease due to common categorical bans on renting to applicants with an eviction history. Consequently, eviction almost always leads to a downward move, doubling up or homelessness, to substandard housing, and to communities with higher rates of crime, poverty, and under-resourced schools.¹¹⁰

During the COVID-19 pandemic, the Biden-Harris Administration’s whole-of-government response to the eviction crisis—that was matched with swift local action to implement programs and adopt legislation—led to an unprecedented reduction in eviction filings nationwide: eviction filings dropped to less than half of historical levels through 2021 and well below historical averages in 2022. (Figure 3) As described herein, interventions attributed with quelling the pandemic eviction crisis included the issuance of eviction moratoria in forty-three states, the District of Columbia and five American territories; the CDC eviction moratoria; rapid distribution of \$46.5 billion in federal Emergency Rental Assistance; investments in tenant right to counsel and eviction diversion programs; outreach from the Attorney General and Associate Attorney General to the legal community

Risk of Eviction in the Suburbs, EVICTION LAB (Feb. 28, 2023), <https://evictionlab.org/growing-risk-of-suburban-eviction>.

¹⁰⁵ Ashley Gromis, James R. Hendrickson & Matthew Desmond, *Eviction from Public Housing in the United States*, 127 CITIES 103749 (2022); REINVESTMENT FUND, POLICY BRIEF: EVICTIONS IN PHILADELPHIA: A DATA & POLICY UPDATE (Oct. 2019).

¹⁰⁶ Gromis et al., *supra* note 99; *see also* Gregory Preston & Vincent J. Reina, *Sheltered from Eviction? A Framework for Understanding the Relationship Between Subsidized Housing Programs and Eviction*, 31 HOUS. POL’Y DEBATE 785 (2021).

¹⁰⁷ Gromis et al., *supra* note 99.

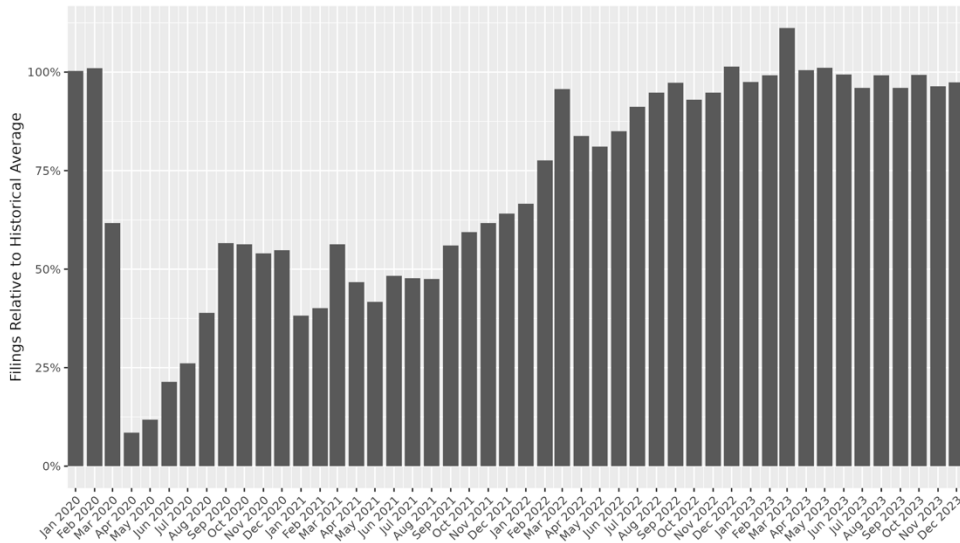
¹⁰⁸ *Eviction and the Reproduction of Urban Poverty*, *supra* note 37.

¹⁰⁹ *Id.*; *see also infra* Section IV.C.7.

¹¹⁰ *Unaffordable America*, *supra* note 84; Desmond, Gershenson & Kiviat, *supra* note 97; Desmond & Shollenberger, *supra* note 97.

and courts; best practices and technical assistance from the U.S. Treasury; as well as the historic supports offered to Americans under the American Rescue Plan Act. By the summer of 2023, due to the sunset of pandemic era interventions and the lack of their permanent adoption on the state and local level, eviction filing rates began to approach or surpass historical levels in multiple jurisdictions, by as much as 140 percent (Minnesota), 150 percent (Houston, Texas), and 170 percent (Las Vegas, NV).¹¹¹

Figure 3. Eviction Filings Compared to Historical Averages January 2020 to December 2023¹¹²



B. Substandard Housing Conditions

Majority Black and Latino communities are affected by substandard conditions at a higher rate than predominately white communities. Approximately thirty-five million (40 percent) homes in U.S. metropolitan areas have one or more health and safety hazards, and rental properties in these areas have a greater prevalence of health-harming conditions than owner-occupied units.¹¹³

111 *Eviction Tracking System*, EVICTION LAB, <https://evictionlab.org/eviction-tracking> (last visited July 27, 2023).

112 Peter Hepburn, Jacob Haas, Renee Louis, Adam Chapnik, Danny Grubbs-Donovan, Olivia Jin, Jasmine Rangel, and Matthew Desmond, *Eviction Tracking System: Version 2.0*, Princeton: Princeton University, 2020.

113 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*

Substandard homes are concentrated in low-income communities and communities of color.¹¹⁴ Undocumented migrants are more likely than immigrants to be exposed to pests, insects, exposed wires, and holes in the walls.¹¹⁵ Overall, Black renter households disproportionately suffer from conditions associated with substandard housing, including asthma, respiratory distress, carbon monoxide poisoning, high blood pressure, heart disease, lead poisoning, mental health impairment, and cancer, among others.¹¹⁶ Tenants who have a history of interaction with the eviction system are not only exposed to hazardous housing conditions at higher rates, but they also have little recourse due to underenforcement of housing codes and warranties of habitability and the immediate threat or fear of retaliatory eviction that may occur after a tenant reports a violation.

C. Housing Unaffordability

Eviction is linked to the severe and chronic affordable housing crisis in the United States. As the country emerged from the pandemic and pandemic-era housing supports lapsed, the number of cost-burdened¹¹⁷ rental households reached a record 21.6 million (roughly half of all renter households), the highest level since 2001, including 11.6 million who were severely cost burdened (defined as paying over 50 percent or more of income toward rent).¹¹⁸ Most renter households below the poverty line spend at least half of their income on rent, with one in four

Low-Income and Minority Communities, 11 HARV. L. & POL'Y REV. ONLINE S1 11 (2017) [hereinafter *There's No Place Like Home*].

¹¹⁴ See *Health Justice Strategies*, *supra* note 23.

¹¹⁵ Matthew Hall & Emily Greenman, *Housing and Neighborhood Quality Among Undocumented Mexican and Central American Immigrants*, 42 SOC. SCI. RES. 1 (2013).

¹¹⁶ *There's No Place Like Home*, *supra* note 113; Benfer et al., *supra* note 1; Douglass S. Massey & Jonathan Tannen, *A Research Note on Trends in Black Hypersegregation*, 52 DEMOGRAPHY 1025 (2015); Douglas S. Massey, *American Apartheid: Segregation and the Making of the Underclass*, 95 AM. J. OF SOCIO. 1153 (1990); Douglas S. Massey & Nancy A. Denton, *Hypersegregation in U.S. Metropolitan Areas: Black and Hispanic Segregation Along Five Dimensions*, 26 DEMOGRAPHY 373 (1989); DOUGLAS S. MASSEY & NANCY A. DENTON, *AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS* (1998); Douglas S. Massey & Mary J. Fischer, *How Segregation Concentrates Poverty*, 23 ETHNIC & RACIAL STUD. 670 (2000).

¹¹⁷ Cost-burdened is defined as those spending more than 30 percent of their income on housing. Molly Cromwell, *Renters More Likely Than Homeowners to Spend More Than 30% of Income on Housing in Almost All Counties*, U.S. CENSUS BUREAU (Dec. 8, 2022), <https://www.census.gov/library/stories/2022/12/housing-costs-burden.html>; see Sean Veal & Jonathan Spader, *Nearly a Third of Americans Were Cost Burdened Last Year*, HARV. JOINT CTR. FOR HOUS. STUD. (Dec. 7, 2018), <https://www.jchs.harvard.edu/blog/more-than-a-third-of-american-households-were-cost-burdened-last-year>.

¹¹⁸ THE STATE OF THE NATION'S HOUSING 2023, HARV. JOINT CTR. FOR HOUS. STUD. (2023), https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_The_State_of_the_Nations_Housing_2023.pdf.

spending over 70 percent of their income on housing costs.¹¹⁹ Between the scarcity of federal assistance and the loss of nearly four million affordable housing units over the last decade,¹²⁰ many renters were at heightened risk of housing instability prior to the economic recession of 2020. The current housing shortfall is substantial with a deficit of 1.5 million units generally,¹²¹ and a shortage of 7.3 million affordable and available rental homes for extremely low-income renters.¹²² To date, no state has an adequate supply of affordable and available housing for low-income renters.¹²³

At the same time, every region of the country has experienced a surge in rent, with median rent more than doubling in the last two decades. In the first quarter of 2022, rental prices increased by 15.3 percent year over year, the highest increase in more than 20 years.¹²⁴ Between the first quarter of 2020 and the first quarter of 2023, rental prices rose 23.9 percent.¹²⁵ The rate of tenant exploitation¹²⁶ and inflated rental prices is higher in low-income neighborhoods and neighborhoods with high concentrations of African Americans.¹²⁷ Other intermediary determinants of health, including lack of annual earnings gains and stagnant incomes for many American families, increase housing precarity for many Americans.¹²⁸

119 U.S. CENSUS BUREAU, AMERICAN HOUS. SURVEY, TABLE 10 (2017).

120 THE STATE OF THE NATION'S HOUSING 2023, *supra* note 118.

121 *Id.*

122 ANDREW AURAND ET AL., NAT'L LOW INCOME HOUS. COAL. THE GAP: A SHORTAGE OF AFFORDABLE HOMES (2023), <https://nlhc.org/gap>.

123 *Id.*; LOURDES ASHLEY HUNTER ET AL., SOCIAL JUSTICE SEXUALITY PROJECT, INTERSECTING INJUSTICE: A NATIONAL CALL TO ACTION: ADDRESSING LGBTQ POVERTY AND ECONOMIC JUSTICE FOR ALL (2018).

124 *On the Brink of Homelessness: How the Affordable Housing Crisis and the Gentrification of America Is Leaving Families Vulnerable: Hearing Before the H. Fin. Serv. Comm.*, 116th Cong. 2 (2020) (statement of Matthew Desmond, Principal Investigator, Eviction Lab Princeton University) [hereinafter *On the Brink of Homelessness*]; THE STATE OF THE NATION'S HOUSING 2023, *supra* note 118, at 1.

125 THE STATE OF THE NATION'S HOUSING 2023, *supra* note 118, at 2.

126 Tenant exploitation is defined as being over charged relative to the market value of the property. Matthew Desmond & Nathan Wilmers, *Do the Poor Pay More for Housing? Exploitation, Profit, and Risk in Rental Markets*, 124 AM. J. SOCIOLOGY 1090 (2019).

127 *Id.* at 1113; *see also* THE STATE OF THE NATION'S HOUSING 2023, *supra* note 118.

128 *On the Brink of Homelessness*, *supra* note 124. Between 1980 and 2010, workers at the bottom 90 percent of the workforce realized annual earnings gains of only 50 percent. *Id.* Post-pandemic, in 2023, the Economic Policy Institute determined that 19.5 million American workers still earn less than \$15 per hour, with 18 percent of Black and Hispanic workers under this threshold, compared to 12 percent of white workers. *Low-Wage Workforce Tracker*, ECON. POL'Y INST. (Apr. 2023), https://economic.github.io/low_wage_workforce; *see also* OXFAM AM., FEW REWARDS: AN AGENDA TO GIVE AMERICA'S WORKING POOR A RAISE (June 22, 2016) https://s3.amazonaws.com/oxfam-us/www/static/media/files/Few_Rewards_Report_2016_web.pdf.

Yet, there is a lack of federal funding to ensure the affordability of housing: only one in four eligible households receive federal financial rental assistance, with Black households disproportionately represented on waitlists.¹²⁹ Even the lucky few who receive rental assistance often struggle to obtain housing due to barriers that include landlord unwillingness to accept vouchers (denial rates were as high as 78 percent in one study), short lease terms that necessitate constant searching for new housing, and substandard conditions in available housing that pose risks to health and safety.¹³⁰

The shortage of affordable and available rental housing disproportionately affects Black, Latino, and Indigenous households, with low-income renters making up 19 percent of Black non-Latino households, 17 percent of American Indian or Alaska Native households, and 14 percent of Latino households, compared to only 6 percent of white non-Latino households.¹³¹ The combination of these factors place renters of color at the highest risk of eviction and housing insecurity.

IV. EVICTION AS A STRUCTURAL DETERMINANT OF HEALTH INEQUITY

The negative impact of eviction on health equity and well-being is not merely a byproduct of the intermediary determinants of health described in Part III, such as housing stability and access, affordability, and conditions. Applying the WHO Conceptual SDOH Model, these are all material circumstances that are directly influenced by structural determinants of health inequity, which include socioeconomic and political elements, as well as subordination and disempowerment. As a whole, the American eviction system operates as a structural determinant of health inequity, influenced by socioeconomic and political contexts, that perpetuates the disproportionate rate of eviction among Black renters. Structural determinants of health inequity do not require individual action or intent. Rather, in the eviction context, the whole system, including laws, policies, processes, practices, and entrenched norms, perpetuates widespread

129 “With just one of every four income-eligible households receiving rental assistance, there are also not enough subsidies to bridge the gap between rents and what these households can afford.” THE STATE OF THE NATION’S HOUSING 2023, *supra* note 118, at 40; *see also* Sonya Acosta & Brianna Guerrero, *Long Waitlists for Housing Vouchers Show Pressing Unmet Need for Assistance*, CTR. ON BUDGET & POL’Y PRIORITIES (Oct. 6, 2021), <https://www.cbpp.org/research/housing/long-waitlists-for-housing-vouchers-show-pressing-unmet-need-for-assistance>.

130 *See* MARY CUNNINGHAM ET AL., U.S. DEP’T HOUS. & URBAN DEV., A PILOT STUDY OF LANDLORD ACCEPTANCE OF HOUSING CHOICE VOUCHERS 3 (2018); Abby Vesoulis, *Including Housing Voucher Funds in Democrats’ Reconciliation Bill is the First Challenge. Getting Landlords to Accept Them is Another*, TIME (Oct. 4, 2021, 6:00 PM), <https://time.com/6103813/housing-voucher-problem>; Teresa Wiltz, *Getting a Section 8 Voucher Is Hard. Finding a Landlord Willing to Accept It Is Harder.*, STATELINE (Aug. 31, 2018 12:00 AM), <https://stateline.org/2018/08/31/getting-a-section-8-voucher-is-hard-finding-a-landlord-willing-to-accept-it-is-harder>.

131 AURAND ET AL., *supra* note 122.

health inequity.¹³² Where laws and policies (formal or informal) disproportionately and negatively affect a specific race, as eviction disproportionately affects Black renters, they operate as structural racism. Structural racism is pervasive and self-perpetuating, as it is constantly “reconstituting the conditions necessary to ensure [its] perpetuation.”¹³³ It is the “most influential . . . level[] at which racism may affect racial and ethnic health inequities.”¹³⁴ Structural racism “is also present in housing decisions that seem ‘neutral’ but disproportionately harm low-income individuals and people of color.”¹³⁵ As described below, eviction law, policy and practice has consistently had a negative impact on the health and well-being of historically marginalized groups.¹³⁶

A. Historical Political Context of Landlord-Tenant Law

Eviction law descends from feudal and common law property principles, where tenants had few (if any) rights: tenants paid rent and accepted hazards on the property, and landlords had the ability to forcibly eject tenants from the property at will.¹³⁷ As the Supreme Court noted in *Lindsey v. Normet*, “[t]he landlord-tenant relationship was one of the few areas where the right to self-help was recognized by the common law of most States, and the implementation of this right has been fraught with ‘violence and quarrels and bloodshed.’”¹³⁸ Because the lease was solely a property interest, independent of habitability, the tenant accepted any defects in the apartment and the landlord remained immune from tort liability for any harm the property caused the tenant. In the late eighteenth and early-to-mid-nineteenth century, summary judgment proceeding statutes were adopted by the “white male property-owning electorate, who were themselves white male property owners,” to provide landowners with immediate possession of the property.¹³⁹ While the move reduced violent expulsions from property, it cemented

132 Gilbert C. Gee & Chandra L. Ford, *Structural Racism and Health Inequities*, 8 DU BOIS REV. 115 (2011) [hereinafter *Structural Racism and Health Inequities*]; see also Madina Agénor et al., *Developing a Database of Structural Racism–Related State Laws for Health Equity Research and Practice in the United States*, 136 PUB. HEALTH REPS. 428 (2021).

133 *Structural Racism and Health Inequities*, supra note 132 (citing Bruce G. Link & Jo Phelan, *Social Conditions as Fundamental Causes of Disease*, 35 J. HEALTH & SOC. BEHAV. 80 (1995)).

134 *Id.*; Zinzi D. Bailey, Justin M. Feldman & Mary T. Bassett, *How Structural Racism Works — Racist Policies as a Root Cause of U.S. Racial Health Inequities*, 384 N. ENG. J. MED. 768 (2021).

135 *Health Justice Strategies*, supra note 23, at 157.

136 Ruqaiijah Yearby, *Racial Disparities in Health Status and Access to Health Care: The Continuation of Inequality in the United States Due to Structural Racism*, 77 AM. J. ECON. & SOC. 1113 (2018).

137 *Javins v. First Nat’l Realty Corp.*, 428 F.2d 1071 (D.C. Cir. 1970).

138 *Lindsey v. Normet*, 405 U.S. 56 (1972) (citing *Entelman v. Hagoood*, 95 Ga. 390, 392 (1895)).

139 Andrew Scherer, *The Case Against Summary Eviction Proceedings: Process as Racism and*

the landlords' power over the tenant's access to the property.

The tension between a tenant's housing rights and a landlord's property and economic interests has been present throughout U.S. history. A century ago, during times of economic distress, renting families frequently doubled and tripled up and endured hazardous and even life-threatening conditions.¹⁴⁰ Before legal reform, poor sanitary conditions—like standing water, rotted floorboards, infestations, and inoperable or nonexistent toilets—led to chronic and serious illness among families.¹⁴¹ Where tenants were behind on rent, landlords shut off heat and water or went to extreme measures, such as removing windowpanes to freeze tenants out.¹⁴² Tenants were frequently forced out of their homes without recourse. During the Great Depression, eviction and housing displacement increased due to prolonged unemployment and local governments' prioritization of food subsidies over rental assistance.¹⁴³ In 1933, 1 in every 6 families in Philadelphia, Pennsylvania, was forced out of their home and evictions increased by 100 percent over two years in Chicago, Illinois.¹⁴⁴ In response to squalid conditions, abject poverty, and forced evictions, protests erupted, often drawing thousands of people.¹⁴⁵ In Chicago, over 2,000 people fought an eviction by moving the evicted family's belongings back into the building.¹⁴⁶ The protests drew citywide attention to the plight of tenants and prompted the bailiff of Chicago's renters court to withhold service of eviction warrants until "every humane consideration" could be given to the families at risk of harm.¹⁴⁷

Sweeping reform of landlord-tenant law, often attributed to the Civil Rights Movement, arrived on a national scale in the late 1960s and early 1970s when some of the earliest rent control¹⁴⁸ and tenant protections were adopted.¹⁴⁹ State and federal lawmakers adopted antidiscrimination laws and prohibitions against retaliatory eviction.¹⁵⁰ Jurisdictions reformed forcible entry and detainer laws,

Oppression, 53 SETON HALL L. REV. 1, 55 (2022).

140 Edith Abbott & Katherine Kiesling, *Evictions During the Chicago Rent Moratorium Established by the Relief Agencies, 1931-33*, 9 SOC. SERV. REV. 34, 54 (1935).

141 *Id.* at 56–57.

142 *Id.* at 41–42.

143 *Id.* at 37.

144 *Id.* at 52, 57.

145 *Id.* at 35.

146 *Id.*

147 *Id.*

148 The earliest and typically temporary rent control laws were adopted during World War II and justified by the "emergencies growing out of the War, resulting in rental conditions dangerous to the public health . . ." See, e.g., *Block v. Hirsch*, 25 U.S. 135 (1921).

149 Symposium, *Revolution in Residential Landlord-Tenant Law: Causes and Consequences*, 69 CORNELL L. REV. 517 (1984).

150 42 U.S.C. §§ 3601-3619 (1968); see also Michelle Adams, *The Unfulfilled Promise of the Fair Housing Act*, THE NEW YORKER (Apr. 11, 2018) <https://www.newyorker.com/news/newsdesk/the-unfulfilled-promise-of-the-fair-housing-act>; Fred McGhee, *The Most Important Housing*

treating leases as contracts with mutual obligations, as opposed to conveyances.¹⁵¹ These shifts helped to prevent, but did not eliminate, the detrimental ramifications of extrajudicial informal (“self-help”) evictions that occur when landlords force tenants to vacate the unit through coercive tactics outside the formal legal process—like making the property unsafe, denying utilities, changing locks, raising rents, threatening eviction, harassment, intimidation, and other measures designed to force a tenant to leave.¹⁵² In addition, the warranty of habitability was implied in nearly every lease,¹⁵³ and landlords could be held accountable for tort violations. By 1968, nearly 5,000 communities had mandated housing standards, up from just over fifty in 1956.¹⁵⁴

However, even with increased habitability standards and improvements to forcible entry and detainer laws, many tenants are denied substantive and procedural justice. Although landlords in the vast majority of states are now prohibited from engaging in extrajudicial evictions that evict a tenant outside of the legal process, these “self-help” evictions are thought to be widespread, and indeed may be considerably more common than court-ordered formal evictions.¹⁵⁵ In addition, the lease contract between tenants and landlords can contain terms that are unfavorable to tenants: a study by Professor David Hoffman found that the majority of people facing eviction during the study period had signed a lease containing exculpatory and unfair clauses that waived the tenant’s right to notice and required acceptance of the premises “as is.”¹⁵⁶ Similarly, while many communities have adopted housing codes, they are rarely enforced, and tenants

Law Passed in 1968 Wasn’t the Fair Housing Act, SHELTER FORCE, (Sept. 5, 2018) <https://shelterforce.org/2018/09/05/the-most-important-housing-law-passed-in-1968-wasnt-the-fair-housing-act>; *Fair Housing Act Overview and Challenges*, NAT’L LOW INCOME HOUS. COAL. (Oct. 23, 2018), <https://nlihc.org/resource/fair-housing-act-overview-and-challenges>.

¹⁵¹ Scherer, *supra* note 139, at 6.

¹⁵² 735 ILL. COMP. STAT. 5/9-101 (2015); *Robinson v. Chi. Hous. Auth.*, 54 F.3d 316, 321–22 (7th Cir. 1995); LAWYERS’ COMM. FOR BETTER HOUS., NO TIME FOR JUSTICE: A STUDY OF CHICAGO’S EVICTION COURT 6 (Dec. 2003), <http://lcbh.org/sites/default/files/resources/2003-lcbh-chicago-eviction-court-study.pdf> [hereinafter NO TIME FOR JUSTICE]; see generally Randy G. Gerchick, *No Easy Way Out: Making the Summary Eviction Process a Fairer and More Efficient Alternative to Landlord Self-Help*, 41 UCLA L. REV. 759 (1994).

¹⁵³ *Javins v. First Nat’l Realty Corp.*, 428 F.2d 1071 (D.C. Cir. 1970); Paula A. Franzese, Gorin Abbott & David J. Guzik, *The Implied Warranty of Habitability Lives: Making Real the Promise of Landlord-Tenant Reform*, 69 RUTGERS L. REV. 1 (2016); Nicole Summers, *The Limits of Good Law: A Study of Housing Court Outcomes*, 87 UNIV. CHI. L. REV. 145 (2020).

¹⁵⁴ *Revolution in Residential Landlord-Tenant Law: Causes and Consequences*, *supra* note 149, at 551; see also NYU FURMAN CTR., CRACKING CODE ENFORCEMENT: HOW CITIES APPROACH HOUSING STANDARDS (Aug. 2021), https://furmancenter.org/files/Up_To_Code-How_Cities_Enforce_Housing_Standards_Final.pdf.

¹⁵⁵ Desmond & Shollenberger, *supra* note 97.

¹⁵⁶ David Hoffman & Anton Strezhnev, *Leases as Forms*, 19 J. EMPIRICAL LEG. STUD. 90 (2022).

often lack enforcement powers.¹⁵⁷ Today, despite policy advances and meritorious tenant claims, researchers have determined that the warranty of habitability is rarely upheld¹⁵⁸ and building codes are underenforced,¹⁵⁹ resulting in negative health outcomes for renters and retaliatory eviction for tenants who request remediation.¹⁶⁰ While every jurisdiction, with the exception of Arkansas,¹⁶¹ now has an implied (forty-nine states) and/or codified (forty-five states) warranty of habitability,¹⁶² only a handful of states require a demonstration of building code compliance prior to renting a unit,¹⁶³ and states generally lack “clean hands” eviction laws that would require compliance with state and local housing codes before filing an eviction.¹⁶⁴ Even where tenants are afforded rights, it is generally impossible for them to assert those rights without legal counsel. While modern law has improved from archaic times, there is still ample room to address broad injustice and the harm it causes tenants.

B. Judicial Governance of the Eviction Process

Evictions fall into three categories: court-ordered that occur through a court process; extrajudicial (“self-help”) evictions wherein the landlord takes measures to forcibly remove or compel the tenant to vacate;¹⁶⁵ and administrative evictions

157 See Kathryn A. Sabbeth, *(Under)Enforcement of Poor Tenants’ Rights*, 27 GEO. J. POVERTY L. & POL’Y 97 (2019); Summers, *supra* note 153; Jessica K. Steinberg, *Informal, Inquisitorial, and Accurate: An Empirical Look at a Problem-Solving Housing Court*, 42 LAW & SOC. INQUIRY 1058 (2017).

158 Summers, *supra* note 153; Franzese, Abbott & Guzik., *supra* note 153; Michele Cotton, *When Judges Don’t Follow the Law: Research and Recommendations*, 19 CUNY L. REV. 57, 67–69 (2015).

159 See Sabbeth, *supra* note 157; see generally ROBIN BARTRAM, STACKED DECKS: BUILDING INSPECTORS AND THE REPRODUCTION OF URBAN POVERTY (2022).

160 Evan Lemire et al., *Unequal Housing Conditions and Code Enforcement Contribute to Asthma Disparities in Boston, Massachusetts*, 41 HEALTH AFFS. 563 (2022); *There’s No Place Like Home*, *supra* note 113.

161 Ashley E. Bachelder et al., *Health Complaints Associated with Poor Rental Housing Conditions in Arkansas: The Only State Without a Landlord’s Implied Warranty of Habitability*, 4 FRONTIERS PUB. HEALTH 226642 (2016).

162 Memorandum from Alice Noble-Allgire, Reporter, to Members of the URLTA Drafting Comm. (Feb. 12, 2012), <https://www.nhlp.org/wp-content/uploads/Research-Memo-re-50-State-Survey-of-the-Warranty-of-Habitability.pdf>.

163 *Id.*; *There’s No Place Like Home*, *supra* note 113; Emily A. Benfer et al., *Health Justice Strategies to Eradicate Lead Poisoning: An Urgent Call to Action to Safeguard Future Generations*, 19 YALE J. HEALTH POL’Y, L. & ETHICS 146 (2020).

164 A New York bill proposed landlords must be free of all outstanding building code violations to proceed with an eviction proceeding. S.B. 4788, 2019 GEN. ASSEMB., REG. SESS. (N.Y. 2019); *There’s No Place Like Home*, *supra* note 113.

165 Based on jurisdiction and method of study, extrajudicial evictions are estimated to occur at anywhere from twice to five times the rate of formal evictions. Sabiha Zainulbhai & Nora Daly, *Informal Evictions: Measuring Displacement Outside the Courtroom* (last updated Jan. 20, 2022),

that allow public housing authorities (“PHA”) in certain jurisdictions to terminate the tenancy of a public housing resident.¹⁶⁶ This section focuses primarily on the first category, court-ordered evictions.

The court-based eviction process is governed by varied state and local law and can generally be divided into five stages, which are described in greater detail below: (1) the landlord provides their tenants with a notice of intent to terminate the tenancy; (2) the landlord files the eviction case with the court; (3) the court holds a hearing; (4) the court issues a judgment and orders a writ of eviction; (5) if the judgment is in the landlord’s favor, law enforcement or other contracted parties, who can be armed, execute the order of eviction by removing the tenant and their belongings from the property.¹⁶⁷ (See Figure 4)

In each of the stages of eviction, the exact process differs from state to state and even across local jurisdictions,¹⁶⁸ including variation in the type of notice required, the cost of filing an eviction, the time between notice and filing, the hearing process and access, and possible causes of action.¹⁶⁹ Some states, such as California, adopted extensive tenant defenses and sealing of eviction cases until and unless the landlord prevails in court.¹⁷⁰ Other states, like Kansas, have adopted policies, such as low filing fees (as low as \$25), and maintain a public record of all landlord-tenant filings.¹⁷¹ This allows for low cost evictions and easy identification of tenants with a history of interacting with the eviction court system. Across states, confusing and inconsistent rules, asymmetrical legal representation across parties, along with shadow procedures and hallway settlements, create power imbalances between landlords and tenants.¹⁷²

<https://www.newamerica.org/future-land-housing/reports/informal-evictions-measuring-housing-displacement-outside-the-courtroom>.

¹⁶⁶ OFF. OF POL’Y DEV. & RSCH., REPORT TO CONGRESS ON THE FEASIBILITY OF CREATING A NATIONAL EVICTIONS DATABASE, U.S. DEP’T OF HOUS. & URB. DEV. (2021).

¹⁶⁷ *COVID-19 Housing Policy*, *supra* note 2.

¹⁶⁸ Megan E. Hatch, *Statutory Protection for Renters: Classification of State Landlord–Tenant Policy Approaches*, 27 HOUS. POL’Y DEBATE 98 (2017).

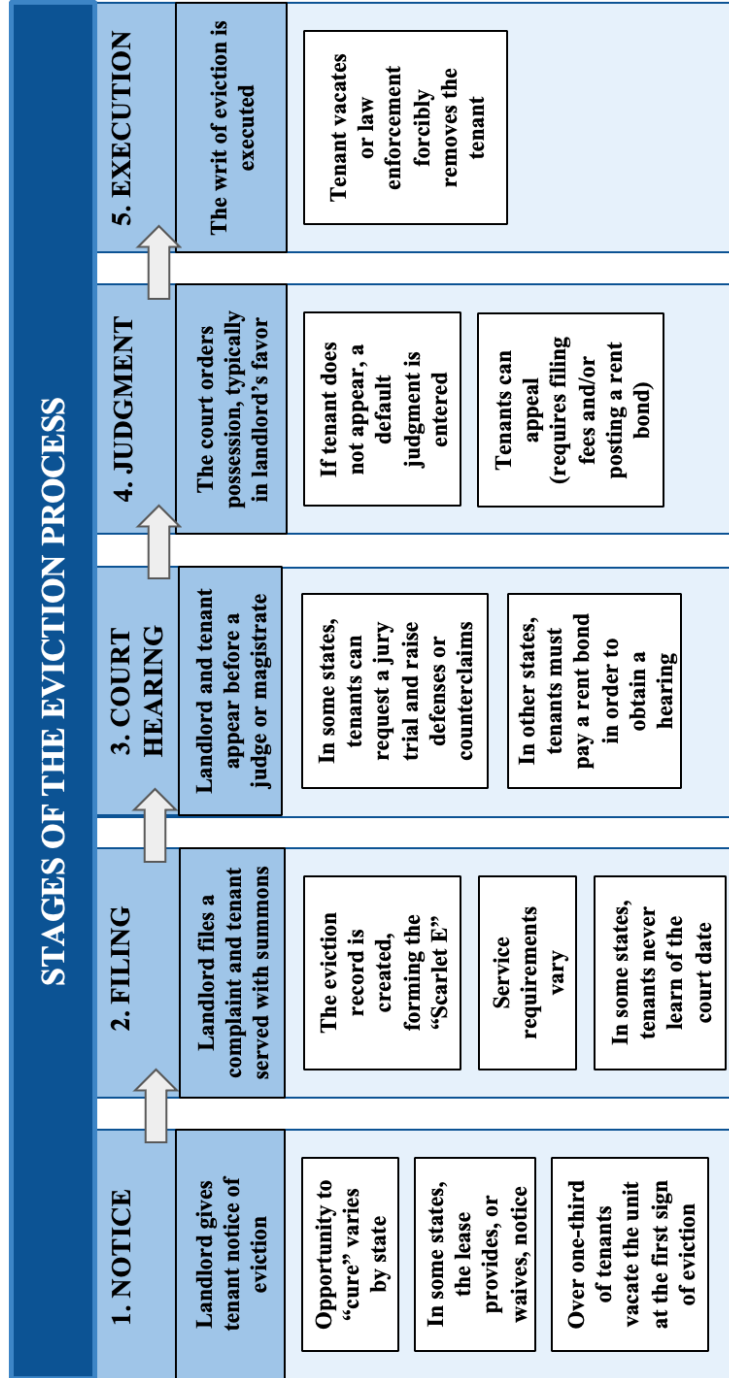
¹⁶⁹ *Id.*; *Residential Eviction Laws in 40 U.S. Cities*, THE POL’Y SURVEILLANCE PROGRAM (Aug. 1, 2018), <https://lawatlas.org/datasets/eviction-laws-1530797420>; Sabbeth, *supra* note 157.

¹⁷⁰ Emily A. Benfer, *The American Eviction Crisis, Explained*, THE APPEAL (Mar. 3, 2021), <https://theappeal.org/the-lab/explainers/the-american-eviction-crisis-explained>.

¹⁷¹ *Id.*

¹⁷² Isaiah Fleming-Klink, Brian J. McCabe & Eva Rosen, *Navigating an Overburdened Courtroom: How Inconsistent Rules, Shadow Procedures, and Social Capital Disadvantage Tenants in Eviction Court*, 22 CITY & CMTY. 220 (2015).

Figure 4. Forcible Entry and Detainer: Stages of the Eviction Process



In the first stage, the landlord provides the tenant with a notice of the landlord's intent to terminate the tenancy.¹⁷³ Tenants' ability to cure any violation described in the notice varies by jurisdiction.¹⁷⁴ In some jurisdictions, the notice is included in the lease and the landlord can move immediately to stage two.¹⁷⁵ Researchers have determined that even small increases in the notice period decreases the eviction filing rate.¹⁷⁶ Many tenants vacate the property at the notice stage, likely to avoid the damaging eviction record and judgment and seeing no alternative.¹⁷⁷

Second, the landlord files the eviction complaint with the court and the tenant is served a summons.¹⁷⁸ Few jurisdictions shield infants and children from being named as defendants in the complaint. This has the effect of creating an intimidation tactic and weaponizing the eviction process.¹⁷⁹ In some jurisdictions, all members of the household must be named, despite child protection and privacy considerations, before a warrant of eviction can be executed. For example, in New York, state warrant law requires that all members of the household, including minors, be listed as defendants for any warrant to be enforceable.¹⁸⁰ While this law was adopted to provide increased protection to household members who might not otherwise receive notice, in some cases, it has had negative consequences. Housing attorneys have anecdotally reported that children are being listed as defendants in multiple states and jurisdictions.¹⁸¹

¹⁷³ *Id.*

¹⁷⁴ Sarah Abdelhadi, *LSC Eviction Laws Database*, LEG. SERVS. CORP., <https://lsc.gov/initiatives/effect-state-local-laws-evictions/lsc-eviction-laws-database> (last visited July 27, 2023); Hatch, *supra* note 168.

¹⁷⁵ Abdelhadi, *supra* note 174.

¹⁷⁶ GROMIS ET AL., *supra* note 99, at 6.

¹⁷⁷ A tenant vacating a unit in response to a notice is an example of extrajudicial (or informal) evictions. Thanks to the lack of legal records on this type of eviction, it is difficult to say exactly what proportion of tenants experience this particular eviction pathway. However, data collected in the Milwaukee Area Renter's Study found that 34% of tenants moved out without going to court after receiving eviction notice. See Desmond & Shollenberger, *supra* note 987, at 1754-55; @just_shelter, TWITTER (Jan. 28, 2021, 5:51 PM), https://twitter.com/just_shelter/status/1354925182499102722?s=20.

¹⁷⁸ *COVID-19 Housing Policy*, *supra* note 2.

¹⁷⁹ 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>.

¹⁸⁰ In 2019, the New York legislature amended the relevant law to state that the court shall issue a warrant "commanding the officer to remove all persons *named in the proceeding*." N.Y. REAL PROP. ACTIONS & PROCEEDINGS § 749(1) (emphasis added).

¹⁸¹ Civil Court of the City of New York held that New York State's warrant law, N.Y. REAL PROP. ACTS. § 749, applies to children in eviction cases, despite confidentiality laws protecting children's identity. See *Dunn v. 583 Riverside Drive LP*, 117 N.Y.S.3d 524 (N.Y. Civ. Ct. 2019). However, in January 2021, Massachusetts passed a law prohibiting landlords from naming minors in eviction filings. 2020 Mass. Acts. 358.

The service requirements at the filing stage are state specific and can be inconsistently followed, resulting in meager attempts to inform tenants of their eviction hearing and some tenants never learning of the hearing at all.¹⁸² The amount of time between the summons and the hearing also varies by state, which may factor into the default rate among tenants who may need to secure childcare, time off work, legal representation, and transportation, or overcome other barriers. The allowable service methods, which include sending via uncertified mail or posting on the property, are arguably substandard from legal norms.¹⁸³ While the notice periods in the summons vary by state, the typical timeframe is truncated to three to fourteen days prior to the hearing, compared to twenty to thirty days in general civil litigation.¹⁸⁴ All of these factors contribute to high default rates. In Dr. Matthew Desmond's pivotal book, "Evicted," approximately 70 percent of tenants in Milwaukee did not appear at their eviction hearing, which resulted in the majority of tenants being evicted.¹⁸⁵

Third, the court holds a summary hearing.¹⁸⁶ Eviction dockets are designed to be fast and high volume. Across court watch studies, the average hearing lasts between ninety seconds and three minutes and twenty-one seconds, and a typical urban court hears an average of 40-100 cases a day.¹⁸⁷ In Chicago, hearings lasted an average of one minute and forty-four seconds (and if a landlord was represented by an attorney, the hearing was even shorter).¹⁸⁸ In Cleveland eviction hearings lasted an average of one minute and fifty-one seconds when only the landlords was present¹⁸⁹ and five minutes and fifty seconds when the tenant appeared.¹⁹⁰ In Maricopa County, Arizona (population four million),¹⁹¹ most eviction hearings

182 Josh Kaplan, *Thousands of D.C. Renters Are Evicted Every Year. Do They All Know To Show Up To Court?*, DCIST (Oct. 5, 2020 1:43 PM), <https://dcist.com/story/20/10/05/thousands-of-d-c-renters-are-evicted-every-year-do-they-all-know-to-show-up-to-court>; The Editorial Board, *Evicted without Warning*, PHILA. INQUIRER (July 28, 2020 5:00 AM), <https://www.inquirer.com/opinion/editorials/a/philadelphia-eviction-system-philly-renters-tenants-blindsided-20200728.html>.

183 Kathryn A. Sabeth, *Eviction Courts*, 18 U. ST. THOMAS L. J. 359 (2022).

184 *Id.*; Abdelhadi, *supra* note 174. This timeframe has been upheld by the Supreme Court as constitutional. *Lindsey v. Normet*, 405 U.S. 56 (1972).

185 MATTHEW DESMOND, *EVICTED: POVERTY AND PROFIT IN THE AMERICAN CITY* 96 (2016).

186 *COVID-19 Housing Policy*, *supra* note 2.

187 See, e.g., R.A. Schuetz, *Harris County's Growing Eviction Dockets Means Many Cases are Decided in Less Than 90 Seconds*, HOUS. CHRON. (Feb. 15, 2023), <https://www.houstonchronicle.com/news/houston-texas/housing/article/harris-county-evictions-process-court-docket-17782265.php>; Texas Housers Staff, 'Case Dismissed!' *What Does This Mean for Tenants in Eviction Hearings?*, TX. HOUSERS (June 14, 2022), <https://texashousers.org/2022/06/14/tenant-eviction-hearing-case-dismissal/>; APRIL HIRSH URBAN ET AL., CTR. ON URB. POVERTY & COMM. DEV., CASE WESTERN RESERVE UNIV., *THE CLEVELAND EVICTION STUDY: OBSERVATIONS IN EVICTION COURT AND THE STORIES OF PEOPLE FACING EVICTION* 22 (Oct. 2019).

188 NO TIME FOR JUSTICE, *supra* note 152, at 11.

189 URBAN ET AL., *supra* note 187, at 22.

190 *Id.*

191 *QuickFacts: Maricopa County, Arizona*, U.S. CENSUS BUREAU, <https://www.census.gov/>

concluded in less than a minute, with many only lasting around twenty seconds.¹⁹²

The rapid pace also furthers inequities between parties: Professor Kathryn Sabbeth's research found that "[s]peedy processes not only sacrifice careful analyses and accurate outcomes, but also they increase the bargaining power of plaintiffs[.]. . .carr[y] implications for the out-of-court relationship between parties[.]. . .[and] underscore the role that the state plays in those relationships."¹⁹³ The majority of cases are decided in the landlords' favor, even where habitability claims or other legitimate defenses are raised.¹⁹⁴ For example, in a study of Los Angeles court data, 99 percent of unrepresented tenants were displaced.¹⁹⁵

Fourth, the court issues a judgment and orders a writ of eviction. Failure to appear almost always results in a default judgment against the tenant and often without a hearing, with default rates ranging from 50 to 90 percent across available studies.¹⁹⁶ Typically, tenants do not have an opportunity to seek a hearing after a default judgment. In the few exceptions, the demonstration of evidence required may be prohibitory.¹⁹⁷ For example, the Philadelphia policy states, "If you are late or fail to appear, a default judgment will be entered against you. The court will send you a notice that a default judgment has been entered against you. You may file a petition to open the default judgment . . . You must have a good reason for missing or being late for the trial, must file the petition promptly after learning of the default judgment, and must have a valid, meritorious claim or defense."¹⁹⁸

Finally, if the judgment is in the landlord's favor, law enforcement or other contracted parties execute the order of eviction.¹⁹⁹ In some jurisdictions, such as Philadelphia, evictions are performed by private armed deputies, who are not required to have law enforcement credentials, to perform the eviction.²⁰⁰ In Philadelphia, the practice proved life-threatening when a tenant was shot in the head and left in critical condition in March of 2023.²⁰¹

quickfacts/fact/table/maricopacountyarizona (last visited Aug. 3, 2020).

192 WILLIAM E. MORRIS INST. FOR JUST., INJUSTICE IN NO TIME: THE EXPERIENCE OF TENANTS IN MARICOPA COUNTY JUSTICE COURTS 2 (June 2005).

193 See Sabbeth, *supra* note 183, at 378.

194 See *Lindsey v. Normet*, 405 U.S. 56 (1972).

195 *Id.*

196 See Sabbeth, *supra* note 183, at 380.

197 *Id.*

198 PHILA. MUN. CT., INFORMATION FOR LANDLORD-TENANT COURT, <https://www.courts.phila.gov/pdf/brochures/mc/LANDLORD-TENANT-PAMPHLET.pdf>.

199 *COVID-19 Housing Policy*, *supra* note 2.

200 Ryan Briggs, *City Council to Investigate Officer that Executes Court's Evictions, Citing 'Conflicts of Interest'*, WHYY (Sept. 17, 2020), <https://whyy.org/articles/city-council-to-investigate-officer-that-executes-courts-evictions-citing-conflicts-of-interest>.

201 Kaleah Mcilwain, *Philly Woman Shot in the Head During Eviction Sues Landlord-Tenant Officer*, NBC10 PHILA. (July 25, 2023 7:24 PM), <https://www.nbcphiladelphia.com/news/local/philly-woman-shot-in-the-head-during-eviction-sues-landlord-tenant-officer-officials->

Justice Douglas' 1967 description of the eviction process, in his dissent to *Williams v. Shaffer*, holds true today: "Summary eviction proceedings are the order of the day. Default judgments in eviction proceedings are obtained in machinegun rapidity since the indigent cannot afford counsel to defend. Housing laws often have a built-in bias against the poor. Slumlords have a tight hold on the Nation."²⁰²

The substantial role of the court in facilitating the eviction system is noteworthy. The adjudicator in a forcible entry and detainer case varies by jurisdiction and influences the balance of the proceeding. Adjudicators may be elected officials and there is no restriction against the adjudicator being a property owner or landlord. The qualifications to preside over an eviction court range from a law degree for a judge to a high school diploma for a magistrate.²⁰³ A recent qualitative study of eviction court judges in Georgia and Florida elucidates how courts can cater to landlord expectations and prioritize landlord engagement through a shared understanding of a fast court process: "You have to get them to trust that you're going to keep their cases moving . . ." ²⁰⁴ The study also uncovered heightened sensitivity to how landlords would respond: "[M]y judges were very well versed on how to keep those cases moving in a way that didn't scare off the landlord, for lack of a more lawyerly [sic] to say it."²⁰⁵ In another example, a judge rejected the notion that they could provide tenants with information about their rights: "It's not my job to say, 'Hey, if you want to stop this, you can file this.' How do I have credibility with my landlords?"²⁰⁶ The attitude of adjudicators reflects the reality that landlords (and their lawyers) largely drive the eviction process and the court's approach to the process.

Lack of legal representation contributes to the low standard of equity and balance in the eviction system. In 2017, the Legal Services Corporation reported that 86 percent of all civil legal problems for low-income people nationwide receive insufficient help or no help at all.²⁰⁷ Nationwide, across studies, estimates suggest that only 3 percent of tenants have legal representation in an eviction proceeding, compared to 83 percent of landlords.²⁰⁸ Without legal representation, tenants are often ill-equipped to navigate complex housing laws and the expedited

call-for-reform/3611606.

202 *Williams v. Shaffer*, 385 U.S. 1035 (1967) (Douglas, J., dissenting).

203 Research on file with author.

204 Lauren Sudeall, Elora Lee Raymond & Phillip M.E. Garboden, *Disaster Discordance: Local Court Implementation of State and Federal Eviction Prevention Policies During COVID-19*, 30 *GEO. J. POVERTY L. & POL'Y* 545 (2022).

205 *Id.* at 575.

206 *Id.* at 576.

207 LEG. SERVS. CORP., *THE JUSTICE GAP: MEASURING THE UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS* 6 (2017).

208 *Eviction Representation Statistics for Landlords and Tenants Absent Special Intervention*, NAT'L COAL. FOR THE CIV. RIGHT TO COUNS., http://civilrighttocounsel.org/uploaded_files/280/Landlord_and_tenant_eviction_rep_stats__NCCRC_.pdf (Mar. 2024).

summary judgment proceeding that is designed in favor of landlords' interests.²⁰⁹ Where tenants are unrepresented, the majority lose their case.²¹⁰ Notably, interviews of tenant attorneys in some tenant right to counsel jurisdictions revealed that when tenant representation increased the court process itself shifted, resulting in the court's willingness to grant continuances and postpone hearings to allow tenants to secure counsel.²¹¹

At the same time, unwritten rules and informal processes leave unrepresented tenants at a disadvantage relative to landlords.²¹² A pre-pandemic study of Chicago's eviction court is demonstrative of the system's slant towards landlords.²¹³ Researchers observed that landlords were rarely required to meet the burden of proof necessary to support an order of possession.²¹⁴ Even where testimony is required, parties were sworn in and asked to take an oath to tell the truth in only 8 percent of cases.²¹⁵ Although a notice of eviction must comply with procedural due process notice requirements,²¹⁶ a judge examined these notices in only 65 percent of cases.²¹⁷ Cases should be dismissed if the landlord is not present, but they were only dismissed in 60 percent of cases when a landlord failed to appear.²¹⁸ Judges asked tenants if they had a defense²¹⁹ in only 27 percent of cases.²²⁰ When asked, tenants offered a legitimate defense in 55 percent of cases, yet all of these tenants were evicted.²²¹

209 Scherer, *supra* note 139; Matthew Desmond, *Tipping the Scales in Housing Court*, N.Y. TIMES (June 29, 2012), <https://www.nytimes.com/2012/11/30/opinion/tipping-the-scales-in-housing-court.html>; *Unaffordable America*, *supra* note 84.

210 *See, e.g.*, D. James Greiner, Cassandra Wolos Pattanayak & Jonathan Hennessy, *The Limits of Unbundled Legal Assistance: A Randomized Study in a Massachusetts District Court and Prospects for the Future*, 126 HARV. L. REV. 901, 903 (2012).

211 Conclusion drawn from an ongoing study; interview notes are on file with the author.

212 Fleming-Klink, McCabe & Rosen, *supra* note 172; Lauren Sudeall & Daniel Pasciuti, *Praxis and Paradox: Inside the Black Box of Eviction Court*, 74 VAND. L. REV. 1365 (2021) (Court Watch Study in Suburban and Urban Eviction Courts in Georgia).

213 NO TIME FOR JUSTICE, *supra* note 152, at 7 (concluding that the data revealed by the study show that courts are far from achieving the goals of the hearings); *see also* Judith Fox, *The High Cost of Eviction: Struggling to Contain a Growing Social Problem*, 41 MITCHELL HAMLINE L. J. PUB. POL'Y PRAC. 167 (2020).

214 NO TIME FOR JUSTICE, *supra* note 152, at 14.

215 *Id.*

216 Forcible Entry and Detainer Act, 735 ILL. COMP. STAT. 5/9-104 (West 2015); *see* NO TIME FOR JUSTICE, *supra* note 152, at 7; *see also* 735 ILL. COMP. STAT. 5/9-209; CITY OF CHI. ILL., RESIDENTIAL LANDLORD & TENANT ORDINANCE, MUN. CODE CH. 5-12-130 (2015).

217 NO TIME FOR JUSTICE, *supra* note 152, at 6.

218 *Id.* at 17.

219 *See* CITY OF CHI. ILL., RESIDENTIAL LANDLORD & TENANT ORDINANCE, MUN. CODE CH. 5-12-110.

220 NO TIME FOR JUSTICE, *supra* note 152, at 6.

221 *Id.*

These outcomes, which are present in eviction courts across the country,²²² demonstrate that the eviction system is bereft of procedures that could guarantee fairness and justice. The system loses its legitimacy and integrity when landlords are not held to due process standards or required to prove all elements of their prima facie case, or when unrepresented tenants are not made aware of their rights or offered the opportunity to respond. These factors, combined with an apparent bias in favor of the landlord, strips the eviction system of the four crucial components of justice—equality, impartiality, transparency, and the fundamental right to be heard.²²³ In this way, the eviction process itself functions as a structural determinant of health inequity that disadvantages tenants in legal forums and negatively impacts health and well-being, as state landlord-tenant laws prioritize the landlord's economic interest over the tenant's rights and housing stability.²²⁴

C. *Eviction Laws and Policies*

In the WHO Conceptual SDOH model, eviction laws, policies, practices, and their effects on other basic rights are all examples of the socioeconomic and political elements that perpetuate health inequity and reinforce social hierarchy, discrimination, as well as societal position by race, gender, and class. To further demonstrate how the eviction system operates as a structural and intermediary determinant of health inequity, this section examines the following eviction policies, practices, and effects: (1) “no fault” eviction; (2) extractive management strategies and unenforced habitability standards; (3) serial eviction filing; (4) rent bonds; (5) criminal eviction, crime-free rental properties, and nuisance ordinances; (6) voter suppression; and (7) screening practices.

1. *“No Fault” Eviction*

Overwhelmingly, state laws permit landlords to terminate the tenancy at the end of the lease term, a standard commonly referred to as “no fault” or “no cause” eviction.²²⁵ The causes of action for an eviction lawsuit are usually based on

²²² See *supra* notes 196-202, 223.

²²³ Lloyd T. Wilson, Jr., *The Beloved Community: The Influence and Legacy of Personalism in the Quest for Housing and Tenants' Rights*, 40 J. MARSHALL L.REV. 513, 530 (2007).

²²⁴ RANYA AHMED ET AL., LEG. SERVS. CORP., *A Common Story: The Eviction Process in Shelby County, TN*, in THE EFFECT OF STATE AND LOCAL LAWS ON EVICTIONS (2021).

²²⁵ See, e.g., Cydney Adams, *How No-fault Evictions Are Contributing to LA's Homeless Crisis*, CBSNEWS (Feb. 24, 2019 7:00 AM) <https://www.cbsnews.com/news/no-fault-evictions-priced-out-los-angeles-hidden-homeless-cbsn-originals>. As of 2022, only five states had passed “just cause” legislation, which limits the causes for which a landlord can refuse to renew a tenant's lease, thereby promoting housing stability for renters who might otherwise face a no-fault eviction. JADE VASQUEZ & SARAH GALLAGHER, NAT'L LOW INCOME HOUS. COAL., PROMOTING HOUSING STABILITY THROUGH JUST CAUSE EVICTION LEGISLATION 2 (May 17, 2022).

nonpayment of rent, lease violations, holdovers past the lease term, and criminal activity. However, the majority of states allow a landlord to terminate the tenancy without providing a reason (“no fault”) at the end of a lease term, or at the appropriate interval in a month-to-month or other periodic tenancy, after adhering to a statutorily prescribed notice period.²²⁶ If the tenant refuses to vacate the unit, the landlord can then formally initiate the eviction process on the basis of a tenant’s holdover past the lease term. “No fault” eviction laws not only disrupt housing stability, but they also cement the landlord’s authority by providing a mechanism for legally forcing tenants who have complied with lease terms out of the unit. “No fault” evictions can also veil landlord retaliation and discriminatory practices, and circumvent federal and state fair housing laws.²²⁷ As an advocate in Colorado noted, “under the current schema, landlords can refuse to renew leases for unlawful and discriminatory reasons and showing that the landlord’s stated lawful reason is pretext is often an impossible battle. Just cause would make it more difficult for landlords to engage in discriminatory and unlawful conduct, or to terminate leases in retaliation for tenants exercising their rights.”²²⁸

“No fault” eviction standards also allow property developers to profit from the displacement of whole communities without recourse. For example, in July 2023, in Chicago, where 1 in 4 evictions are filed after a “no fault” notice of termination, Levav Properties issued notices of “no fault” termination of tenancy to 120 households who resided in their recently acquired South Side Buildings in the Beverly community.²²⁹ The common occurrence was described by Sharonda Whitehead, an 18-year resident of Beverly: “What word comes to mind is displacement. They think that we are disposable . . . we are veterans here. We are working-class people. We are taxpayers. We are voters. We have rights.”²³⁰

During the COVID-19 pandemic, landlords were coached to rely on lease violations and “no fault” terminations of tenancy at the end of lease terms to avoid being subject to the CDC or state eviction moratoria, which typically only halted

226 Abdelhadi, *supra* note 174; Julieta Cuellar, *Effect of “Just Cause” Eviction Ordinances on Eviction in Four California Cities*, PRINCETON U. J. PUB. INT’L AFF. (May 21, 2019); *see also* “Just Cause” Eviction Policies, LOC. HOUS. SOLUTIONS, <https://www.localhousingsolutions.org/act/housing-policy-library/just-cause-eviction-policies-overview/just-cause-eviction-policies> (last visited July 21, 2023).

227 Greenberg et al., *supra* note 39.

228 Letter from the Nat’l Hous. L. Project, members of the Hous. Just. Network & Undersigned Orgs to Sandra Thompson, Fed. Hous. Fin. Agency (July 21, 2023), <https://www.nhlp.org/wp-content/uploads/NHLP-Response-to-FHFA-RFI-on-Multifamily-Tenant-Protections.pdf>.

229 Ilana Arougheti, *‘We’re on the Front Lines of Gentrification’: Beverly Tenants Protest Mass Eviction in Six-Building Complex*, CHI. TRIB. (last updated July 24, 2023 2:46 PM), <https://www.chicagotribune.com/business/ct-biz-beverly-tenants-organize-to-protest-mass-eviction-levav-properties-20230724-ya3wnoj3kjecnedyhpweslozqi-story.html>.

230 *Id.*

eviction for nonpayment of rent, rather than other causes of action.²³¹ While the moratoria were in effect, landlords increasingly evicted tenants based on oftentimes trivial lease violations, which likely would have gone unnoticed prior to the pandemic-era partial bar on eviction, to remove renters with arrears while avoiding rental assistance programs or coverage of the eviction moratoria.²³² In Michigan, “no fault” evictions increased by 61 percent after the state’s COVID-19 eviction relief program (“CERA”) was adopted. Michigan’s “no fault” eviction policy provided a “legal alternative for landlords who elect not to participate in the CERA program (due to program delays or requirements) and provide[d] a loophole for landlords seeking higher paying tenants amid the tightening pandemic-era housing market.”²³³

One landlord attorney advised her clients to “pay close attention” to their tenants’ behavior: “A lot of nonpaying tenants are also bad actors. They are also not good housekeepers. They have a lot of problems in their life. If they’re violent, if there’s trash on the balcony, if they moved in their boyfriend, if they’ve got an unauthorized dog, they’re cooking PCP, they made a threat to their landlord, ‘Get off my this or that,’ that’s good grounds.”²³⁴ The same attorney noted that “if all else fails,” landlords can terminate the tenancy through “no fault” eviction practices by moving a tenant whose lease is expiring to “a month-to-month agreement and then refuse to renew it the following month.”²³⁵ She discussed with her landlord clients “as to whether or not they should just put everybody into a month-to-month tenancy so if they stop paying we can terminate the month-to-month tenancy rather than dealing with the CDC order.”²³⁶ The landlord attorney noted that, during the pandemic, she had “quite a bit of success” pursuing these kinds of evictions.²³⁷ This example demonstrates how “no fault” eviction standards can become a backdoor for landlords seeking to terminate lease terms for otherwise unlawful reasons, even in times of national public health emergencies.

2. *Extractive Management Strategies & Unenforced Habitability Standards*

The fact that many renters, particularly those with past interaction with the eviction system, have limited options in the rental market creates an environment conducive to “extractive management strategies.” In this method, the landlord

231 Bryce Covert, *Despite the CDC’s Eviction Ban, Thousands of Tenants Are Losing Their Homes*, NATION (Nov. 24, 2020), <https://www.thenation.com/article/society/evictions-tenants-covid>.

232 *Id.*

233 ALEXA EISENBERG & KATLIN BRANTLEY, MICH. POVERTY SOLUTIONS, *CRISIS BEFORE THE EMERGENCY: EVICTIONS IN DETROIT BEFORE AND AFTER THE ONSET OF COVID-19* (June 2022)

234 Covert, *supra* note 231.

235 *Id.*

236 *Id.*

237 *Id.*

deliberately disinvests in properties or operates buildings in disrepair by either refusing to respond to tenant reports of infestations, mold, peeling lead paint, and faulty appliances and utilities, or responding with the threat of eviction.²³⁸ Large landlords, who frequently earn millions of dollars in rental income, can absorb housing code fines without affecting profit margins, especially where the housing code is underenforced.²³⁹ In contrast, low-income tenants often lack alternative housing options and are, therefore, reluctant to report violations and forced to endure squalid conditions. These tenants often live paycheck-to-paycheck and sacrifice necessities, such as food or medicine,²⁴⁰ to pay the rent, which exacerbates health inequity.

The Hoff real estate empire in Milwaukee illustrates the harm of extractive management strategies. Hoff properties included over 700 units that are predominately located in majority Black neighborhoods.²⁴¹ Hoff's management practice consisted of ignoring requests for repairs, but filing for eviction as soon as a tenant was late on rental payments. The practice not only fostered housing insecurity and living conditions hazardous to health; it also affected the safety of the property and the neighborhood as a whole, concentrating violent crime and increasing assaults, robberies, and burglaries.²⁴²

The availability of the eviction system to intimidate and control tenant behavior allows landlords to exploit renters who have no alternatives when choosing where to live by increasing the rent beyond the value of the property, avoiding the cost of repairs, and attaching excess fees to the tenancy.²⁴³ In majority-Black neighborhoods, the practice of inflating prices, especially for necessities like housing, is widespread.²⁴⁴ According to the Eviction Lab, the “exploitation is often justified by appeals to racist narratives. In the case of housing, this leads to claims that low-income Black tenants are responsible for the dilapidation of their own properties.”²⁴⁵ For example, a landlord in Yonkers, New

238 Henry Gomory & Matthew Desmond, *Extractive Landlord Strategies: How the Private Rental Market Creates Crime Hot Spots*, EVICTION LAB (May 11, 2023) [hereinafter *Extractive Landlord Strategies*], <https://evictionlab.org/extractive-landlords-and-crime>.

239 *Id.*

240 WHITNEY AIRGOOD OBRYCKI, ALEXANDER HERMANN & SOPHIA WEDEEN, HARV. JOINT CTR. FOR HOUS. STUD., *THE RENT EATS FIRST: RENTAL HOUSING UNAFFORDABILITY IN THE US* (Jan. 2021).

241 Henry Gomory & Matthew Desmond, *Neighborhoods of Last Resort: How Landlord Strategies Concentrate Violent Crime*, 61 CRIMINOLOGY 270 (2023); Daphne Chen & Cary Spivak, *A Prolific Evictor Left a Profound Mark on Milwaukee. Yet Few in Power Noticed.*, MILWAUKEE J. SENTINEL, <https://www.jsonline.com/in-depth/news/investigations/2023/01/11/milwaukee-landlord-curtis-hoffs-anchor-properties-evicted-thousands/69575798007> (last updated Feb. 6, 2024 2:26 PM).

242 *Id.*

243 *Extractive Landlord Strategies*, *supra* note 238.

244 Amber R. Crowell, *Renting Under Racial Capitalism: Residential Segregation and Rent Exploitation in the United States*, 42 SOCIO. SPECTRUM 95 (2022).

245 *Extractive Landlord Strategies*, *supra* note 238; see News 12 Staff, *They Are Causing this*

York, who owns 11 multi-unit properties, blamed the tenants for housing code violations: “They’re causing the problem. They’re not even cleaning.”²⁴⁶ His strategy is to evict the “bad tenants.” In Milwaukee, where Black renters are segregated into dilapidated, high crime neighborhoods, Hoff properties blamed the housing conditions on the tenants: “They were animals,” Hoff said.²⁴⁷

This blame shifting, which judges often accept, is nearly identical to the justifications proffered to support the segregation of public housing,²⁴⁸ installment land contracts during Jim Crow,²⁴⁹ and the adoption of a national lead poisoning policy that allows children, particularly in low-income, predominately Black and Latino neighborhoods, to be poisoned at high rates long after the problem was practically resolved for white children.²⁵⁰

3. *Serial Eviction Filing*

Landlords frequently use the courts to control or influence tenant behavior and increase revenue by transferring costs to tenants.²⁵¹ Nearly one-third of households facing eviction are filed against repeatedly at the same address, a practice known as serial eviction filing.²⁵² For example, in South Carolina, 43 percent of eviction

Problem. ‘Yonkers Landlord Blames Bad Tenants for Pest Infestation, Poor Conditions, NEWS12 WESTCHESTER (Dec. 7, 2022 8:35 PM), <https://westchester.news12.com/they-are-causing-this-problem-yonkers-landlord-blames-bad-tenants-for-pest>; Meta Minton, *Renter Tells Special Magistrate About Nightmare Conditions at Home in The Villages*, VILLAGES-NEWS.COM (Jan. 24, 2023), <https://www.villages-news.com/2023/01/24/renter-tells-special-magistrate-about-nightmare-conditions-at-home-in-the-villages>; Meta Minton, *Landlord in the Villages Blames Tenants in Dispute Over Derelict Homes*, VILLAGES-NEWS.COM (Feb. 28, 2023), <https://www.villages-news.com/2023/02/28/landlord-in-the-villages-blames-tenants-in-dispute-over-derelict-homes>.

²⁴⁶ News 12 Staff, *supra* note 245.

²⁴⁷ *Extractive Landlord Strategies*, *supra* note 238.

²⁴⁸ *See infra* Section V.B.

²⁴⁹ RICHARD ROTHSTEIN, *THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA* (2017).

²⁵⁰ Emily A. Benfer, *Contaminated Childhood: How the United States Failed to Prevent the Chronic Lead Poisoning of Low-Income Children and Communities of Color*, 41 HARV. ENV. L. REV. 493 (2017) (“[M]ost of the cases are in [Black] and Puerto Rican families, and how . . . does one tackle that job? . . . Until we can find a means to (a) get rid of our slums and (b) educate the relatively ineducable parent, the problem will continue to plague us.” (quoting Manfred Bowditch, *Lead Industry Association Congressional Testimony* 1956)).

²⁵¹ Philip Garboden & Eva Rosen, *Serial Filing: How Landlords Use the Threat of Eviction*, 18 CITY & COMM. 638 (2019); Adam Porton et al., *Inaccuracies in Eviction Records: Implications for Renters and Researchers*, 31 HOUS. POL’Y DEBATE 377, 380 (2021).

²⁵² Lillian Leung et al., *Serial Eviction Filing: Civil Courts, Property Management, and the Threat of Displacement*, 100 SOC. FORCES 316 (2021) [hereinafter *Serial Eviction Filing: Civil Courts*]; Lillian Leung, Peter Hepburn & Matthew Desmond, *Serial Eviction Filings: How Landlords Use the Courts to Collect Rent*, EVICTION LAB (Sept. 15, 2020), <https://evictionlab.org/serial-eviction-filings>.

cases are serial in nature.²⁵³ In one study of serial eviction filing in three cities, researchers concluded that “landlords generally try to avoid costly evictions, instead relying on the serial *threat* of eviction By redefining renters as debtors, filing assists in rent collection by leveraging the state to materially and symbolically support the landlord’s debt collection.”²⁵⁴ Serial filing is a property-management approach most commonly used by corporate landlords²⁵⁵ that disproportionately affects Black renter households, with 14.7 percent of Black households receiving repeated filings at the same address, compared to 9.7 percent of white households.²⁵⁶ Serial eviction filings affect tenants’ credit rating and ability to secure future rental housing. Since the practice increases housing costs by 20 percent due to fines and fees, every time a new case is filed, it is likely to decrease the tenant’s ability to pay other bills or result in deferred payments—thereby further negatively influencing material circumstances and, in turn, health inequity.²⁵⁷

4. Rent Bonds

Despite the democratic principle in the U.S. legal system that both parties have the right to present arguments and evidence, tenants do not always have the automatic right to be heard in eviction lawsuits.²⁵⁸ In multiple states, tenants do not have access to either a hearing or an appeal of an eviction judgment unless they pay a “rent bond,” typically an amount equivalent to one month’s rent or the amount alleged due by the landlord or more, to the court.²⁵⁹ For example, in Florida, if a tenant is unable to pay the rent bond to the court, the case is automatically decided in the landlord’s favor, even though the tenant has yet to be heard and even if the tenant has defenses, such as unlawful landlord behavior.²⁶⁰ Other states require tenants to pay the rent to the court before they can raise counterclaims. For example, in Oregon, “If the tenant does not comply with an order to pay rent into the court . . . , the tenant shall not be permitted to assert a counterclaim in the action for possession.”²⁶¹ In Dallas County, Texas, the state appellate rent bond statute was recently ruled unconstitutional, though housing

253 Porton et al., *supra* note 251.

254 Garboden & Rosen, *supra* note 251, at 638.

255 *Serial Eviction Filing: Civil Courts*, *supra* note 252.

256 Hepburn, Louis & Desmond, *supra* note 37.

257 *Serial Eviction Filing: Civil Courts*, *supra* note 252.

258 Emily A. Benfer et al., Opinion, *The Eviction Moratorium Limbo Laid Bare the System’s Extreme Dysfunction*, WASH. POST (August 12, 2021), <https://www.washingtonpost.com/opinions/2021/08/12/eviction-moratorium-court-cdc-congress; Sabbeth, supra note 157>.

259 See spreadsheet on file with author.

260 Sabbeth, *supra* note 183, at 381.

261 OR. REV. STAT. § 90.370 (2023).

attorneys are uncertain whether the rule will be followed locally, further demonstrating the court's discretion and the system's slant toward landlords.²⁶² When the right to participate in the legal process hinges on a tenant's ability to pay a bond into court, eviction policy operates as a structural determinant of health inequity that influences power structures, establishes the hierarchy of litigants, and undermines the tenant's ability to prevent an eviction and its negative consequences to health and well-being.

5. *Criminal Eviction, Crime Free Rental Properties, and Nuisance Ordinances*

In numerous jurisdictions, local law allows, and even directs, landlords to target vulnerable populations and historically marginalized groups with extreme penalties, including the loss of personal freedom and a criminal record. In Arkansas, renters who are late on rent payments can be charged with a misdemeanor and sentenced to jail time, despite the Eighth Amendment prohibition against cruel and unusual punishment and the prohibition on debtors' prison.²⁶³ The 122-year-old law allows landlords to initiate the criminal action and has resulted in over 1,000 criminal eviction cases between 2018 and 2020 alone.²⁶⁴ The law disproportionately impacts Black female, low-income renters: 62 percent of criminal eviction cases filed in Little Rock in 2012 were filed against Black women, who represent 20 percent of the population.²⁶⁵ Landlords are supportive of the law and have a record of lobbying to prevent repeal: The president of the Hot Springs Landlord Association said, "We're not about turning someone into a criminal because they didn't pay their rent, but we do want a simple, easy to use law that's inexpensive." Similarly, the president of the Greene County Landlord Association explained: "I don't want to label anyone a criminal by no means. But, you know, we need a good way to evict people."

Equally harmful, "Crime Free" rental properties and nuisance ordinances use third parties (the landlord) to control behavior (of the tenant) by requiring property owners to evict a tenant who makes frequent calls to 911.²⁶⁶ These laws

262 Jacob Vaughn, *A New Dallas County Court Ruling Might Make It Easier for Some Tenants to Appeal Evictions*, DALLAS OBSERVER (Sept. 22, 2022), <https://www.dallasobserver.com/news/some-tenants-may-have-an-easier-time-appealing-evictions-after-dallas-county-court-ruling-14869449> ("This is a county court of law in Dallas County that ruled it unconstitutional. Whether people decide to ignore that or not is a different question," said Mark Melton, the attorney who argued the case.")

263 ARK. CODE ANN. § 18-16-101 (2021); see also Maya Miller & Ellis Simani, *When Falling Behind on Rent Leads to Jail Time*, PROPUBLICA (Oct. 26, 2020), <https://www.propublica.org/article/when-falling-behind-on-rent-leads-to-jail-time>.

264 Miller & Simani, *supra* note 263.

265 *Id.* (citing University of Arkansas at Little Rock Law Professor Emerita Lynn Foster).

266 *Health Justice*, *supra* note 21.

disproportionately impact domestic violence victims and women of color. In one study analyzing nuisance citations where domestic violence was present, 50 percent of cases resulted in a landlord formally or informally evicting the tenants. In 83 percent of cases studied, property owners relied on either eviction or the threat of eviction to block future police calls, thereby depriving vulnerable renters of safety and the protection of law enforcement.²⁶⁷ Renters in Black neighborhoods were much more likely to receive nuisance citations with a rate of 1 in 16 eligible properties receiving a citation compared to 1 in 41 eligible properties in white neighborhoods.²⁶⁸ Out of all nuisance citations, 40 percent of cases resulted in a formal eviction and 78 percent resulted in a landlord-initiated forced move.²⁶⁹ As Professor Deborah Archer has concluded, “crime-free housing ordinances enable racial segregation by importing the racial biases, racial logics, and racial disparities of the criminal legal system into private housing markets.”²⁷⁰

Where eviction laws and policies allow landlords to harness the bias and intimidation of the criminal justice system against the tenant, they reinforce a culture of subordination and disempowerment—key elements of structural determinants of health inequity.

6. Voter Suppression

Eviction is also associated with challenges in exercising the fundamental right to vote. A recent study found that eviction depressed voter turnout in the 2016 election, regardless of whether the communities in question were urban or rural and whether they had high or low rates of eviction.²⁷¹ In the aftermath of an eviction, displaced renters may not be able to demonstrate a current address in the district or may be forced to move to a new county, which typically would require the advanced submission of a change of address form in order to vote.²⁷² Where a recently evicted renter does attempt to vote without updating their voter registration, they may open themselves up to criminal charges for voter fraud.²⁷³

²⁶⁷ Matthew Desmond & Nicol Valdez, *Unpolicing the Urban Poor: Consequences of Third-Party Policing for Inner-City Women*, 17 AM. SOC. REV. 117 (2012).

²⁶⁸ *Id.*

²⁶⁹ *Id.*

²⁷⁰ Debora N. Archer, *The New Housing Segregation: The Jim Crow Effects of Crime-Free Housing Ordinances*, 118 MICH. L. REV. 173 (2019).

²⁷¹ Gillian Slee & Matthew Desmond, *Eviction and Voter Turnout: The Political Consequences of Housing Instability*, 51 POL. & SOC. 3 (2023).

²⁷² See, e.g., ARK. CODE ANN. § 108-00-07 (2007); ALA. CODE §§ 17-3-50, 17-3-56 (2006).

²⁷³ 52 U.S.C. § 10307(c). Though there have not been any cases of an individual being charged with voter fraud following an eviction, in 2022 five Wisconsin citizens were charged with voter fraud following their registration at the incorrect address, including one unhoused individual. Scott Bauer, *Trump Backer, 4 Others Charged with Voter Fraud in Wisconsin*, ASSOCIATED PRESS (Feb. 10, 2022), <https://apnews.com/article/business-donald-trump-wisconsin-presidential-elections-elections->

The effects were greater in areas with new voter restrictions and less in places that allowed registration and voting on the day of the election.²⁷⁴ While many of the states with strict voter ID requirements have exceptions—such as natural disaster (TX), confidential listings due to domestic violence, sexual assault, or stalking (WI), or religious objections to being photographed (IN, KS, MS, SC, TN, TX and WI)—no state expressly includes exceptions for people who were recently evicted and are unable to demonstrate a current address.²⁷⁵ “As eviction disproportionately affects low-income, majority Black and Latino communities, it is likely diminishing the power of low income, Black and Latino voters.”²⁷⁶ As a result, eviction likely affected past election results.²⁷⁷ Researchers estimated that “reducing the residential eviction rate by 1 percentage point would have increased voter turnout in 2016 by 2.73 percentage points.” The significance of deterred political participation is poignant: “In the 2016 presidential election, six states were decided by less than 2 percentage points, including Michigan, Pennsylvania, and Florida.”²⁷⁸ Housing security and political participation and representation—and the ability to disrupt structural barriers to health equity—are deeply intertwined.

7. *Screening Practices*

Screening practices that rely on past interaction with the eviction system influence intermediary determinants of health by restricting a tenant’s ability to obtain future housing. Eviction screening practices disproportionately exclude Black renters, and Black women in particular.²⁷⁹ The negative effects of eviction begin to attach at the moment of an eviction filing; eviction creates a permanent and public record—a “Scarlet E”—that can affect a tenant’s economic and housing security for years.²⁸⁰ Approximately 85 percent of landlords run an eviction report on all rental housing applicants and 90 percent of landlords run a credit and

f7e490e5a73b54110e077c824c4e3bb3?utm_source=copy&utm_medium=share.

274 Slee & Desmond, *supra* note 271.

275 *Voter ID Laws*, NAT’L CONF. STATE LEGISLATURES, <https://www.ncsl.org/elections-and-campaigns/voter-id> (last updated Feb. 2, 2024).

276 Gillian Slee, *Eviction Depressed Voter Turnout in the 2016 Presidential Election*, EVICTION LAB (Nov. 8, 2021), <https://evictionlab.org/eviction-voter-turnout>.

277 Slee & Desmond, *supra* note 271.

278 *Id.*

279 Sandra Park, *Unfair Eviction Screening Policies Are Disproportionately Blacklisting Black Women*, ACLU (March 30, 2017), <https://www.aclu.org/blog/womens-rights/violence-against-women/unfair-eviction-screening-policies-are-disproportionately>.

280 Lauren Kirchner, *Data Brokers May Report COVID-19–Related Evictions for Years*, MARKUP, <https://themarkup.org/locked-out/2020/08/04/covid-evictions-renter-background-reports> (last updated August 7, 2020, 1:54 PM).

criminal background check on rental housing applicants.²⁸¹ Nine out of ten landlords, and the majority of large landlords, rely on third-party tenant screening companies to compile these reports.²⁸² The screening always includes a search for past eviction records, which are typically categorized as an automatic strike against the tenant, even if the applicant was not the leaseholder or the tenant filed the case affirmatively to enforce rights.²⁸³ In court records, it can also appear as though the landlord prevailed when a stipulated judgment is filed with the court, even though a settlement was reached, or the tenant repaid all rental arrears.²⁸⁴ Where tenants were subjected to serial eviction filings,²⁸⁵ they will have multiple records affecting their report. Screening reports may not even rely on correct information, since court records are frequently inaccurate and include misinformation due to clerical errors, file management, and other issues. In one study, a review of over 3.6 million administrative court records from 12 states found that “22 percent of eviction records contain ambiguous information on how the case was resolved or falsely represent a tenant’s eviction history.”²⁸⁶

Typically, the existence of any eviction record will be a complete bar to approving a rental housing application and/or the basis for charging the tenant a higher security deposit.²⁸⁷ These judgments are made even if the eviction case was dismissed and even if there is no way to verify that the identity of the tenant matches that in the eviction record. For example, in Chicago, Hunter Properties, Inc., which manages 2,500 apartments, maintains a policy to categorically reject any applicant that has any prior interaction with the eviction system.²⁸⁸ This policy applies even if the court case was decided in the tenant’s favor, even if the tenant proactively filed the case, and even if it was a frivolous lawsuit.²⁸⁹ There are no exceptions to the policy and the tenant’s ability to pay the rent or comply with the

281 Shannon Price, *Stay at Home: Rethinking Rental Housing Law in an Era of Pandemic*, 28 GEO. J. POVERTY L. & POL’Y 1, 302 (2020); *TransUnion Independent Landlord Survey Insights*, TRANSUNION SMARTMOVE (Aug. 7, 2017), <https://www.mysmartmove.com/SmartMove/blog/landlord-rental-market-survey-insights-infographic.page>.

282 Lauren Kirchner & Matthew Goldstein, *How Automated Background Checks Freeze Out Renters*, N.Y. TIMES (May 28, 2020), <https://www.nytimes.com/2020/05/28/business/renters-background-checks.html>.

283 Valerie Schneider, *Locked Out by Big Data: How Big Data, Algorithms and Machine Learning May Undermine Housing Justice*, 52 COLUM. HUM. RTS. L. REV. 251, 268–70 (2020).

284 *Id.* at 279.

285 *Serial Eviction Filing: Civil Courts*, *supra* note 252.

286 Porton et al., *supra* note 251.

287 Wonyoung So, *Which Information Matters? Measuring Landlord Assessment of Tenant Screening Reports*, 33 HOUS. POL’Y DEBATES 1484, 1502 (2023).

288 *Legal Aid Chicago v. Hunter Properties, Inc.*, No. 1:23-cv-4809 (N.D. Ill., filed Jul. 25, 2023).

289 *Id.*

lease terms are not relevant to the determination.²⁹⁰ In Chicago, consistent with national statistics, this policy disproportionately harms Black renters, who represent 33 percent of the Cook County renter population and 56 percent of renters who received an eviction filing between September 2010 to March 2023.²⁹¹ Notably, Black women represented 33 percent of people filed against during the same timeframe, significantly increasing barriers to future housing opportunities.²⁹²

Tenant screening companies and credit reporting agencies are barred from reporting eviction records beyond seven years, pursuant to the Fair Credit Reporting Act. However, even after that time, the record continues to exist and many landlords continue to report evictions to credit agencies and screening companies.²⁹³ Unless it is sealed, the record is also always available to landlords through independent court record searches.

In practice, most of the tenant screening companies offer products that judge or score the applicant and provide a “yes” or “no” recommendation to the landlord about whether to accept the applicant, rather than provide public record information and allow landlords to make an independent determination. The reports do not consider mitigating circumstances²⁹⁴ or false positives. Further, where Artificial Intelligence (“AI”) made the determination and only provides a recommendation (yes or no) or a score, there is no information about why the applicant was rejected.²⁹⁵

Landlords, particularly large landlords, will rely on systematized screening software algorithms designed by companies²⁹⁶ to determine whether to lease to a prospective tenant. As one study found, reliance on the screening company’s evaluation allows property owners “to make systematic decisions that protect them from fair housing lawsuits.”²⁹⁷ Since AI is making the decision, the tenant screening companies often promote the tool as a way to eliminate bias, but research

290 *Id.*

291 *Id.*

292 *Id.*

293 CONSUMER FINANCIAL PROT. BUREAU, MARKET SNAPSHOT: BACKGROUND SCREENING REPORTS (2019), https://files.consumerfinance.gov/f/documents/201909_cfpb_market-snapshot-background-screening_report.pdf.

294 Schneider, *supra* note 283, at 254.

295 ARIEL NELSON, NAT’L CONSUMER L. CTR., BROKEN RECORDS REDUX: HOW ERRORS BY CRIMINAL BACKGROUND CHECK COMPANIES CONTINUE TO HARM CONSUMERS SEEKING JOBS AND HOUSING 15–17 (2019), <https://www.nclc.org/images/pdf/criminal-justice/report-broken-records-redux.pdf>.

296 See, e.g., Corelogic, LeaseRunner; RealPage; Online Rental Exchange.

297 Eva Rosen, Philip M.E. Garboden & Jennifer E. Cosyleon, *Racial Discrimination in Housing: How Landlords Use Algorithms and Home Visits to Screen Tenants*, 86 AMER. SOC. REV. 787, 801 (2021).

has shown that they may instead increase housing discrimination.²⁹⁸ Algorithms “use historical data as input to produce a rule that is applied to a current situation,” and therefore, “[t]o the extent that historical data reflects the results of de jure segregation, Jim Crow laws, redlining, restrictive covenants, white flight, and other explicitly and implicitly racist, laws, policies, and actions, any given algorithmic ‘rule’ is likely to produce racist results, including when those patterns reflect past discrimination.”²⁹⁹ These algorithms are intended to be “race-blind,” but they rely on criteria—such as income, eviction history, criminal history, and credit score—that are correlated with structural racism and racial marginalization. The flawed screening product harms millions of renters’ housing stability and errors have even resulted in homelessness, which is associated with numerous comorbidities.³⁰⁰ The U.S. District Court for the District of Connecticut found that the tenant screening company transforms the records review process into a “yes/no switch” and eliminates the possibility of a full assessment of an applicant to avoid eliminating tenants who do not pose any risk.³⁰¹

Tenant screening companies reportedly use incorrect or unqualified information and include information based on mistaken identity.³⁰² Screening companies often only require a partial match of the letters in a tenant’s name to include negative history in the screening.³⁰³ Thus, the tenant screening may include an eviction or criminal record that does not belong to the applicant due to the error-prone tool, as well as the inability of companies to verify court data with date of birth, Social Security Numbers, or other identifying information.³⁰⁴ In a 2021 Compliance Bulletin, the CFPB stated it is “particularly concerned” that “the procedures that some tenant-screening companies use to match public records . . . to specific consumers may create a high risk that inaccurate data will be included in tenant-screening reports” and that the “risk of mismatching” may fall heaviest on “Hispanic, Black, and Asian individuals because there is less surname diversity than among the white population.”³⁰⁵ Third-party tenant screening companies are

298 Wonyoung So, *supra* note 287, at 1502, 1504–05.

299 Schneider, *supra* note 283.

300 MICHELE GILMAN, DATA & SOC., POVERTY LAWGORITHMS: A POVERTY LAWYER’S GUIDE TO FIGHTING AUTOMATED DECISION-MAKING HARMS ON LOW-INCOME COMMUNITIES 30–33 (2020).

301 Connecticut Fair Hous. Ctr. v. CoreLogic Rental Prop. Sols., LLC, 478 F. Supp. 3d 259, 273, 279 (D. Conn. 2020).

302 Kirchner & Goldstein, *supra* note 282.

303 *Id.*

304 *Id.*; see also Schneider, *supra* note 283; Connecticut Fair Hous. Ctr., 478 F. Supp. 3d at 259.

305 CFPB, ENFORCEMENT COMPLIANCE BULLETIN AND POLICY GUIDANCE: CONSUMER REPORTING OF RENTAL INFORMATION, BULLETIN 2021-03 (July 31, 2021), https://files.consumerfinance.gov/f/documents/cfpb_consumer-reporting-rental-information_bulletin-2021-03_2021-07.pdf.

considered specialty consumer reporting agencies under the Fair Credit Reporting Act (“FCRA”). The FCRA requires that screeners “follow reasonable procedures to assure maximum possible accuracy.”³⁰⁶ However, unlike credit scores, federal regulators do not review tenant scoring models or the underlying algorithms to ensure the process is predictive or statistically sound.

Racial discrimination in the screening process is more overt among small size property landlords. A study led by Drs. Eva Rosen and Philip Garboden found that “landlords distinguish between tenants based on the degree to which their behavior conforms to insidious cultural narratives at the intersection of race, gender, and class.”³⁰⁷ Small size landlords are less likely to rely on screening companies and instead “make decisions based on informal mechanisms such as ‘gut feelings,’ home visits, and the presentation of children.”³⁰⁸ In these instances, a tenant with a history of interaction with the eviction system need not apply, or can expect to face far worse conditions than in prior housing.³⁰⁹

The disproportionate and negative effect of tenant screening policies and practices, and the lack of regulation, on historically underrepresented and marginalized groups demonstrates how a policy, practice, or entrenched norm increases subordination and disempowerment. (Figure 1) These structural determinants of health inequity decrease housing access and negatively impact health equity and well-being.

The whole of the eviction system—from the laws and policies that determine whether a tenant can stay housed to landlord practices that determine who has access to safe, decent, and affordable or substandard housing—bestows power upon the landlord, deteriorates tenants’ material circumstances, and perpetuates health inequity among historically marginalized people. With structural determinants driving the system, eviction deepens longstanding patterns of economic and housing instability in historically marginalized communities and negatively affects health outcomes. Figure 5 provides a partial snapshot of the

306 15 U.S.C. § 1681e(b) (2018).

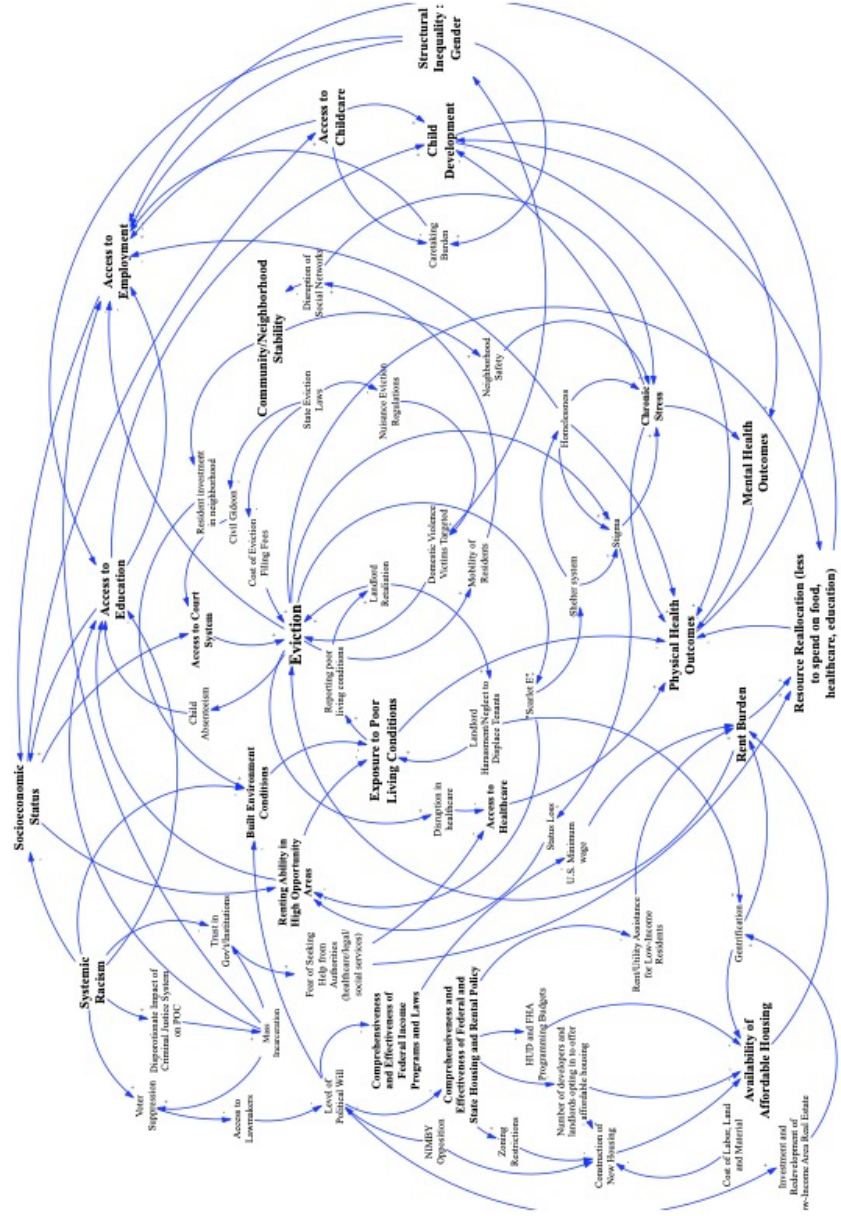
307 Rosen, Garboden & Cosyleon, *supra* note 297.

308 *Id.*

309 *See Eviction and the Reproduction of Urban Poverty, supra* note 37 (“When evicted tenants do find subsequent housing, they often must accept conditions far worse than those of their previous dwelling. Because many landlords reject applicants with recent evictions, evicted tenants are pushed to the very bottom of the rental market and often are forced to move into run-down properties.”).

complex network of causal loops and health outcomes within the eviction system.

Figure 5. The Eviction System: Causal Loops and Health Outcomes³¹⁰



310 Marissa Y. Long & Emily A. Benfer, *The Eviction System: Causal Loops and Health Outcomes* (2021), simplified for print.

V. APPLYING THE HEALTH JUSTICE FRAMEWORK TO THE U.S. EVICTION SYSTEM

As described in this Article, eviction operates as a structural determinant of health inequity that negatively influences material circumstances and shapes health status among historically marginalized groups, with Black people experiencing eviction and its harms at the highest rates. Examining the eviction system in the context of the WHO Conceptual SDOH model reveals the roots of inequity in eviction law and policy, and pathways from those root causes to stark differences in health and well-being by race. Preventing the devastating and intergenerational health effects of eviction requires directly confronting the structural and intermediary determinants of health inequity embedded in, and resulting from, the American eviction system. Efforts to address structural determinants of health inequity in eviction will be most effective where they abide by the key commitments of health justice outlined in the framework. (Figure 2) The Health Justice Framework collectively identifies and addresses drivers of health inequity, and includes (at least) four overarching principles that can be engaged simultaneously to address and prevent health inequity:³¹¹

1. *Community Empowerment*³¹² and *Community-Driven Structural Change*: Engage and “cultivate the political capacity of people who are disproportionately harmed by health inequity”³¹³ as leaders in the decision making, development, and implementation of community-driven structural change, including protective and corrective laws and policies.
2. *Truth and Reconciliation*: Investigate the historical mechanisms of structural racism underlying health inequity and offer reconciliation opportunities.
3. *Law and Policy*: Address the structural determinants of health inequity, including the social, political, and legal mechanisms of subordination.
4. *Support and Protect*: Provide supports and legal protections to transition material and environmental circumstances from negative to positive determinants of health.

311 See *supra* notes 21-35.

312 Where this article uses the term “empowerment” or “elevate the power” of historically marginalized communities, the health justice focus on empowerment rejects the concept of empowerment that suggests a favored group granting power to another. Rather, the “health justice framework seeks the outcome of power among race-class subjugated communities (and should not contemplate the idea of an outside actor bestowing power).” *Post-Pandemic Clinic*, *supra* note 24, at 47 n.4 (2021). See, e.g., Harris & Pamukcu, *supra* note 24; *Health Justice Strategies*, *supra* note 23.

313 Michener, *supra* note 17.

The following sections provide examples of how each health justice principle can be applied to the U.S. eviction system to confront and eliminate the structural determinants of health inequity.

A. Prioritize Empowerment of Race-Class Subjugated Communities and Prioritize Community-Driven Structural Change

Among the core tenets of the Health Justice Framework is building power among people burdened by structural racism and health inequity to ensure that any structural changes are driven by the communities most affected. Community power and the act of working to increase power are both linked to improved health outcomes, including lower infant mortality, reduced cardiovascular risk, disease reduction, emotional well-being, and environmental improvement, among other benefits.³¹⁴ Building power requires engaging and “cultivat[ing] the political capacity of people who are disproportionately harmed by health inequity”³¹⁵ as leaders in the decision making, development, and implementation of community-driven structural change.

Dr. Jamila Michener’s theory of power in health justice posits:

Since historical and contemporary alignments of power have produced and perpetuated the status quo of health inequity, altering this trajectory will involve struggles for power. Such struggle can take (at least) two forms: 1) building power among those who are most affected by health inequity 2) breaking the power of interests that undermine health equity.³¹⁶

Mechanisms for power building among race-class subjugated communities include “community organizing, coalition and social movement seeding and development and strategic institutional negation.”³¹⁷ In turn, power breaking addresses the imbalance of power that “undergirds health inequity through 1) minimizing profit; 2) administrative regulation and enforcement; and 3) strategic institutional negotiation.”³¹⁸ In the context of eviction, the need to apply power shifting methods to unequal power dynamics is clear in the landlord’s, property owner’s, and investor’s ability to unequivocally control and manipulate the tenant’s access to safe and decent housing and, therein, their survival.³¹⁹

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

315 Michener, *supra* note 17.

316 *Id.*

317 *Id.*

318 *Id.*

319 *See* *Javins v. First Nat’l Realty Corp.*, 428 F.2d 1071, 1079 (D.C. Cir. 1970) (“The

A critical component of power shifting to address the structural racism of eviction is community-led and -centered structural change:

“Communities that have been disenfranchised by racism, poverty, and other forms of subordination must be recognized, engaged, respected, and empowered as leaders in the development and implementation of interventions to eliminate health inequities and realize health justice . . . the processes created to develop, evaluate, and reform laws and policies that shape health must incorporate mechanisms for combatting existing power imbalance and subordination, by centering community decision making and control.”³²⁰

Community-led structural change requires that community members have the authority and resources (financial and otherwise) to meaningfully inform the development of protective and corrective laws and policies, including the prioritization of interventions. Communities and individuals affected by health inequity are “best positioned to identify the major challenges to overcoming inequity and to evaluate the viability of proposed solutions”³²¹ and know better than anyone how laws and policies will play out in their lives. Any policy changes must be centered around community knowledge, experience, and goals. Increased power should include the ability to direct and control resources in their own community—an approach that has been implemented in other public health contexts, such as efforts to improve the built environment, food and nutrition security, and immunization.³²²

Recent research demonstrates that tenant organizing and power building, indeed, reduces eviction: for every ten new tenant organizations, there is a 10 percent reduction in eviction filings.³²³ The COVID-19 pandemic serves as an example of the positive effects of increasing tenant power. During the pandemic,

inequality in bargaining power between landlord and tenant has been well documented.”); Jamila Michener, *Civil Justice, Local Organizations, and Democracy*, 122 COLUM. L. REV. 1389, 1397 (2022); *supra* Section IV.C.

³²⁰ *What is Health Justice?*, *supra* note 24.

³²¹ *Health Justice*, *supra* note 21, at 346.

³²² CTR. FOR DISEASE CONTROL AND PREVENTION, GETTING FURTHER FASTER COMMUNITY PROGRAM, <https://www.cdc.gov/chronicdisease/healthequity/sdoh-and-chronic-disease/nccdphps-programs-to-address-social-determinants-of-health/getting-further-faster.htm> (last visited Mar. 25, 2024) (Partnered with 42 communities to implement SDOH interventions); *Policy Solutions to End Hunger in America*, DREXEL UNI. CTR. FOR HUNGER-FREE COMMS., <https://drexel.edu/hunger-free-center/research/briefs-and-reports/policy-solutions-to-end-hunger> (last visited Mar. 25, 2024) (Framework created for Biden Administration’s Conference on Hunger, Nutrition and Health); UNICEF, HUMAN-CENTERED DESIGN FIELD GUIDE, <https://www.hcd4health.org/resources>.

³²³ Andrew Messamore, *The Effect of Community Organizing on Landlords’ Use of Eviction Filing: Evidence from U.S. Cities*, 70 SOC. PROB. 809 (2023).

community organizing and the development of tenant associations and organizations grew nationwide. This empowerment had an immediate impact on federal, state, and local policymakers who introduced model legislation to advance housing stability and health equity.³²⁴ Landlord behavior also changed. In response to tenant-led direct actions and protests that negated systems, shutdown courthouses, or blocked evictions,³²⁵ landlords “halted eviction proceedings and instead negotiated terms with tenants that kept them in their homes.”³²⁶

As predicted in Dr. Michener’s theory of power in health justice, the development of citywide tenant unions and organizations gave renters bargaining power and access to rights in the landlord-tenant relationship. These local efforts were enhanced by coalition building with local and national organizations that amplified messages, drew resources, and centered tenants in the movement for housing stability during and beyond the pandemic. These efforts increased the ability of tenants to participate in the policy process and drew the attention of the state, local, and federal government, including an audience with the Biden-Harris Administration. The shift in tenant power and the increased attention to tenant voices is likely responsible for an unprecedented number of housing-related bills during and after the pandemic, including the White House Renter Bill of Rights and HUD dedicating \$10 million in funding for tenant education, outreach, and organizing in certain federally assisted housing.³²⁷ The investment in capacity building among tenants is critical and should be replicated and extended to private market renters. Ultimately, health justice empowerment and engagement allow harmed or high-risk individuals to direct the dismantling of structural determinants

324 Erika Rickard & Natasha Khwaja, *State Policymakers Are Working to Change How Courts Handle Eviction Cases*, PEW (Aug. 26, 2021), <https://www.pewtrusts.org/en/research-and-analysis/articles/2021/08/26/state-policymakers-are-working-to-change-how-courts-handle-eviction-cases>.

325 Michelle Conlin, *‘This is Not Justice.’ Tenant Activists Upend U.S. Eviction Courts*, REUTERS (Feb. 8, 2021 2:09 PM), <https://www.reuters.com/article/us-health-coronavirus-usa-evictions-insi/this-is-not-justice-tenant-activists-upend-u-s-eviction-courts-idUSKBN2A8112>.

326 Jamila Michener & Mallory SoRelle, *Politics, Power, and Precarity: How Tenant Organizations Transform Local Political Life*, 11 INT. GRPS. & ADVOC. 209 (2022).

327 Rickard & Khwaja, *supra* note 324; Press Release, U.S. Dep’t of Hous. & Urb. Dev., *HUD Affirms Renter Protections and Releases \$10 Million Funding Opportunity for Tenant Education and Outreach* (July 27, 2023), https://www.hud.gov/press/press_releases_media_advisories/HUD_No_23_150; Press Release; Exec. Off. of the President, Readout of White House Meeting on Tenant Protections and Rental Affordability (Nov. 15, 2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/11/15/readout-of-white-house-meeting-on-tenant-protections-and-rental-affordability>; *see also* Press Release, Exec. Off. of the President, FACT SHEET: Biden-Harris Administration Announces New Actions to Protect Renters and Promote Rental Affordability (Jan. 25, 2023), <https://www.whitehouse.gov/briefing-room/statements-releases/2023/01/25/fact-sheet-biden-harris-administration-announces-new-actions-to-protect-renters-and-promote-rental-affordability>.

of health inequity and the housing policies that negatively affect their well-being.³²⁸

B. Acknowledge the Historical and Modern-Day Mechanisms of Structural Discrimination and Racism Underlying Health Inequity & Offer Reconciliation Opportunities

Dr. Martin Luther King, Jr. said, “I do not see how we will ever solve the turbulent problem of race confronting our nation, until there is an honest confrontation with it and a willing search for the truth and a willingness to admit the truth when we discover it.”³²⁹ Similarly, this principle of health justice confronts subordination and disempowerment by uncovering and publicly documenting the historical mechanisms of structural racism, including their effect on historically marginalized groups, and offering harmed individuals an opportunity for reconciliation. In the SDOH Framework developed by Professor Ruqaiyah Yearby, any attempts to address structural discrimination must also implement a “truth and reconciliation process that acknowledges the existence of structural discrimination and offers individuals from less privileged groups a mechanism to recover from the trauma of experiencing structural discrimination.”³³⁰

It is well-documented that Black people and majority-Black communities have a heightened risk of facing housing instability and disproportionately experience eviction.³³¹ In a health justice approach, federal, state, and local governments inquire into the factors that led to racial disparity in housing access, stability, affordability, and conditions. Remediating structural determinants of health inequity requires documenting the United States’ sordid history of subordination and racially discriminatory housing and landlord-tenant laws at the national and local levels. Namely, the disproportionate impact of eviction on historically underrepresented and marginalized groups is intertwined with the United States’ history of racial discrimination at the community and local level that prohibited land and home ownership;³³² exploited Black families through “on

328 See PUB. HEALTH LEADERSHIP SOC’Y, PRINCIPLES OF THE ETHICAL PRACTICE OF PUBLIC HEALTH 2–3 (2002), https://www.apha.org/media/files/pdf/membersgroups/ethics/ethics_brochure.ashx.

329 Martin Luther King Jr., *The Other America*: Speech Given at Grosse Point South High School (Mar. 14, 1968).

330 See Yearby, *supra* note 35.

331 See *supra* Section II.A.

332 See ROTHSTEIN, *supra* note 249; KENNETH T. JACKSON, *CRABGRASS FRONTIER: THE SUBURBANIZATION OF THE UNITED STATES 196–98* (1985); Julian Bond, *Historical Perspectives on Fair Housing*, 29 MARSHALL L. REV. 315, 317 (1996).

contract” home purchases that drained assets,³³³ segregated neighborhoods,³³⁴ seized land and displaced, or physically divided, entire neighborhoods in the name of post-war era “slum clearance” or “urban renewal,”³³⁵ required discriminatory lending and zoning practices;³³⁶ pushed communities of color into “undesirable” and unhealthy areas near industry;³³⁷ cleared thriving majority-Black communities to develop interstate highways,³³⁸ and repeatedly infringed on the rights of communities of color.³³⁹

These policies are all examples of structural discrimination and racism that advantaged white Americans in home ownership, income, education, and health while relegating Black Americans to racially segregated neighborhoods that became the target of profit for real estate and industry alike.³⁴⁰ Today, racially segregated neighborhoods that are predominately Black are subjected to substandard and unaffordable housing conditions and have less economic investment and fewer community resources, which increases eviction risk and exacerbates poor health, especially among Black women.³⁴¹

These neighborhoods also have more pollution, noise, environmental and health hazards, substandard housing stock, and overcrowding, and are typically far removed from city resources—all of which are social determinants of poor health.³⁴² During the pandemic, these disparities resulted in a life-or-death reality: communities of color were more susceptible to contracting viruses, at high risk of

333 BERYL SATTER, *FAMILY PROPERTIES: HOW THE STRUGGLE OVER RACE AND REAL ESTATE TRANSFORMED CHICAGO AND URBAN AMERICA* (2009).

334 See ROTHSTEIN, *supra* note 249.

335 See generally Housing Act of 1949, 42 U.S.C. ch. 8A; see also Marc A. Weiss, *The Origins and Legacy of Urban Renewal*, in *FEDERAL HOUSING POLICY AND PROGRAMS: PAST AND PRESENT* 253 (J. Paul Mitchell ed., 1985).

336 See ROTHSTEIN, *supra* note 249.

337 EMILY COFFEY ET AL., SHRIVER CTR. ON POVERTY L. & EARTH JUST., *POISONOUS HOMES* (2020), https://www.povertylaw.org/wp-content/uploads/2020/06/environmental_justice_report_final.pdf.

338 Deborah Archer, *Transportation Policy and the Underdevelopment of Black Communities*, 106 IOWA L. REV. 2125 (2021).

339 *Id.*

340 *Id.*

341 Lee Mobley et al., *Environment, Obesity, and Cardiovascular Disease Risk in Low-Income Women*, 30 AM J. PREVENTATIVE MED. 327, 327 (2006).

342 Renee E. Walker et al., *Disparities and Access to Healthy Food in the United States: A Review of Food Deserts Literature*, 16 HEALTH & PLACE 881, 876–84 (2010); Nicole I. Larson et al., *Neighborhood Environments: Disparities in Access to Healthy Foods in the U.S.*, 36 AM. J. PREVENTATIVE MED. 74, 74–81 (2009); Lavonna Blair Lewis et al., *African Americans Access to Healthy Food Options in South Los Angeles Restaurants*, 95 AM. J. PUB. HEALTH 672, 668–73 (2005); Ingrid Gould Ellen et al., *Neighborhood Effects on Health: Exploring the Links and Assessing the Evidence*, 23 J. URB. AFFS. 393, 391–408 (2001); A.V. Diez Roux, *Investigating Neighborhood and Area Effects on Health*, 91 AM. J. PUB. HEALTH 1783, 1786 (2001).

COVID-19 complications or death due to comorbidities precipitated by structural discrimination, and at heightened risk of eviction and homelessness.³⁴³ Similarly, the lack of infrastructure and access to transportation common in low-income communities creates physical barriers to justice that contribute to the high default rate seen in eviction proceedings today.³⁴⁴ In a study of Philadelphia and Harris County, Texas, researchers determined that equalizing the travel time to court across all tenants would have reduced the number of default judgment orders of eviction by 4,000 to 9,000 over the study period.³⁴⁵

Historical and longstanding discriminatory practices are responsible for the entrenched segregation, disinvestment, crumbling infrastructure, environmental injustice,³⁴⁶ poverty,³⁴⁷ lack of wealth accumulation, and health inequity in majority-Black and Latino neighborhoods.³⁴⁸ For example, in 1934, the New Deal authorized the Public Works Administration to build the country's first federally funded public housing units.³⁴⁹ During the mid-to-late 1930s, Congress held several public hearings on the topic of housing in the United States. The testimony provides a snapshot of the culture of racism that permeated decision-making:

If you could keep these people within confines, put up a little Chinese Wall around them, and keep them all in Harlem, all in New York City, or New York State, and did not have the children wandering all over the country, taking their low standards of living, their health conditions, their conditions of life along with them, you might say it is a local problem, but those things are spreading out throughout the entire country. (Mrs. Roscoe Conklin Bruce, Manager Paul Dunbar Apartments, Congressional Testimony, 1937.)³⁵⁰

I would say they are a shiftless race. (Harry Winters, Council of

343 *Health Justice Strategies*, *supra* note 23.

344 David A. Hoffman & Anton Strezhnev, *Longer Trips to Court Cause Evictions*, 120 PROCEEDINGS NAT'L ACAD. SCI. e2210467120 (2023).

345 *Id.*

346 Jamie Smith Hopkins, *The Invisible Hazard Afflicting Thousands of Schools*. CTR. FOR PUB. INTEGRITY (Feb. 17, 2017), <https://publicintegrity.org/environment/the-invisible-hazard-afflicting-thousands-of-schools>.

347 *Health Justice*, *supra* note 21, at 325.

348 *Id.*

349 The country's first public housing was created by the New York City Housing Authority in 1935. *About NYCHA*, N.Y.C. HOUS. AUTH., <https://www.nyc.gov/site/nycha/about/about-nycha.page#> (last visited Jan. 24, 2024).

350 *To Create a United States Housing Authority: Hearing Before the H. Comm. On Banking and Currency*, 75th Cong. 200 (1937).

Real Estate Association, Congressional Testimony, 1937.)³⁵¹

The Neighborhood Composition Rule of 1939 reflected the overarching culture of subordination and required the racial composition of public housing developments to reflect the racial composition of the surrounding neighborhoods.³⁵² It was national policy to firmly maintain residential segregation. Even after the rule was invalidated in 1949, by which time over 170,400 units of public housing were already built, public housing continued to be sited in segregated communities of color.³⁵³ By 1980, more than one million public housing units were built in highly segregated areas of the United States that were and continue to be disproportionately exposed to substandard conditions and environmental hazards.³⁵⁴

The harm was compounded by the federal Urban Renewal Program, instituted under the Housing Act of 1949, that authorized the use of eminent domain powers to seize and sell land in “blighted” areas to developers.³⁵⁵ “Approximately one million people were displaced in 2,500 projects carried out in 993 American cities; 75% of those displaced were people of color.”³⁵⁶ Forced displacement policies, including urban renewal and interstate highway development practices, displaced communities without compensation, replacement housing, or relocation assistance. It decimated neighborhoods, businesses, and personal assets; dramatically reduced the supply of affordable and decent housing; and “broke social networks, destroyed nascent political organization, and spread diseases and violence.”³⁵⁷

Today, the median wealth of a white family is nearly twelve times that of a Black family.³⁵⁸ Even homeownership gains among Black families over the last fifty years were lost due to predatory lending practices in the early 2000s and the

³⁵¹ *Id.*

³⁵² Secretary of the Interior Harold Ickes, who managed the public housing program at the time the Rule was approved, had a foundation of combatting discrimination and promoting integration. Despite this foundation, he “caved to the politics of the time” and likely approved of this Rule to “avoid clashes with segregationists” and appease a wary public. Betsey Martens, Elizabeth Glenn & Tiffany Mangum, *Race, Equity and Housing: The Early Years*, J. HOUS. & CMTY. DEV. (Oct. 9, 2020), https://www.nahro.org/journal_article/race-equity-and-housing-the-early-years.

³⁵³ COFFEY ET AL., *supra* note 337.

³⁵⁴ *Id.*; see also ROTHSTEIN, *supra* note 249.

³⁵⁵ Mindy Thompson Fullilove & Rodrick Wallace, *Serial Forced Displacement in American Cities, 1916–2010*, 88 J. URB. HEALTH 381 (2011).

³⁵⁶ *Id.*

³⁵⁷ *Id.* at 382–83.

³⁵⁸ Janelle Jones, *The Racial Wealth Gap: How African-Americans Have Been Shortchanged Out of the Materials to Build Wealth*, ECON. POL’Y INST.: WORKING ECON. BLOG (Feb. 13, 2017), <https://www.epi.org/blog/the-racial-wealth-gap-how-african-americans-have-been-shortchanged-out-of-the-materials-to-build-wealth>.

subsequent foreclosure crisis, thereby increasing the Black renter population.³⁵⁹

Pandemic-era research offers important insights into the necessity of addressing past harms to ensure the success of future interventions. In a study of renter experiences with pandemic-era state level eviction moratoria, the effects of past discrimination had a chilling effect on renter access to eviction protections, as described in the following excerpts:

For example, Ashton, a Black college student in Florida, was aware of the moratoriums but expressed concern that these policies would be applied in a discriminatory way . . . and would not protect him from his landlord's eviction threats . . . "Mentally, of course, I'll just start thinking . . . that I'm Black and maybe these people are kind of not really considering Blacks for assistance or help in this case." . . .

Dre, a Black Florida resident, also expressed concerns that racially discriminatory implementation of the moratoriums might undermine the policies' protections . . . "For me, I was denied. But for them [a White neighbor], their application was accepted and that's just a classic example of how this system is rigged against [non-White people]." These experiences made him question the ability of the moratoriums to protect him as a Black renter . . .

[P]articipants described how racial discrimination deterred them from seeking other eviction-prevention resources . . . Ian, another Black Florida renter, noted, "I felt probably I wouldn't get any help—and considering, like, I'm Black—so I thought I'd be discriminated on . . . so that's why I didn't, like, bother trying to get some help."³⁶⁰

Especially as federal, state, and local governments seek to address the dual crises of affordable housing and eviction, there remains an urgent need to uncover this type of history and its consequences, and to offer opportunities for affected populations to share experiences that can inform solutions. This type of exploration is critical to accountability, building trust, developing an accurate problem statement, and healing past and ongoing trauma due to structural racism. Professor Yearby recommends the adoption of a truth and reconciliation process, like the one developed in Providence, Rhode Island, a state that passed a ballot to remove "Providence Plantations" from its official name in 2020. The city developed a plan

359 See Yearby, *supra* note 35.

360 Keene et al., *supra* note 9.

to share the “state’s role throughout history in the institution of slavery, genocide of Indigenous people, forced assimilation and seizure of land; followed by city leaders reviewing laws and policies that resulted in discrimination against Black and Indigenous people; and concluded with community discussion about the state’s history and the ways in which historical injustices and systemic discrimination continue to affect society today.”³⁶¹

C. Design Laws and Policies to Address the Structural Determinants of Health Inequity & Provide Supports and Legal Protections

The U.S. eviction system is among the most egregious representations of structural determinants of health inequity, determining the trajectory of a person’s health and well-being in mere minutes and reinforcing race-class subjugation. The final principles enumerated in the Health Justice Framework offer mechanisms for supplanting the current eviction system with one that facilitates access to the supports necessary to avoid eviction, and ultimately addresses the structural determinants of health inequity through protective and corrective laws and policies. The third principle of the Health Justice Framework directs that law and policy must address the social determinants that threaten historically marginalized people’s health, financial, and social well-being. The fourth principle adds that laws and policies must be accompanied by legal protections, social supports, and necessary accommodations. This section will apply these complementary principles jointly to the socioeconomic and political contexts in the eviction system.

As described in Part I, III, and IV, the structural determinants include the socioeconomic and political contexts that result in discriminatory policies and lead to intermediary determinants of poor health, including reduced material circumstances. The structural determinants include: (1) governance processes (legislative, administrative, and judicial), (2) laws and policies, (3) budgets, and (4) enforcement processes, among others. In the third principle of the Health Justice Framework, each of these four contexts must be evaluated and redesigned to prioritize and ensure health equity. At the same time, the fourth principle of the Health Justice Framework requires that supportive measures (e.g., rental assistance and housing subsidies) and legal protections (e.g., against retaliation for reporting conditions violations) be adopted to support positive health outcomes and to address immediate needs. The descriptions that follow provide non-exhaustive examples of how prioritizing health justice within the socioeconomic and political contexts can support policymakers and courts in the effort to increase housing stability and health equity.

361 *Id.*

1. *Governance Process and Court-based Procedures*

While many courts continue to see landlords as their primary stakeholder,³⁶² numerous courts adopted strategies that increased housing stability, primarily during the COVID-19 pandemic, including eviction diversion, pre-eviction outreach, increased filings fees, evidentiary standards, and tenant right to counsel. This list is by no means comprehensive, and courts and policymakers are directed to the 2022 American Bar Association Resolution on Ten Guidelines for Residential Eviction Laws and the National Center for State Courts for additional interventions.³⁶³

Eviction Diversion

Eviction diversion programs are aimed at keeping renters in their homes and resolving any disputes between landlords and tenants outside the eviction court system. This approach connects parties to support and, where implemented pre-filing, prevents the initial formation of the eviction record and the subsequent “Scarlet E.” The necessary components to a successful eviction diversion program include access to an attorney or advocate, an alternative to the court process, and assistance—such as supportive services, financial assistance, debt forgiveness, housing counseling, and case management. It is critical that all three prongs of diversion are offered in tandem. Programs that implement mediation alone risk replicating the power imbalance and inequitable outcomes present in the eviction system. The pre-filing, mandatory eviction diversion program in Philadelphia offers a model: tenants have access to an advocate, rental assistance, and the opportunity to enter into a facilitated alternative to housing court, including mediation and legal services consultation.³⁶⁴ Similarly, after demonstrating the return on investment in multiple cities, Michigan expanded to a statewide diversion program that included state court rule changes to encourage greater participation in the program.³⁶⁵ Across all eviction diversion programs that have been studied,

³⁶² Sudeall & Pasciuti, *supra* note 212.

³⁶³ *ABA Ten Guidelines for Residential Eviction Laws*, AM. BAR ASSOC. (Mar. 14, 2022), https://www.americanbar.org/groups/legal_aid_indigent_defense/sclaid-task-force-on-eviction—housing-stability—and-equity/guidelines-eviction.

³⁶⁴ *City of Philadelphia’s Eviction Diversion Program: About Page*, CITY OF PHILA. DEPT. OF PLAN. & DEV., <https://eviction-diversion.phila.gov/#/About> (last visited Jul. 31, 2023); Aidan Gardiner, *How Philadelphia Kept Thousands of Tenants from Being Evicted*, N.Y. TIMES (July 13, 2023), <https://www.nytimes.com/2023/07/13/headway/philadelphia-tenants-eviction.html?smid=url-share>; see also *Eviction Diversion Program in Jackson County, MI*, EVICTION INNOVATIONS (May 27, 2020), <https://evictioninnovation.org/2020/05/27/diversion-jackson-co>.

³⁶⁵ Press Release, Exec. Off. of the President, FACT SHEET: White House Summit on Building Lasting Eviction Prevention Reform (Aug. 2, 2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/08/02/fact-sheet-white-house-summit-on-building-lasting-eviction->

67 to 95 percent of participating tenants stayed housed.³⁶⁶

Pre-Eviction Outreach to High-Risk Renters

Courts, local government, and community-based organizations can partner to use data patterns and machine learning tools to identify tenants who are at risk of possible eviction, following examples from New York, Los Angeles, and Washington, D.C. For example, in D.C., the Children’s Law Center partnered with a local hospital system and the Department of Housing to identify communities at high risk of asthma due to substandard housing conditions, allowing directed outreach and code enforcement. Early intervention in housing conditions cases also serves to prevent eviction, as retaliatory evictions frequently occur after a tenant reports a landlord for code violations. During the pandemic, tenant organizations in jurisdictions across the country frequently accessed court filing records and proactively conducted outreach to tenants facing eviction to link tenants to legal assistance, rights education, and resources. In Los Angeles, SAGE-Strategic Action for a Just Economy developed a tool to analyze displacement risk by mapping distressed properties, ownership patterns, and eviction history, among other risk factors. Through these strategies, tenants are identified and provided social supports and legal assistance to prevent or proactively address landlord harassment, eviction, and poor housing conditions prior to displacement.

Increased Filing Fees

Low filing fees allow landlords to use the court to collect rent, control or intimidate tenants, and promote serial eviction filing practices. Increased filing fee costs can motivate landlords to amicably work out a solution with tenants to avoid such cost. Multiple studies have found that increasing the cost of filing an eviction significantly reduces eviction rates.³⁶⁷ For example, in an Eviction Lab study, researchers determined that an increase in the filing fee of \$100 would reduce the eviction filing rate by 2.25 percentage points.³⁶⁸ The researchers explained the implications: “For context, the eviction filing rate in the median

prevention-reform.

³⁶⁶ EVICTION DIVERSION AND PREVENTION PROGRAMS, NETWORK FOR PUB. HEALTH L. (May 19, 2021), <https://www.networkforphl.org/wp-content/uploads/2021/05/Fact-Sheet-Eviction-Diversion.pdf>.

³⁶⁷ Henry Gomory et al., *The Racially Disparate Influence of Filing Fees on Eviction Rates*, 33 HOUS. POL’Y DEBATE 1463 (2023); see also Ashley C. Bradford & David W. Bradford, *The Effect of State and Local Housing Policies on County-Level Eviction Rates in the United States, 2004-2016* (2021), <https://dx.doi.org/10.2139/ssrn.3623318>.

³⁶⁸ 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>.

neighborhood in our sample is 3.3 percent. That \$100 increase to the filing fee would more than halve its number of eviction cases. It would also drive down the eviction judgment rate by 0.64 percentage points, directly helping to keep tenants in their homes.”³⁶⁹ However, tenant protections must be adopted to prevent landlords from passing the cost of filing and other fees onto tenants. Jurisdictions can prohibit the practice of adding court costs, including the judgment amount, to rental fees, or withholding it from the security deposit.

Evidentiary Standards

A common strategy during the Great Recession was to require that landlords demonstrate an evidentiary basis for their claim, providing full documentation of notices and other documents, before being allowed to file an eviction. New York requires similar production of evidence prior to filing a debt collection case to ensure there is sufficient grounds for the case and to prevent improper service of process and other due process issues.³⁷⁰ This practice prevents the abuse of the court system and filters out unmeritorious claims. During the pandemic, numerous courts demonstrated their ability to require documentation by requiring a landlord affidavit certifying the property is not covered by the state, local, or federal moratoriums.³⁷¹ Similar evidentiary standards can be permanently adopted.

Right to Counsel

Tenant right to counsel programs address the imbalance of power in eviction proceedings and are credited with redressing disparities in the eviction system by reducing eviction filings, orders of eviction, and involuntary moves, among other positive outcomes for tenants.³⁷² A study of Los Angeles reviewed publicly available eviction court data and determined that 97 percent of tenants were unrepresented and out of the unrepresented tenants, 99 percent likely experienced displacement.³⁷³ In analyzing the case information for local legal aid providers, the study found that tenants who are represented are able to avoid disruptive

³⁶⁹ *Id.*

³⁷⁰ James C. McKinnley, Jr., *Top State Judge Tightens Rules on Debt Collection*, N.Y. TIMES (May 1, 2014), <https://www.nytimes.com/2014/05/01/nyregion/top-state-judge-tightens-rules-on-debt-collection.html>.

³⁷¹ See, e.g., *CARES Act Affidavit*, MO. CTS. (May 13, 2020), <https://www.courts.mo.gov/file.jsp?id=156716>.

³⁷² See generally *Eviction Right to Counsel Resource Center*, STOUT, <https://www.stout.com/en/services/transformation-change-consulting/eviction-right-to-counsel-resources> (last visited July 28, 2023).

³⁷³ STOUT, COST-BENEFIT ANALYSIS OF PROVIDING A RIGHT TO COUNSEL TO TENANTS IN EVICTION PROCEEDINGS 10 (2019).

displacement 95 percent of the time.³⁷⁴ After Cleveland adopted the right to counsel, tenants avoided judgment or an involuntary move in 93 percent of cases.³⁷⁵ Right to counsel also appears to decrease filing rates, thereby changing landlord behavior.³⁷⁶ In response to the heightened risk of eviction during the COVID-19 pandemic and at the urging of tenants and advocacy organizations, tenant right to counsel was adopted in a record number of jurisdictions. As of May 2024, seventeen cities, five states, and one county have legislatively adopted the tenant right to counsel.³⁷⁷ While the intervention has yet to be comprehensively studied—especially in jurisdictions with limited notice requirements, rent bonds, or punitive eviction practices³⁷⁸—to ensure the right to counsel provides the greatest benefit, it is critical to engage tenants in the development of the right and as advisors throughout its existence, avoid rigid eligibility criteria (e.g., familial status) and processes, provide the right to all tenants, partner with community-based organizations and tenant groups to educate and inform tenants about their rights and how to access the benefit, and fully fund the right to prevent it from lapsing into a short-term benefit that only occurs when policymakers are motivated to include it in the budget. Shifts in the court process, such as postponing hearings to allow tenants to access the right and bench cards (e.g., Washington state) that allow or require judges to inform tenants about right to counsel, are also critical to the success of the right to counsel.

2. *Laws and Policies*

Federal, state, and local governments must consider the impact of their eviction and housing laws and policies on the health and well-being of historically marginalized people and communities. Because the social determinants of health are affected by government decision-making, it is imperative that states and localities take a health justice approach to housing policy development that redresses the historical and root causes of structural racism and anticipates possible negative health consequences, especially for the people at highest risk of housing

³⁷⁴ *Id.*

³⁷⁵ CLEVELAND EVICTION RIGHT TO COUNSEL ANNUAL INDEPENDENT EVALUATION: JANUARY 1, 2022 TO DECEMBER 31, 2022, STOUT (Jan. 31, 2023), https://freeevictionhelpresults.org/wp-content/uploads/2023/01/UPDATED-Stouts-2022-Independent-Evaluation-FINAL_2023.01.31.pdf.

³⁷⁶ *Id.*; see also NYC HUM. RESOURCES ADMIN., UNIVERSAL ACCESS TO LEGAL SERVICES: A REPORT ON YEAR FOUR OF IMPLEMENTATION IN NEW YORK CITY 3 (2021).

³⁷⁷ *The Right to Counsel for Tenants Facing Eviction: Enacted Legislation*, NAT'L COAL. FOR A CIV. RIGHT TO COUNSEL, http://civilrighttocounsel.org/uploaded_files/283/RTC_Enacted_Legislation_in_Eviction_Proceedings_FINAL.pdf (last modified Nov. 2023).

³⁷⁸ See *supra* Section IV.C; see also LSC Eviction Laws Database, LEG. SERV. CORP. (2021), <https://www.lsc.gov/initiatives/effect-state-local-laws-evictions/lsc-eviction-laws-database>.

displacement (households with children, women, and Black people). Policymakers must monitor legislation and amend or repeal laws that could negatively impact low-income and minority populations by: “(1) evaluat[ing] how a law might be applied, intentionally or inadvertently, to the disadvantage of marginalized individuals; and (2) examin[ing] the potential health effects on the entire population, paying special attention to marginalized individuals.”³⁷⁹ Laws and policies must affirmatively and aggressively address past and current drivers of health inequity and promote positive health outcomes among low-income and historically marginalized populations. Health justice principles—such as the truth and reconciliation process, community empowerment, and community driven-structural change described herein, as well as tools that include the Environmental Impact Assessment, Health Equity Impact Assessment, or the Child Impact Assessment—can be used to identify deleterious health effects of eviction and housing policy that disproportionately impact people and communities of color and develop health protective laws and policies.³⁸⁰ Equally critical, state laws that constrain or preempt local efforts to address eviction and increase health and housing equity must be addressed.³⁸¹ Failure to address barriers and take these collective precautions will most certainly result in policies that either maintain the status quo and perpetuate poor health or create new health hazards, both of which reinforce patterns of structural racism and health inequity.

Multiple immediate measures can be taken to improve laws and policies governing eviction, including the following non-exhaustive first steps toward health justice and equity. The 2023 White House Blueprint for a Renters Bill of Rights offers additional, critical interventions that can be adopted at the federal, state, and local levels.³⁸²

Clean Hands and Just Cause Eviction Requirements

Landlords should be required to verify compliance with rental ordinances,

³⁷⁹ *Health Justice*, *supra* note 21, at 341.

³⁸⁰ KIDSIMPACT: ADVOCATES FOR CHILDREN, <https://kidsimpact.org> (last visited Mar. 8, 2020); *HIAs and Other Resources to Advance Health-Informed Decisions: A Toolkit to Promote Healthier Communities Through Cross-Sector Collaboration*, PEW, <https://www.pewtrusts.org/en/research-and-analysis/data-visualizations/2015/hia-map?sortBy=relevance&sortOrder=asc&page=1> (last updated Feb. 2023).

³⁸¹ See generally THE LOCAL POWER AND POLITICS REVIEW 10 (2022), <https://static1.squarespace.com/static/5ce4377caeb1ce00013a02fd/t/621ef122d42c703ace74086b/1646194985581/LPPR-VolumeII-2022.pdf>; see also Nestor M. Davidson, *The Dilemma of Localism in an Era of Polarization*, 128 YALE L.J. 954 (2019); Joshua S. Sellers & Erin A. Scharff, *Preempting Politics: State Power and Local Democracy*, 72 STAN. L. REV. 1361 (2020).

³⁸² THE DOMESTIC POL'Y COUNCIL & NAT'L ECON. COUNCIL, THE WHITE HOUSE BLUEPRINT FOR A RENTERS BILL OF RIGHTS (2023), <https://www.whitehouse.gov/wp-content/uploads/2023/01/White-House-Blueprint-for-a-Renters-Bill-of-Rights.pdf>.

housing quality standards, and continuous, reasonable access (“clean hands”). The need for adoption and enforcement of clean hands laws was apparent during the COVID-19 eviction crisis: 90 percent of eviction cases filed in Detroit were filed by landlords whose properties were not in compliance with the city’s rental ordinance.³⁸³ In Cleveland, the Housing Court exercised its authority to adopt a clean hands rule.³⁸⁴ The court conducts routine reviews of the eviction docket and requires any property owner with an outstanding warrant for code violations to appear and enter a plea in the criminal case before the eviction action can proceed.³⁸⁵ New York state proposed a Clean Hands bill³⁸⁶ that would make it unlawful for a landlord to file an eviction action where the property has outstanding charges of building code violations. Philadelphia plans to mitigate this issue by creating a publicly available database of landlords and information about their properties.³⁸⁷

In addition, policymakers must address the harmful loophole created by “no fault” eviction laws. To date, at least eight states have formally adopted “just cause” eviction standards.³⁸⁸ In a “just cause” jurisdiction, landlords can only file for eviction against a tenant for a limited number of causes of action. This approach is likely to prevent the discrimination and abuse that occurs in “no fault” jurisdictions and to reduce serial eviction filing. Early research demonstrates that cities that implemented just cause eviction laws experienced lower eviction (by 0.808 percentage points) and eviction filing rates (by 0.780 percentage points) than those that did not.³⁸⁹ These policies should be adopted across Low Income Housing Tax Credit (“LIHTC”), federally assisted, and private market housing.³⁹⁰

383 EISENBERG & BRANTLEY, *supra* note 233.

384 See URBAN ET AL., *supra* note 187; RAYMOND L. PIANKA, CLEVELAND HOUSING COURT—A PROBLEM-SOLVING COURT ADAPTS TO NEW CHANGES, TRENDS IN STATE COURTS (2012); Robert Jaquay, *Cleveland’s Housing Court*, SHELTERFORCE (May 1, 2005), www.nhi.org/online/issues/141/housingcourt.html.

385 See PIANKA, *supra* note 384.

386 A.1853, 2023–2024 Leg. Sess. (N.Y. 2023).

387 *Mayor’s Taskforce on Eviction Prevention and Response*, CITY OF PHILA. (June 2018), <https://www.phila.gov/documents/mayors-task-force-on-eviction-prevention-and-response-final-report>.

388 Sophie Quinton, *Blue States Pass ‘Good Cause’ Eviction Laws*, PLURIBUS NEWS (Apr. 30, 2024), <https://pluribusnews.com/news-and-events/blue-states-pass-good-cause-eviction-laws/>; NADA HUSSEIN & SARAH GALLAGHER, NAT’L LOW INCOME HOUS. COAL., THE STATE OF STATEWIDE TENANT PROTECTIONS (May 2023), <https://nlihc.org/sites/default/files/state-statewide-tenant-protections.pdf>.

389 Cuellar, *supra* note 226.

390 See generally Florence Wagman Roisman, *The Right to Remain: Common Law Protections for Security of Tenure*, 86 N.C. L. REV. 817 (2008); Letter from the Nat’l Hous. L. Project, *supra* note 228.

*Providing Legal Defenses to Eviction and the Right to Be Heard
(Eliminating Rent Bonds)*

Courts should implement methods for educating tenants about their rights and provide tenants with an opportunity to assert defenses to an eviction, such as a landlord's breach of the warranty of habitability, self-help eviction attempts, or retaliation. Automating appeal rights can also assist unrepresented tenants in exercising rights and increase fairness and equity in proceedings. At the same time, the elimination of rent bond requirements is necessary to ensure that all tenants can have the ability to exercise their right to be heard or to appeal a decision, regardless of their ability to pay into the court or the landlord's claims of rental arrears.

Right to Cure, Grace Period, Redemption Rights

States and localities should mandate that landlords offer tenants a reasonable payment plan that gives tenants additional time to pay rent or the ability to pay in installments (e.g., according to their income over multiple months). In the District of Columbia, some landlords have adopted a credit system, wherein every on time rental payment is also credited toward rental debt forgiveness. To address rental arrears, jurisdictions must require the landlord to support the tenant's application for, and accept, rental assistance. HUD strongly supports the use of repayment plans, recommending that the monthly retroactive rent payment plus the amount of rent the tenant pays at the time the repayment agreement is executed should not exceed 40 percent of the family's monthly adjusted income.³⁹¹ During the pandemic, some states, including Connecticut, Oregon, and North Carolina instituted mandatory or upon request grace periods to pay rent.³⁹² The Oregon law created a grace period of six months for tenants following the close of the emergency period to repay their arrearages.³⁹³ The tenants were required, however, to give the landlord notification that they plan to utilize the grace period.³⁹⁴ Landlords could not charge tenants a late fee for using this grace period and paying late³⁹⁵ and had the voluntary option of offering tenants an alternative repayment plan to the grace period.³⁹⁶ Research on the effect of moratoria during the pandemic demonstrated that additional time was helpful to tenants and allowed

391 REPAYMENT AGREEMENT GUIDANCE, U.S. DEP'T HOUS. & URB. DEV., https://www.hud.gov/sites/dfiles/PIH/documents/Attachment4_Repayment_Agreement_Guidance.pdf (last visited July 28, 2023).

392 Conn. Exec. Order No. 7X (May 10, 2020); H.B. 4213, 80th Leg. Assemb., 1st Spec. Sess. (Or. 2020); N.C. Exec. Order No. 142 (May 30, 2020).

393 H.B. 4213, 80th Leg. Assemb., 1st Spec. Sess. (Or. 2020)

394 *Id.*

395 *Id.*

396 *Id.*

them to gather resources and avoid eviction.³⁹⁷

Late Fee Bans and Limits

Policymakers can implement late fee bans or limits and create a buffer period following the rent due date, in which tenants can pay rent without being charged a late fee or being in violation of the lease. Multiple states successfully prohibited late fees during the pandemic.³⁹⁸

Record Sealing and Regulating the Use of Eviction Records

Avenues for addressing the “Scarlet E” precipitated by an eviction filing include two broad categories: (1) regulating private actors’ use of eviction records; and (2) altering courts’ creation and storage of such records to prevent access.³⁹⁹ Record sealing prevents landlords from using a tenant’s prior rental history against them when they apply for new housing. Multiple states have attempted to prevent the long-term negative consequences of eviction records by limiting public access to eviction records (e.g., record sealing or expungement), prohibiting the denial of an application for tenancy based on eviction records, and limiting the types of evictions that appear on tenant screening reports.⁴⁰⁰ Numerous states, including California, Colorado, Florida, Illinois, and Minnesota,⁴⁰¹ among others, have adopted mandatory or discretionary record sealing laws.⁴⁰² In addition, during the COVID-19 pandemic policymakers introduced 31 eviction record sealing bills⁴⁰³ and the American Bar Association passed a resolution urging federal, state, and local government to prohibit tenant screening practices that include nonpayment of rent evictions that occurred during the pandemic, indicating an understanding of the importance of the policy to public health.⁴⁰⁴

397 See, e.g., Keene et al., *supra* note 9, at 445–46.

398 See Ryan P. Sullivan, *Survey of State Laws Governing Fees Associated with Late Payment of Rent*, 24 CITYSCAPE 269 (2022); see, e.g., H.B. 4213, 80th Leg. Assemb., 1st Spec. Sess. (Or. 2020).

399 Esme Caramello & Nora Mahlberg, *Combating Tenant Blacklisting Based on Housing Court Records: A Survey of Approaches*, SHRIVER NAT’L CTR. ON POVERTY L.: CLEARINGHOUSE COMMUNITY (Sept. 2017), <https://perma.cc/PZX2-9HJE>.

400 Jaboia Lake & Leni Tupper, *Eviction Record Expungement Can Remove Barriers to Stable Housing*, CTR. FOR AM. PROGRESS (Sept. 30, 2021), <https://www.americanprogress.org/issues/poverty/reports/2021/09/30/504373/eviction-record-expungement-can-remove-barriers-stable-housing>.

401 See CAL. CIV. PRO. CODE § 1161.2; COLO. REV. STAT. § 13-40-110.5; FLA. STAT. § 83.626; 735 ILL. COMP. STAT. § 5/9-121; MINN. STAT. § 84.014.

402 Lake & Tupper, *supra* note 400.

403 Rickard & Khwaja, *supra* note 324.

404 AM. BAR ASS’N., RESOLUTION 10H: PREVENTING AN EVICTION CRISIS AND FURTHER HOUSING INSECURITY FOLLOWING THE COVID-19 PANDEMIC (2020), <https://www.americanbar.org/>

The federal government is also called to respond to the deleterious effect of eviction records. Members of Congress have introduced multiple bills that included provisions on eviction record sealing or tenant screening practices.⁴⁰⁵ HUD should issue guidance interpreting the Fair Housing Act to require individualized assessments (as opposed to reliance on tenant screening reports) before applicants can be denied housing admission due to a prior eviction. This guidance should make it clear that the automatic denial of applicants with prior eviction filings against them is a violation of the Fair Housing Act due to the disparate impact on Black and Hispanic households, women, and families.⁴⁰⁶ HUD should also require public housing authorities that evict tenants through the formal court process to petition the court to seal any eviction record from public housing.

The Consumer Financial Protection Bureau (“CFPB”) issued an advisory opinion that addresses tenant screening practices, including a directive that background reports should not contain records that have been “expunged, sealed, or otherwise legally restricted from public access.”⁴⁰⁷ The CFPB and Federal Trade Commission can also issue an opinion interpreting the subject matter regulated under section 15 U.S.C. § 1681c(a) of the Fair Credit Reporting Act to afford states greater freedom to restrict the reporting of eviction records that are unfair or that contravene public policy objectives. To demonstrate the need for state and federal action, CFPB could conduct and publish a market report on landlords’ use of tenant screening reports and the effect on renters, like it has with employers’ use of criminal background checks.⁴⁰⁸

3. *Budgets*

Federal, state, and local budgets operate as structural determinants of health inequity. The recommendations enumerated throughout this article cannot be possible, and health equity cannot be achieved, unless substantial investments are directed to eviction prevention, affordable housing, community development, home ownership, and supports that help historically marginalized people and communities recover from over a century of insidious interpersonal, systemic, and structural racism. Robust action by federal and state governments to direct funds toward eliminating historical, structural, and institutional discrimination—

content/dam/aba/administrative/news/2020/08/2020-am-resolutions/10h.pdf.

⁴⁰⁵ Eviction Crisis Act of 2021, S. 2182, 117th Cong. (2021).

⁴⁰⁶ See 24 C.F.R. § 100.500(a).

⁴⁰⁷ ROHIT CHOPRA, CONSUMER FINANCIAL PROT. BUREAU ADVISORY OPINION (2024), https://files.consumerfinance.gov/f/documents/cfpb_fair-credi-reporting-background-screening_2024-01.pdf.

⁴⁰⁸ CONSUMER FINANCIAL PROT. BUREAU, MARKET SNAPSHOT: BACKGROUND SCREENING REPORTS (2019), https://files.consumerfinance.gov/f/documents/201909_cfpb_market-snapshot-background-screening_report.pdf.

following the direction of affected populations—is paramount.

First, policymakers at every level of government must invest in affordable, safe, and decent housing and provide equitable access to thriving communities and areas of opportunity to ensure that a person’s health is no longer determined by zip code. The American Rescue Plan Act (“ARPA”) State and Local Fiscal Recovery program marked the first-time communities across the nation made significant investments in affordable housing, eviction prevention, and homelessness prevention.⁴⁰⁹ The Biden Administration’s 2023 and 2024 Budgets included historic investments in housing, amounting to over \$175 billion in 2023 that included building and preserving affordable housing, providing assistance to first-generation homebuyers who were excluded from generational wealth building, and adopting pandemic-era interventions in eviction prevention, eviction diversion, and rental assistance.⁴¹⁰ The budget proposals recognized the effects of racially discriminatory laws and policies and represents the most comprehensive approach to addressing housing inequity in recent history. Regrettably, it has yet to pass in entirety, and few state and local budgets have even partially matched the ARPA investments.

Market Interventions and Rent Subsidies

Pursuant to health justice principles, the United States must invest in race-class subjugated communities, including historically marginalized communities, through market interventions that include rental subsidies and new construction or rehabilitation that will increase long-term affordable housing.⁴¹¹ Rental subsidies are necessary to address the increasing costs of housing and should be combined with complementary market interventions, such as rent regulation systems, to prevent displacement, especially among low-income renters.⁴¹² At the same time,

409 *Local Government ARPA Investment Tracker*, BROOKINGS, <https://www.brookings.edu/articles/arpa-investment-tracker/> (last updated Mar. 15, 2024); American Rescue Plan Act of 2021, P.L. 117-2 (2021).

410 Press Release, Exec. Off. of the President, FACT SHEET: President Biden’s Budget Lowers Housing Costs and Expands Access to Affordable Rent and Home Ownership (Mar. 9, 2023), <https://www.whitehouse.gov/omb/briefing-room/2023/03/09/fact-sheet-president-bidens-budget-lowers-housing-costs-and-expands-access-to-affordable-rent-and-home-ownership>; *see also* Press Release, Exec. Off. of the President, President Biden Announces New Actions to Ease the Burden of Housing Costs (May 16, 2023), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/05/16/president-biden-announces-new-actions-to-ease-the-burden-of-housing-costs>.

411 THE DOMESTIC POLICY COUNCIL AND NATIONAL ECONOMIC COUNCIL, THE WHITE HOUSE BLUEPRINT FOR A RENTERS BILL OF RIGHTS (2023), <https://www.whitehouse.gov/wp-content/uploads/2023/01/White-House-Blueprint-for-a-Renters-Bill-of-Rights.pdf>.

412 NYU Furman Ctr., Rent Regulation for the 21st Century: Pairing Antigonuing with Targeted Subsidies (Apr. 2021), https://furmancenter.org/files/Rent_Regulation_for_the_21st_Century.pdf.

Government-Sponsored Enterprises (“GSE”) must remedy the current market conditions that can be traced to racially discriminatory lending policies. To accomplish this, GSEs must address disparities in asset accumulation, the racially dual home mortgage lending market (in which Black people receive FHA loans), the persistence of mortgage lending discrimination, and the siting of homes, as detailed herein. (See Section V.B.)

Financial Supports

Unemployment insurance,⁴¹³ the pandemic-era Child Tax Credit,⁴¹⁴ safety net programs (e.g., Temporary Assistance to Needy Families and Supplemental Nutrition Assistance Program), and rental assistance or housing payments all increase the affordability of housing and are demonstrated to prevent eviction. Yet, safety net programs are drastically underfunded and difficult to access, and Congress allowed the Child Tax Credit expansion to lapse despite its record of reducing child poverty by more than 40 percent.⁴¹⁵ Other than the American Recovery and Reinvestment Act of 2009, which distributed \$741 million in rental assistance to about 336,000 households across three years, the United States had no history of a large-scale, nationwide federal program dedicated to short-term emergency rental assistance until the COVID-19 pandemic.⁴¹⁶ Prior to the pandemic, just over forty rental assistance programs existed nationally.⁴¹⁷ Early programs were underfunded, depleted in a few hours,⁴¹⁸ and covered a fraction of

413 Ryan Nunn et al., *Incomes Have Crashed. How Much Has Unemployment Insurance Helped?*, BROOKINGS INST. (May 13, 2020), <https://www.brookings.edu/blog/up-front/2020/05/13/incomes-have-crashed-how-much-has-unemployment-insurance-helped>.

414 *Id.*

415 Chuck Marr, Kris Cox & Sarah Calame, *Any Year-End Tax Legislation Should Expand Child Tax Credit to Cut Child Poverty*, CTR. BUDGET & POL’Y PRIORITIES (Nov. 7, 2023), <https://www.cbpp.org/research/federal-tax/any-year-end-tax-legislation-should-expand-child-tax-credit-to-cut-child>; Zachary Parolin et al., *Monthly Poverty Rates Among Children After the Expansion of the Child Tax Credit*, 5 POVERTY & SOC. POL’Y BRIEF 1 (2021), <https://www.povertycenter.columbia.edu/news-internal/monthly-poverty-july-2021>.

416 THE WHITE HOUSE, *ADVANCING EQUITY THROUGH THE AMERICAN RESCUE PLAN 161* (2022), <https://www.whitehouse.gov/wp-content/uploads/2022/05/Advancing-Equity-Through-The-American-Rescue-Plan.pdf>.

417 Solomon Greene & Samantha Batko, *What Can We Learn from New State and Local Assistance Programs for Renters Affected by COVID-19?*, URB. INST. (May 6, 2020), <https://housingmatters.urban.org/articles/what-can-we-learn-new-state-and-local-assistance-programs-renters-affected-covid-19>. This included some private programs; at the “outset of the pandemic, only a few dozen jurisdictions operated [public] rental assistance programs or eviction diversion programs.” Jacob Leibenluft, *Emergency Rental Assistance: Supporting Renting Families, Driving Lasting Reform*, U.S. DEP’T OF THE TREAS. (Mar. 22, 2023).

418 See, e.g., Michelle Homer & Doug Delony, *All Funds for Houston Rental Assistance Program are Already Gone and Site is Now Closed*, KHOU (May 13, 2020), <https://www.khou.com/article/news/health/coronavirus/rental-assistancefor-houstonians->

the rental debt (limited to one to three months of assistance)⁴¹⁹ or were capped at a few hundred dollars.⁴²⁰ The pandemic-era CARES Act appropriated up to \$4 billion to states and localities that could be used to create or expand rental assistance programs. However, the funding fell far short of the national need and, according to the National Low Income Housing Coalition, the programs were heterogeneous, had limited funding, and often required onerous documentation, including proof of COVID-19 hardship, which led to the denial of high-risk tenants or deterred applications altogether.⁴²¹

Emergency Rental Assistance and Eviction Court Reform

Federal, state, and local governments should permanently establish Emergency Rental Assistance (“ERA”) programs and the eviction court reform that the federal ARPA ERA prompted. The ARPA ERA program established, for the first time, a national framework for preventing tenant interactions with the eviction system. In response to the pandemic eviction crisis, Congress created the ERA program, dedicating a historic \$46.5 billion in rental and utility assistance to state, local and tribal grantees⁴²² to prevent eviction and utility shut-offs due to non-payment.⁴²³ The ERA program, and the Biden Administration’s guidance to support grantees in establishing over 700 programs across the country, is credited with keeping eviction filings well below pre-pandemic historical averages during the height of and throughout the pandemic for the first time since eviction data

deadline/285-55a97aa7-a7ce-46ef-91e0-44574bc1adb9.

419 See, e.g., Gabriella Nuñez, *City of Kissimmee to provide foreclosure, rental assistance for those impacted by COVID-19*, CLICK ORLANDO (Mar. 31, 2020), <https://www.clickorlando.com/news/local/2020/03/31/city-of-kissimmee-to-provide-foreclosure-rental-assistance-for-those-impacted-by-covid-19>.

420 See, e.g., MTN News, *Whitefish Housing Authority Establishes Emergency Rental Assistance Fund*, KPAX (Mar. 27, 2020 5:06 PM), <https://www.kpax.com/news/local-news/flathead-county/whitefish-housing-authority-establishes-emergency-rental-assistance-fund>.

421 Vincent Reina et al., *COVID-19 Emergency Rental Assistance: Analysis of a National Survey of Programs* (Jan. 2021), https://nlihc.org/sites/default/files/HIP_NLIHC_Furman_Brief_FINAL.pdf.

422 *ERA Eligible Units of Local Governments*, U.S. DEPT. OF THE TREAS., <https://home.treasury.gov/system/files/136/ERA-List-of-Eligible-Local-Governments-Final.pdf> (last visited July 29, 2023); *Emergency Rental Assistance Program: Payments to Tribes and Tribally Designated Housing Entities (TDHE)*, U.S. DEPT. OF THE TREAS. (Feb. 26, 2021), <https://home.treasury.gov/system/files/136/Payments-to-Tribes-and-TDHEs.pdf>.

423 In January 2021, the Consolidated Appropriations Act provided \$25 billion for rental and utility assistance, establishing the Emergency Rental Assistance (ERA) program. Consolidated Appropriations Act of 2021, 15 U.S.C. § 9058a; GRANT A. DRIESSEN, MAGGIE MCCARTY & LIBBY PERL, CONG. RSCH. SERV., R46688, PANDEMIC RELIEF: THE EMERGENCY RENTAL ASSISTANCE PROGRAM (2023). A second round of ERA funding—\$21.55 billion—was included in Section 3201 of the American Rescue Plan Act of 2021. See 15 U.S.C. § 9058c.

became available.⁴²⁴ Critically, the U.S. Department of the Treasury's and ARPA Implementation Team's approach to ERA, led by White House ARPA Coordinator and Senior Advisor to the President Gene Sperling, emphasized equitable access and urged on-the-ground outreach and application assistance in the highest risk communities. As a result, and as the data demonstrates, ERA was equitably distributed: over 80 percent of ERA was delivered to very low-income households earning 50 percent of Area Median Income. In addition, people who disproportionately face eviction received the majority of ERA funds: over 40 percent of applicants receiving assistance self-identified as Black; over 20 percent of applicants receiving assistance self-identified as Latino; and female-headed households made up to almost two-thirds of ERA beneficiaries.⁴²⁵ This distribution is in line with the rates at which Black, Latino, and female-headed households had faced eviction filings earlier in the pandemic, according to research by the Eviction Lab.⁴²⁶

These unprecedented results are due to the Biden Administration's adoption of best practices in the administration of ARPA and ERA, including the issuance of guidance⁴²⁷ that:

- strongly encouraged partnership with courts to actively prevent evictions and develop eviction diversion programs, and allowed housing stability funds to be used for both diversion and legal services;
- helped families experiencing homelessness gain access to assistance by creating a commitment letter process for those who lacked a current rental obligation;
- removed cultural and language barriers and encouraged partnership with community-based organizations and trusted community leaders to increase access and awareness;
- allowed (and even encouraged) the use of self-attestation in documenting each aspect of a household's eligibility for ERA (financial hardship, risk of homelessness or housing instability, income) in order to simplify the process and disburse funds quickly;

424 Peter Hepburn et al., *Preliminary Analysis: Eviction Filing Patterns in 2021*, EVICTION LAB (Mar. 8, 2022), <https://evictionlab.org/us-eviction-filing-patterns-2021>; 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>; Peter Hepburn et al., *U.S. Eviction Filing Patterns in 2020*, 7 SOCIUS 23780231211009983 (2021) [hereinafter *Filing Patterns in 2020*].

425 Press Release, U.S. Dep't of the Treas., *New Treasury Data Shows Over 80% of Emergency Rental Assistance Delivered to Lowest-Income Households* (Feb. 24, 2022).

426 *Filing Patterns in 2020*, *supra* note 424; THE WHITE HOUSE, *supra* note 416, at 35; U.S. Dep't of the Treas., *supra* note 425.

427 Emergency Rental Assistance: Frequently Asked Questions, U.S. DEPT. OF THE TREAS. (June 24, 2021).

- allowed grantees to provide an advance on expected assistance to large landlords and utility providers while the application process was being completed;
- allowed grantees to partner with community-trusted nonprofits to deliver advance assistance to households at risk of eviction in the community while applications were processed;
- allowed grantees to make additional payments to incentivize landlords to enter into a lease with “hard-to-house” households that would otherwise not qualify under screening policies;
- allowed grantees to provide ERA to cover past arrears at a prior address, at a tenant’s request, to remove future barriers to housing stability related to outstanding debts; and
- addressed the issue of rent bonds by allowing ERA programs to cover them as an eligible “other expense” to ensure tenants had a right to raise defenses in rent bond jurisdictions, among other model interventions.

The combined result of adopting these evidence-based best practices was the rapid distribution of billions of dollars in ERA to the households that needed it most. By the end of 2021, nearly one in four grantees had spent all of their initial ERA allocation.⁴²⁸ In addition to allowing landlords to recoup lost rental income and protecting tenants from eviction by covering both prospective rent and rental arrears, ERA also led to the piloting of tenant right to counsel programs and the establishment or improvement of court-based or court-adjacent eviction diversion programs. The introduction of ERA even shifted court practices, prompting judges to order the deferral of cases in order to allow parties to apply for ERA and resolve the case equitably. These model pandemic-era programs nearly eliminated eviction during the pandemic. Their permanent adoption could drastically improve health equity and housing stability among race-class subjugated communities and the most vulnerable families.

Low and No Barrier Services

As the flexibilities of ERA demonstrated, it is critical to reduce administrative burdens to ensure tenants can access any supportive services and material supports. Administrative burdens—such as eligibility determinations, documentation requirements, and lengthy application processes—block access to critical public benefits and often deter participation or result in health harms, such as increased

⁴²⁸ U.S. Gov’t Accountability Off., GAO-22-105490, Emergency Rental Assistance: Additional Grantee Monitoring Needed to Manage Known Risks (2022).

stress and anxiety.⁴²⁹ In a study of tenant experiences with state eviction moratoria, a tenant described how past experiences with administrative burdens deterred her from accessing the eviction protections afforded by the moratorium, despite eligibility: “It’s never easy. I feel like sometimes it’s like more trouble than it’s worth, even when you really, really need it. Even having dealt with, you know, like, just getting assistance from the county over the years as far as food stamps or child-care vouchers. So, it’s just always just a headache.”⁴³⁰ As described herein, in the effort to expedite the delivery of ARPA ERA funds, the Biden Administration issued guidance permitting and encouraged state and local grantees to adopt flexibilities in the application process, including allowing self-attestation for all areas of eligibility. Shortly after, the speed of ERA distribution rapidly increased, even in spite of some authorities’ and landlords’ attempts to undermine it.⁴³¹ The types of flexibility adopted during the pandemic should be applied to supportive benefits and legal protections to ensure access.

Federally Assisted Housing

In addition to the safety net of rental assistance, tenant-based and building or unit-based rental assistance programs are among the primary approaches to increasing the long-term affordability of housing and can also increase health equity. Housing Choice Vouchers (“vouchers”) require tenants to pay 30 percent of their adjusted monthly gross income in rent in private market housing.⁴³² HUD has found that vouchers reduce homelessness, increase independent housing, increase the average number of rooms per household member, and increase household expenditures on food.⁴³³ The study conducted by HUD also found vouchers had a significant impact on housing location:⁴³⁴ vouchers were found to decrease the number of moves and result in better residential housing locations than the tenant would otherwise experience without the voucher, among other

429 Pamela Herd & Donald Moynihan, *How Administrative Burdens Can Harm Health*, HEALTH AFFS. (Oct. 2, 2020), <https://www.healthaffairs.org/doi/10.1377/hpb20200904.405159>.

430 Keene et al., *supra* note 9, at 442.

431 See Will Parker, *Why Some Landlords Don’t Want Any of the \$50 Billion in Rent Assistance*, WALL ST. J. (Mar. 19, 2021) <https://www.wsj.com/articles/why-some-landlords-dont-want-any-of-the-50-billion-in-rent-assistance-11616155203> (“In Houston, a nonprofit charged with administering pandemic rental assistance last year said more than 5,600 households who applied for money had a landlord who refused to take it”); Arthur Delaney, *Some Landlords Would Rather Evict Tenants Than Accept Federal Rental Aid*, HUFFPOST (Sep. 17, 2021), https://www.huffpost.com/entry/emergency-rental-assistance-program-landlords_n_61439bdce4b0d808bf26967e.

432 *Housing Choice Vouchers Fact Sheet*, U.S. DEP’T OF HOUS. & URBAN DEV., https://www.hud.gov/program_offices/public_indian_housing/programs/hcv/about/fact_sheet (last visited Jul. 30, 2023).

433 Gregory Mills et al., U.S. Dep’t of Hous. & Urb. Dev., *Effects of Housing Vouchers on Welfare Families* (2006).

434 *Id.*

positive outcomes.⁴³⁵ Despite the advantages of vouchers, studies have identified varied rates of housing search success, due to source of income discrimination and other barriers.⁴³⁶ HUD also reported that local housing authorities often fail to use all of the vouchers designated to them in a given year.⁴³⁷ The study recommends prohibiting source of income discrimination as a method for ensuring that low-income households have the ability to use the vouchers to obtain housing.⁴³⁸ Since the Fair Housing Act (“FHA”) does not include source of income discrimination, a practice in which landlords discriminate against low-income renters who use subsidies like housing vouchers and other forms of public assistance, it is upon states to prohibit source of income discrimination. As of May 2023, twenty-one states have done so.⁴³⁹

Public housing and project-based programs are another important source of affordable housing that provides low-cost housing to tenants in a range of single family homes to high rise apartment buildings managed by local public housing authorities.⁴⁴⁰ However, these units are typically located in highly segregated and resource deprived neighborhoods, are frequently cited for substandard conditions,⁴⁴¹ which housing authorities typically blame on lack of investment in the national Housing Trust Fund, and have a high rate of eviction and serial eviction filings.⁴⁴² These failings must be addressed to protect the 1.2 million

435 *Id.*; see Eva Rosen, *Rigging the Rules of the Game: How Landlords Geographically Sort Low-Income Renters*, 13 CITY & CMTY. 310 (2014).

436 HUD found that at least 20 percent of housing searches using vouchers are unsuccessful. DEP’T OF HOUS. & URBAN DEV., THE IMPACT OF SOURCE OF INCOME ON VOUCHER UTILIZATION AND LOCATIONAL OUTCOMES vii (2011). In another study, the median success rate was 61% after a 180-day search and ranged from less than 25% (very rare) to 100% (slightly less rare, but still uncommon). INGRID GOULD ELLEN, KATHERINE O’REGAN & SARAH STROCHAK, USING HUD ADMINISTRATIVE DATA TO ESTIMATE SUCCESS RATES AND SEARCH DURATIONS FOR NEW VOUCHER RECIPIENTS 7 (2021), https://www.huduser.gov/portal/sites/default/files/pdf/Voucher-Success_Rates.pdf.

437 *Id.*

438 *Id.* at 23.

439 HUSSEIN & GALLAGHER, *supra* note 388.

440 HUD’s *Public Housing Program*, U.S. DEP’T OF HOUS. & URBAN DEV., https://www.hud.gov/topics/rental_assistance/phprog (last visited July 30, 2023); CONG. RSCH.SERV., INTRODUCTION TO PUBLIC HOUSING (last updated Feb. 13, 2014).

441 See, e.g., Press Release, U.S. Atty’s Off/ SDNY, U.S. Attorney Announces Application Process for Second Term Of NYCHA Monitorship (May 24, 2023); CREATING A TRULY INDEPENDENT DC HOUSING AUTHORITY: INCREASING POLITICAL INSULATION TO IMPROVE OUTCOMES AT DCHA, D.C. OFF. OF THE ATT’Y GEN. (2022), <https://oag.dc.gov/sites/default/files/2022-12/DCHA-Report-final-.pdf>.

442 Danya E Keene & Kim M Blankenship, *The Affordable Rental Housing Crisis and Population Health Equity: A Multidimensional and Multilevel Framework*, 100 J. URB. HEALTH 1212 (2023); GROMIS, ET AL., *supra* note 99; Lillian Leung et al., *No Safe Harbor: Eviction Filing in Public Housing*, 97 SOC. SERV. REV. 456 (2023).

households living in public housing, as estimated by HUD.⁴⁴³ At the same time, HUD should increase its housing conditions standards for the HCV program and require that pre-rental lead paint inspections and risk assessments occur before a child is exposed and develops permanent brain damage.⁴⁴⁴ In order for these programs to be effective, they must be examined to identify policies that reinforce structural racism and health inequity, including admission screening practices, eviction policies, and the high risk of exposure to health harms due to insufficient inspection standards and historic siting of complexes in areas of high environmental contamination.⁴⁴⁵

Low-Income Housing Tax Credits & Affordable Housing Development

LIHTC and other federal, state, and local affordable housing development programs provide funding for the development of long-term affordable housing. LIHTC, which provides funding for tax credits for the acquisition, rehabilitation, or new construction of rental housing reserved for lower-income households, has already supported the creation of more than two million housing units, helping to alleviate the housing shortage.⁴⁴⁶ The Internal Revenue Service should use its regulatory authority to require stronger tenant protections and eviction deterrents in LIHTC housing, including “just cause” eviction standards. LIHTC and additional federal programs for the development of affordable housing, including Community Development Block Grants and HOME Investment Partnerships Program,⁴⁴⁷ should be expanded and further funded.⁴⁴⁸ On the state and local level, programs have included housing trust funds, state and local tax credits for affordable housing, and inclusionary zoning.⁴⁴⁹ Affordable housing development,

443 *Public Housing*, U.S. DEP’T OF HOUS. & URB. DEV., https://www.hud.gov/program_offices/public_indian_housing/programs/ph (last visited July 30, 2023).

444 Benfer et al., *supra* note 258.

445 See *supra* Section II.B; see also Ann Cammett, *Confronting Race and Collateral Consequences in Public Housing*, 39 SEATTLE U. L. REV. 1123 (2016); Jeffrey Fagan et al., *Race and Selective Enforcement in Public Housing*, 9 J. EMPIRICAL LEG. STUD. 697 (2012).

446 *Low-Income Housing Tax Credits*, NAT’L HOUS. L. PROJECT, <https://www.nhlp.org/resource-center/low-income-housing-tax-credits> (last visited July 30, 2023).

447 For general information on these programs, see *Community Development Block Grant Program*, U.S. DEP’T OF HOUS. & URB. DEV., https://www.hud.gov/program_offices/comm_planning/cdbg (last updated Jan. 17, 2024); *Home Investment Partnerships Program*, U.S. DEP’T OF HOUS. & URB. DEV., https://www.hud.gov/program_offices/comm_planning/home (last updated Dec. 22, 2022).

448 G. Thomas Kingsley, *Trends in Housing Problems and Federal Housing Assistance*, URBAN INST. (Oct. 2017), <https://www.urban.org/sites/default/files/publication/94146/trends-in-housing-problems-and-federal-housing-assistance.pdf>.

449 Solomon Greene & Aaron Shroyer, *How States Can Support Shared Prosperity in Cities by Promoting Affordable Rental Housing*, URBAN INST. (Mar. 26, 2020), <https://www.urban.org/research/publication/how-states-can-support-shared-prosperity-cities->

land banking, and major reforms to zoning and land use could provide opportunities for development of more affordable housing. Research has shown that there is a strong correlation between zoning strictness and high housing prices.⁴⁵⁰ All of these approaches must be well-funded and reviewed for structural determinants of health inequity in order to be successful.⁴⁵¹

Community Development

Community Development also offers a model for community investment and outreach.⁴⁵² The strategy includes efforts to “improve the physical, economic, and social environment by promoting affordable housing, small-business development, job creation, and social cohesion.”⁴⁵³ Without such assistance, homes deteriorate, causing hazardous conditions that harm residents and the wider community.⁴⁵⁴ Greater investment in low-income communities, and historically marginalized communities, can lead to eviction reduction, increased housing stability, less strain on families, and lower levels of violence—outcomes that increase health equity.⁴⁵⁵ Any community development program must emphasize health justice principles that prioritize community-centered and -led problem solving to address the structural determinants of health inequity.

Human Right to Housing

Ultimately, the United States must redress the structural racism in eviction by creating the right to safe and decent housing and achieve “the goal of a decent

through-affordable-rental-housing.

450 Edward L. Glaeser & Joseph Gyourko, Harvard Inst. of Econ. Rsch., *The Impact of Zoning on Housing Affordability* 20 (2002).

451 For documentation of exclusionary zoning, see Matt Mleczko & Matthew Desmond, *To Reform Exclusionary Zoning, We First Need to Document It. Now We Have a Tool for That*, EVICTION LAB (Mar. 17, 2023), <https://evictionlab.org/zoning-restrictiveness-index>.

452 Amanda Cassidy, *Community Development and Health*, HEALTH AFFS. (Nov. 10, 2011), https://www.healthaffairs.org/doi/10.1377/hpb20111110.912687/full/healthpolicybrief_56.pdf.

453 Id.; see generally Alexander von Hoffman, *The Past, Present, and Future of Community Development in the United States: Investing in What Works for America’s Communities*, HARV. UNIV. JOINT CTR. FOR HOUS. STUDY, Paper No. W12-6 (2012), https://www.jchs.harvard.edu/sites/default/files/w12-6_von_hoffman.pdf.

454 HARV. UNIV. JOINT CTR. FOR HOUS. STUDS., *THE US HOUSING STOCK: READY FOR RENEWAL, IMPROVING AMERICA’S HOUSING 2013* at 7 (2013), https://www.jchs.harvard.edu/sites/default/files/harvard_jchs_remodeling_report_2013_0.pdf.

455 Alistair Woodward & Ichiro Kawachi, *Why Reduce Health Inequalities?*, 54 J. EPIDEMIOLOGY & CMTY. HEALTH 923, 924 (2000); *Health Justice*, *supra* note 21, at 347; Kevin Park, *Good Home Improvers Make Good Neighbors*, HARV. UNIV. JOINT CTR. FOR HOUS. STUDY, Paper No. W08-2 1, 19 (2008), https://www.jchs.harvard.edu/sites/default/files/w08-2_park.pdf.

home and a suitable living environment for every American family.”⁴⁵⁶ Decision makers have advanced a right to housing in both national and international stages. In 1944, Franklin Roosevelt declared that the United States had a second bill of rights, the Economic Bill of Rights, that included the right to housing, stating “We cannot be content, no matter how high that general standard of living may be, if some fraction of our people — whether it be one-third or one-fifth or one-tenth — is ill-fed, ill-clothed, ill-housed, and insecure.”⁴⁵⁷ In 1948, the United States signed the Universal Declaration of Human Rights, which recognizes the right to adequate housing as a human right.⁴⁵⁸ The United States also ratified the International Covenant on Civil and Political Rights (1992)⁴⁵⁹ and the International Convention on the Elimination of All Forms of Racial Discrimination (1994).⁴⁶⁰ These covenants recognize the right to be free from discrimination, including in housing, and stress the need for the adoption of equitable policies that address historical discrimination.⁴⁶¹ As the National Homelessness Law Center has documented, France, Scotland, South Africa, and several other countries have adopted a right to housing in their constitutions or legislation, leading to improved housing access and conditions.⁴⁶² The United States has a duty to address the structural determinants of health inequity by dedicating the resources to ensure permanent housing stability for historically marginalized people and communities who have been denied these rights at great cost, including at the expense of their health and well-being.

4. Enforcement Processes

Finally, to reverse the pattern of structural racism, states and localities must adopt penalties and enforcement mechanisms that deter discrimination and the economic exploitation of communities of color. This requires investing in the

456 U.S. Housing Act of 1949, Pub. L. 81-171 (Sec. 2) (Jul. 15, 1949).

457 Franklin D. Roosevelt, Economic Bill of Rights: The 1944 Annual Message to Congress (Jan. 11, 1944), in *THE PUBLIC PAPERS AND ADDRESSES OF FRANKLIN D. ROOSEVELT*, 40–42 (Samuel Rosenman ed., 1950).

458 The Universal Declaration of Human Rights is nonbinding and was codified in the International Covenant on Economic, Social, Political and Cultural Rights (ICESCR), which the U.S. has signed but not ratified. See ERIC TARS, NAT’L HOMELESSNESS L. CTR., HOUSING AS A HUMAN RIGHT (2020), https://nlihc.org/sites/default/files/AG-2021/01-06_Housing-Human-Right.pdf.

459 G.A. Res. 2200A (XXI) (drafted Dec. 16, 1966) (entry into force Mar. 23, 1976).

460 G.A. Res. 2106 (XX) (Dec. 21, 1965) (entry into force Jan. 4, 1969).

461 ERIC TARS, NAT’L HOMELESSNESS L. CTR., HOUSING AS A HUMAN RIGHT (2020), https://nlihc.org/sites/default/files/AG-2021/01-06_Housing-Human-Right.pdf.

462 *Id.*; Eric Tars, Julia Lum & E. Kieran Paul, *The Champagne of Housing Rights: France’s Enforceable Right to Housing and Lessons for U.S. Advocates*, 4 *NE .L.J.* 429 (2012); SOUTH AFRICAN HUMAN RTS. COMM’N, THE RIGHT TO ADEQUATE HOUSING: FACT SHEET, <https://www.sahrc.org.za/home/21/files/Fact%20Sheet%20on%20the%20right%20to%20adequate%20housing.pdf> (last accessed Jul. 28, 2023).

development of pathways for historically marginalized groups to safely report violations, without fear of retaliation, as well as increased enforcement activities to address persistent discrimination. Common approaches include penalties for unlawful evictions, illegal lease clauses, and frivolous or retaliatory eviction filings, as well as upholding fair housing protections. These interventions can help to build trust and prevent further abuse of tenants' rights.

Statutory Damages and Penalties for Unlawful Evictions

States and localities can impose criminal penalties against landlords who evict tenants through unlawful means. New York allows for criminal prosecution of landlords, who can be charged with a Class A misdemeanor for taking such action.⁴⁶³ New York also allows civil remedies for affected renters. The landlord can face a civil penalty of \$1,000–\$10,000 for each violation and can also be fined each day they refuse to allow the renter re-entry.⁴⁶⁴ Connecticut increased landlord fines to \$2,000 for housing code violations.⁴⁶⁵ The Minnesota Attorney General prosecuted multiple landlords for “self-help” evictions early in the pandemic to send a clear message of compliance expectations,⁴⁶⁶ and the Rhode Island Attorney General issued a statement warning landlords that self-help evictions would be prosecuted.⁴⁶⁷ While not all evictions were prevented, these strong actions on the part of Attorneys General had a chilling effect on extrajudicial attempts to coerce tenants out of their homes.

Prohibition of and Statutory Damages for Leases that Waive Tenant Rights

Each state should adopt a tenant bill of rights that includes statutory causes of action for tenants to file against landlords who use illegal clauses or waive tenant rights (e.g., excessive late fees) in the lease. For example, Colorado prohibits rental agreements from including waivers that limit a renter's legal recourse, as well as fee-shifting clauses that only benefit the landlord.⁴⁶⁸

⁴⁶³ *Illegal Eviction Law*, N.Y. COURTS, <https://www.nycourts.gov/courts/nyc/housing/illegal.shtml> (last updated Mar. 6, 2020).

⁴⁶⁴ *Id.*

⁴⁶⁵ S.B. No. 998, Reg. Sess. (Conn. 2023).

⁴⁶⁶ Press Release, Off. of the Att’y Gen. M.N., Attorney General Ellison’s Office Wins Halt to Illegal Removal of Tenants During Emergency (Apr. 7, 2020), https://www.ag.state.mn.us/Office/Communications/2020/04/07_Mostad.asp.

⁴⁶⁷ *Guidance for Law Enforcement Officials*, OFF. OF THE ATT’Y GEN. OF R.I. (Apr. 6, 2020), <http://www.riag.ri.gov/documents/RIAGGuidanceonSelf-HelpEvictions.pdf>.

⁴⁶⁸ H.R. 23-1120, 74th Gen. Assemb., Reg. Sess. (Colo. 2023).

Fair Housing Protections

State and local governments should enact and consistently enforce state and local fair housing laws that explicitly offer eviction protections for vulnerable populations, including families and Black renters. The FHA provides statutory protections against discrimination in rental housing, sale of housing, and mortgage lending.⁴⁶⁹ In 2017, more than 28,000 housing discrimination complaints were filed.⁴⁷⁰ Since the FHA's passage, HUD has conducted studies about every ten years to monitor trends in racial discrimination in housing.⁴⁷¹ The 2012 study found that, although the most blatant forms of housing discrimination (e.g., refusing to meet with minority home seekers) have declined, other forms (e.g., providing less information about the home offering) have remained.⁴⁷² The persistent discrimination and lack of proactive efforts to address fair housing concerns on the local level demonstrates the need for the recently reinstated Affirmatively Further Fair Housing ("AFFH") Rule. The AFFH Rule was instituted under the Obama Administration,⁴⁷³ terminated in 2020 by the Trump administration for being "complicated, costly, and ineffective,"⁴⁷⁴ and reinstated in 2023 by the Biden Administration with new provisions designed to strengthen community engagement and encourage public participation in the design of Equity Plans.⁴⁷⁵

CONCLUSION

Philosopher Amartya Sen posits that "health is among the most important conditions of human life and a critically significant constituent of human capabilities which we have reason to value . . . Equity in the achievement and distribution of health gets, thus, incorporated and embedded in a larger understanding of justice."⁴⁷⁶ Yet, for millions of Black people and historically marginalized groups, the U.S. eviction system operates as a major driver and structural determinant of health inequity. The system, thereby, undermines justice and thwarts efforts to achieve the housing stability so fundamental to one's capability and thriving at the individual and community level.

469 42 U.S.C. § 3601 (2018).

470 *Fair Housing Act Overview and Challenges*, *supra* note 150.

471 U.S. Dep't Of Hous. & Urban Dev., *Housing Discrimination Against Racial And Ethnic Minorities 2012* (2013).

472 *Id.*

473 24 C.F.R. §§ 5.150–5.167-5.180 (2023).

474 Press Release, U.S. DEP'T OF HOUS. & URBAN DEV., *Secretary Carson Terminates 2015 AFFH Rule* (July 23, 2020).

475 Press Release, U.S. DEP'T OF HOUS. & URBAN DEV., *HUD Announces New Proposed "Affirmatively Furthering Fair Housing" Rule, Taking a Major Step Towards Rooting Out Longstanding Inequities in Housing and Fostering Inclusive Communities* (Jan. 19, 2023).

476 Amartya Sen, *Why Health Equity?*, 11 *HEALTH ECON.* 659, 663 (2002).

With the COVID-19 pandemic as the only exception, the nation has never made a concerted effort to confront the eviction system as a structural determinant of health inequity or to address its disproportionate and harmful impact on historically marginalized people, especially Black families. During the COVID-19 pandemic, when it was widely understood that health is inseparable from housing,⁴⁷⁷ policy makers prioritized health equity and eviction prevention. The result was unprecedented: eviction courts halted proceedings, filing rates dropped to *all time* historical lows, and new financial resources that were equitably distributed increased housing stability among the estimated tens of millions of renters who were at heightened risk of eviction. The United States achieved what was once dismissed as impossible when it appropriately treated the eviction crisis as a public health crisis and prioritized health equity and housing stability.

Today, as the vast majority of pandemic-era interventions have lapsed and eviction increasingly threatens the health and stability of historically marginalized communities, the country is called to act. The pandemic should serve as a catalyst to prioritize health justice in the U.S. eviction system as a major public health commitment. Without swift intervention at the federal, state and local levels, the predictable result will be a bolstered eviction system and return to the pre-pandemic norm where millions of renter households face eviction each year and we wittingly strip young children and infants of their homes at the highest rates. Especially after successfully preventing the COVID-19 eviction crisis, there can be no conscionable justification for allowing the eviction system to operate unchanged. Inaction and complacency as the country returns to the status quo—or worse—guarantees the perpetuation of health inequity among historically marginalized groups, especially Black women, families, and children.

Policymakers and courts can immediately employ the Health Justice Framework to address the structural and intermediary determinants of health inequity inherent in the U.S. eviction system. The Framework demonstrates how to effectively supplant harmful laws, policies, and practices with equitable, protective, and supportive ones. It requires an investigation into the historic and modern day causes of health inequity and their dismantling. It emphasizes that structural change is only possible if people facing obstacles to equity and justice have the power to drive that change. Ultimately, the achievement of health justice and equity demands that every individual in America has uninhibited access to stable, safe, decent, and affordable housing free of the threat of eviction and its devastating consequences. It is this America—a place where housing and health equity are ensured—that we must all demand.

⁴⁷⁷ Benfer et al., *supra* note 258.