Equitable Thriving: A Lifecourse Approach to Maternal and Child Health Justice

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Black women are at least three times more likely to die due to a pregnancy-related cause than White women. Grave racial disparities also abound in severe maternal morbidity, or significant unexpected health consequences of labor and delivery. The Supreme Court's decision in Dobbs v. Jackson Women's Health Organization*, eliminating the constitutional right to abortion, has only further restricted reproductive healthcare options and raised concerns that these disparities will grow even starker. Black, Indigenous, and Latine infants and children also experience unjust—and avoidable—health inequities. As a general matter, people of color are sicker across their lifespans and die younger in the United States.*

A robust body of legal scholarship has surfaced significant problems with healthcare access and delivery, including racism within the healthcare system, that impact pregnancy, labor, and delivery and drive disparities in maternal and infant mortality and morbidity. Research shows that these inequities also have structural causes outside of healthcare and in many facets of life over a person's lifespan. Indeed, myriad social conditions, such as housing insecurity, employment discrimination, and barriers to early childhood education, drive poor health and have an outsized impact on racial health disparities, including maternal and child health inequity. Laws in all these areas drive inequity in these conditions.

The health justice framework and movement aim to eliminate health disparities caused by laws and systems of subordination. This Article argues for urgent attention to maternal and child health injustice and proposes "equitable thriving" as a new approach—a lifecourse approach—to law and policy. Under-explored in legal scholarship,

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Lifecourse Health Development is a body of scientific theory and research that examines mechanisms of maternal and child health to promote human flourishing beyond the doctor's office and the hospital room—and across the lifespan.

Building on ongoing efforts to attack barriers to maternal healthcare and the discrimination and bias within it, equitable thriving widens the analytical lens to examine maternal and child health justice across the broad range of sectors that impact health and across a wider time frame, long before and after pregnancy and across the lifespan and generations. The core thesis of this Article is simple: Legal action, informed by lifecourse science, is needed to preempt and mitigate grave racial disparities in maternal and child health—and to create the conditions necessary for children and parents from racially minoritized communities to not only survive but thrive.

TABLE OF CONTENTS

INTRODUCTION

The United States has a maternal and infant mortality—and inequity—crisis. Racial health disparities affecting Black[1] women and birthing people,[2] infants,

1. This Article capitalizes Black, consistent with many major periodicals and style guides. It also capitalizes White because not doing so, despite capitalizing "Black," risks implying that Whiteness is the standard or norm. *See* Ann Thúy Nguyễn & Maya Pendleton, *Recognizing Race in Language: Why We Capitalize 'Black' and 'White,'* CTR. FOR STUDY SOC. POL'Y (Mar. 23, 2020), https://cssp.org/2020/03/recognizing-race-in-language-why-we-capitalize-black-and-white/ [https://perma.cc/5AGZ-LJNJ]; Matiangai Sirleaf, *Rendering Whiteness Visible*, 117 AM. J. INT'L L. 484, 486 (2023) ("The move to capitalize White challenges global conventions informed by anti-Blackness and White supremacy that seek to race certain groups of people and leave Whiteness untouched."); *see also* Nancy Coleman, *Why We're Capitalizing Black*, N.Y. TIMES (July 5, 2020), https://www.nytimes.com/2020/07/05/insider/capitalized-black.html; *Black and White: A Matter of Capitalization*, CMOS SHOP TALK (June 22, 2020), https://cmosshoptalk.com/2020/06/22/black-and-white-a-matter-of-capitalization.

2. It is important to acknowledge that cisgender women are not the only people who can become pregnant. This Article frequently refers to women and mothers to reflect the terms used in much of the relevant research and that gender-based oppression underlies disparities in reproductive health and freedom, especially when intersecting with race-based oppression. *See, e.g.*, Lisa Rosenthal & Marci Lobel, *Gendered Racism and the Sexual and Reproductive Health of Black and Latina Women*, 25 ETHNICITY & HEALTH 367, 368 (2020). However, because the ideas in this Article aim to be inclusive of all birthing persons, this Article also uses "pregnant people" and "parents" when possible, as "[g]ender-inclusive language may seem to be just words, but research has shown that acceptance can be lifesaving

and children, as well as those from other racially minoritized groups, are immense and grave. Black women are at least *three* times as likely as White women to die from pregnancy-related causes.[3] Women of color have higher rates than White women of preterm births, low-birthweight births, and late or no prenatal care.[4] Racial disparities also exist for multiple forms of severe maternal morbidity, or unexpected serious health conditions from pregnancy, labor and delivery, and postpartum, including admission to intensive care units and substantial blood transfusions.[5]

Moreover, racial disparities abound across measures of infant health. The infant mortality rate for Black babies is more than twice that for White babies and disproportionately higher for Indigenous and Latine[6] babies.[7] Chronic conditions, such as asthma, heart disease, a range of cancers, and diabetes, disproportionately impact Black children and other children of color.[8]

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for transgender and nonbinary people . . . ."). Kristen Rogers, *The Case for Saying 'Pregnant People' and Other Gender-Inclusive Phrases*, CNN HEALTH (May 6, 2024, 12:09 PM), https://www.cnn.com/2024/05/06/health/gender-inclusive-language-wellness/index.html [https://perma.cc/W88H-E69A]; *see also* Khiara M. Bridges, *Racial Disparities in Maternal Mortality*, 95 N.Y.U. L. REV. 1229, 1231 n.1 (2020).

3. Anuli Njoku et al., *Listen to the Whispers Before They Become Screams: Addressing Black Maternal Morbidity and Mortality in the United States*, HEALTHCARE, Jan. 2023, at 1, 1.

4. *Id.* at 4, 8.

5. Eugene Declercq & Laurie C. Zephyrin, *Severe Maternal Morbidity in the United States: A Primer*, COMMONWEALTH FUND (Oct. 28, 2021), https://www.commonwealthfund.org/publications/issue-briefs/2021/oct/severe-maternal-morbidity-united-states-primer [https://perma.cc/D99M-GQDA].

6. Latoya Hill et al., *Key Data on Health and Health Care by Race and Ethnicity*, KAISER FAM. FOUND. (Mar. 15, 2023), https://www.kff.org/racial-equity-and-health-policy/report/key-data-on-health-and-health-care-by-race-and-ethnicity [https://perma.cc/2KX2-7GTF]. For gender inclusivity, this Article uses "Latine" as an alternative to "Latinx," as "Latinx" has been criticized for falling outside of Spanish pronunciation conventions and representing an imperialist Anglicization of the Spanish language. *See* Evan Odegard Pereira, Editorial, *For Most Latinos, Latinx Does Not Mark the Spot*, N.Y. TIMES (June 15, 2021), https://www.nytimes.com/2021/06/15/learning/for-most-latinos-latinx-does-not-mark-the-spot.html (criticizing "Latinx" as "an Anglicization of [Spanish] language"); Ana María del Río-González, *To Latinx or Not to Latinx: A Question of Gender Inclusivity Versus Gender Neutrality*, 111 AM. J. PUB. HEALTH 1018, 1018 (2021) (describing Latinx as "an imperialist imposition of the English language's gender neutrality as the grammatical gold standard").

7. *See* KHIARA M. BRIDGES, CRITICAL RACE THEORY: A PRIMER 320 (2019); DANIELLE M. ELY & ANNE K. DRISCOLL, NAT'L CTR. FOR HEALTH STATS., CTRS. FOR DISEASE CONTROL & PREVENTION, INFANT MORTALITY IN THE UNITED STATES: PROVISIONAL DATA FROM THE 2022 PERIOD LINKED BIRTH/INFANT DEATH FILE 3 (2023), https://www.cdc.gov/nchs/data/vsrr/vsrr033.pdf [https://perma.cc/W2XW-73R4] (finding an infant mortality rate of 10.86 per 1,000 live births for Black infants, 9.06 per 1,000 live births for American Indian and Alaskan Native infants, and 4.52 per 1,000 live births for White infants in 2022).

8. Hill et al., *supra* note 6; Maureen R. Benjamins, *Comparison of All-Cause Mortality Rates and Inequities Between Black and White Populations Across the 30 Most Populous US Cities*, 4 JAMA NETWORK OPEN 1, 1 (2021), https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2775299 (finding a 24% higher all-cause mortality rate among Black populations than among White populations across the United States from 2016 to 2018); James Price et al., *Racial/Ethnic Disparities in Chronic Diseases of Youths and Access to Health Care in the United States*, BIOMED RSCH. INT'L (Aug. 8, 2013), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3794652/pdf/BMRI2013-787616.pdf; Erin L. Marcotte et al., *Racial and Ethnic Disparities in Pediatric Cancer Incidence Among Children and Young Adults in the United States by Single Year of Age*, 127 CANCER 3651, 3653, 3655, 3657 (2021) (finding higher

The health justice framework surfaces mechanisms both within and well outside of healthcare to attack subordination as a root cause of this health inequity.[9] The framework posits that just as law has shaped the structural drivers of health inequity, law can and should be used to actively eradicate disparities.[10] Health justice applies critical theories and perspectives to pressing problems within health law and policy[11] and incorporates frameworks from other justice movements, such as the reproductive justice movement, which works to enshrine and protect the rights to have and not have a child and to parent with dignity.[12]

In applying a health justice lens to maternal and child health, this Article centers and builds on the important body of legal scholarship examining the maternal and infant mortality and morbidity crises.[13] Whereas that scholarship has surfaced important racialized dimensions of healthcare connected to pregnancy, labor, and delivery, this Article adds a set of inquiries and interventions to examinations of maternal and child health justice. It draws on Lifecourse Health Development theory and research to propose a new and additional approach in the fight for maternal and child health justice called "equitable thriving." Equitable thriving widens the analytical lens to examine maternal and child health justice both across the broad range of sectors beyond healthcare that impact health and across a wider timeframe, long before and long after pregnancy and indeed across the lifespan and generations. It calls for equitable and optimal maternal and child flourishing as a core goal of health justice and offers principles and evidence from lifecourse science to guide law reform and implementation approaches to that end.

The following story demonstrates the need for a robust, holistic vision of maternal and child health grounded in health justice.[14] Tina is a Black woman who was discharged from the hospital, exhausted after a difficult delivery of her baby. She was looking forward to bringing her newborn daughter home, but she was also worried. There was mold throughout her apartment that triggered her asthma, and she had experienced numerous severe asthma attacks during her pregnancy. Her landlord advised her to use basic cleaning supplies to clean the

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rates of incidence of cancers including non-Hodgkin lymphoma, nephroblastoma, osteosarcoma, rhabdomyosarcoma, fibrosarcoma, and Kaposi sarcoma in Black children and adolescents).

9. *See* 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, 335–38 (2015).

10. Sheila Foster, Yael Cannon & Gregg Bloche, *Health Justice Is Racial Justice: A Legal Action Agenda for Health Disparities*, HEALTH AFFS. (July 2, 2020), https://www.healthaffairs.org/content/forefront/health-justice-racial-justice-legal-action-agenda-health-disparities [https://perma.cc/4BRF-ZKED].

11. Lindsay F. Wiley et al., *Introduction: What is Health Justice?*, 50 J.L. MED. & ETHICS 636, 638 (2022).

12. *See* Angela P. Harris & Aysha Pamukcu, *The Civil Rights of Health: A New Approach to Challenging Structural Inequality*, 67 UCLA L. REV. 758, 809 (2020); *see also* Dorothy Roberts, *Reproductive Justice, Not Just Rights*, DISSENT (2015), https://www.dissentmagazine.org/article/reproductive-justice-not-just-rights/ [https://perma.cc/G78Y-V833].

13. *See infra* Section II.A.

14. Tina's story is based on a composite of families that the author has learned from and collaborated with at the Georgetown University Health Justice Alliance.

mold, which she tried without success, but he refused to take further steps to remediate the mold. Tina was worried about how the mold would continue to affect her and her baby's breathing, as her doctor advised her the mold could lead to lifelong respiratory problems for her daughter.

Tina was also worried about her job. She took a lot of unpaid time off work during her pregnancy for prenatal doctor's appointments and emergency room visits during her asthma flare-ups. Taking additional unpaid leave to recover from her difficult delivery and to care for her daughter, since she did not have childcare, would be extremely stressful and could cause her to lose her job. She was already behind on rent and making difficult choices each month between paying for rent, utilities, or food, leading her to frequently skip meals. Tina was worried that she and her newborn would be evicted and become homeless. She was also concerned about how she would pay for preschool for her daughter as she got older because there were no affordable programs nearby. She felt alone and isolated, like the system was stacked against her and that she was powerless to change her circumstances.

Tina and her daughter are lacking the conditions they need to achieve health and flourish. Systems grounded in law related to housing, employment, and childcare deprive them of those conditions. For example, the difficult choices Tina is forced to make as a result of her unpaid leave and her challenges paying rent have led to food insecurity that could negatively impact her health, as well as her infant's health. Moreover, because food insecurity during pregnancy and in infancy is particularly harmful, it can have *lifelong* impacts, especially when unmitigated.[15] Consequently, Tina's daughter may grow up to be a less healthy adult. If Tina's daughter eventually becomes a parent, this early childhood food insecurity could have further intergenerational impacts, ultimately affecting the health of Tina's daughter's future children.[16] In other words, if left unaddressed, these circumstances could affect Tina and her daughter not just at that moment, but throughout her daughter's life, including her daughter's possible future maternal health. These circumstances could even affect her daughter's future children, contributing to the entrenchment of health inequity faced by Black families across generations.

What would health justice for Tina, her baby, and subsequent generations look like? How can Tina and her baby experience optimal health and well-being throughout their lives? In addition to access to robust and culturally responsive reproductive, maternal, and infant healthcare that is free from racism and bias, their family needs access to quality childcare, early childhood education,

15. *See A Critical Window: Early Malnutrition Sets Stage for Poor Growth and Death, Researchers Find*, BERKELEY PUB. HEALTH (Sept. 29, 2023), https://publichealth.berkeley.edu/news-media/research-highlights/early-malnutrition-sets-stage-for-poor-growth-and-even-death [https://perma.cc/F6BN-28YC].

16. *See, e.g.*, Neal Halfon & Christopher B. Forrest, *The Emerging Theoretical Framework of Life Course Health Development*, *in* HANDBOOK OF LIFE COURSE HEALTH DEVELOPMENT 19, 35 (Neal Halfon et al. eds., 1st ed. 2017).

consistent income, stable housing, and opportunities to come together with neighbors for support and solidarity in driving systems change and improving community health. With deprivations of all these conditions that are necessary for them to thrive, Tina and her daughter are experiencing barriers to both health and justice created by legal drivers of health inequity.

This Article argues that health justice requires that law be used instead to create the conditions necessary for equitable maternal and child thriving, with approaches grounded in law and lifecourse science.[17] Lifecourse Health Development (LCHD) theory and research—well-developed in public health and medical literature but largely absent in legal scholarship—is a groundbreaking approach to understanding human development.[18] LCHD posits that health can be optimized to allow people to thrive. In particular, through targeted interventions across sectors that support the health of children and parents, health can be optimized across the lifespan and across generations.[19] Lifecourse research emphasizes childhood as a pivotal moment in lifelong health because childhood is when health and development are most alterable.[20]

LCHD also surfaces the intergenerational nature of health, as well as the many systems and sectors that impact health.[21] Like Tina and her baby, the health of parents, children, and future generations is highly influenced by a range of social and structural determinants far outside of healthcare, such as education, employment, and housing.[22] Therefore, interventions through law should aim to eradicate maternal disparities in access to and within healthcare facilities and *also* in the places and spaces in which families of color live, work, eat, learn, play, and grow throughout their lives. Along with the targeted dismantling of subordinating structures in healthcare access and delivery that has been powerfully advocated by a robust body of legal scholarship, this Article argues that health justice should also include a core goal of equitable thriving and apply LCHD strategies to law to advance that goal.

In Part I, I provide an overview of the health justice framework, which requires leveraging the law to eradicate subordination as a root cause of health inequity. This discussion provides the foundation for this Article to bring a health justice lens to maternal and child health disparities.

In Part II, I examine the U.S. maternal and infant mortality and morbidity inequity crises as well as the legal scholarship surfacing and analyzing the racialized dimensions of healthcare access and delivery that have contributed to those

17. *See* Benfer, *supra* note 9, at 338; Elizabeth Tobin Tyler, *Black Mothers Matter: The Social, Political and Legal Determinants of Black Maternal Health Across the Lifespan*, 25 J. HEALTH CARE L. & POL'Y 49, 89 (2022) ("The human rights crisis in Black maternal health is perpetuated by decades of social, political, and legal building blocks that must be knocked down.").

18. *See* Neal Halfon & Miles Hochstein, *Life Course Health Development: An Integrated Framework for Developing Health, Policy, and Research*, 80 MILBANK Q. 433, 433–34 (2002).

19. *See id.*

20. *See id.*

21. *See id.*

22. *See id.* at 435.

crises. I then examine key aspects of Lifecourse Health Development theory and its conceptualization of health as a developmental capacity. LCHD provides insights and evidence for interventions that support lifelong and intergenerational maternal and child health optimization.

To that end, the Article continues in Part II to introduce equitable thriving as a new approach to health justice. Equitable thriving draws on LCHD research to provide evidence-based principles to guide the leveraging of law to equitably promote maternal and child flourishing, with impacts across the lifespan and across generations. It adds to the maternal health scholarship concerned with the impacts of barriers to necessary healthcare and racism and bias within healthcare by drawing on lifecourse science to examine multi-sectoral conditions necessary for lifelong and intergenerational maternal and child flourishing. Part II concludes by addressing potential limitations and critiques of this approach.

In Part III, I articulate four organizing principles to guide legal approaches to equitable maternal and child thriving. If the goal is not just survival and the absence of disease in snippets of time,[23] but health optimization, well-being, and flourishing (or "thriving") across the lifecourse, LCHD research shows that law should embrace approaches to maternal and child health justice that are (1) preventive, (2) intergenerational, (3) multisolving, and (4) community-led. For each of these principles, I provide case studies in areas of law outside of healthcare to exemplify how legal determinants of health can be leveraged to facilitate equitable thriving.

I conclude by arguing that equitable thriving requires that law and legal systems provide people with the conditions needed to thrive, from pregnancy to childhood to parenthood and onward. Legal interventions across a wide range of laws that implicate health must embody whole-person, whole-family, and whole-community approaches to supporting children and families, with the ultimate aim of equitable human flourishing.

I. THE HEALTH JUSTICE FRAMEWORK

Health justice is a legal scholarly framework and movement that strives to eradicate health inequity caused by systems of subordination and to build power within marginalized and minoritized communities.[24] With as much as 80% of health influenced not by genetics or by healthcare but by social and structural

23. *See* WORLD HEALTH ORG. CONSTITUTION OF THE WORLD HEALTH ORGANIZATION 1 (1948) https://apps.who.int/gb/bd/PDF/bd47/EN/constitution-en.pdf?ua=1 [https://perma.cc/84X3-RFJZ] ("Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.").

24. Wiley et al., *supra* note 11, at 636; Harris & Pamukcu, *supra* note 12, at 806; Jasmine E. Harris, *Locating Disability Within a Health Justice Framework*, 50 J.L. MED. & ETHICS 663, 665 (2022); Charlene Galarneau & Patrick T. Smith, *Respect for Communities in Health Justice*, 50 J.L. MED. & ETHICS 650, 650 (2022).

conditions,[25] health justice calls for addressing inequities within healthcare and also far beyond.[26]

The health justice framework therefore centers the wide range of research that reveals that the *social* and *structural* determinants of health are making people of color sick—and literally killing them.[27] The *social* determinants of health are "non-medical factors that affect health outcomes," including the conditions in which people live, work, eat, learn, and age.[28] For example, substandard housing and food insecurity can negatively affect health.[29] These conditions are increasingly referred to as the social "drivers" of health to recognize that these factors are not fixed, but rather can be changed by policymakers, individuals, and communities.[30]

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25. Sanne Magnan, *Social Determinants of Health 101 for Health Care: Five Plus Five*, NAT'L ACAD. MED. PERSP. 1, 1 (Oct. 9, 2017) [https://perma.cc/V8JT-7KFT].

26. Health justice scholarship has examined mechanisms of subordination within healthcare access and delivery. *See, e.g.*, 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, 874 (2016) (identifying the health justice framework as a means of analyzing healthcare quality and access); Medha D. Makhlouf, *Health Justice for Immigrants*, 4 U. PA. J.L. & PUB. AFFS. 235, 282 (2019) (applying the health justice framework to the lack of access to public healthcare for immigrants); Elizabeth Y. McCuskey, *The Body Politic: Federalism as Feminism in Health Reform*, 11 ST. LOUIS U. J. HEALTH L. & POL'Y 303, 312 (2018) (highlighting the focus of the health justice lens on regulation of healthcare access); Valarie K. Blake & Elizabeth Y. McCuskey, *Employer-Sponsored Reproduction*, 124 COLUM. L. REV. 273, 348 (2024) (considering how a single-payer health insurance system can promote health justice goals and reproductive autonomy). Health justice scholarship has also surfaced mechanisms of subordination outside of healthcare that drive health disparities. *See, e.g.*, Benfer, *supra* note 9, at 337–38 (arguing that health justice requires the adoption of laws and policies, as well as broader public health and social supports); Heather Payne & Jennifer D. Oliva, *Warrantying Health Equity*, 70 UCLA L. REV. 1030, 1071 (2023) (explaining that "[t]he expansion of the implied warranty to encompass gas appliances falls squarely within the health justice framework"); Emily A. Benfer & Allyson E. Gold, *There's No Place Like Home: Reshaping Community Interventions and Policies to Eliminate Environmental Hazards and Improve Population Health for Low-Income and Minority Communities*, 11 HARV. L. & POL'Y REV. S1, S43 (2017) (naming the health justice approach as a key strategy for addressing home and environmental health hazards); Matthew B. Lawrence, *Against the "Safety Net,"* 72 FLA. L. REV. 49, 64 (2020) (using the health justice framework to critically examine the metaphor of the "safety net" as obscuring the social and structural determinants of health and health inequality); Yael Cannon, *Unmet Legal Needs as Health Injustice,* 56 U. RICH. L. REV. 801, 807 (2022) (applying the health justice approach to the issue of unmet civil legal needs that influence health); Tomar Pierson-Brown, *It's Not Irony, It's Interest Convergence: A CRT Perspective on Racism as Public Health Crisis Statements*, 50 J.L. MED. & ETHICS 693, 694 (2022) (analyzing governmental declarations of racism as a public health crisis through a health justice lens). *See generally* DAYNA BOWEN MATTHEW, JUST HEALTH: TREATING STRUCTURAL RACISM TO HEAL AMERICA (2022); ELIZABETH TOBIN-TYLER & JOEL B. TEITELBAUM, ESSENTIALS OF HEALTH JUSTICE: A PRIMER (2018).

27. *See* Njoku et al., *supra* note 3, at 12; Wiley et al., *supra* note 11, at 636–37.

28. *See* Njoku et al., *supra* note 3, at 3; Jeremy Ney, *America's Growing Birthweight Crisis*, TIME (Apr. 9, 2024, 12:44 PM), https://time.com/6965173/americas-birthweight-crisis/ [https://perma.cc/49ZY-95YN] (linking food deserts and lack of access to healthy food to higher rates of low birthweight).

29. *See* Njoku et al., *supra* note 3, at 3; Joia Crear-Perry et al., *Social and Structural Determinants of Health Inequities in Maternal Health*, 30 J. WOMEN'S HEALTH 230, 231 (2021).

30. Sarah Halpin et al., *Using Clear Terms to Advance Health Equity – "Social Drivers" vs. "Social Determinants,"* PRAPARE (Aug. 12, 2022), https://prapare.org/using-clear-terms-to-advance-health-equity-social-drivers-vs-social-determinants/ [https://perma.cc/UTY8-ZH6H]. While the term "social determinants of health" has been widely used, there have been recent calls to change the language to

In turn, the *structural* determinants of health reflect the role of laws, policies, institutions, and systems operating upstream to define the distribution and maldistribution of these social drivers.[31] These structural determinants, grounded in forms of oppression like White supremacy, misogyny, and ableism, include laws that authorized redlining and restrictive covenants and current zoning laws and regulations that promote gentrification and result in displacement of people of color.[32] These laws and their implementation have operated to segregate people of color into neighborhoods with substandard housing stock, environmental pollutants, and a lack of green space, fresh foods, and medical care,[33] which deprive people of the social conditions they need to achieve health.[34]

Without effectively addressing these determinants, many childhood-health issues are likely to worsen and to "persist into adulthood."[35] The same can be said of maternal health problems, which then influence child health, further anchoring intergenerational health disparities. Indeed,

> [a]s we think about law's relationship to social determinants, . . . it is crucial to engage . . . "incidental" public health laws—policies that do not primarily focus on health but may nonetheless create health benefits or harms . . . . Health researchers are invited to accept that law influences environments and behaviors in ways that they cannot, from a scientific standpoint, credibly ignore . . . . Legal scholars . . . are encouraged to appreciate that health is actually one of the most important things law can influence . . . .[36]

In other words, the health justice framework argues that it is not only unwise but impossible to limit *health* to *healthcare*.[37] As such, health justice recognizes that law serves as a structural determinant of health that inequitably distributes

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"social drivers of health" to "more accurately describe[] the ability for policy-makers, communities, and individuals to affect change on the factors negatively impacting health and well-being" and avoid the connotation that health is fixed. *Id*.

31. *See* Njoku et al., *supra* note 3, at 3; Crear-Perry et al., *supra* note 29, at 231.

32. *See* Njoku et al., *supra* note 3, at 3; MATTHEW, *supra* note 26, at 135; SHERYLL CASHIN, WHITE SPACE, BLACK HOOD: OPPORTUNITY HOARDING AND SEGREGATION IN THE AGE OF INEQUALITY 4 (2021).

33. Justin Dorazio, *Localized Anti-Displacement Policies*, CTR. FOR AM. PROGRESS (Sept. 26, 2022), https://www.americanprogress.org/article/localized-anti-displacement-policies/ [https://perma.cc/AAU6-3QPJ]; MATTHEW, *supra* note 26, at 135 ("Experts have identified racial residential segregation as the 'structural linchpin' of the entire system of racial inequality and stratification in the United States. . . . Residential segregation is a fundamental cause of health disparities."); CASHIN, *supra* note 32, at 4 ("[G]eography is now central to American caste, a mechanism for overinvesting in affluent white space and disinvesting and plundering elsewhere.").

34. Crear-Perry et al., *supra* note 29, at 231; Njoku et al., *supra* note 3, at 3.

35. *See* Neal Halfon, Shirley A. Russ & Edward L. Schor, *The Emergence of Life Course Intervention Research: Optimizing Health Development and Child Well-Being*, PEDIATRICS, May 2022, at S3.

36. Scott Burris, *From Health Care Law to the Social Determinants of Health: A Public Health Law Research Perspective*, 159 U. PA. L. REV. 1649, 1663, 1666–67 (2011).

37. *See id*. at 1666–67.

the social conditions necessary for good health along the lines of race, class, disability, and other identities.[38]

To deepen this understanding of the role of various forms of subordination and injustice in driving health disparities, health justice is in conversation with and closely connected to other forms of justice that implicate health, such as environmental and reproductive justice.[39] In order to advance the "civil rights of health," health justice draws on ideas from these justice movements and from critical theories.[40] For example, health justice scholars have applied critical race theory to examine the role of K–12 education in health disparities and feminist legal theory to map the ways that healthcare is structured, accessed, and delivered.[41]

Reflecting the importance and breadth of the social and structural drivers of health, maternal and child health justice therefore require an understanding that in addition to problems with healthcare law, laws traditionally understood as outside of the purview of health law also contribute to maternal, infant, and child health disparities. For example, compared to their White counterparts, Black women and birthing people disproportionately experience housing insecurity, housing discrimination and eviction.[42] Both the threat of eviction and actual displacement from eviction are "strongly associated" with negative short- and long-term physical and mental health outcomes, "including high blood pressure, depression, [and] anxiety."[43] These are significant concerns for Tina. Given that housing insecurity and the eviction system are shaped by a jurisdiction's landlord–tenant and other related laws,[44] the resulting poor health outcomes disproportionately experienced by Black women and birthing people provide a strong example of the role of law in driving health disparities.[45]

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38. *See id.*; Crear-Perry et al., *supra* note 29, at 231; Njoku et al., *supra* note 3, at 4–5 (describing how the law functions as a structural determinant of health to contribute to adverse maternal and infant health outcomes).

39. *See* Foster et al., *supra* note 10; Cannon, *supra* note 26, at 809–13 (2022). *See generally* IN OUR OWN VOICE: NAT'L BLACK WOMEN'S REPRODUCTIVE JUSTICE AGENDA, BLACK REPRODUCTIVE JUSTICE POLICY AGENDA (2023), https://blackrj.org/wp-content/uploads/2023/06/RJPolicyAgenda2023.pdf [https://perma.cc/53WE-FGPT] [hereinafter POLICY AGENDA].

40. *See generally* Harris & Pamukcu, *supra* note 12.

41. *See generally* Yael Cannon & Nicole Tuchinda, *Critical Perspectives to Advance Educational Equity and Health Justice*, 50 J.L. MED. & ETHICS 776 (2023); FEMINIST JUDGMENTS: HEALTH LAW REWRITTEN (Seema Mohapatra & Lindsay F. Wiley eds., 2022); McCuskey, *supra* note 26; Blake & McCuskey, *supra* note 26; Seema Mohapatra & Lindsay F. Wiley, *Feminist Perspectives in Health Law*, 47 J.L. MED. & ETHICS 103 (2019); Maya Manian, *The Ripple Effects of* Dobbs *on Health Care Beyond Wanted Abortion*, 76 SMU L. REV. 77 (2023).

42. PRASHASTI BHATNAGAR ET AL., HOUSING JUSTICE IS REPRODUCTIVE JUSTICE: A REVIEW OF HOUSING JUSTICE AS A STRUCTURAL DETERMINANT OF BLACK WOMEN AND BIRTHING PEOPLE'S REPRODUCTIVE HEALTH IN WASHINGTON, DC 7 (2024), https://developingbrainresearchlab.org/wp-content/uploads/2024/04/Mamatoto_Village_Housing_Justice_Report_March_2024.pdf [https://perma.cc/9DNP-AUXA].

43. *See id.* at 13.

44. *See* Nicole Summers, *Eviction Court Displacement Rates*, 117 NW. U. L. REV. 287, 289–90, 297 (2022); Kathryn A. Sabbeth, *Eviction Courts*, 18 U. ST. THOMAS L.J. 359, 371, 376 (2022).

45. *See* Njoku et al., *supra* note 3, at 2; Juanita J. Chinn et al., *Health Equity Among Black Women in the United States*, 30 J. WOMEN'S HEALTH 212, 215 (2021) ("The health of Black women is measured in

With recognition of the powerful role of law in driving health inequity, health justice acknowledges that health disparities are the "result of subordination, not . . . accident [or] individual choice."[46] The framework also requires action in response. Health justice centers the role of law and legal systems not only in forming and perpetuating health inequity but in potentially addressing these inequities.[47] Recognizing the law's enduring role as a social and structural determinant of health inequity, health justice scholars have called for the leveraging of laws and policies to address systemic racial, socioeconomic, and other disparities.[48] Indeed, "[b]ecause law and policy shape political and social determinants, health justice demands that they be leveraged to mitigate, and ultimately eliminate, health disparities."[49] A "Health in All Policies" approach is important because policy across a wide array of areas impacts health, and therefore policymaking must incorporate a health-related lens across sectors.[50]

Action is required on two distinct yet synergistic levels to leverage law to eliminate maternal and child health disparities. As I have argued elsewhere, health justice requires (1) leveraging extant laws and (2) transformative law reform.[51] First, health justice requires more consistent enforcement of extant laws that could promote health so that health-promoting laws-in-action align with laws on the books.[52] Because systemic reform requires significant time and financial investment and can be stymied by legislative inertia,[53] and because law reform is only as good as the implementation that follows, any law reform must be paired

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their disproportionally poor health outcomes, but it is a result of a complex milieu of barriers to quality health care, racism, and stress associated with the distinct social experiences of Black womanhood in U.S. society.").

46. *See* Harris & Pamukcu, *supra* note 12, at 773.

47. Wiley et al., *supra* note 11, at 636; ELIZABETH TOBIN-TYLER & JOEL B. TEITELBAUM, ESSENTIALS OF HEALTH JUSTICE: LAW, POLICY AND STRUCTURAL CHANGE, at xvii (2d ed. 2023); Emily A. Benfer & Lindsay F. Wiley, *Health Justice Strategies to Combat COVID-19: Protecting Vulnerable Communities During a Pandemic*, HEALTH AFFS. (Mar. 19, 2020), https://www.healthaffairs.org/content/forefront/health-justice-strategies-combat-covid-19-protecting-vulnerable-communitie s-during [https://perma.cc/65HQ-SUM5].

48. *See* Benfer, *supra* note 9, at 306–07; Emily A. Benfer et al., *Health Justice Strategies to Combat the Pandemic: Eliminating Discrimination, Poverty, and Health Disparities During and After COVID-19*, 19 YALE J. HEALTH POL'Y L. & ETHICS 122, 130–32 (2020); Yael Cannon, *Closing the Health Justice Gap: Access to Justice in Furtherance of Health Equity*, 53 COLUM. HUM. RTS. L. REV. 517, 549, 554–55 (2021).

49. Cannon, *supra* note 48, at 549; *see also* Benfer & Wiley, *supra* note 47.

50. *See* HEALTH IN ALL POLICIES: PROSPECTS AND POTENTIALS, at xviii (Timo Stahl et al. eds., 2006); *see also* OFF. DISEASE PREVENTION & HEALTH PROMOTION, HEALTHY PEOPLE 2030, QUALITY OF HOUSING, https://health.gov/healthypeople/priority-areas/social-determinants-health/lit erature-summaries/quality-housing [https://perma.cc/2KM3-EZJY] (last visited Oct. 20, 2024); Benfer & Wiley, *supra* note 47; Cannon, *supra* note 48, at 549–50.

51. *See* Cannon, *supra* note 48, at 554–55.

52. *See id.*; *see also* Yael Cannon, *Injustice Is an Underlying Condition*, 6 U. PA. J.L. & PUB. AFFS. 201, 218–19 (2020).

53. *See* Cannon, *supra* note 26, at 856–57; *see also* Wendy E. Parmet, Lauren A. Smith & Meredith A. Benedict, *Social Determinants, Health Disparities and the Role of Law*, *in* POVERTY, HEALTH AND LAW: READINGS AND CASES FOR MEDICAL-LEGAL PARTNERSHIP 3, 29 (Elizabeth Tobin Tyler et al. eds., 2011).

with proper application and enforcement of laws on the books. Otherwise, "the present-day circumstances and immediate needs of individuals would go unmet, and preventable, imminent harm to health and well-being would go unmitigated."[54] The failure to equitably implement and enforce health-promoting existing laws for people of color drives lasting health disparities.[55] In this way, the gap between laws on the books and laws-in-action can drive health inequity. Second, structural law reform is also critical. Transformative legislative and systemic reforms are needed to address social drivers of health and to dismantle systems of inequity that disproportionately harm children and families of color.[56]

Further, the framework emphasizes that the health justice agenda must be designed and led by affected communities.[57] Policymaking and other health justice approaches must center community healing and power.[58] Health justice scholarship continues to deepen its engagement with how community leadership might be operationalized.

Health justice, with all the dimensions described above, will remain elusive without the intentional and targeted leveraging of law to eradicate maternal and child health inequity. This Article therefore argues for a centering of maternal and child health justice. It calls for both elevating and building on the important body of scholarship exploring the gendered and racialized dimensions of healthcare access and delivery that drive maternal and infant mortality and morbidity disparities to argue for an additional set of evidence-based strategies and indeed an additional *goal* of health justice, called equitable thriving. Equitable thriving is a new approach to health justice that brings lifecourse principles to law to ensure that, beyond the hospital and health clinic, parents and children of color have all the conditions they need to flourish long before and long after pregnancy and childbirth and across generations.

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54. Cannon, *supra* note 26, at 857; *see also* Rebecca Sharpless, *More than One Lane Wide: Against Hierarchies of Helping in Progressive Legal Advocacy*, 19 CLINICAL L. REV. 347, 372 (2012).

55. *See* Elizabeth Tobin-Tyler, *When Are Laws Strictly Enforced? Criminal Justice, Housing Quality, And Public Health*, HEALTH AFFS. FOREFRONT (Nov. 5, 2015), https://www.healthaffairs.org/content/forefront/laws-strictly-enforced-criminal-justice-housing-quality-and-public-health; MAYA HAZARIKA WATTS & KATIE HANNON MICHEL, CHANGELAB SOLS., EQUITABLE ENFORCEMENT TO ACHIEVE HEALTH EQUITY: AN INTRODUCTORY GUIDE FOR POLICYMAKERS AND PRACTITIONERS 4, 23 (2020), https://www.changelabsolutions.org/sites/default/files/2020-06/Equitable_Enforcement_to_Achieve_Health_Equity-GUIDE-ACCESSIBLE_FINAL_20200610.pdf.

56. *See* Wiley et al., *supra* note 11, at 638; Foster et al., *supra* note 10; Cannon, *supra* note 52, at 218.

57. *See, e.g.*, Wiley et al., *supra* note 11, at 637–38; Harris & Pamukcu, *supra* note 12, at 813 (citing ELIZABETH TOBIN-TYLER & JOEL B. TEITELBAUM, ESSENTIALS OF HEALTH JUSTICE: A PRIMER 150 (2018)); Emily A. Benfer et al., *Setting the Health Justice Agenda: Addressing Health Inequity & Injustice in the Post-Pandemic Clinic*, 28 CLINICAL L. REV. 45, 56 (2021).

58. Ruqaiijah Yearby, *The Social Determinants of Health, Health Disparities, and Health Justice*, 50 J.L. MED. & ETHICS 641, 646 (2022). Yearby argues that health justice embraces the principle of truth and reconciliation, which "provide[s] an opportunity for individuals from less privileged groups to heal and build trusting and respectful relationships with the government," which she posits is critical for community-led grassroots change. *Id.*

II. EQUITABLE THRIVING TO ADVANCE MATERNAL AND CHILD HEALTH JUSTICE

The U.S. maternal and infant mortality crisis is grave, growing, and maldistributed.[59] The crisis most profoundly impacts Black women. In 2021, the maternal mortality rate for Black women was more than two and a half times the rate for White women.[60] Other studies have shown that Black women remain more likely than White women to die from pregnancy-related causes regardless of education or income and are *five* times more likely than White women to die from postpartum cardiomyopathy, preeclampsia, and eclampsia.[61] Similarly, severe maternal morbidity, defined as significant and unexpected health consequences from labor and delivery, presents in Black mothers more than twice as often as White mothers.[62]

The infant mortality rate also reflects racial disparities. In 2021, the mortality rate for Black infants was more than twice the rate for White infants.[63] Black babies also experience higher rates of low birthweight than White babies, even when comparing the birthweight rates of infants born to college-educated Black mothers and those born to White mothers without high school diplomas.[64] More broadly, the trend of adverse birth outcomes for infants has been worsening. Recent data shows that over 300,000 babies experience low birthweight each year, which reflects the highest rate for low birthweight of the last thirty years.[65]

While discussion surrounding racial disparities in maternal and infant health has become more prominent in recent years, "Black women in the United States

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59. *See* DONNA L. HOYERT, NAT'L CTR. FOR HEALTH STATS., CTRS. FOR DISEASE CONTROL & PREVENTION, MATERNAL MORTALITY RATES IN THE UNITED STATES 1 (2023), https://www.cdc.gov/nchs/data/hestat/maternal-mortality/2021/maternal-mortality-rates-2021.pdf [https://perma.cc/E79J-S5KW] ("The maternal mortality rate for 2021 was 32.9 deaths per 100,000 live births, compared with a rate of 23.8 in 2020 and 20.1 in 2019.") (citations omitted).

60. *See id.*

61. *Maternal Death Among U.S. Black Women*, POPULATION REFERENCE BUREAU (Mar. 9, 2023), https://www.prb.org/resources/maternal-death-among-u-s-black-women/ [https://perma.cc/57HH-CLSM]; *see also* Elizabeth Tobin-Tyler, *A Grim New Reality—Intimate-Partner Violence After* Dobbs *and* Bruen, 387 NEW ENG. J. MED. 1247, 1247 (2022) (noting that "[h]omicide is the leading cause of pregnancy-associated death in the United States" and that Black pregnant women are more than five times more likely to die by homicide during pregnancy and the postpartum period than White women).

62. *See* Declercq & Zephyrin, *supra* note 5.

63. *Infant Mortality*, CTRS. FOR DISEASE CONTROL & PREVENTION (May 15, 2024), https://www.cdc.gov/maternal-infant-health/infant-mortality/ [https://perma.cc/UHT3-TXLC] (noting that in 2021, the infant mortality rate per 1,000 live births was 10.6 for non-Hispanic Black infants but only 4.4 for non-Hispanic White infants and 4.8 for Hispanic infants); *see also* ANNIE MENZEL, FATAL DENIAL 8 (2024) (exploring the "biopolitics of racial innocence," or "the institutionalized mechanisms, habits, and techniques of practiced blamelessness that have at once enabled, obscured, and perpetuated racial capitalism's fatal impacts on Black maternity, gestation, birth, and infancy"). *See generally* MONICA J. CASPER, BABYLOST: RACISM, SURVIVAL, AND THE QUIET POLITICS OF INFANT MORTALITY, FROM A TO Z (2022) (tracking social and cultural dimensions of infant death).

64. *See* Jane Sandall et al., *Gender and Maternal Healthcare*, *in* THE PALGRAVE HANDBOOK OF GENDER AND HEALTHCARE 389, 394–95 (Ellen Kuhlmann & Ellen Annandale eds., 2d ed. 2012); Elizabeth A. Pollock et al., *Trends in Infants Born at Low Birthweight and Disparities by Maternal Race and Education from 2003 to 2018 in the United States*, BMC PUB. HEALTH, June 2021, at 1, 3, 5 ("[E]ducational attainment could not explain away racial disparities.").

65. Ney, *supra* note 28.

have *always* died during pregnancy, childbirth, or shortly thereafter at higher rates than [W]hite women."[66] Unfortunately, racial disparities continue to worsen,[67] with Black women experiencing maternal mortality rates two times greater than those of White women in 1940, three times greater in 1990, and three to four times greater today.[68]

A. MATERNAL AND INFANT HEALTH INEQUITY

A robust body of scholarship has surfaced racialized dimensions of maternal and infant health inequity, including through interrogations of subordinating forces in healthcare that align with reproductive justice priorities. Concerned with the failure to center racial disparities and multiple and intersectional forms of subordination, Black feminists at a 1994 pro-choice conference challenged the White-dominated reproductive rights movement's focus on a legal right to abortion, especially taking issue with the emphasis on "choice,"[69] which "privilege[s] predominantly [W]hite middle-class women who have the ability to choose from reproductive options that are unavailable to poor and low-income women, especially women of color."[70] They stressed the political context of "intersecting race, gender, and class oppressions" and introduced the term reproductive justice.[71] Reproductive justice embodies three rights: the rights to have and not have a child and to raise children with dignity in safe, healthy, and supportive environments.[72]

Different forms of racialized and gendered injustice have been examined in discussions of maternal health inequity. For example, reproductive justice and health justice legal scholarship are increasingly in conversation around these issues, and health justice scholars are mapping perspectives from feminist legal theory onto the field of health law and to the examination of different aspects of the healthcare system.[73] Indeed, "justice movements," like reproductive justice and health justice, share a commitment to surfacing patterns of historically overlooked subordination.[74] For example, in emphasizing subordination in the realms of both health justice and reproductive justice, Angela Harris and Aysha Pamukcu posit that the reproductive *rights* movement in the U.S. "failed to challenge racially and financially differentiated access to reproductive health."[75] In

66. Bridges, *supra* note 2, at 1231 (emphasis in original).

67. *Id.* at 1248.

68. *Id.*; ERIC BAUDRY ET AL., YALE GLOB. HEALTH JUST. P'SHIP, WHEN THE STATE FAILS: MATERNAL MORTALITY & RACIAL DISPARITY IN GEORGIA 16 (2018), https://law.yale.edu/sites/default/files/area/center/ghjp/documents/ghjp_2018_when_the_state_fails-_maternal_mortality_racial_disparity_in_georgiarev.pdf [https://perma.cc/WJ3P-BBKZ].

69. *See* Marian Jones, *Dorothy Roberts on Reproductive Justice: 'Abortion Isn't the Only Focus,'* GUARDIAN, https://www.theguardian.com/us-news/2022/aug/28/reproductive-freedom-abortion-rights-dorothy-roberts-interview.

70. Roberts, *supra* note 12.

71. *Id.*

72. *See id.*

73. *See, e.g.*, Rachel Rebouché, *The Public Health Turn in Reproductive Rights*, 78 WASH. & LEE L. REV. 1355, 1431 (2021). *See generally* FEMINIST JUDGMENTS: HEALTH LAW REWRITTEN, *supra* note 41; McCuskey, *supra* note 26; Mohapatra & Wiley, *supra* note 41.

74. Harris & Pamukcu, *supra* note 12, at 808.

75. *Id.* at 809.

response, reproductive *justice* activists worked to "identify the institutional and structural forms of discrimination that prevent all women from equally enjoying the right to bear and raise healthy children, in addition to the right to choose not to have a child."[76] Both health and reproductive justice aim to identify and also dismantle these structures of subordination.

In light of the maternal and infant mortality and morbidity crises in the Black community and other communities of color, legal scholarship has looked at the drivers of disparities,[77] calling attention to barriers to healthcare access for pregnant and parenting people of color[78] and racism and bias within healthcare.[79]

The lack of healthcare access is an expansive problem that includes disparities in insurance coverage[80] and the inaccessibility of maternal healthcare for people of color.[81] Moreover, communities of color are often served by too few obstetricians, midwives, and healthcare facilities providing prenatal and labor and delivery services,[82] leading patients to miss out on early prenatal care and the opportunity to build trusting relationships with their providers.[83] However, "[i]t is

76. *Id.*

77. Tobin Tyler, *supra* note 17, at 86 ("[T]he public health and legal communities are joining forces in a budding health justice movement that is . . . fundamentally centered on reducing health disparities by addressing structural inequality, perpetuated by law and policy.").

78. *See id.* at 58–64; Bridges, *supra* note 2, at 1259; Elizabeth Kukura, *Rethinking the Infrastructure of Childbirth*, 91 UMKC L. REV. 497, 513 (2021).

79. *See, e.g.*, Brietta R. Clark, *Centering Black Pregnancy: A Response to Medical Paternalism, Stillbirth, & Blindsided Mothers*, 106 IOWA L. REV. ONLINE 85, 109 (2021); Bridges, *supra* note 2, at 1268–69; Tobin Tyler, *supra* note 17, at 64; *see also* Jennifer Jones, Bakke *at 40: Remedying Black Health Disparities Through Affirmative Action in Medical School Admissions*, 66 UCLA L. REV. 522, 522 (2019) ("[A]rgu[ing] that the persistence of racial health disparities today is not only a relic of a long history of anti-Black racism in healthcare, but a consequence of the Court's colorblind approach to affirmative action jurisprudence since *Bakke*."); Michele Goodwin, *Fetal Protection Laws: Moral Panic and the New Constitutional Battlefront*, 102 CALIF. L. REV. 781, 827 (2014) (arguing that the discretionary power of medical staff to enforce fetal protection laws can perpetuate racial bias and prejudice).

80. Tobin Tyler, *supra* note 17, at 60–64.

81. Bridges, *supra* note 2, at 1258–59. The issue of insurance coverage disproportionately affects people of color due to disparity in poverty and unemployment rates. *Id.*; Elizabeth Tobin-Tyler, *Abortion Rights and the Child Welfare System: How* Dobbs *Exacerbates Existing Racial Inequities and Further Traumatizes Black Families*, 51 J.L. MED. & ETHICS 575, 576 (2023). Women's health and reproductive justice scholar Jamila K. Taylor has emphasized the need for health insurance coverage, pointing out that in states that have not expanded Medicaid eligibility under the Affordable Care Act, low-income families of color disproportionately struggle to access insurance coverage. These states experience higher uninsured rates and worse maternal and infant health outcomes. Taylor has argued that because most Medicaid beneficiaries are women of color, they are disproportionately harmed by these programmatic inadequacies. Meanwhile, in states with expanded Medicaid, pregnant people and new parents are better able to access preventative care and a continuum of care throughout pregnancy and the postpartum period, improving health outcomes. Jamila K. Taylor, *Structural Racism and Maternal Health Among Black Women*, 48 J.L. MED. & ETHICS 506, 513–15 (2020).

82. *See* Njoku et al., *supra* note 3, at 9; Crear-Perry et al., *supra* note 29, at 231–32.

83. Crear-Perry et al., *supra* note 29, at 232; Tobin Tyler, *supra* note 17, at 62. Maternal healthcare is becoming even scarcer in underserved communities. *See, e.g.*, Colby Itkowitz, *Closure of Two D.C. Maternity Wards Hurts Low-Income Women Most*, WASH. POST (Oct. 28, 2017, 5:15 PM), https://www.washingtonpost.com/local/closure-of-two-dc-maternity-wards-hurts-low-income-women-most/2017/10/28/753e4dee-ad06-11e7-9e58-e6288544af98_story.html; Peter Jamison, *Nursery and Delivery*

not merely lack of access to hospital obstetric units or a sufficient number of trained providers that drives poor outcomes, but also a lack of access to appropriate forms of care relevant to a patient's specific needs," including doulas and midwives,[84] who could provide significant health benefits—particularly to Black patients[85]—and much-needed postpartum care and support.[86]

Similarly, a rich body of legal scholarship explores the racialized dimensions of restricted access to abortion care, especially in light of the Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization*, which eliminated the constitutional right to an abortion.[87] The decision has led to restrictions on abortion in many states that only compound the Black maternal and infant mortality crises.[88] Black women and parenting people more often experience constraints that make it difficult to maintain full control of their reproductive lives, such as "poverty, sexual violence, inaccessibility of reliable contraception, [and] lack of sex education in public schools."[89] As a result, they more frequently face unintended and unwanted pregnancies.[90] Legal restrictions on abortion force women

Rooms at D.C.'s Public Hospital Will Not Reopen, WASH. POST (Dec. 13, 2017, 5:51 PM), https://www.washingtonpost.com/local/dc-politics/nursery-and-delivery-rooms-at-dcs-public-hospital-will-not-reopen/2017/12/13/cec40a42-e038-11e7-8679-a9728984779c_story.html; *see also* Bridges, *supra* note 2, at 1285 (connecting the closure of obstetrics units in public hospitals to the Black maternal mortality crisis).

84. Kukura, *supra* note 78, at 513; *see also* Elizabeth Kukura, *Seeking Safety While Giving Birth During the Pandemic*, 14 ST. LOUIS U. J. HEALTH L. & POL'Y 279, 318–19 (2021) (discussing how "the [COVID-19] pandemic highlighted the serious gaps in access to midwifery care across the U.S., even in non-pandemic times").

85. *See* Kukura, *supra* note 78, at 529. *See generally* DÁNA-AIN DAVIS, REPRODUCTIVE INJUSTICE: RACISM, PREGNANCY, AND PREMATURE BIRTH (2019).

86. *See* Elizabeth Kukura, *Birthing Alone*, 79 WASH. & LEE L. REV. 1463, 1483 (2022) ("Researchers estimate that roughly 60 percent of those [maternal] deaths are preventable and that many of them occur when postpartum complications are left unaddressed. The risk is not borne equally across the population.").

87. *See* Dobbs v. Jackson Women's Health Org., 597 U.S. 215, 302 (2022).

88. *See* POLICY AGENDA, *supra* note 39, at 16; Manian, *supra* note 41, at 95–96; *see e.g.*, ARIZ. REV. STAT. § 13-3603 (criminalizing abortion "unless it is necessary to save [a woman's] life"); IDAHO CODE § 18-622 (criminalizing abortion unless it is necessary to save a woman's life or if a woman is a victim of rape or incest reported to law enforcement agency).

89. Khiara M. Bridges, *The Dysgenic State: Environmental Injustice and Disability-Selective Abortion Bans*, 110 CALIF. L. REV. 297, 333 (2022). Increased restrictions on abortion access also disproportionately impact people with intersectional identities because there is an "inextricable relationship between ableism, racism, and reproductive oppression." Robyn M. Powell, *Disability Reproductive Justice During COVID-19 and Beyond*, 72 AM. U. L. REV. 1821, 1855–56 (2023); *see also* Leslie Francis, *The Reproductive Injustices of Abortion Bans for Disability*, 51 J.L. MED. & ETHICS 490, 490 (2023).

90. Bridges, *supra* note 89, at 333–34; *see also* Khiara M. Bridges, *Deploying Death*, 68 UCLA L. REV. 1510, 1529–31 (2022) (discussing several poverty-driven factors contributing to Black women and parenting people's higher reliance on abortion care, including higher rates of Black women who have experienced sexual violence and increased likelihood that Black children will attend public schools lacking sexual and reproductive health education). Michele Goodwin and Erwin Chemerinsky argue that Supreme Court decisions such as *Maher v. Roe*, *Beal v. Doe*, and *Harris v. McRae* demonstrate the "courts' inattention to the lived experiences of poor women" and the connections between poverty, reproductive rights, and health outcomes. Michele Goodwin & Erwin Chemerinsky, *Pregnancy, Poverty, and the State*, 127 YALE L.J. 1270, 1314 (2018).

to give birth or obtain abortions in unsafe conditions, and Black women and other women of color are most vulnerable to higher mortality and morbidity rates from forced childbirth.[91]

Along with these barriers to healthcare access, women of color and especially Black women experience obstetric racism,[92] including differences in clinical practices and decisions,[93] that causes intergenerational harms for both mother and child.[94] The "pervasive, longstanding racial bias in health care—including the dismissal of legitimate concerns and symptoms . . . can help explain poor birth outcomes," even for Black women who have greater financial resources and

91. Manian, *supra* note 41, at 95; MICHELE GOODWIN, POLICING THE WOMB 57–58 (2020); *see also* POLICY AGENDA, *supra* note 39, at 16. Forced childbirth is also likely to result in higher rates of maternal mortality and morbidity for all women, but especially among marginalized populations, including women with low income and women of color who face "higher rates of miscarriage and stillbirth." Manian, *supra* note 41, at 95–96; *see* Lisa H. Harris, *Navigating Loss of Abortion Services – A Large Academic Medical Center Prepares for the Overturn of* Roe v. Wade, 386 NEW ENG. J. MED. 2061, 2063 (2022). In a similar vein, David Cohen, Greer Donley, and Rachel Rebouché highlight the disproportionate effect that "abortion deserts," and their increase post-*Dobbs* will have on Black women and women of color. *See* David S. Cohen, Greer Donley & Rachel Rebouché, *The New Abortion Battleground*, 123 COLUM. L. REV. 1, 11–12 (2023).

92. Kukura, *supra* note 78, at 508; *see also* Elizabeth Kukura, *Obstetric Violence*, 106 GEO. L.J. 721, 739 (2018) (asserting that women of color are disproportionately exposed to obstetric violence, "abuse, coercion, and disrespect," or "conduct that women's health advocates and individual patients find objectionable, traumatic, or harmful"); Njoku et al., *supra* note 3, at 8.

93. *See* Caleb J. Jang & Henry C. Lee, *A Review of Racial Disparities in Infant Mortality in the US*, CHILDREN, 2022, at 1, 7.

94. *Id.* at 7 ("Maternal morbidity can also induce adverse infant health outcomes. One study found that severe maternal morbidity was associated with a greater risk of delivering very preterm live births and that Black mothers were at the greatest risk to severe maternal morbidity complications."); Kukura, *supra* note 78, at 509 (citing Dána-Ain Davis, *Obstetric Racism: The Racial Politics of Pregnancy, Labor, and Birthing*, 38 MED. ANTRHOPOLOGY 560, 560–61 (2019)); *see, e.g.*, Thu T. Nguyen et al., *Racism During Pregnancy and Birthing: Experiences from Asian and Pacific Islander, Black, Latina, and Middle Eastern Women*, 10 J. RACIAL & ETHNIC HEALTH DISPARITIES 3007, 3008 (2023) (describing literature which found that women of color were twice as likely to report delayed treatment and that women of color experienced more strictly enforced visitation policies); Theresa Morris & Mia Schulman, *Race Inequality in Epidural Use and Regional Anesthesia Failure in Labor and Birth: An Examination of Women's Experience*, 5 SEXUAL & REPROD. HEALTHCARE 188, 188 (2014) (finding that healthcare providers were more likely to pressure women of color into receiving an epidural during labor). Studies show that almost half of OB/GYN providers admit to having some sort of bias against patients and that racism and other forms of bias frequently shape encounters in perinatal care. Kukura, *supra* note 78, at 509; *see* MEDSCAPE, LIFESTYLE REPORT 2016: BIAS AND BURNOUT 6 (2016), https://www.medscape.com/slideshow/lifestyle-2016-overview-6007335?0 (discussing a survey of more than 15,000 doctors which found that 47% of OB/GYNs reported having some bias related to factors such as perceived weight, intelligence, emotional problems, and insurance coverage). Indeed, there is a dearth of Black OB/GYNs. Research indicates that patients have better health outcomes when treated by a doctor from the same cultural background. *See* Taylor, *supra* note 81, at 514–15; *see also* Kukura, *supra* note 78, at 513 (emphasizing the need for providers to be culturally competent and racially concordant); Paula Braveman et al., *The Social Determinants of Health: Coming of Age*, 32 ANN. REV. PUB. HEALTH 381, 387–88 (2011).

access to high quality healthcare.[95] Accountability mechanisms do not adequately address harms like obstetric abuse, coercion, or disrespect,[96] or the pervasive structural racism that impacts the healthcare experiences of Black pregnant people.[97]

In addition to the rights to safely have and not have a child implicated in these issues of healthcare, reproductive justice also calls for the right to raise children with dignity in safe, healthy, and supportive environments.[98] To that end, health justice for mothers, other caregivers, and their children necessitates a broader vision of health and safety for parents and their children beyond healthcare access and eradicating racism and bias in healthcare. This Article examines what other conditions are necessary for maternal and child health justice. For example, pregnant people and parents also require adequate wages, food security, safe and stable housing, and other conditions needed to have safe and healthy pregnancies, to nurture their children, and to have thriving families—conditions shaped by a panoply of laws and legal systems.[99]

As such, maternal and child health justice necessitates justice in other areas of law that also implicate health.[100] Maternal and child health justice both require an examination of health and well-being outside of the doctor's office or hospital and long before and after the moments of pregnancy, labor, delivery, and newborn infancy. Both demand an understanding of the interconnections between maternal and child health. These forms of justice call for approaches in law—driven by community members—that reduce mortality and morbidity and also those that aim for thriving throughout the lifecourse and across generations. Both require an examination of how law can be leveraged to eradicate subordination—in healthcare and among many other health-implicating systems—as a root cause of health inequity.[101]

In sum, a deep and growing field of legal scholarship is concerned with the role of healthcare access and delivery in addressing the urgent crises of maternal and infant mortality and morbidity among Black families and other families of color. This Article adds to that important work by considering how maternal and child

95. Linda Villarosa, *Why America's Black Mothers and Babies Are in a Life-or-Death Crisis*, N.Y. TIMES (Apr. 11, 2018), https://www.nytimes.com/2018/04/11/magazine/black-mothers-babies-death-maternal-mortality.html.

96. *See* Kukura, *supra* note 78, at 507; Kukura, *supra* note 92, at 724–25, 778. Additionally, a woman's race may impact the coercion she experiences—for example, a provider may decide "to pursue a court-ordered cesarean . . . based on subjective judgments about a patient's . . . race, . . . rather than medical necessity." Kukura, *supra* note 92, at 739. Bridges discusses maternal mortality review committees, or groups of interdisciplinary experts who evaluate all maternal deaths in a specific jurisdiction to uncover why each death occurred and identify next steps to prevent similar deaths from occurring. Bridges, *supra* note 2, at 1234, 1307; *see also* Preventing Maternal Deaths Act of 2018, Pub. L. No. 115-344, 132 Stat. 5047 (2018).

97. Clark, *supra* note 79, at 109–10.

98. Roberts, *supra* note 12.

99. *About Us*, SISTER SONG WOMEN OF COLOR REPROD. JUST. COLLECTIVE, https://www.sistersong.net/about-x2 (last visited Oct. 20, 2024); POLICY AGENDA, *supra* note 39, at 42, 52.

100. *See* POLICY AGENDA, *supra* note 39, at 42.

101. Wiley et al., *supra* note 11, at 636.

health justice can also be pursued and protected outside of the health clinic and hospital and in the other places and during the other times throughout the lifecourse where justice influences health. This Article seeks to broaden and deepen the exploration of maternal and child health justice outside of healthcare and outside of the moments of pregnancy, labor, delivery, and infancy by engaging with lifecourse health research to investigate how law can support lifelong and intergenerational equitable thriving for families of color.

B. LIFECOURSE HEALTH DEVELOPMENT THEORY

Equitable thriving raises, and begins to answer, important questions about the power of law to advance maternal and child health justice: How can law play a role in facilitating a broad vision of equitable well-being and flourishing for parents and their children across their lifespans and across generations? What does maternal and child health justice require of law outside of pregnancy, labor, and delivery? As we work to reduce maternal and child health disparities, how can we also maximize health and thriving for parents and children of color across a much longer timeframe? Fortunately, there is a body of scientific theory and research that can help articulate a pathway to this broader vision of maternal and child health justice. This Section examines lifecourse research[102] to begin to chart a course towards maternal and child health justice across the lifespan and across generations.

In the 1980s, a seminal study showed that experiences during fetal development could influence adult health.[103] In a culmination of lifecourse epidemiology, developmental, and population health research, Neal Halfon and Miles Hochstein first proposed the LCHD framework in the early 2000s.[104] They offered the framework as a mechanism for understanding health as an evolving and *developmental* capacity, around which healthcare and health-influencing systems should be organized, financed, and delivered.[105] The framework builds on the work of prominent scholars of the capabilities approach.[106] These scholars maintain that societies should promote a set of opportunities that support the universal attainment of basic human capabilities, such as health and life satisfaction.[107]

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102. The terms "lifecourse" and "life course" have both been commonly used in literature. For consistency, the author uses the spelling "lifecourse." *See* Shirley A. Russ et al., *A Lifecourse Approach to Health Development: Implications for the Maternal and Child Health Research Agenda*, 18 MATERNAL & CHILD HEALTH J. 497, 497, 505 (2014) (using both terms interchangeably).

103. *See* Halfon & Forrest, *supra* note 16, at 21–22.

104. *See* Halfon & Hochstein, *supra* note 18, at 457, 459–68.

105. *See* Halfon & Forrest, *supra* note 16, at 19–20; Russ et al., *supra* note 102, at 498; Halfon & Hochstein, *supra* note 18, at 457, 459–68.

106. *See* Halfon & Forrest, *supra* note 16, at 36; Paula Braveman, *What Is Health Equity: And How Does a Life-Course Approach Take Us Further Toward It?*, 18 MATERNAL & CHILD HEALTH J. 366, 367 (2014).

107. *See* Braveman, *supra* note 106, at 367; Halfon & Forrest, *supra* note 16, at 36; *see also* MARTHA C. NUSSBAUM, CREATING CAPABILITIES: THE HUMAN DEVELOPMENT APPROACH 18–19 (2011); AMARTYA SEN, THE IDEA OF JUSTICE 253 (2009) ("Since the idea of capability is linked with substantive freedom, it gives a central role to a person's *actual* ability to do the different things she values doing.").

Accordingly, LCHD emphasizes the importance of access to social resources such as education, employment, and healthy housing that make it possible to attain health and happiness and to thrive.[108]

Health cannot be fully understood using the traditional biomedical model,[109] which involves immediate treatment of acute illness and injury over days or weeks,[110] or the biopsychosocial model, which emphasizes management of chronic illness, with a medium-term timeframe of months and years.[111] LCHD has added to these models an important paradigm: a health-development model that, beyond the goal of minimizing disease, injury, and premature death, adds a focus on health *optimization* for all people.[112] This goal envisions people thriving across a much longer timeframe: across the lifespan and across multiple generations.[113]

According to LCHD, health development is dynamic, complex, non-linear, and emergent, beginning before conception and developing continuously throughout the lifespan, with influences on future generations.[114] Parental and child health are interconnected with each other and with other members of the family and community. In fact, a person's health development is influenced by multiple factors well beyond their internal genetic, biological, physiological, and behavioral systems; health is impacted by external familial, community, social, and physical environments and circumstances (which function as social determinants of health) and by the structural determinants, such as policy levers, that shape them.[115]

Negative factors like poverty and lack of access to healthcare can shift a person's health trajectory downwards, leading to increased exposure to other risk factors, like reduced school and workplace readiness, that accumulate and can contribute to illness and chronic health conditions.[116] Conversely, positive influences, such as exposure to reading as a child, can promote an individual's health, protecting against disease and improving well-being.[117]

LCHD posits that childhood is a pivotal moment in lifelong health. Social and environmental factors during critical and sensitive periods of development, such as during infancy, early childhood, and adolescence, significantly affect health

108. *See* Braveman, *supra* note 106, at 367; Halfon & Forrest, *supra* note 16, at 36.

109. Neal Halfon et al., *Lifecourse Health Development: Past, Present and Future*, 18 MATERNAL & CHILD HEALTH J. 344, 352 (2014).

110. *See id*. at 355.

111. *Id*. at 347–48.

112. *See id*. at 344 ("[M]odels of lifecourse health development (LCHD) have . . . paved the way for the creation of novel strategies aimed at optimization of individual and population health trajectories.").

113. *See id*. at 355.

114. *See id*. at 344, 355.

115. *See id*. at 351, 355, 359.

116. *See id*. at 352–54 (noting that negative factors can "continue to multiply over the lifespan, with predictable further declines in health trajectories"); Halfon & Hochstein, *supra* note 18, at 441.

117. *See* Halfon et al., *supra* note 109, at 351–52; Halfon & Forrest, *supra* note 16, at 21 (noting that "[h]ealth development is sensitive to the timing and social structuring of environmental exposures and experiences").

outcomes not only in the short-term, but over the course of a person's lifespan and those of subsequent generations.[118] Because the body and brain are particularly malleable throughout childhood, social and structural conditions affect health not just at that moment, but rather can embed in a child's biology to impact health throughout their lives.[119] For example, childhood poverty has been linked to dysregulated stress responses, which are mechanisms for morbidity later in life.[120] Because of childhood's importance to lifelong and intergenerational health, interventions to promote healthy conditions in childhood can have maximal impacts over the long term.[121]

The highly impactful nature of childhood health harms means that child health inequity ages into parental health inequity, which can turn into child health inequity in the next generation. For example, when a parent has been exposed to at least four traumatic experiences during their childhood (known as adverse childhood experiences, or ACEs), their child is three times more likely to develop mental health conditions including depression and anxiety.[122] This effect perpetuates itself, with research showing that prenatal stress and mental health issues in parents may negatively affect their infants' mental health.[123] ACEs and their rippling impacts are disproportionately experienced by Black and Latine children.[124]

In this way, LCHD illuminates the problems with attempting to improve health simply within the healthcare system and at the snippets of time when disease and illness occur, while ignoring lifelong and intergenerational influences from across sectors that could be leveraged to prevent ill health and create the conditions needed for people to thrive.[125] Despite their outsized influence on health, social and structural issues are frequently viewed as outside of healthcare providers' professional experience and sphere of influence.[126] "[T]his approach is not working"; health professionals have seen that their inability to address non-medical

118. Halfon et al., *supra* note 109, at 345, 349.

119. Halfon & Hochstein, *supra* note 18, at 442.

120. *See* Gary W. Evans & Pilyoung Kim, *Childhood Poverty and Health: Cumulative Risk Exposure and Stress Dysregulation*, 18 PSYCH. SCI. 953, 953, 955–56 (2007).

121. Halfon & Hochstein, *supra* note 18, at 448–50.

122. Eboni Haynes et al., *Exploring the Association Between a Parent's Exposure to Adverse Childhood Experiences (ACEs) and Outcomes of Depression and Anxiety Among Their Children*, CHILD. & YOUTH SERVS., Apr. 2020, at 1, 5.

123. Evin Aktar et al., *Fetal and Infant Outcomes in the Offspring of Parents with Perinatal Mental Disorders: Earliest Influences*, FRONTIERS PSYCHIATRY, July 2019, at 1, 9.

124. Vanessa Sacks & David Murphey, *The Prevalence of Adverse Childhood Experiences, Nationally, by State, and by Race or Ethnicity,* CHILD TRENDS (Feb. 12, 2018), https://www.childtrends.org/publications/prevalence-adverse-childhood-experiences-nationally-state-race-ethnicity [https://perma.cc/Q22F-K7MC].

125. *See* Halfon et al., *supra* note 109, at 345.

126. *See* Neal Halfon, Shirley A. Russ & Edward L. Schor, *The Emergence of Life Course Intervention Research: Optimizing Health Development and Child Well-Being*, PEDIATRICS, May 2022, at S1, S2–S3.

determinants means that these issues persist and even worsen throughout a patient's life.[127]

As a result, LCHD argues for a multi-dimensional systems approach across sectors that implicate social and structural determinants of health, with particular attention to how interventions to promote maternal and child health reverberate across the lifespan and across generations.[128] To understand what interventions are needed, LCHD synthesizes the early programming model, emphasizing the strong impacts of childhood interventions, with the cumulative pathways model,[129] which examines how health harms from socially constructed factors accumulate to impact people over prolonged time frames.[130] LCHD incorporates the framework of "weathering," recognizing that the cumulative effects of racism, gender discrimination, and other subordinating risk factors can lead to the "allostatic load" of chronic stress and manifest as health vulnerability.[131]

In 1992, public health researcher Arline Geronimus published a seminal article positing that the effects of racism cause premature biological aging, or "weathering," in Black women, with direct effects on maternal and infant health.[132] Dr. Geronimus found that while Black women had better pregnancy outcomes in their late teens than mid-twenties, the opposite was true for White women.[133] Developing the "weathering" hypothesis, Geronimus proposed that systemic racism explains why Black women age "earlier and faster than [W]hite women."[134] Repeated exposure to discrimination impacts the health of both Black women and their infants,[135] with chronic toxic stress from racism and sexism leading to rapid aging and premature deterioration of the body.[136]

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127. *See id.*

128. Michael C. Lu, *Improving Maternal and Child Health Across the Life Course: Where Do We Go from Here?*, 18 MATERNAL & CHILD HEALTH J. 339, 341 (2014).

129. *See* Daniel Atkins et al., *Medical-Legal Partnership and Healthy Start: Integrating Civil Legal Aid Services into Public Health Advocacy*, 35 J. LEGAL MED. 195, 198 (2014); Michael C. Lu & Neal Halfon, *Racial and Ethnic Disparities in Birth Outcomes: A Life-Course Perspective*, 7 MATERNAL & CHILD HEALTH J. 13, 18 (2003).

130. *See* Halfon & Hochstein, *supra* note 18, at 449; Halfon et al., *supra* note 109, at 350.

131. *See* Njoku et al., *supra* note 3, at 2.

132. *See id.*; Arline T. Geronimus, *The Weathering Hypothesis and the Health of African-American Women and Infants: Evidence and Speculations*, 2 ETHNICITY & DISEASE 207, 210 (1992).

133. Geronimus, *supra* note 132, at 209; *see also* Ana Sandoiu, *'Weathering': What Are the Health Effects of Stress and Discrimination?*, MED. NEWS TODAY (Feb. 26, 2021), https://www.medicalnewstoday.com/articles/weathering-what-are-the-health-effects-of-stress-and-discrimination [https://perma.cc/J5GS-EPR]; Bridges, *supra* note 2, at 1260.

134. Nicole Van Groningen, *Racial Injustice Causes Black Americans to Age Faster Than Whites*, MASSIVE SCI. (Aug. 6, 2020), https://massivesci.com/articles/weathering-hypothesis-black-aging-health/ [https://perma.cc/D3WH-8G3L]. Critical legal theorist Angela Harris has characterized chronic stress of this type—and the resulting racial disparities in infant and maternal health across class and education levels—as harmful and persistent "slow violence." *See* Angela P. Harris, *Criminal Justice and Slow Violence in* Keilee Fant v. City of Ferguson, Missouri, LPE PROJECT (May 2, 2018), https://lpeproject.org/blog/criminal-justice-and-slow-violence-in-keilee-fant-v-city-of-ferguson-missouri/ [https://perma.cc/7JVX-VNT2].

135. Villarosa, *supra* note 95; *see also* Njoku et al., *supra* note 3, at 1–2.

136. *See* Bridges, *supra* note 2, at 1261; *see also* Shanice Battle & Denise Carty, *Gendered Racism Among Women of Color*, CTRS. FOR DISEASE CONTROL & PREVENTION (Oct. 6, 2022), https://blogs.cdc.

In essence, racism and the chronic stress it causes are critical drivers of higher morbidity and mortality rates among Black women.[137] Discrimination and inequality make Black women more vulnerable to health conditions that can cause life-threatening complications during subsequent pregnancy, such as hypertension.[138] Indeed, "[t]he finding of larger racial disparities among the nonpoor than the poor, and among women than men, suggests that persistent racial differences in health may be influenced by the stress of living in a race-conscious society,"[139] and the health impacts of these stressors, if they go unmitigated, can last across generations.[140]

The fact that morbidity and mortality outcomes persist for women of color regardless of socioeconomic status provides important context for understanding the role of weathering. Indeed, "[e]ducation and income offer little protection. In fact, a [B]lack woman with an advanced degree is more likely to lose her baby than a [W]hite woman with less than an eighth-grade education."[141] Similarly, Black mothers and babies do not "gain protection from being rich," with data from the U.S. Census Bureau showing that the "richest Black mothers and their babies are twice as likely to die as the richest [W]hite mothers and their babies."[142]

LCHD recognizes that just as health can be harmed in these ways, health can be improved by reducing exposure to negative factors like those driven by

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gov/healthequity/2022/10/06/gendered-racism-among-women-of-color/ [https://perma.cc/ZD7Z-6NG5] (defining "weathering" as "early health decline due to coping with persistent stress").

137. *See* Bridges, *supra* note 2, at 1261.

138. Tobin Tyler, *supra* note 17, at 58.

139. Arline T. Geronimus et al., *"Weathering" and Age Patterns of Allostatic Load Scores Among Blacks and Whites in the United States*, 96 AM. J. PUB. HEALTH 826, 830 (2006).

140. *See* Halfon et al., *supra* note 109, at 345–46, 349. LCHD models have incorporated findings from research related to epigenetics, the concept that a panoply of factors, including a person's environment, can cause changes in gene expression that have the potential to be passed to offspring, even though the person's genetic code remains the same, a process known as "biological embedding." *See id.*; Halfon & Forrest, *supra* note 16, at 21, 25, 30–31 (describing how epigenetics studies provided a basis for LCHD and understanding of developmental plasticity, gene expression modification, and multigenerational passage of traits); *see also* BRIDGES, *supra* note 7, at 337–38 ("The field of epigenetics is important to scholars interested in health equity because it may explain why poor health has persisted across generations, with inherited epigenomes reflecting violent and hostile environments, such as chattel slavery, lynch mobs, and the brutality of the Jim Crow era."). This view of epigenetics could support arguments for reparations to address the lasting health impacts of these profound harms. However, some critical race theorists have cautioned against using epigenetics as a framework for examining health inequity because "epigenetic understandings of racial minorities' compromised health may slip into arguments about racial minorities' genetic inferiority." BRIDGES, *supra* note 7, at 339 (citing DOROTHY ROBERTS, FATAL INVENTION: HOW SCIENCE, POLITICS, AND BIG BUSINESS RE-CREATE RACE IN THE TWENTY-FIRST CENTURY 143–44 (2011)).

141. Villarosa, *supra* note 95.

142. Claire Cain Miller et al., *Childbirth Is Deadlier for Black Families Even When They're Rich, Expansive Study Finds*, N.Y. TIMES (Feb. 12, 2023), https://www.nytimes.com/interactive/2023/02/12/upshot/child-maternal-mortality-rich-poor.html; Kate Kennedy-Moulton et al., *Maternal and Infant Health Inequality: New Evidence from Linked Administrative Data* 5–6, 29 (Nat'l Bureau of Econ. Rsch., Working Paper No. 30693, 2023). The study also found that other racialized families—including American Indian/Alaska Native families—experience "similarly high rates of infant mortality" throughout "most points in the income distribution." Kennedy-Moulton et al., *supra*, at 6.

discrimination, and by promoting positive health influences and interventions that allow people to thrive. Health development is dynamic, such that neither negative nor positive factors are static.[143] For instance, an individual could start life with low socioeconomic status, but after being exposed to a positive school environment and quality healthcare, their health may improve.[144] All individuals have their own unique lifetime health trajectory, which rises and falls with the process of development and decline[145] and is influenced by exposure to risk and protective factors.[146] For example, childhood socioeconomic status, parental relationships, nutrition, job security, and healthcare quality can serve as risk or protective factors, depending on how they present.[147] These factors subsequently manifest as health.

LCHD also centers those with lived experience in the research process and in the development of interventions to support maternal and child health. The framework champions community leadership in research through an approach known as community-based participatory research (CBPR). This type of research engages community members in all decisionmaking phases of the project, such as the creation of the research agenda, the research process, and the evaluation of interventions.[148] CBPR collects "the community perspective and results in culturally-tailored public health interventions that are more pertinent to the lived experiences of community residents."[149] For example, using LCHD as the theoretical framework and CPBR to frame the inquiry, researchers have explored the perspectives of community residents on maternal and child health risk and protective factors, such as their perspectives on the ways that mentorship for teenagers and access to nutritious food operate as protective factors contributing to maternal and child health.[150]

In short, LCHD emphasizes that health can be optimized by disrupting negative conditions experienced by children and their parents that produce weathering and other cumulative health harms, and by promoting positive conditions. All people should have the freedom to thrive, and the right structural conditions must be in place for children and their parents to flourish across their lifespan.

C. EQUITABLE THRIVING

Urgent legal action is needed to advance maternal and child health justice. This action should incorporate lifecourse theory and research to leverage law,

143. *See* Halfon et al., *supra* note 109, at 347–48, 352.

144. *See id*. at 352.

145. Clyde Hertzman & Chris Power, *Health and Human Development: Understandings From Life-Course Research*, 24 DEVELOPMENTAL NEUROPSYCHOLOGY 719, 724 (2003).

146. *See* Halfon et al., *supra* note 109, at 353.

147. *See id*. at 349, 352.

148. Abraham A. Salinas-Miranda et al., *Protective Factors Using the Life Course Perspective in Maternal and Child Health*, 1 ENGAGE! 69, 71 (2020).

149. *Id*.

150. *Id*. at 74–76; *see also* Abraham Salinas-Miranda et al., *Exploring the Life Course Perspective in Maternal and Child Health Through Community-Based Participatory Focus Groups: Social Risks Assessment*, 10 J. HEALTH DISPARITIES RSCH. & PRACTICE 143, 160 (2017).

policy, and systems to create the conditions needed for parents and children of color to thrive across their lifespan and across generations. Equitable thriving provides core principles to effect this change.

An equitable thriving approach to health justice centers and builds on current legal scholarship on eliminating racial disparities, particularly in maternal mortality. It also requires close attention to maternal morbidity, as well as the many ways in which the social, structural, and political determinants of health keep mothers from thriving and from raising their children in environments that enable thriving. It takes the LCHD-informed approach of not accepting fewer deaths as an acceptable goal.

LCHD requires goals that go well beyond survival—that is, beyond the goals of mortality and morbidity eradication and the elimination of "hazards that jeopardize health."[151] Equitable thriving draws on LCHD to examine how law can facilitate positive conditions that promote maternal and child flourishing. Just as health justice should center and develop proposals to leverage laws that impact reproductive health, pregnancy, labor, and delivery, it must also embrace approaches in law that facilitate equitable opportunities for maternal and child thriving over the long term and in the many facets of life that impact health. "Thriving" is the target because it incorporates both LCHD's recognition that health can be optimized and its refusal to accept the status quo deprivation of conditions necessary for racially minoritized communities to thrive.[152] In translating LCHD's lessons into the health justice framework, equitable thriving argues for a "commitment to create communities where all people have a fair chance to participate, prosper, and reach their full potential."[153]

Additionally, achieving the vision of the reproductive justice movement such that pregnant people can thrive both before and after their pregnancy and raise their children with dignity necessitates a continued and reinvigorated spotlight on maternal, infant, and child health. Equitable thriving adds to this vision by situating "thriving" as a central goal of maternal and child health justice and demanding a radical reimagination of law, structures, supports, and policies that shape maternal and child health.[154] The concept of thriving builds on LCHD's central tenet that health is a developmental capacity that can be optimized by promoting

151. Benfer, *supra* note 9, at 278 ("Health justice requires that all persons have the same chance to be free from hazards that jeopardize health, fully participate in society, and access opportunity.").

152. *See* ELTRR INTERAGENCY WORKGROUP, FEDERAL PLAN FOR EQUITABLE LONG-TERM RECOVERY AND RESILIENCE FOR SOCIAL, BEHAVIORAL, AND COMMUNITY HEALTH 19 (2022), https://health.gov/our-work/national-health-initiatives/equitable-long-term-recovery-and-resilience [https://perma.cc/289G-8V4Q].

153. *Why Thriving Together?*, THRIVING TOGETHER, https://thriving.us/why-thriving/ [https://perma.cc/L8GL-TP8Z] (last visited Oct. 21, 2024).

154. *See* RAISING THE BAR, DEFINING, CREATING AND SUSTAINING OPTIMAL MATERNAL HEALTH 2, https://nationalpartnership.org/wp-content/uploads/rtb-optimal-maternal-health-statement.pdf [https://perma.cc/L8GL-TP8Z] (last visited Oct. 21, 2024) ("Optimal maternal health is rooted in good health status prior to pregnancy, anchored in healthy communities and healthy families, and enabled by health-supporting structures, policies, programs, and practices."); Halfon et al., *supra* note 109, at 356.

positive conditions and minimizing negative risk factors.[155] It encompasses a broader understanding than biomedical markers of health that includes well-being, stability, and opportunities to flourish over the long term. To thrive, people—and the networks around them—must be afforded the vital conditions for health and well-being throughout their lives.[156]

The idea of thriving as a north star has also gained traction in federal policy, as the Biden Administration recently embraced a vision of thriving in its post-COVID pandemic interagency plan for community health.[157] The U.S. Department of Health and Human Services brought together twenty-eight federal agencies[158] with a goal of achieving "a state of thriving for all,"[159] defined as "[a] state of being that is strong, consistent, and progressing; distinguished from the struggling or suffering of people or places."[160] The resulting federal plan envisions transformative change, arguing previous efforts have focused on a return to the status quo without addressing the role of underlying social, mental, physical health, and economic factors.[161] Thriving instead demands collaborative efforts to name and target disparities and connected systemic issues.[162]

Equitable thriving does not prescribe specific strategies, policies, or programs in law to accomplish these goals, but rather articulates four principles to ensure broad, dynamic, far-reaching applicability and to provide a methodology for future assessment. Ongoing and dynamic analysis is needed to leverage law in ways that are (1) preventive, (2) intergenerational, (3) multisolving, and (4) community-led.

Indeed, an LCHD-informed approach to health justice allows us to investigate the potential for many areas of law to *preempt* grave maternal, infant, and other racial health disparities, centering the importance of upstream measures. It recognizes that pregnancy and childbirth are "crucial moment[s]" in life[163] and also explores how events throughout one's lifetime, long before pregnancy, affect maternal health.[164] It emphasizes childhood as a pivotal moment for driving health justice across the lifespan, when early and preventive approaches will have maximum and far-reaching impacts.[165] Equitable thriving deeply incorporates lifecourse public-health research into legal scholarship and advocacy to inform

155. *See, e.g.*, Halfon et al., *supra* note 109, at 352.

156. *See Framework*, U.S. DEP'T HEALTH & HUM. SERVS.: OFF. OF DISEASE PREVENTION & HEALTH PROMOTION, https://health.gov/our-work/national-health-initiatives/equitable-long-term-recovery-and-resilience/framework [https://perma.cc/D7HK-998E] (last visited Oct. 9, 2024).

157. *See* ELTRR INTERAGENCY WORKGROUP, *supra* note 152, at 14, 21.

158. Membership of the working group includes the Departments of Agriculture, Commerce, Education, Health and Human Services, Housing and Urban Development, and Transportation, as well as the Environmental Protection Agency and the Federal Reserve Bank. *Id.* at 2.

159. *Id.* at 9.

160. *Id.* at 216.

161. *Id.* at 19.

162. *See id.*

163. Tobin Tyler, *supra* note 17, at 64.

164. *Id.* at 66; *see* Bridges, *supra* note 2, at 1285.

165. *See* Halfon & Forrest, *supra* note 16, at 33; Halfon et al., *supra* note 109, at 358.

evidence-based efforts in law to support the health optimization of pregnant people, parents, and children.[166]

As an approach to health justice, equitable thriving adds an important emphasis on the interconnected nature of health across generations. Most healthcare approaches treat individuals in silos. Parents and children typically attend different appointments with different doctors, who consider the health of one family member in isolation. Rather than focus on pregnant and parenting people separately from infants and children, LCHD conceptualizes health as a function of cumulative interconnectedness across generations.[167] For example, women with children face a greater risk of eviction.[168] When parents like Tina experience stressors connected to eviction, the parental stress can compound health harms to their children.[169] These mechanisms of intergenerational health harm necessitate approaches that provide support across generations and highlight the value of using lifecourse research to inform approaches in law that will maximize long-term benefit.

Moreover, equitable thriving builds on the work of reproductive and health justice scholars to center community leadership.[170] It envisions how LCHD approaches can promote power within communities that have been disproportionately impacted by the maternal and infant health crises, and it calls for promoting the leadership of community members in the problem-solving work to resolve these crises and achieve thriving.

D. ADDRESSING THE LIMITATIONS OF EQUITABLE THRIVING

There are many critiques, limitations, and risks possible with an approach to health justice that is as sweeping, interdisciplinary, and aspirational as equitable thriving.[171] This Section starts to identify and address those critiques.

To begin, some have disputed the gravity and trajectory of the maternal health crisis in the first place, arguing that "[t]hings aren't getting *worse* for women; we're just getting better at tracking what's going on."[172] This argument cites the addition of a checkbox on death certificates by multiple states, denoting whether the decedent had been pregnant or recently pregnant.[173] Because deaths with

166. *See, e.g.*, Tina L. Cheng et al., *Breaking the Intergenerational Cycle of Disadvantage: The Three Generation Approach*, PEDIATRICS, June 2016, at 1, 5, 8.

167. *See, e.g.*, Halfon & Hochstein, *supra* note 18, at 433, 436 ("Health is a consequence of multiple determinants operating in nested genetic, biological, behavioral, social, and economic contexts that change as a person develops.").

168. BHATNAGAR ET AL., *supra* note 42, at 13.

169. *Id.*

170. *See supra* Part I; *supra* notes 57–58.

171. *See* Emily R.D. Murphy, *Collective Cognitive Capital*, 63 WM. & MARY L. REV. 1347, 1357 (2022) (acknowledging similar concerns with a theory of similar scope).

172. Jerusalem Demsas, *The Maternal-Mortality Crisis That Didn't Happen*, ATLANTIC (May 30, 2024), https://www.theatlantic.com/ideas/archive/2024/05/no-more-women-arent-dying-in-childbirth/678486/ (emphasis in original); *see* Saloni Dattani, *The Rise in Reported Maternal Mortality Rates in the US Is Largely Due to a Change in Measurement*, OUR WORLD IN DATA (May 13, 2024), https://ourworldindata.org/rise-us-maternal-mortality-rates-measurement [https://perma.cc/VQ5B-8BK4].

173. Dattani, *supra* note 172.

tenuous or ambiguous connections to pregnancy may be erroneously counted, or the checkbox may be incorrectly marked, skeptics have asserted that the changes have led to overreporting of maternal mortality.[174]

However, this explanation does not account for existing and increasing racial disparity in maternal and infant mortality and morbidity.[175] Nor does this explanation contemplate that policymakers often ignore maternal morbidity and that they lack systems for comprehensively and adequately measuring it,[176] even though severe complications in pregnancy, during birth, or postpartum affect at least 50,000 to 60,000 people annually.[177] Additionally, research in California still found higher rates of maternal mortality when using a more comprehensive method involving multiple forms of data, rather than death certificate data alone.[178] Regardless, there is no question that racial disparities abound both within maternal mortality and morbidity and across the lifecourse for infants, children, and parents.

Though critics have warned that LCHD may lead to front-loaded interventions focusing solely on early childhood,[179] LCHD scholars have emphasized the importance of other critical periods and the interconnected and intergenerational nature of health.[180] For example, the health of grandparents can have an impact on the health of their grandchildren.[181] The equitable thriving approach also responds to these concerns. Binary approaches to health interventions are a choice resulting in avoidable health inequities, and they are a product of viewing societal structures through the lens of existing societal norms.[182] Instead, the goal of equitable thriving recognizes that it is important both to promote positive

174. *Id.*; Demsas, *supra* note 172.

175. *See supra* Part I; *see also* Robin Fields, *What to Know About the Roiling Debate Over U.S. Maternal Mortality Rates*, PROPUBLICA (Apr. 5, 2024, 5:00 AM), https://www.propublica.org/article/what-to-know-maternal-mortality-rates-debate [https://perma.cc/9559-58XC].

176. *See* Christine H. Morton, *The Problem of Increasing Maternal Morbidity: Integrating Normality and Risk in Maternity Care in the United States*, 41 BIRTH 119, 119 (2014).

177. P. Mimi Niles et al., *"We Don't Really Address the Trauma": Patients' Perspectives on Postpartum Care Needs After Severe Maternal Morbidities*, MATERNAL & CHILD HEALTH J., May 13, 2023 at 1, 8.

178. MATERNAL, CHILD, AND ADOLESCENT HEALTH DIV., CAL. DEP'T OF PUB. HEALTH, CALIFORNIA PREGNANCY-RELATED DEATHS, 2008–2016, at 14, 18 (2021), https://www.cdph.ca.gov/Programs/CFH/DMCAH/surveillance/CDPH%20Document%20Library/CA-PMSS/CA-PMSS-Surveillance-Report-2008-2016.pdf [https://perma.cc/AX9Q-8FDU].

179. AMY FINE & MILTON KOTELCHUCK, U.S. DEP'T OF HEALTH & HUMAN SERVS., RETHINKING MCH: THE LIFE COURSE MODEL AS AN ORGANIZING FRAMEWORK: CONCEPT PAPER 4 (2010).

180. Halfon et al., *supra* note 109, at 358.

181. *See, e.g.*, Matthew M. Davis, Katherine McGonagle, Robert F. Schoeni & Frank Stafford, *Grandparental and Parental Obesity Influences on Childhood Overweight: Implications for Primary Care Practice*, 21 J. AM. BD. FAM. MED. 549, 553 (2008) (finding a strong association between being overweight in childhood and grandparental obesity); *see also* Narayan Sastry, Paula Fomby & Katherine McGonagle, *Using the Panel Study of Income Dynamics (PSID) to Conduct Life Course Health Development Analysis*, *in* HANDBOOK OF LIFE COURSE HEALTH DEVELOPMENT, *supra* note 16, at 579, 591 (reviewing literature examining multigenerational family outcomes).

182. These norms include those driven by racial capitalism. Tonya L. Brito, Kathryn A. Sabbeth, Jessica K. Steinberg & Lauren Sudeall, *Racial Capitalism in the Civil Courts*, 122 COLUM. L. REV. 1243, 1264–68. Racialized poverty and the systems that entrench it, as explained by the concept of racial

health for all ages and to prioritize targeted, early interventions to maximize impact and prevent and preempt health harms. Moreover, preventive approaches disrupt the status quo in which the healthcare system intervenes far downstream when people are already sick and inequity is already deeply entrenched. Early prevention of health harms to racially minoritized communities in the first place should be the central aim; this goal represents a more meaningful manifestation of justice than settling for improved healthcare for sick adults.

Equitable thriving, like other approaches to health justice, could also be critiqued for relying on law for solutions when law, in its design and implementation, drives the deep health inequity that has become a core feature of American injustice. Why is law the solution? If inequity is a policy choice baked into law, how can more law or implementation of law be the way out of structural inequity? What does a focus on law add to the resolution of these challenges?

Yet, because health inequity is facilitated by law and legal structures, not only can it be undone through law and legal structures, it *must* be undone at least in part through interventions in law. Core to health justice (and therefore to equitable thriving) is the idea that if law can drive these problems, law can and should be actively used to undo them.[183] Health justice demands that just as we should work to recognize and identify the subordinating power of law, we must act to ensure that law aspires towards equity.[184] For example, "[l]aws and policies that have played critical roles in facilitating environmental racism and maintaining residential segregation can [and must] be re-engineered to de-concentrate disadvantage in communities of color," including in ways that promote equitable maternal and child thriving.[185] Health disparities are not inevitable; rather, the fact that health disparities are preventable and avoidable is emblematic of their injustice.[186] By using the four principles of equitable thriving to equitably implement existing laws and enact law reform to promote maternal and child health justice, law can be used to disrupt the status quo and serve as a positive force for human flourishing. Although these principles are foundational, the specific legal approaches must purposefully evolve as equitable thriving relies on developing science and a growing evidence base to support new approaches,[187] which in part is where hope can be drawn. As the research base in LCHD and the conceptual understanding of how to leverage social and structural determinants of maternal and child health equity grow, so will the possibilities for law to eradicate

capitalism, can help us understand compounding deprivations of thriving experienced by children and families of color.

183. *See* Cannon, *supra* note 48, at 549; Benfer & Wiley, *supra* note 47.

184. Yael Cannon & Nicole Tuchinda, *Critical Perspectives to Advance Educational Equity and Health Justice*, 50 J.L. MED. & ETHICS 776, 783 (2023) ("Kimberlé Crenshaw, who coined the term CRT [critical race theory], notes that CRT is not a noun, but a verb, an evolving and malleable practice. Health justice should also be a 'verb' and function as an aspirational and dynamic vision involving action in pursuit of health equity.").

185. *See* Foster et al., *supra* note 10.

186. *See What Is Health Equity?*, CDC (June 11, 2024), https://www.cdc.gov/health-equity/what-is/?CDC_AAref_Val=https://www.cdc.gov/healthequity/whatis/index.html.

187. *See* Halfon et al., *supra* note 109, at 360.

disparities and create the conditions for thriving for those who have been systematically deprived of them.

Other critiques may relate to the feasibility of equitable thriving's approaches. In particular, multisolving and transdisciplinary approaches can be difficult to achieve, as they require partnership across sectors without a history of collaboration. However, entire movements employ multisolving and interdisciplinary strategies that offer promising models, even in traditionally siloed fields, such as medical-legal partnerships that bring lawyers and healthcare professionals together to work holistically to advance health justice.[188]

Moreover, the problems that equitable thriving approaches work to address undoubtedly seem daunting, and the investments may appear out of reach. However, beyond the intrinsic benefits of racial equity, realigning federal, state, and local investments through multisolving can be cost-effective in the long term. In fact, there is ample research reflecting the idea that these preventive interventions—especially those targeting early childhood—produce immense financial return on investment.[189] Addressing the upstream drivers of chronic illness can similarly reduce healthcare expenditures, especially as "90 percent of the [United States'] $4.3 trillion in annual health care expenditures" are for people with chronic disease and mental health conditions.[190] Indeed, U.S. healthcare reflects a status quo that prioritizes unsustainable, costly, reactive, downstream, siloed, narrow, and short-term healthcare interventions.[191] The principles of equitable thriving aim to disrupt this status quo through early-life investments that will save healthcare costs and improve productivity and economic growth later in

188. For example, medical–legal partnerships bring together attorneys, healthcare providers, and other cross-sector partners to address a range of health-harming legal needs and advocate for law reform. *See infra* Section V.C.

189. Programs like universal preschool can yield significant financial benefits. *See infra* Section V.A. Similarly, addressing housing insecurity as a multisolving approach can have broad cross-sector economic impacts. The public spends more than $35,000 per year on supports for an individual experiencing chronic homelessness though investment in prevention services can reduce these cross-sector costs by almost 50%. NAT'L ALL. TO END HOMELESSNESS, ENDING CHRONIC HOMELESSNESS SAVES TAXPAYERS MONEY 1 (2017), https://endhomelessness.org/wp-content/uploads/2017/06/Cost-Savings-from-PSH.pdf [https://perma.cc/K9DU-YK3X] (reporting cost savings associated with permanent supportive housing programs due to reduced use of services likes jails and emergency departments).

190. TR. FOR AM.'S HEALTH, THE IMPACT OF CHRONIC UNDERFUNDING ON AMERICA'S PUBLIC HEALTH SYSTEM: TRENDS, RISKS, AND RECOMMENDATIONS 22 (2023).

191. *See* Anthony B. Iton & Damon Francis, *Envisioning a New Health System Rooted in Equity*, URB. INST., Dec. 2023, at 1, 28 ("The US health system is dominated by a downstream-focused approach that is organized to make profits for purveyors and to sell lucrative services to payers. This model, in which too many health care decisions are driven by financial motives instead of medical knowledge, is incompatible with community health improvement and, ultimately, public health."); *see also* Priyanka K. Naithani, *Moving Upstream: Addressing Social Determinants of Health*, HARV. MED. SCH.: PERSPS. IN PRIMARY CARE (July 18, 2019), https://info.primarycare.hms.harvard.edu/perspectives/articles/addressing-social-determinants-of-health (reporting that proponents of the upstream approach find that "the U.S. healthcare system is failing patients by treating disease without addressing the social factors that lead to illness and injury. Today's health care problems are rooted in individual health choices shaped by the many contexts in which people live; therefore, medicine and public health simply cannot afford to continue to work in their separate silos").

life.[192] More must be done to educate policymakers across the political spectrum on this potential for tremendous return on investment.[193] These efforts may benefit from community partnerships that can use grassroots organizing to move the needle in the face of political gridlock or opposition.[194]

The ability of evidence-based decisionmaking to effect change, such as legal interventions driven by LCHD research, may be curbed where there is a societal disagreement about values and objectives.[195] However, identifying where the data and science can drive interests to converge can help align goals and strategies even where values may not be in sync. For example, the notion that racial disparities harm us all—and that addressing structural racial inequities therefore has universal, tangible benefits—is gaining traction.[196] Racial discrimination has negatively affected overall economic growth,[197] with research finding that $16 trillion could have been added to the U.S. economy if racial gaps for Black people in wages, education, housing, and investment were closed 20 years ago.[198] Racial equity strategies still have the potential to add trillions to the U.S. GDP in the coming years,[199] as racial discrimination continues to rob "countless people of higher standards of living and well-being . . . from generation to generation."[200] Equitable opportunities for health and flourishing are beneficial for everyone.[201] It will be important to ensure that reforms stemming from this "interest convergence" engender sustained and structural change that meaningfully benefits and builds power among marginalized communities.[202]

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192. *See* Halfon et al., *supra* note 109, at 359.

193. *See, e.g.*, Jorge Luis García et al., *Quantifying the Life-Cycle Benefits of an Influential Early-Childhood Program*, 128 J. POL. ECON. 2502, 2503–05 (2020).

194. *Tenant Right to Counsel*, NAT'L COAL. FOR A CIV. RIGHT TO COUNS., http://civilrighttocounsel.org/highlighted_work/organizing_around_right_to_counsel [https://perma.cc/9SVT-JZDE] (last visited Oct. 24, 2024).

195. *See, e.g.*, Eloise Pasachoff, *Two Cheers for Evidence: Law, Research, and Values in Education Policymaking and Beyond*, 117 COLUM. L. REV. 1933, 1966 (2017) ("These are questions about values that evidence cannot answer.").

196. *See generally* HEATHER MCGHEE, THE SUM OF US: WHAT RACISM COSTS EVERYONE AND HOW WE CAN PROSPER TOGETHER (2021).

197. *See* Lisa D. Cook, *Violence and Economic Activity: Evidence from African American Patents, 1870–1940*, 19 J. ECON. GROWTH 221, 221 (2014); Chang-Tai Hsieh, Erik Hurst, Charles I. Jones & Peter J. Klenow, *The Allocation of Talent and U.S. Economic Growth*, 87 ECONOMETRICA 1439, 1439 (2019).

198. CITI GLOBAL PERSPS. & SOLS., CLOSING THE RACIAL INEQUALITY GAPS: THE ECONOMIC COST OF BLACK INEQUALITY IN THE U.S. 3 (2020).

199. *Id.*

200. Lisa D. Cook, *Racism Impoverishes the Whole Economy*, N.Y. TIMES (Nov. 18, 2020), https://www.nytimes.com/2020/11/18/business/racism-impoverishes-the-whole-economy.html.

201. *See* Derrick A. Bell Jr., Brown v. Board of Education *and the Interest-Convergence Dilemma*, 93 HARV. L. REV. 518, 524 (1980); Pierson-Brown, *supra* note 26, at 693–94, 699.

202. Critical race theorist and legal scholar Derrick Bell coined the term "interest convergence," which refers to the idea that change benefitting racially minoritized populations happens when it benefits those in power. *See* Bell Jr., *supra* note 201, at 523. However, when this change occurs, it is important that it is structural and sustained, not performative or aimed at appeasing those in power, which will be important to equitable thriving. *See* Pierson-Brown, *supra* note 26, at 693–94, 699 (analyzing the trend of adopting "racism as a public health crisis" statements during the summer of 2020 as a "missed

III. PRINCIPLES OF THE EQUITABLE THRIVING APPROACH

Equitable thriving argues for bringing LCHD theory and research into maternal and child health justice. It draws on LCHD literature to identify four evidence-based principles to guide how law can be used to promote equitable maternal and child health and thriving.[203] Preventive, intergenerational, multisolving, and community-led approaches are necessary to facilitate equitable thriving.[204]

This Part demonstrates how application of these four organizing principles to the law can advance equitable maternal and child thriving. Each Section begins by describing an organizing principle and its genesis in LCHD. To demonstrate the equitable thriving approach in action, this discussion proceeds by offering a case study for each LCHD principle of different conditions that drive maternal and child health injustice and by demonstrating how law implementation and reform can embody the relevant principle to address the legal drivers of those conditions and advance equitable maternal and child thriving.

The case studies below explore existing law not only at the federal level, but at the state and local levels, where structural determinants of health play out in localized contexts. In addition to wide-reaching federal laws and regulations, state and municipal legislative and regulatory levers have had promising success, imparting pathways for replication across the country. Though these initiatives might operate on a smaller scale, state and municipal approaches are not always hampered by the same inertia as Congress[205] and provide important opportunities to center community power-building.[206]

A. PREVENTIVE

LCHD research supports targeted preventive approaches that will not simply address immediate health concerns but promote consistent lifelong and intergenerational health. These approaches can be applied to law implementation and reform to advance equitable thriving.

1. Preventive Approaches Grounded in Lifecourse Science

Lifecourse science posits that "[r]isk factors and protective influences can have a bigger impact on health development during sensitive and critical developmental periods when biological and behavioral regulatory systems are being

opportunity to articulate and forge a pathway for the distribution of power directly to racially marginalized groups").

203. *See* Halfon & Forrest, *supra* note 16, at 19–20.

204. *See* Halfon & Hochstein, *supra* note 18, at 449–51 (discussing the cumulative and programming mechanisms that affect long-term health development).

205. *See* Bruce Katz, *Go Local: Help Cities Pursue the New American Localism to Break Partisan Gridlock*, BROOKINGS INST. (July 14, 2016), https://www.brookings.edu/articles/go-local-help-cities-pursue-the-new-american-localism-to-break-partisan-gridlock/ [https://perma.cc/7T4R-RX29] ("Cities have become the primary engines of social and economic progress by planning, designing, and executing strategies to overcome their problems with limited or no help from Washington or their states."); *see also* Cannon, *supra* note 26, at 856.

206. For further discussion of community power-building, see *infra* Section V.D.

initialized, programmed and implemented."[207] During critical periods, developing bio-behavioral systems are most alterable,[208] and early adverse exposures can lead to changes in the structure and function of bodily systems, creating long-lasting physical effects.[209] For example, cataracts before eighteen months of age can lead to the loss of a significant amount of vision, whereas cataracts in a sixty-year-old "have no known adverse consequence . . . because of the relative stability of mature neuronal connections."[210]

These critical periods cross the entire "child-span" of fetal development, early childhood, and adolescence; during these periods, risk and protective factors influence how health and disease will develop throughout the whole lifespan.[211] Effective development is key to building the capacity of an individual to become a healthy and productive contributor to society.[212] Thus, centering childhood in health equity promotion, through early and preemptive interventions, has lifelong and intergenerational health impacts, as childhood experiences can be the difference between poor health and thriving.[213]

Hundreds of studies using the Advanced Childhood Experience (ACE) framework[214] have shown that children who have experienced multiple ACEs are more likely to experience significant physical and mental health problems in both childhood and adulthood, including premature mortality,[215] heart disease, stroke, asthma, chronic obstructive pulmonary disease, cancer, kidney disease, and diabetes.[216] Thus, early childhood experiences are critical to whether children have a fair opportunity to thrive throughout their lifetimes and even whether their offspring have the same opportunity to thrive.[217] This research underscores the

207. *See* Halfon et al., *supra* note 109, at 350.

208. *See* Halfon & Hochstein, *supra* note 18, at 453.

209. D. Kuh et al., *Life Course Epidemiology*, 57 J. EPIDEMIOLOGY & CMTY. HEALTH 778, 780 (2003).

210. Halfon & Hochstein, *supra* note 18, at 453.

211. *See* Halfon et al., *supra* note 109, at 350.

212. *See* Maureen M. Black et al., *Early Childhood Development Coming of Age: Science Through the Life Course*, 389 LANCET 77, 87 (2017).

213. *See* Lu, *supra* note 128, at 339–41.

214. *ACE Study*, ACE RESPONSE, http://www.aceresponse.org/who_we_are/ACE-Study_43_pg.html [https://perma.cc/PK7Q-JUW2] (last visited Oct. 25, 2024) (studying the relationship between traumatic experiences—such as childhood abuse, loss of a parent, and parental incarceration—and poor health in adulthood).

215. Erin M. Carr, *Educational Equality and the Dream That Never Was: The Confluence of Race-Based Institutional Harm and Adverse Childhood Experiences (ACEs) in Post-*Brown *America*, 12 GEO. J.L. & MOD. CRIT. RACE PERSP. 115, 115 (2020); Christina Bethell et al., *Methods to Assess Adverse Childhood Experiences of Children and Families: Towards Approaches to Promote Child Well-Being in Policy and Practice*, 17 ACAD. PEDIATRICS S51 (2017); Vincent J. Felitti et al., *Relationship of Childhood Abuse and Household Dysfunction to Many of the Leading Causes of Death in Adults: The Adverse Childhood Experiences (ACE) Study*, 14 PREVENTATIVE MED. 245 (1998); David W. Brown et al., *Adverse Childhood Experiences and the Risk of Premature Mortality*, 37 AM. J. PREVENTATIVE MED. 389, 393 (2009).

216. Melissa T. Merrick et al., *Vital Signs: Estimated Proportion of Adult Health Problems Attributable to Adverse Childhood Experiences and Implications for Prevention—25 States, 2015–2017*, 68 MORBIDITY & MORTALITY WKLY. REP. 999, 1001–03 (2019).

217. *See infra* notes 268–69 and accompanying text.

importance of addressing issues preventively in early childhood to curtail health inequity before it compounds.

Puberty can also be considered a critical window and stressful transition period.[218] During puberty, multiple transformations occur at the same time, including biological growth, organ-system development, and heightened receptivity to external social influences.[219] Brain development is still ongoing, and social environments play a central role in adolescent behaviors, with potentially life-long health impacts.[220] Deficient impulse control can result from impaired brain development related to childhood trauma.[221]

Adolescence also includes a lead-up period to preconception, the period between reproductive maturity and conception of a first child.[222] At this critical developmental stage, the quality of the preconception environment can impact both a future parent's own health and the health of their future children.[223] For example, nutritional deficiencies can affect the health of an adolescent as they age as well as the health trajectories of their future children.[224]

LCHD posits that the effects of risk and protective factors on health during these critical periods of childhood development can be both "cumulative," or compounding over a prolonged time period, and "latent," or "not clinically observable for years and decades."[225] The cumulative and latent impact of health-influencing factors in childhood explain how childhood experiences such as ACEs, racism, and other forms of discrimination can accumulate to cause toxic stress, with powerful impacts on health much later in life.[226]

The same is true for protective factors, which can have *positive* lifelong health impacts.[227] But important protective factors like high-quality early childhood education and access to nutritious food are less available to children of color,[228]

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218. *See* John S. Santelli et al., *Adolescent Risk-Taking, Cancer Risk, and Life Course Approaches to Prevention*, 52 J. ADOLESCENT HEALTH 541, 541 (2013).

219. *See id.* at 541–42.

220. *See* Elizabeth Scott et al., *Brain Development, Social Context, and Justice Policy*, 57 WASH. U. J.L. & POL'Y 13, 15–16 (2018).

221. *See* Heather C. Forkey, *Children Exposed to Abuse and Neglect: The Effects of Trauma on the Body and Brain*, 30 J. AM. ACAD. MATRIMONIAL L. 307, 311–12 (2018).

222. Halfon et al., *supra* note 109, at 358.

223. *Id.*

224. *Id.*

225. *Id.* at 350; *see also* Santelli et al., *supra* note 218, at 542.

226. *See* Xuening Chang et al., *Associations Between Adverse Childhood Experiences and Health Outcomes in Adults Aged 18–59 Years*, 14 PLOS ONE, Feb. 7, 2019, at 1, 1 (finding that increased ACE scores are associated with increased risks of drinking, chronic disease, depression, and posttraumatic stress disorder); *see also supra* notes 131–37 and accompanying text for a discussion of weathering, which is an example of cumulative health impacts, where the stress and allostatic load of racism compounds over time to harm the body.

227. Halfon et al., *supra* note 109, at 351.

228. *See* CHILD.'S DEF. FUND, 2023 STATE OF AMERICA'S CHILDREN REPORT: EDUCATION (2023), https://www.childrensdefense.org/tools-and-resources/the-state-of-americas-children/soac-education/ [https://perma.cc/Z6GK-VL7P]; Kelly M. Bower et al., *The Intersection of Neighborhood Racial Segregation, Poverty, and Urbanicity and Its Impact on Food Store Availability in the United States*, PREVENTATIVE MED. 33, 35 (2014) ("Neighborhoods with greater poverty and large minority

like Tina's daughter. Without meaningful interventions, those growing up experiencing greater risk and fewer protective factors are more likely to have lower health trajectories than those children growing up with fewer risk and greater protective factors.[229] LCHD research shows that the former group is less likely to attend college and more likely to experience unemployment and monetary stress as adults.[230] Altogether and individually, these factors make it more difficult to thrive. Because social and systemic contexts influence pathways of health development, "[u]nless society alters its infrastructure to provide specific occupational opportunities and supports for the most at-risk youth, risks will continue to multiply over the lifespan, with predictable further declines in health trajectories."[231]

In sum, equitable thriving employs a focus on preventive measures to achieve its aspiration that families of color will be able to easily access protective factors and avoid risk factors that contribute to maternal and child health disparities.

2. Barriers to Education as a Driver of Maternal and Child Health Injustice

Consistent access to education is critical to health justice as it offers opportunities to prevent negative health trajectories. Because the early years of childhood and adolescence are dedicated to development of specific capacities that can maximally promote "future health potential,"[232] interventions throughout childhood that can support positive health development are particularly impactful,[233] including those that ensure access to education. Indeed, education is a powerful determinant of health.[234] In fact, whether a person graduates high school is a powerful predictor of lifelong health.[235] High-quality education and supportive learning environments from infancy through higher education and workforce development positively shape social, behavioral, and health development.[236] Starting with early childhood learning opportunities, the law must create opportunities for consistent access to high-quality education.[237]

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populations have less access to supermarkets. The combination of living in an impoverished and a segregated Black neighborhood presents a double disadvantage in access to high quality foods."); ALISHA COLEMAN-JENSEN ET AL., U.S. DEP'T OF AGRIC. ECON. RSCH. SERV., STATISTICAL SUPPLEMENT TO HOUSEHOLD FOOD SECURITY IN THE UNITED STATES IN 2020, at 6 (2021), https://www.ers.usda.gov/webdocs/publications/102072/ap-091.pdf?v=4905.8 [https://perma.cc/E8KJ-W9WK].

229. *See* Halfon et al., *supra* note 109, at 353.

230. *See id.*

231. *Id.*

232. *See id.* at 351.

233. *See id.* at 353.

234. *See* Thalia González, Alexis Etow & Cesar De La Vega, *A Health Justice Response to School Discipline and Policing*, 71 AM. U. L. REV. 1927, 1964 (2022).

235. *See id.* at 1935; *High School Graduation*, U.S. DEP'T OF HEALTH AND HUM. SERVS., https://health.gov/healthypeople/priority-areas/social-determinants-health/literature-summaries/high-school-graduation [https://perma.cc/8YTX-VSGJ] (last visited Oct. 25, 2024).

236. *See* THRIVING TOGETHER: A SPRINGBOARD FOR EQUITABLE RECOVERY & RESILIENCE IN COMMUNITIES ACROSS AMERICA 40–44 (Bobby Milstein et al. eds., 2020), https://thriving.us/wp-content/uploads/2020/07/Springboard-Main-Narrative-For-Screen-2.pdf [https://perma.cc/9TN5-GENA] [hereinafter THRIVING TOGETHER].

237. *See id.* at 40–47; Halfon et al., *supra* note 109, at 353.

Early educational environments are vital to critical periods of brain and body development for children.[238] Early childhood education (ECE) has well-documented associations with childhood and long-term health outcomes. ECE can affect children's health directly through access to health screenings, improved nutrition, and other health-promoting activities, as well as indirectly through increased school readiness and increased parental employment and income.[239] ECE interventions also improve children's social and cognitive development and "act as a protective factor against the future onset of adult disease and disability."[240] Accordingly, these impacts are associated with improved health outcomes throughout childhood and into adulthood,[241] such as improved cardiovascular and metabolic health.[242] In turn, this can improve pregnancy outcomes, which are significantly linked to chronic disease.[243] Mitigating educational disadvantage can also prevent health outcomes like chronic stress.[244] Educational success in childhood can help promote future maternal and parental thriving, and subsequently, future intergenerational thriving.

Other research into the lifecycle costs and benefits of high-quality early childhood programs has revealed that universal pre-K would pay for itself and *then* some,[245] with a more than seven times return on investment and substantial effects on lifetime likelihood of cancer, heart disease, stroke, and early mortality.[246] Specifically, Nobel prize-winning economist James Heckman and his research colleagues have used economic forecasting to quantify the benefits over the lifecourse[247] and concluded that "every dollar invested in a high-quality, birth to five program for the most economically disadvantaged children resulted in $7.30 in benefits as children grew up healthier, were more likely to graduate high school and college, and earned more as

238. *See* Adrienne Tierney & Charles A. Nelson III, *Brain Development and the Role of Experience in the Early Years*, 30 ZERO THREE 9, 11 (2009) (stating that "[t]he foundations of sensory and perceptual systems that are critical to language, social behavior, and emotion are formed in the early years and are strongly influenced by experiences during this time").

239. *See* TARYN MORRISSEY, HEALTH AFFS., THE EFFECTS OF EARLY CARE AND EDUCATION ON CHILDREN'S HEALTH 4–5 (2019).

240. *Interventions Addressing the Social Determinants of Health: Early Childhood Education*, CTRS. FOR DISEASE CONTROL & PREVENTION [https://perma.cc/SR4V-AY7B] (last visited Aug. 5, 2016); Halfon & Hochstein, *supra* note 18, at 451.

241. MORRISSEY, *supra* note 239, at 4–5.

242. *See id.*

243. *See* Elizabeth R. Ralston et al., *Perceptions of Risk in Pregnancy with Chronic Disease: A Systematic Review and Thematic Synthesis*, 16 PLOS ONE, July 19, 2021, at 1, 1.

244. *See* Anna Zajacova & Elizabeth M. Lawrence, *The Relationship Between Education and Health: Reducing Disparities Through a Contextual Approach*, 39 ANN. REV. PUB. HEALTH 273, 282 (2018) (suggesting a focus on investments in ECE programs that have demonstrated benefits including improved adult health); Peter Muennig et al., *The Effect of an Early Education Program on Adult Health: The Carolina Abecedarian Project Randomized Controlled Trial*, 101 AM. J. PUB. HEALTH 512, 514 (2011).

245. Planet Money (@planetmoney), INSTAGRAM (Sept. 23, 2024), https://www.instagram.com/p/DAROGcdydB6/?hl=en.

246. *See* Jorge Luis García & James J. Heckman, *Early Childhood Education and Life-Cycle Health* 4 (Nat'l Bureau of Econ. Rsch, Working Paper No. 26880, 2020); Jorge Luis García et al., *Quantifying the Life-Cycle Benefits of an Influential Early-Childhood Program*, 128 J. POL. ECON. 2502, 2503–05 (2020).

247. García et al., *supra* note 246, at 2503–05.

adults."[248] Similarly, children participating in the Abecedarian Project in North Carolina had improved adult health outcomes, including higher health insurance coverage and reduced risk factors for cardiovascular and metabolic diseases.[249]

Racial disparities abound in access to early childhood education. Families of color, especially Latine and Indigenous families, are most likely to live in "child care deserts" with little or no access to quality child care, which both harms children and affects maternal stress.[250] Lack of access to affordable early childhood education was a major stressor for Tina. Research also shows that children of color disproportionately lack access to *high-quality* education in particular.[251]

Consistent access to education, including freedom from harmful exclusion, is also important to health. Exclusionary discipline, such as suspensions and expulsions, is correlated with harms to health and well-being.[252] Discriminatory school policing and discipline practices damage academic outcomes and push students out of school and into the juvenile and criminal legal systems (through the school-to-prison pipeline), both of which are connected to myriad health harms.[253] Police encounters that are perceived as unfair, discriminatory, or intrusive happen in school settings, even with younger children.[254] These encounters are associated with adverse mental health outcomes, such as increased anxiety and depression.[255] Positive school climates improve student social and emotional health, academic learning, physical health, and healthy behaviors.[256]

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248. *Fact Sheet: The American Families Plan*, WHITE HOUSE (Apr. 28, 2021), https://www.whitehouse.gov/briefing-room/statements-releases/2021/04/28/fact-sheet-the-american-families-plan/ [https://perma.cc/RZ2L-BEF3]; *see* Jorge Luis García et al., *The Life-Cycle Benefits of an Influential Early Childhood Program* 54 (Nat'l Bureau of Econ. Rsch, Working Paper No. 22993, 2016).

249. Frances Campbell et al., *Early Childhood Investments Substantially Boost Adult Health*, 343 SCIENCE 1478, 1481–84 (2014).

250. *See* RASHEED MALIK ET AL., CTR. FOR AM. PROGRESS, AMERICA'S CHILD CARE DESERTS IN 2018, at 3–4, 11 (2018), https://www.americanprogress.org/wp-content/uploads/sites/2/2018/12/AmericasChildCareDeserts20182.pdf [https://perma.cc/47RC-T92A]; *see also* CHRISTINE JOHNSON-STAUB, CTR. FOR L. & SOC. POL'Y, EQUITY STARTS EARLY: ADDRESSING RACIAL INEQUITIES IN CHILD CARE AND EARLY EDUCATION POLICY 11 (2017).

251. *See, e.g.*, Daphna Bassok & Eva Galdo, *Inequality in Preschool Quality? Community-Level Disparities in Access to High-Quality Learning Environments*, 27 EARLY EDUC. & DEV. 128, 136–37 (2016) (discussing a study that measured the quality of Georgia prekindergarten classes and found that prekindergarten classes in neighborhoods with higher levels of poverty and high levels of Black residents had worse scores in child-to-adult ratio, emotional support, classroom organization, and instructional support).

252. *See* Cannon & Tuchinda, *supra* note 184, at 778.

253. *See* Thalia González et al., *An Antiracist Health Equity Agenda for Education*, 50 J.L. MED. & ETHICS 31, 33 (2022); Andrew Bacher-Hicks et al., *Proving the School-to-Prison Pipeline: Stricter Middle Schools Raise the Risk of Adult Arrests*, 21 EDUC. NEXT 52, 52 (2021) (linking stricter school discipline to worse educational outcomes and increased criminal justice involvement).

254. *See* CHILD.'S P'SHIP, POLICING AND ITS HARMFUL IMPACTS ON CHILD WELLBEING 7–8 (2020).

255. *See id.*

256. *See* Keng-Yen Huang et al., *School Contexts as Social Determinants of Child Health: Current Practices and Implications for Future Public Health Practice*, 128 PUB. HEALTH REP. 21, 25 (2013); Thalia González, Alexis Etow & Cesar De La Vega, *Health Equity, School Discipline Reform, and Restorative Justice*, 47 J.L. MED. & ETHICS 47, 48–49 (2019).

Exclusionary discipline is disproportionately used against Black students and other students of color,[257] who are punished and policed at much higher rates than their White peers both in early childhood and K–12 education.[258] For example, in the 2017–18 school year, Black preschoolers made up 18.2% of the preschool population but 43.3% of out-of-school suspensions, while White preschoolers, who make up 43% of the preschool population, received 37.6% of out-of-school suspensions.[259] Even as the use of out-of-school suspensions in both K–12 and secondary schools declined nationally, schools were still more than twice as likely to suspend their Black students than their White or Latine students during the same school year.[260]

3. Preventive Approaches to Law Implementation and Reform

Leveraging law to ensure access to high-quality early childhood education and consistent access to education thereafter, without the harms of exclusionary discipline, is an example of a preventive approach to maternal and child health justice that advances equitable thriving. Removing barriers to education could help preempt the onset of harmful conditions and, in turn, boost the health and thriving of the next generation. This includes implementation and enforcement of the rights of students facing exclusionary school discipline and law reform to broaden access to high-quality early childhood education.

Legal protections against exclusionary school discipline without due process exist but are frequently ignored in practice. The Supreme Court has held that students facing exclusionary discipline in schools, including suspensions and expulsions, have constitutional rights.[261] In *Goss v. Lopez*, the Court held that Ohio violated suspended students' constitutional rights because, under the Due Process Clause of the Fourteenth Amendment, students who are suspended for ten days or less must be given oral or written notice of the charges against them, an explanation of the evidence against them, and the opportunity to present their side of the story.[262] Students with disabilities are afforded additional protections from the

257. *See* González et al., *supra* note 256, at 48; Anne Gregory et al., *Good Intentions Are Not Enough: Centering Equity in School Discipline Reform*, 50 SCH. PSYCH. REV. 206, 206 (2021) (reporting that Black and Indigenous students were two and ten times more likely than White students to be suspended, respectively).

258. *See* Gregory et al., *supra* note 257, at 206, 211; Renee Ryberg et al., *Despite Reductions Since 2011–12, Black Students and Students with Disabilities Remain More Likely to Experience Suspension*, CHILD TRENDS (Aug. 9, 2021), https://www.childtrends.org/publications/despite-reductions-black-students-and-students-with-disabilities-remain-more-likely-to-experience-suspension [https://perma.cc/8Y7M-MEXC].

259. OFF. FOR C.R., U.S. DEP'T OF EDUC., DISCIPLINE PRACTICES IN PRESCHOOL (2021), https://civilrightsdata.ed.gov/assets/downloads/crdc-DOE-Discipline-Practices-in-Preschool-part1.pdf.

260. Ryberg et al., *supra* note 258.

261. *See* Goss v. Lopez, 419 U.S. 565, 574, 581 (1975).

262. *Id.* at 581.

Individuals with Disabilities Education Act (IDEA).[263]

However, students' constitutional and statutory rights often go under-implemented and under-enforced, which can cause particular harms and health consequences for students of color, who are disproportionately disciplined and funneled into the school-to-prison pipeline.[264] States and school districts have developed their own varying processes for due process in these cases.[265] Students facing longer suspensions may be entitled to more detailed notice and the opportunity to share their side of the story, but the duty to enact such procedures often goes unenforced and courts have "generally failed to ensure meaningful guardrails to arbitrary decisions and overreach by school officials."[266] Moreover, schools sometimes informally remove children from school without calling the action a suspension, which both denies those families the proper notice and opportunity to appeal the exclusion from school and may also violate special education law for students with disabilities.[267]

In concert with greater enforcement of students' rights in cases of exclusionary discipline, equitable thriving also necessitates law reform to promote educational access, especially in early childhood education, where tremendous racial disparities in access abound and where interventions can have powerful lifelong impacts. There are myriad law reform efforts that can increase access to quality early childhood education and, in turn, to the associated positive health outcomes.

Foremost, as most jurisdictions provide scattered opportunities for ECE, law reform to create *universal* ECE opportunities can advance racial health equity and promote equitable thriving. State- and local-level universal pre-K programs have been shown to result in significant gains in cognitive performance in reading, math,

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263. 20 U.S.C. §1400(d); Johanna E. Miller, *Protecting Children's Rights in School Discipline*, AM. BAR ASS'N: GP SOLO, Mar.–Apr. 2017, at 28, 30–31. Under IDEA, students with Individualized Education Programs (IEPs) or for whom the school has constructive notice of their disability are entitled to a "manifestation determination" for any infractions that do not involve drugs or weapons resulting in either a ten-day suspension or non-consecutive suspensions adding up to ten days. *See* 20 U.S.C. §1415(k)(1)(B), (E); Miller, *supra*, at 30. This is essentially an additional level of review protecting students with disabilities from wrongful suspensions. *See* Miller, *supra*, at 31.

264. Miller, *supra* note 263, at 30.

265. *See id.*

266. Diana Newmark, *The Illusion of Due Process in School Discipline,* 32 WM. & MARY BILL RTS. J. 343, 355 (2023); *see Goss v. Lopez*, 419 U.S. 565, 584 (1975) (noting that "suspensions [longer than ten days] or expulsions for the remainder of the school term, or permanently, may require more formal procedures"). Moreover, "courts have allowed schools to suspend and expel students by going through the motions of due process, deferring to the school officials' judgment and assuming generally that schools will be fair." Newmark, *supra*, at 363. There is also no right to counsel in school discipline matters. Students may have an advocate to help them throughout the process, but the advocate is often the student's parent or another non-attorney without knowledge of students' due process rights, nor of any additional protections from IDEA. *See* Miller, *supra* note 263.

267. Valerie C. Williams, *Discipline Discussions: Informal Removals Matter*, U.S. DEP'T OF EDUC.: OFF. OF SPECIAL EDUC. & REHAB. SERVS. BLOG (Feb. 22, 2023), https://sites.ed.gov/osers/2023/02/discipline-discussions-informal-removals-matter.

and problem solving.[268] They have also been shown to increase high school graduation and college attendance and decrease disciplinary incidents, including juvenile incarceration, all of which are linked to improved health outcomes.[269]

Law reform can also work to ensure higher quality among ECE programs, especially because some early childhood programs have yielded "mixed results."[270] To that end, legislative and regulatory efforts should require evidence-based curricula with nurturing and language-rich environments where staff encourage exploration and guide skill development, clear "protection[s] from inappropriate discipline," and resources to promote staff stability and cultural sensitivity.[271] These efforts can ensure that teachers are highly qualified and offered opportunities for professional development, manageable classroom sizes, and low staff–child ratios.[272] Community ownership is especially critical,[273] and programs should involve local communities in the development and implementation of early childhood policies and programs.[274] Quality must be measured regularly, economic analyses on the return on investment and health impact studies should be conducted and disseminated, and strategies should be developed to scale up effective local programs.[275] Leveraging law in these ways to ensure consistent access to high-quality education exemplifies a preventive approach that can promote equitable thriving.

B. INTERGENERATIONAL

An intergenerational approach to health equity is grounded in lifecourse science and is integral to equitable thriving. Though law drives health *disparities*

268. *See, e.g.*, William T. Gormley Jr. et al., *The Effects of Universal Pre-K on Cognitive Development*, 41 DEV. PSYCH. 872, 880 (2005) (studying effects of universal pre-K attendance in Oklahoma).

269. Guthrie Gray-Lobe et al., *The Long-Term Effects of Universal Preschool in Boston* 1, 21–22 (Nat'l Bureau of Econ. Rsch., Working Paper No. 28756, 2021).

270. Remy Pages et al., *Elusive Longer-Run Impacts of Head Start: Replications Within and Across Cohorts*, 42 EDUC. EVALUATION & POL'Y ANALYSIS 471, 471 (2020); LYNN A. KAROLY & ANAMARIE AUGER, RAND CORP., INFORMING INVESTMENTS IN PRESCHOOL QUALITY AND ACCESS IN CINCINNATI 7 (2016).

271. LORI G. IRWIN ET AL., WORLD HEALTH ORG.'S COMM'N ON THE SOC. DETERMINANTS OF HEALTH, EARLY CHILD DEVELOPMENT: A *POWERFUL* EQUALIZER 19, 30–31 (2007); KAROLY & AUGER, *supra* note 270, at 12.

272. *See* KAROLY & AUGER, *supra* note 270, at 3, 12.

273. *See, e.g.*, NH LISTENS, EARLY CHILDHOOD COMMUNITY ENGAGEMENT: HOW CAN NEW HAMPSHIRE BE THE BEST PLACE FOR ALL CHILDREN AND THEIR FAMILIES TO PLAY, LEARN, AND GROW? 3–6 (2017), https://carsey.unh.edu/sites/default/files/resource/files/early_childhood_community_engagement_report_print.pdf [https://perma.cc/CS28-TYPS] (describing New Hampshire's efforts to facilitate community engagement to develop early childhood interventions).

274. *See* IRWIN ET AL., *supra* note 271, at 41–42.

275. *See id.* at 41–43; Amanda Devercelli et al., *This Is What It Takes to Ensure Quality Early Childhood Learning*, WORLD ECON. F. (Oct. 4, 2022), https://www.weforum.org/agenda/2022/10/early-childhood-education-nurture-children-potential/ [https://perma.cc/335S-TL56] (encouraging systems for effective monitoring, quality assurance, and scaling up).

intergenerationally, it can instead be used to more justly and equitably promote human *flourishing* across the lifespan and across generations.[276]

1. Intergenerational Approaches Grounded in Lifecourse Science

LCHD emphasizes that health risks can be transmitted not just across the lifespan of one person but intergenerationally.[277] For example, insufficient nutritional intake during pregnancy can increase the risk of heart disease for children, and parental stress, including stress caused by poverty, can have health impacts on children.[278] In fact, maternal health, even before the point of conception, is an important factor in the persistence of racial disparities in birth outcomes.[279] Because LCHD emphasizes lifelong development and intergenerational influences,[280] it calls for a focus on the relationship of parents' and grandparents' health to children's health.[281]

In response to cautions that LCHD could promote early childhood interventions at the expense of other age groups,[282] LCHD scholars have emphasized the intergenerational nature of LCHD theory, through which the health of family members along the age spectrum is closely intertwined.[283] Therefore, interventions to promote health and health equity must "cut across generations"[284] in a "whole-person, whole-family, whole-community systems approach" involving "integrated, multi-sector service systems."[285] Legal and policy approaches to health justice should similarly center lifecourse and intergenerational health approaches to most effectively impact health equity.

For example, childhood disadvantage has been found to be the most important factor affecting intergenerational links in health.[286] The negative impacts of early life adversity and maltreatment in childhood not only affect children themselves but their offspring too.[287] Mental health problems can persist across generations;

276. *See* Marian Moser Jones & Kevin Roy, *Placing Health Trajectories in Family and Historical Context: A Proposed Enrichment of the Life Course Health and Development Model*, 21 MATERNAL & CHILD HEALTH J. 1853, 1855–56 (2017).

277. *See* D.J.P. Barker, *The Developmental Origins of Adult Disease*, 18 EUR. J. EPIDEMIOLOGY 733, 735 (2003) (describing the connections between maternal health, fetal health, and the future health of children, with a specific focus on the growing "body of evidence that a woman's diet and body composition before pregnancy play a major role in determining the future health of her children").

278. *See id.* at 733–34.

279. *See* Halfon et al., *supra* note 109, at 356, 358.

280. *See* Halfon & Hochstein, *supra* note 18, at 436.

281. *See* Halfon et al., *supra* note 109, at 356.

282. *See* FINE & KOTELCHUCK, *supra* note 179, at 4.

283. *See* Halfon et al., *supra* note 109, at 358.

284. *See id.* at 355.

285. Tina L. Cheng & Barry S. Solomon, *Translating Life Course Theory to Clinical Practice to Address Health Disparities*, 18 MATERNAL & CHILD HEALTH J. 389, 389–90 (2014).

286. Esperanza Vera-Toscano & Heather Brown, *The Intergenerational Transmission of Mental and Physical Health in Australia: Evidence Using Data From the Household Income and Labor Dynamics of Australia Survey*, 9 FRONTIERS PUB. HEALTH, Feb. 23, 2022, at 1, 8.

287. *See* Margot E. Barclay et al., *Maternal Early Life Adversity and Infant Stress Regulation: Intergenerational Associations and Mediation by Maternal Prenatal Mental Health*, 51 RSCH. CHILD & ADOLESCENT PSYCHOPATHOLOGY 1839, 1839 (2023); Amanda M. Flagg et al., *Intergenerational*

this effect can be mitigated by strong social networks in childhood.[288] Childhood conduct disorders are also influenced by family-level risk factors, such as witnessing interparental violence, that can often persist throughout generations.[289]

To thrive, a person's family must thrive too. Childhood health is affected by maternal prenatal health and environmental factors during pregnancy and childhood, like geographic location, health insurance status, and socioeconomic status.[290] The impact of poverty on lifelong health is especially worrying in a country where about one-third of poor children will experience poverty as adults;[291] interventions to improve people's health must address intergenerational poverty. Programs targeting intergenerational poverty implicate racial equity because poverty in the United States is highly racialized, disproportionately impacting Black and Indigenous children.[292]

Because current interventions and resources are not being deployed effectively—with over 20% of American children remaining poor after receiving government benefits[293]—the safety net should be adapted to target the cycle of intergenerational poverty.[294] Promoting and preserving employment and economic stability for parents is an intergenerational approach that can promote maternal, child, and intergenerational thriving.

2. Employment Insecurity as a Driver of Maternal and Child Health Injustice

Health justice requires that pregnant and parenting people are able to access quality employment and achieve economic security, conditions which have positive effects on the whole family's health. During pregnancy, the postpartum period, and well beyond, a parent's ability to maintain work and income is critical to child health. A family's income and wealth influence a child's access to resources that support health and well-being,[295] including essentials necessary to

Consequences of Maternal Childhood Maltreatment on Infant Health Concerns, 27 MATERNAL & CHILD HEALTH J. 1981, 1986 (2023).

288. *See* Evelina Landstedt & Ylva B. Almquist, *Intergenerational Patterns of Mental Health Problems: The Role of Childhood Peer Status Position*, 19 BMC PSYCHIATRY, Sept. 18, 2019, at 1, 6, 7.

289. *See* Marie B. H. Yap, *Empowering Multiply Disadvantaged Parents: A Step Toward Breaking the Intergenerational Perpetuation of Health Inequalities*, 76 JAMA PSYCHIATRY 233, 233 (2019).

290. *See* Jason Fletcher & Katie M. Jajtner, *Intergenerational Health Mobility: Magnitudes and Importance of Schools and Place*, 30 HEALTH ECON. 1648, 1654, 1657 (2021) (discussing geographic location and health insurance status); Anne Case et al., *Economic Status and Health in Childhood: The Origins of the Gradient*, 92 AM. ECON. REV. 1308, 1330 (2002) (discussing socioeconomic status).

291. Greg J. Duncan & Harry J. Holzer, *Policies That Reduce Intergenerational Poverty*, BROOKINGS INST. (Oct. 17, 2023), https://www.brookings.edu/articles/policies-that-reduce-intergenerational-poverty/ [https://perma.cc/D9NS-FRVM].

292. *See id.*

293. Idrees Kahloon, *The Best Way to Eradicate Poverty in America is to Focus on Children*, ECONOMIST (Sept. 26, 2019), https://www.economist.com/special-report/2019/09/26/the-best-way-to-eradicate-poverty-in-america-is-to-focus-on-children; *see also* Arohi Pathak, *Using Holistic, Multigenerational Strategies to Alleviate Poverty*, CTR. FOR AM. PROGRESS (Aug. 12, 2021), https://www.americanprogress.org/article/using-holistic-multigenerational-strategies-alleviate-poverty/ [https://perma.cc/5WW5-T7T2].

294. *See* Kahloon, *supra* note 293.

295. *See* Vanessa Wight et al., *Understanding the Link Between Poverty and Food Insecurity Among Children: Does the Definition of Poverty Matter?*, 20 J. CHILD. & POVERTY 1, 12 (2014); JOAN ALKER &

thrive.[296] Among other measures, families with higher incomes are better able to access consistent, high-quality preventive health services,[297] high-quality educational and recreational opportunities from early childhood through higher education,[298] nutritious foods,[299] health insurance,[300] and neighborhoods with less pollution,[301] community violence,[302] police violence,[303] and over-criminalization.[304] All of these factors can impact children's development.[305]

Family income and wealth can also influence a child's health through parental stress, mental wellness, and access to mental health resources.[306] Economic stress

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ALEXANDRA CORCORAN, GEO. UNIV. CTR. FOR CHILD. & FAMILIES, CHILDREN'S UNINSURED RATE RISES BY LARGEST ANNUAL JUMP IN MORE THAN A DECADE 10 (2020), https://ccf.georgetown.edu/wp-content/uploads/2020/10/ACS-Uninsured-Kids-2020_10-06-edit-3.pdf [https://perma.cc/4WFD-T5F2] (detailing that 7.7% of children at the 138% federal poverty level or below lack health insurance); *see also* THRIVING TOGETHER, *supra* note 236, at 41.

296. *See* Kerris Cooper & Kitty Stewart, *Does Household Income Affect Children's Outcomes? A Systematic Review of the Evidence*, 14 CHILD INDICATORS RSCH. 981, 982 (2021); Greg J. Duncan et al., *Moving Beyond Correlations in Assessing the Consequences of Poverty*, 68 ANN. REV. PSYCH. 413, 419–21 (2017).

297. *See* Elizabeth R. Wolf et al., *Gaps in Well-Child Care Attendance Among Primary Care Clinics Serving Low-Income Families*, PEDIATRICS, Nov. 2018, at 1, 2; Robert Sege et al., *Medical-Legal Strategies to Improve Infant Health Care: A Randomized Trial*, PEDIATRICS, July 2018, at 97, 102–03.

298. *See* W. STEVEN BARNETT & DONALD J. YAROSZ, NAT'L INST. FOR EARLY ED. RSCH., WHO GOES TO PRESCHOOL AND WHY DOES IT MATTER? 7 (2007); U.S. GOV'T ACCOUNTABILITY OFF., GAO-19-8, PUBLIC HIGH SCHOOLS WITH MORE STUDENTS IN POVERTY AND SMALLER SCHOOLS PROVIDE FEWER ACADEMIC OFFERINGS TO PREPARE FOR COLLEGE 24–33 (2018); Amanda M. White & Constance T. Gager, *Idle Hands and Empty Pockets? Youth Involvement in Extracurricular Activities, Social Capital, and Economic Status*, 39 YOUTH & SOC'Y 75, 101–04 (2007); Josh Kinsler & Ronni Pavan, *Family Income and Higher Education Choices: The Importance of Accounting for College Quality*, 5 J. HUM. CAP. 453, 469–76 (2011).

299. Wight et al., *supra* note 295, at 8–10; Lauren Futrell Dunaway et al., *Beyond Food Access: The Impact of Parent-, Home-, and Neighborhood-Level Factors on Children's Diets*, INT'L J. ENV'T RSCH. & PUB. HEALTH, June 20, 2017, at 1, 2.

300. *See* KATHERINE KEISLER-STARKEY & LISA N. BUNCH, U.S. CENSUS BUREAU, HEALTH INSURANCE COVERAGE IN THE UNITED STATES: 2020, at 11 (2021). In 2020, children in families with higher incomes were more likely to have health insurance coverage than children in families with lower incomes. *See id.* For instance, 2.2% of children in households at or above 400% of poverty were uninsured, compared with 9.3% of children in below 100% of poverty and 7.0% of children between 100% and 399% of poverty. *Id.*

301. *See* Philip J. Landrigan et al., *Environmental Justice and the Health of Children*, 77 MT. SINAI J. MED. 178, 182 (2010); ANTONIA JUHASZ, HUM. RTS. WATCH, "WE'RE DYING HERE": THE FIGHT FOR LIFE IN A LOUISIANA FOSSIL FUEL SACRIFICE ZONE 4 (2024), https://www.hrw.org/report/2024/01/25/were-dying-here/fight-life-louisiana-fossil-fuel-sacrifice-zone#5194 [https://perma.cc/6H34-GG8H]; Ney, *supra* note 28 (describing how infants born in Louisiana's "Cancer Alley" have a three times higher chance of low birthweight than the nationwide average).

302. *See* Ashli J. Sheidow et al., *Family and Community Characteristics: Risk Factors for Violence Exposure in Inner-City Youth*, 29 J. CMTY. PSYCH. 345, 347–48 (2001).

303. Justin M. Feldman et al., *Police-Related Deaths and Neighborhood Economic and Racial/Ethnic Polarization, United States, 2015–2016*, 109 AM. J. PUB. HEALTH 458, 461–62 (2019).

304. *See* Janel George, *Populating the Pipeline: School Policing and the Persistence of the School-to-Prison Pipeline*, 40 NOVA L. REV. 493, 493–95 (2016).

305. *See* Duncan et al., *supra* note 296, at 419–21 ("[E]conomists have challenged scholars to think about the many ways parents use economic resources to support healthy development.").

306. *See id.* at 417–19; Arianna M. Gard et al., *Evaluation of a Longitudinal Family Stress Model in a Population-Based Cohort*, 29 SOC. DEV. 1155, 1156 (2020).

can lead to greater distress among parents,[307] negatively impacting their emotional well-being. In turn, this distress can cause increased anxiety and depression,[308] challenges with responses to child behaviors,[309] and less involved parenting,[310] which can disrupt child development and lead to poor outcomes for children like behavioral[311] and mental health problems,[312] a decrease in social competence,[313] and lower cognitive outcomes.[314]

While consistent and well-paying employment is important because it can facilitate economic security and wealth, employment in and of itself is also linked to the health outcomes of employed parents and their children. Studies find both positive associations between employment and physical health and negative associations between unemployment and physical health, such as increased chronic disease, high blood pressure, stroke, and heart disease.[315] When job loss negatively impacts parental health and mental health,[316] children can experience health harms.[317] Parental unemployment is associated with negative physical, cognitive, and socio-emotional developmental outcomes in early childhood.[318] Accordingly, if Tina loses her job because of the time she needed to attend prenatal appointments, recover from labor, and care for her newborn, both she and her baby may face serious, impactful health harms.

Job loss is particularly detrimental when it keeps families from building assets, especially if they empty their savings to get through periods of unemployment.[319] Lack of access to wealth-building in turn can harm children and subsequent

307. Natalie Low & Nina S. Mounts, *Economic Stress, Parenting, and Adolescents' Adjustment During the COVID-19 Pandemic*, 71 FAM. RELS. 90, 97 (2022).

308. Kelsey Allard Crowder, The Effects of the Family Stress Model on Child Mental Health 5, 8–9 (2013) (M.S. thesis, Iowa State Univ.), https://dr.lib.iastate.edu/server/api/core/bitstreams/5ad94615-2fff-4884-9382-8ce673599bb2/content [https://perma.cc/JD2Q-E3LC].

309. Gard et al., *supra* note 306, at 1156.

310. *See* Crowder, *supra* note 308, at 10–12; Cooper & Stewart, *supra* note 296, at 982 (noting that economic hardship can make parents frustrated, less patient, and lacking in emotional resources); Vonnie C. McLoyd, *The Impact of Economic Hardship on Black Families and Children: Psychological Distress, Parenting, and Socioemotional Development*, 61 CHILD DEV. 311, 335–36 (1990).

311. Crowder, *supra* note 308, at 1–2.

312. *Id.* at 6–7.

313. *Id.* at 1–2.

314. *Id.*

315. *See* Kenneth C. Hergenrather et al., *Employment as a Social Determinant of Health: A Systematic Review of Longitudinal Studies Exploring the Relationship Between Employment Status and Physical Health*, 29 REHAB. RSCH. POL'Y & EDUC. 2, 13–14 (2015); *Employment*, OFF. DISEASE PREVENTION & HEALTH PROMOTION, U.S. DEP'T HEALTH & HUM. SERVS., https://health.gov/healthypeople/priority-areas/social-determinants-health/literature-summaries/employment [https://perma.cc/9FRQ-882R] (last visited Oct. 26, 2024).

316. Matthew Desmond & Carl Gershenson, *Housing and Employment Insecurity Among the Working Poor*, SOC. PROBLEMS, 2016, at 1, 13–14.

317. *See Children's Mental Health*, CTRS. FOR DISEASE CONTROL & PREVENTION (Mar. 8, 2023) [https://perma.cc/D8H5-F5GB].

318. *See* Demetris Pillas, *Social Inequalities in Early Childhood Health and Development: A European-Wide Systematic Review*, 76 PEDIATRIC RSCH. 418, 420, 423 (2014).

319. *See* Desmond & Gershenson, *supra* note 316, at 2.

generations.[320] In 2020, the wealthiest 10% of households held nearly 70% of the country's total wealth, with the top 1% alone owning more than 31% of total wealth.[321]

There are large racial wealth disparities, with the median net worth of White families almost eight times higher than that of Black families.[322] Because of racial income and wealth inequality,[323] White families are more likely than families of color to have the wealth and income to safeguard their children's access to resources needed to thrive.[324] In 2021, 51% of Black households lacked a baseline level of savings needed to survive at the poverty level for three months (in case of a job loss or medical emergency, for example), compared to 24% of White households and 27% of all United States households.[325] Among all racial groups in the United States, Black women earn the least, and "[s]ome scholars attribute [B]lack women's efforts to gain economic standing in America as part of their rationale for delaying pregnancies."[326]

Black individuals, and particularly Black women, face disproportionately high unemployment rates compared to White individuals. The unemployment rate for Black individuals is significantly higher than the overall unemployment rate in the United States.[327] These disparities worsened during the COVID-19 pandemic.[328] In February 2020, the unemployment rate for Black women over the age of twenty was 4.8%,[329] but rose to a peak of 16.6% that May.[330] Though

320. *See generally* DOROTHY A. BROWN, THE WHITENESS OF WEALTH: HOW THE TAX SYSTEM IMPOVERISHES BLACK AMERICANS – AND HOW WE CAN FIX IT (2021).

321. SHIRA MARKOFF ET AL., INST. ON RACE, POWER & POL. ECON. & PROSPERITY NOW, A BRIGHTER FUTURE WITH BABY BONDS: HOW STATES AND CITIES SHOULD INVEST IN OUR KIDS 5 (2024), https://prosperitynow.org/sites/default/files/resources/A%20Bright%20Future%20for%20Baby%20Bonds%202024_Final_021324.pdf [https://perma.cc/CR4K-QTTA].

322. Neil Bhutta et al., *Disparities in Wealth by Race and Ethnicity in the 2019 Survey of Consumer Finances*, BD. GOVERNORS FED. RSRV. SYS. (Sept. 28, 2020), https://www.federalreserve.gov/econres/notes/feds-notes/disparities-in-wealth-by-race-and-ethnicity-in-the-2019-survey-of-consumer-finances-20200928.htm [https://perma.cc/C337-8WKV].

323. *See generally* BROWN, *supra* note 320.

324. CHRISTIAN E. WELLER & LILY ROBERTS, CTR. FOR AM. PROGRESS, ELIMINATING THE BLACK-WHITE WEALTH GAP IS A GENERATIONAL CHALLENGE 1–5 (2021), https://americanprogress.org/wp-content/uploads/2021/03/BlackWhiteWealthGap-report11.pdf [https://perma.cc/59LG-QRW5].

325. *Financial Assets & Income: Liquid Asset Poverty Rate, 2021*, PROSPERITY NOW SCORECARD, https://scorecard.prosperitynow.org/data-by-issue#finance/outcome/liquid-asset-poverty-rate; *see also* THRIVING TOGETHER, *supra* note 236, at 37.

326. Michele Goodwin, *Assisted Reproductive Technology and the Double Blind: The Illusory Choice on Motherhood*, 9 J. GENDER, RACE & JUST. 1, 43–44 (2005).

327. *See Labor Force Characteristics by Race and Ethnicity, 2022*, U.S. BUREAU LAB. STATS. (Nov. 2023), https://www.bls.gov/opub/reports/race-and-ethnicity/2022/ [https://perma.cc/ZV6N-RCYE].

328. *See* Stephanie Aaronson et al., *A Hot Labor Market Won't Eliminate Racial and Ethnic Unemployment Gaps*, BROOKINGS INST. (Sept. 2, 2021), https://www.brookings.edu/articles/a-hot-labor-market-wont-eliminate-racial-and-ethnic-unemployment-gaps/ [https://perma.cc/B4WT-BYTY].

329. *See* Jocelyn Frye, *Rejecting Business As Usual: Improving Employment Outcomes and Economic Security for Black Women*, NAT'L P'SHIP FOR WOMEN & FAMS. (July 2023), https://nationalpartnership.org/report/improving-employment-outcomes-economic-security-for-black- women/ [https://perma.cc/LXE4-6S7Z].

330. *Id.*

overall unemployment has decreased since the height of the pandemic, Black women remain more likely to be unemployed than other groups of women; in June 2023, the unemployment rate for Black women over the age of twenty was 5.4%, compared to 2.6% for White women.[331]

3. Intergenerational Approaches to Law Implementation and Reform

Given the clear connections between income, wealth, employment, and parent and child health, addressing racial financial inequities and ensuring parents can maintain employment and economic security provides a foundational opportunity for existing and new law to support parental—and especially maternal—thriving in a way that engenders childhood thriving and intergenerational thriving.

To that end, there are myriad extant employment laws that can be more equitably leveraged and enforced to promote maternal and child intergenerational thriving. For example, Title VII of the Civil Rights Act of 1964 prohibits discrimination against employees or job applicants based on race, color, religion, sex, and national origin in all employment decisions.[332] That law and others have been interpreted and amended to expand employee protections in various ways, including prohibiting discrimination against a woman due to pregnancy, childbirth, or a related medical condition[333] and prohibiting unequal pay of men and women who perform equal work in the same workplace.[334] These provisions are critical to parents and other caregivers, especially those from marginalized communities, being able to pursue consistent work and wealth, with health benefits for children and entire families.

However, these anti-discrimination protections are not always adequately enforced.[335] The primary responsibility for enforcing anti-discrimination laws is placed on workers, who face a number of barriers to the effective protection of their rights,[336] such as information and power imbalances with employers[337] and the risk of retaliation and harm to their careers.[338] In fiscal year 2021, 56% of all

331. *Id.*

332. Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241 (codified as amended at 42 U.S.C. § 2000e).

333. *See* Pregnancy Discrimination Act of 1978, Pub. L. No. 95-955, 92 Stat. 2076, 2076–77 (1978); *see also Equal Employment Opportunity Laws*, U.S. EQUAL EMP. OPPORTUNITY COMM'N, https://www.eeoc.gov/equal-employment-opportunity-laws [https://perma.cc/2VX8-4YRA].

334. Equal Pay Act of 1963, Pub. L. 88-38, §3, 77 Stat. 56 (codified as amended at 29 U.S.C. § 206(d) (1982)); *see also* U.S. EQUAL EMP. OPPORTUNITY COMM'N, *supra* note 333.

335. *See* Samuel R. Bagenstos, *The Structural Turn and the Limits of Antidiscrimination Law*, 94 CAL. L. REV. 1, 4 (2006) (discussing courts' resistance to the ADA); Samuel R. Bagenstos, *The Future of Disability Law*, 114 YALE L.J. 1, 23 (2004).

336. *See* JENNY R. YANG & JANE LIU, ECON. POL'Y INST., STRENGTHENING ACCOUNTABILITY FOR DISCRIMINATION 1 (2021), https://files.epi.org/pdf/218473.pdf [https://perma.cc/TEM3-ASGZ].

337. *Id.* at 9, 15–17.

338. *Id.* at 14; *see also* CHARLOTTE A. BURROWS, U.S. EQUAL EMP. OPPORTUNITY COMM'N, BUILDING FOR THE FUTURE: ADVANCING EQUAL EMPLOYMENT OPPORTUNITY IN THE CONSTRUCTION INDUSTRY 42 (2023), https://www.eeoc.gov/sites/default/files/2023-05/Building%20for%20the%20Future.pdf [https://perma.cc/64RP-BQ88].

charges filed with the Equal Employment Opportunity Commission included an allegation of retaliation.[339]

Research indicates that Black and Latina mothers are more likely to quit their jobs after giving birth so they can have leave to care for their children.[340] Job protection and enforcement measures against racial and pregnancy discrimination could mitigate these problems.[341] Advocates propose a number of changes, including increased resources to vindicate workers' rights, policies to encourage employer transparency, and required data collection to support prevention and accountability.[342] Effective and just implementation and enforcement of employment discrimination protections for pregnant people and parents is critical to maternal and child health justice and to equitable thriving.

Law reform in employment law should also be leveraged to promote equitable maternal and child thriving. For example, law reform in the areas of paid sick and parental leave for pregnant people and parents demonstrates the potential for law to advance maternal and child health justice. Laws that provide for paid leave represent intergenerational approaches to equitable thriving because they help caregivers maintain employment and protect their health and that of their children.

Paid sick leave enables employees not only to take time off to recover and seek medical care without losing wages, but to provide care to their children. This allows parents and their children to recover faster and avoid more serious illness.[343] Research shows that access to paid leave improves maternal physical and mental health, reduces infant mortality rates, supports the healthy development of infants and toddlers, promotes young children's relationships with their caregivers, allows people to maintain employment, and improves the economic well-being of families.[344] Because Black women are more likely to be breadwinners for their families than mothers from other racial groups and face disproportionately high rates of maternal and infant mortality,[345] it is particularly important

339. BURROWS, *supra* note 338, at 42.

340. NAT'L P'SHIP FOR WOMEN & FAMS., PAID FAMILY AND MEDICAL LEAVE: A RACIAL JUSTICE ISSUE – AND OPPORTUNITY 6 (2018), https://nationalpartnership.org/wp-content/uploads/2023/02/Paid-Family-and-Medical-Leave-A-Racial-Justice-Issue-and-Opportunity.pdf [https://perma.cc/X949-B57K].

341. *See* YANG & LIU, *supra* note 336, at 14.

342. *See id.* at 2.

343. *See* LeaAnne DeRigne, Patricia Stoddard-Dare & Linda Quinn, *Workers Without Paid Sick Leave Less Likely to Take Time Off for Illness or Injury Compared to Those with Paid Sick Leave*, 35 HEALTH AFFS. 520, 520–21 (2016).

344. *See* Mina Dixon Davis, *National Paid Family and Medical Leave Is an Important Promise to Children*, CHILD.'S DEF. FUND (Nov. 18, 2021), https://www.childrensdefense.org/blog/national-paid-family-and-medical-leave [https://perma.cc/2ST5-SKEJ]; Arijit Nandi et al., *The Impact of Parental and Medical Leave Policies on Socioeconomic and Health Outcomes in OECD Countries*, 96 MILBANK Q. 434, 434 (2018).

345. Jessica Milli et al., *Black Women Need Access to Paid Family and Medical Leave*, CTR. FOR AM. PROGRESS (Mar. 4, 2022), https://www.americanprogress.org/article/black-women-need-access-to-paid-family-and-medical-leave [https://perma.cc/4SVY-DET9]; NAT'L P'SHIP FOR WOMEN & FAMS., *supra* note 340, at 5, 7.

that they can maintain employment and have access to paid leave as a means to combat economic and health inequity.

There is no federal guarantee to paid family or medical leave.[346] The Family and Medical Leave Act (FMLA) allows those who meet certain criteria to receive up to twelve weeks of unpaid leave for qualifying life events—including the birth of a child.[347] To qualify under FMLA, a person must have worked for either a private employer with at least fifty employees or a government employer of any size for at least a year and must have worked at least 1,250 hours in the past twelve months for that employer.[348] A 2020 Department of Labor report indicated that just 56% of American workers were eligible for FMLA, with 38% of low-wage workers eligible compared to 63% of non-low-wage earners.[349] This difference has an impact on racial inequities; because people of color are more likely to be working low-wage jobs, parents of color are accordingly less able to take leave from work after childbirth, either to recover from labor or to care for a new infant. Expanding coverage of FMLA could support more parents of color in keeping their jobs after childbirth, passing down the positive health effects of employment to the next generation.[350]

The Family and Medical Insurance Leave (FAMILY) Act is an example of proposed law reform that would provide a wide range of caregivers, including young, part-time, low-wage, and self-employed workers, with access to up to twelve weeks of partial paid leave when they take time off for their own or a family member's serious health condition, including the birth or adoption of a child.[351] This legislation shows how proposed law reform can expand accessibility to intergenerational protective conditions by making the benefits of employment (with additional financial supports) attainable to the entire family.

Considering this lack of movement on the federal level, state-level paid leave programs should be studied and replicated where effective. Thirteen states and Washington, D.C., have enacted their own paid leave programs, each including

346. Molly Weston Williamson, *The State of Paid Family and Medical Leave in the U.S. in 2024*, CTR. FOR AM. PROGRESS (Jan. 17, 2024), https://www.americanprogress.org/article/the-state-of-paid-family-and-medical-leave-in-the-u-s-in-2024 [https://perma.cc/27R6-9ZNG].

347. *See* 29 U.S.C. § 2612; *The Family and Medical Leave Act (FMLA)*, USA GOV, https://www.usa.gov/family-leave-act [https://perma1cc/ZB4Y-E2PS] (last visited Oct. 27, 2024).

348. 29 U.S.C. § 2612; *see also The Family and Medical Leave Act (FMLA)*, *supra* note 347. Additionally, all public and private elementary and secondary schools qualify as employers, regardless of size. 29 U.S.C. § 2618; *see also The Family and Medical Leave Act (FMLA)*, *supra* note 347.

349. SCOTT BROWN ET AL., ABT ASSOCS., EMPLOYEE AND WORKSITE PERSPECTIVES OF FMLA: WHO IS ELIGIBLE? 1–2 (2020), https://www.dol.gov/sites/dolgov/files/OASP/evaluation/pdf/WHD_FMLA2018PB1WhoIsEligible_StudyBrief_Aug2020.pdf [https://perma.cc/A6KC-ULA8].

350. NAT'L P'SHIP FOR WOMEN & FAMS., *supra* note 340, at 4, 7–8.

351. S. 248, 117th Cong. (2021); H.R. 804, 117th Cong. (2021). The FAMILY Act was introduced with 35 original cosponsors in the Senate and 197 original cosponsors in the House and was referred to the Senate Committee on Finance and the House Committee on Ways and Mean's Subcommittee on Worker and Family Support in February 2021. The bill would provide tiered benefits, with higher percentages of wages going to those with lower income. It would be administered through a new Office of Paid Family and Medical Leave. *See* Family and Medical Insurance Leave Act, S. 1714, 118th Cong. (2023); Family and Medical Insurance Leave Act, H.R. 3481, 118th Cong. (2023).

the right to cash benefits through an insurance system similar to the FAMILY Act.[352] California's paid leave program has shown that paid leave can reduce disparity in the duration of leave taken by new mothers of different races and in the adoption of breastfeeding, which encourages mother-child bonding and is associated with health benefits for infants.[353] Thus, paid leave programs help parents, children, and ultimately subsequent generations thrive. In these ways, leveraging law to preserve and promote employment and economic security exemplifies an intergenerational approach that can promote equitable thriving.

C. MULTISOLVING

The equitable thriving approach brings to maternal and child health justice a focus on the cross-sectoral, interwoven nature of health harms and on efforts that have impacts across multiple enmeshed systems. As a result, equitable maternal and child thriving can be fostered through multisolving, a practice where a focused approach on one issue helps to address multiple problems.[354]

1. Multisolving Approaches Grounded in Lifecourse Science

Rather than addressing issues in different sectors independently and in silos, multisolving is the use of approaches that will have cascading impacts across multiple social and structural drivers of health.[355]

This approach involves interventions with impacts that go beyond the immediate system and have positive spill-over effects across multiple systems. For example, promoting safe and healthy housing for a family—or an entire community—is a multisolving strategy because stable housing opens doors to other health-promoting supports, like access to education and employment. Multisolving in this way is responsive to the interdependent and cross-sectoral nature of determinants of health highlighted by LCHD literature,[356] like the interwoven threats to housing stability, employment, economic security, educational access, and health that Tina and her daughter experienced.

Children and families in marginalized communities often experience "tangled threats," or threats to health that are "pernicious and deeply entangled" with *other* threats to health.[357] Housing insecurity is a representative tangled threat because it is extremely harmful to health and well-being, and is also interwoven with other health-harming conditions, such as barriers to food, healthcare, utility access, and transportation.[358] For example, housing insecurity causes families to "make

352. *See* Williamson, *supra* note 346.

353. NAT'L P'SHIP FOR WOMEN & FAMS., *supra* note 340, at 5–6.

354. *See* Elizabeth Sawin, *The Magic of "Multisolving,"* STAN. SOC. INNOVATION REV. (July 16, 2018), https://ssir.org/articles/entry/the_magic_of_multisolving [https://perma.cc/KUS9-2MXZ].

355. See *supra* Sections II.A. and II.B. for further discussion of social and structural determinants of health.

356. *See supra* Section II.B.

357. *See* Bobby Milstein & Jack Homer, *Which Priorities for Health and Well-Being Stand Out After Accounting for Tangled Threats and Costs? Simulating Potential Intervention Portfolios in Large Urban Counties*, 98 MILBANK Q. 372, 394 (2020).

358. *See supra* Section II.A.

difficult choices between paying the rent and paying for medicine, food, heating, transportation, and other essentials."[359] Tina and her daughter experienced precisely this form of tangled threat, and Tina was compelled to sacrifice necessities like food and utility access to put money towards rent. Tina also experienced how substandard housing conditions that make a parent sick can impact employment.

Tangled threats to maternal and child health, like housing insecurity, necessitate multisolving approaches. Just as housing *insecurity* creates these difficult choices that force people to go without basic necessities in ways that harm health, promoting housing *security* is a multisolving approach because of its cascading positive health-promoting impacts. Advancing housing stability is a multisolving approach because it helps to remove barriers to access basic necessities, education, employment, and economic security, fostering the health and well-being of parents and children.[360]

2. Housing Insecurity as a Driver of Maternal and Child Health Injustice

As the Black-run doula organization Mamatoto Village and the medical–legal partnership Georgetown University Health Justice Alliance assert in a recent report, "[h]ousing justice is reproductive justice."[361] Indeed, housing instability drives significant maternal and child health inequity before, during, and after pregnancy and across generations.[362] For example, being behind on rent is linked to increased maternal depressive symptoms and worse caregiver health, along with increased child lifetime hospitalizations and worse child health.[363] Unstable housing status among pregnant patients is linked to higher delivery costs[364] and a 73% increase in the risk of "low birth weight or preterm birth."[365] Young women experiencing housing instability during pregnancy are exposed to multiple financial

359. *See* Peggy Bailey, *Housing and Health Partners Can Work Together to Close the Housing Affordability Gap*, CTR. ON BUDGET & POL'Y PRIORITIES (Jan. 17, 2020), https://www.cbpp.org/research/housing/housing-and-health-partners-can-work-together-to-close-the-housing-affordability [https://perma.cc/TXZ6-DJCC]; *see also supra* Section II.A for a discussion of the interaction between environmental factors and health.

360. *See, e.g.*, Robert B. Hood et al., *Housing Stability and Access to General Healthcare and Reproductive Healthcare Among Women in Ohio*, 26 MATERNAL & CHILD HEALTH J. 2185, 2188 (2022) (finding that housing insecurity is associated with greater likelihood of barriers to accessing general and contraceptive healthcare).

361. BHATNAGAR ET AL., *supra* note 42, at 17.

362. *See id.* at 10–14.

363. *See* Megan Sandel et al., *Unstable Housing and Caregiver and Child Health in Renter Families*, PEDIATRICS, Jan. 2018, at 1, 4–7.

364. Lindsay K. Admon et al., *A Closer Look at Health Inequities Among Pregnant People with Unstable Housing*, 4 JAMA NETWORK OPEN, Apr. 22, 2021, at 1, 1; Ayae Yamamoto et al., *Comparison of Childbirth Delivery Outcomes and Costs of Care Between Women Experiencing vs Not Experiencing Homelessness*, 4 JAMA NETWORK OPEN, Apr. 22, 2021, at 1, 8.

365. *See* Kathryn M. Leifheit et al., *Severe Housing Insecurity During Pregnancy: Association with Adverse Birth and Infant Outcomes*, 17 INT'L J. ENV'T RSCH. & PUB. HEALTH, Nov. 21, 2020, at 1, 8; *see also* Bianca V. Carrion et al., *Housing Instability and Birth Weight Among Young Urban Mothers*, 92 J. URB. HEALTH 1, 5 (2014).

stressors,[366] which are further risk factors for low birthweight and preterm birth.[367] These health consequences follow children throughout their lives; low birthweight, for example, is linked to an increased risk of childhood asthma as well as adult diseases like hypertension and cardiovascular disease.[368]

When an eviction occurs, there are significant maternal health consequences. Caregivers who are evicted experience higher rates of economic hardship and depression, which can create health harms to them and their children.[369] Parents who become unhoused face further serious health threats. Studies indicate that children of mothers who experienced homelessness during pregnancy or after birth had an increased risk of poor health, hospitalization, and developmental delays.[370]

Housing instability, evictions, and homelessness also directly harm children's health.[371] Evictions and homelessness can result in toxic stress, which can even be experienced in the womb.[372] Infants born during a period of unstable housing and homelessness have negative health outcomes in early childhood, including higher rates of respiratory problems and fever, longer neonatal intensive care unit stays, and increased rates of emergency department visits.[373] Children without stable housing are more likely to experience "developmental delay, . . . anxiety, depression, . . . and even death."[374] Children who are unhoused have lower rates of immunization and higher rates of hospitalization and severe hunger.[375] In 2023, a national survey found 111,620 children were unhoused, making up 17% of all those experiencing homelessness.[376]

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366. *See* Carrion et al., *supra* note 365, at 6.

367. *See* Joanna Almeida et al., *Racial/Ethnic Inequities in Low Birth Weight and Preterm Birth: The Role of Multiple Forms of Stress*, 22 MATERNAL & CHILD HEALTH J. 1154, 1157 (2018).

368. Xue-Feng Xu et al., *Effect of Low Birth Weight on Childhood Asthma: A Meta-Analysis*, BMC PEDIATRICS, Oct. 23, 2014, at 1, 6.

369. *See* Bruce Ramphal et al., *Evictions and Infant and Child Health Outcomes*, JAMA NETWORK OPEN, Apr. 11, 2023, at 1, 8–9; Matthew Desmond & Rachel Tolbert Kimbro, *Eviction's Fallout: Housing, Hardship, and Health*, 94 SOC. FORCES 295, 316–17 (2015).

370. MEGAN SANDEL ET AL., CTR. FOR HOUS. POL'Y, NAT'L HOUS. CONF., COMPOUNDING STRESS: THE TIMING AND DURATION EFFECTS OF HOMELESSNESS ON CHILDREN'S HEALTH 2 (2015), https://childrenshealthwatch.org/wp-content/uploads/Compounding-Stress_2015.pdf [https://perma.cc/YJ42-3WJJ].

371. *See* NEMOURS CHILDREN'S HEALTH, IMPACT OF HOUSING ON CHILD HEALTH 1–2 (2023), https://www.nemours.org/content/dam/nemours/shared/collateral/policy-briefs/housing-on-child-health-brief.pdf [https://perma.cc/Q35C-VW2T].

372. *Id.* at 2.

373. Robin E. Clark et al., *Infants Exposed to Homelessness: Health, Health Care Use, and Health Spending from Birth to Age Six*, 38 HEALTH AFFS. 721, 721 (2019).

374. Ericka Petersen, *Building a House for Gideon: The Right to Counsel in Evictions*, 16 STAN. J. C.R. & C.L. 63, 69 (2020).

375. Roy Grant et al., *Twenty-Five Years of Child and Family Homelessness: Where Are We Now?*, 103 AM. J. PUB. HEALTH, Sept. 2, 2013, at e1, e4.

376. TANYA DE SOUSA ET AL., U.S. DEP'T OF HOUS. & URB. DEV., THE 2023 ANNUAL HOMELESSNESS ASSESSMENT REPORT (AHAR) TO CONGRESS – PART 1: POINT-IN-TIME ESTIMATES OF HOMELESSNESS 14 (2023), https://www.huduser.gov/portal/sites/default/files/pdf/2023-AHAR-Part-1.pdf [https://perma.cc/FNQ9-EF9M].

Housing instability is not just a problem in and of itself. As a "tangled threat," it leads to many health harms for parents and children beyond housing.[377] With more than 10 million renters—a quarter of renter-occupied units—spending at least *half* their income on housing, those families experience steep barriers towards accessing other essential needs.[378] When "the rent eats first," the whole family is left with scant resources for other basic necessities critical for thriving, like nutritious food and medical care.[379] Often, they are forced to live in dangerous housing conditions, lacking heat or exposed to hazards like mold and lead.[380] Housing unaffordability can also drive families to live in neighborhoods with underfunded schools and a dearth of safe outdoor play spaces, grocery stores, and healthcare providers, conditions which make good health less attainable for parents and children.[381]

In addition, housing instability creates barriers to education for children. For example, housing instability can lead to lower school attendance and lower likelihood of high school completion.[382] Because educational attainment is closely linked to childhood and lifelong health and well-being,[383] these tangled threats are particularly harmful to health across the lifespan.

Housing instability also results in job loss for parents. A study in Milwaukee showed that people who experienced a forced move due to housing insecurity had an 11%–22% higher likelihood of a subsequent job loss.[384] The relationship between housing insecurity and employment is one of "double precarity," as job loss decreases access to health insurance coverage and leads to other health harms.[385] Parental unemployment has further rippling impacts for families and is correlated with poorer parental and child health.[386]

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377. *See* THRIVING TOGETHER, *supra* note 236, at 3.

378. *See* Alexandra Ashbrook, *Food Insecurity and Housing Instability Are Inextricably Linked*, FOOD RSCH. & ACTION CTR. (Nov. 20, 2023), https://frac.org/blog/food-insecurity-and-housing-instability-are-inextricably-linked#_edn3 [https://perma.cc/9JYW-3NCT].

379. *See id.*

380. *See* Bailey, *supra* note 359.

381. *See* NEMOURS CHILDREN'S HEALTH, *supra* note 371, at 2; Ashbrook, *supra* note 378; Rebecca Lee, *How Poverty and Location Limit Access to Health Care*, RENDIA, https://rendia.com/resources/insights/poverty-location-limit-access-health-care/ [https://perma.cc/Q7M4-AX86] (last visited Oct. 27, 2024).

382. Brendan Chen, *How Housing Instability Affects Educational Outcomes*, HOUS. MATTERS URB. INST. (Feb. 28, 2024), https://housingmatters.urban.org/articles/how-housing-instability-affects-educational-outcomes [https://perma.cc/J33V-RMDE].

383. *See* Cannon & Tuchinda, *supra* note 184, at 778.

384. Desmond & Gershenson, *supra* note 316, at 14.

385. *See id.* at 14–15; NEMOURS CHILDREN'S HEALTH, *supra* note 371, at 1–2.

386. *See* Joseph Marrone & Margaret A. Swarbrick, *Long-Term Unemployment: A Social Determinant Underaddressed Within Community Behavioral Health Programs*, 71 PSYCHIATRIC SERVS. 745, 745–46 (2020) (discussing research connecting unemployment and poorer health); Björn Högberg et al., *Intergenerational Effects of Parental Unemployment on Infant Health: Evidence from Swedish Register Data*, 40 EUR. SOCIO. REV. 41, 46 (2024) (finding that parental unemployment at birth is associated with low birthweight and preterm birth); Irma Mooi-Reci & Mark Wooden, *Jobless Parents, Unhealthy Children? How Past Exposure to Parental Joblessness Influences Children's Future Health*,

Families of color disproportionately experience the maternal and child health harms of unstable and unhealthy housing. Historic racist housing policies like "redlining,"[387] ongoing racist housing policies like exclusionary zoning practices,[388] and racial inequities in income and wealth have led to persistent racial inequities in homeownership and racial segregation.[389] Families of color are less likely to have access to homeownership, better schools, nearby grocery stores and healthier food options, and other interrelated resources needed for families to thrive.[390] Instead, Black, Latine, and other families of color are more likely to be rent-burdened and to experience housing instability or homelessness.[391] In particular, Black women and their children are more likely to experience eviction than any other group.[392] It is important to note that the effect of race cannot be reduced to a class issue, with studies indicating that "[h]istorical discrimination in housing, education, and employment . . . still create disadvantage [even] among college-educated African American women."[393]

3. Multisolving Approaches to Law Implementation and Reform

Just as housing instability represents a tangled threat to families of color, the leveraging of existing law and law reform efforts to promote housing *stability* is a

SSM POPULATION HEALTH, June 2022, at 1, 7 ("[A]ll else equal, children continuously exposed to parental joblessness were more vulnerable to poor mental and general health in later years.").

387. *See* Jeramy Townsley & Unai Miguel Andres, *The Lasting Impacts of Segregation and Redlining*, SAVI (June 24, 2021), https://www.savi.org/lasting-impacts-of-segregation/ [https://perma.cc/P82X-TYMX].

388. *See* Jonathan Rothwell & Douglas S. Massey, *The Effect of Density Zoning on Racial Segregation in U.S. Urban Areas*, 44 URB. AFFS. REV. 779, 780–81 (2009) (noting that "macro-level zoning regulations play a role in sustaining segregation," as evidenced by the fact that "jurisdictions with low-density zoning [a]re less likely to have Black residents than those without such regulations").

389. *See* DEDRICK ASANTE-MUHAMMED ET AL., CFED & INST. FOR POL'Y STUD., THE EVER-GROWING GAP: WITHOUT CHANGE, AFRICAN-AMERICAN AND LATINO FAMILIES WON'T MATCH WHITE WEALTH FOR CENTURIES 7–8 (2016), https://ips-dc.org/wp-content/uploads/2016/08/The-Ever-Growing-Gap-CFED_IPS-Final-1.pdf [https://perma.cc/U6FR-RE99].

390. *See* RHONDA TSOI-A-FATT BRYANT, CTR. FOR L. & SOC. POL'Y, COLLEGE PREPARATION FOR AFRICAN AMERICAN STUDENTS: GAPS IN THE HIGH SCHOOL EDUCATIONAL EXPERIENCE 1–2 (2015), https://www.clasp.org/sites/default/files/public/resources-and-publications/publication-1/College-readiness2-2.pdf [https://perma.cc/N54G-DHSU]; SARAH TREUHAFT & ALISON KARPYN, POLICYLINK & FOOD TRUST, THE GROCERY GAP: WHO HAS ACCESS TO HEALTHY FOOD AND WHY IT MATTERS 13–16 (2010), https://policylink.org/sites/default/files/FINALGroceryGap.pdf [https://perma.cc/367F-ZD5S]; Dolores Acevedo-Garcia et al., *Racial and Ethnic Inequities in Children's Neighborhoods: Evidence from the New Child Opportunity Index 2.0*, 39 HEALTH AFFS. 1693, 1693–94, 1697–98 (2020) (showing causal links between childhood neighborhood status and long-term educational and employment outcomes).

391. *See* THRIVING TOGETHER, *supra* note 236, at 33 (noting, for instance, that 31% of Black people and 28% of Latine people spend more than half their incomes on rent).

392. Kathryn A. Sabbeth & Jessica K. Steinberg, *The Gender of Gideon*, 69 UCLA L. REV. 1130, 1147 (2023).

393. Marian Moser Jones & Kevin Roy, *Placing Health Trajectories in Family and Historical Context: A Proposed Enrichment of the Life Course Health and Development Model*, 21 MATERNAL & CHILD HEALTH J. 1853, 1855–56 (2017); *see* Sandall et al., *supra* note 64, at 394–95; Ney, *supra* note 28 (explaining that racial disparities in low birthweight rates persist, even between a Black college-educated mother and a White mother without a high school diploma). For further discussion of the impact of race on maternal-health outcomes regardless of affluence, see *supra* Section II.A.

multisolving approach to equitable maternal and child thriving because of these measures' positive cascading effects on health.[394]

There are myriad housing laws on the books that are under-enforced, resulting in health harms. The "justice gap," or the lack of adequate legal assistance and resources for parents facing eviction, contributes to the inequitable enforcement of tenants' rights and the resulting health harms for parents and children when they experience unjust evictions.[395] Tenants are rarely represented by counsel to help them enforce and protect their rights, while most landlords have attorneys, who are often advantaged by being repeat players in the courtroom.[396] Thus, many tenants are left without an awareness of or an opportunity to raise eviction defenses (such as hazardous housing conditions) available under existing laws.[397]

A growing number of states and municipalities have enacted right-to-counsel legislation for tenants in eviction proceedings,[398] while other programs train non-lawyer navigators to "function as intermediaries between disadvantaged people and the legal system," identify legal issues, share legal information and advice, and provide referrals.[399] Though all of these programs can benefit families of color, given their overrepresentation in the eviction system, programs specifically targeting families with children and pregnant people can have particularly impactful multisolving impacts across the lifecourse. With limited resources, a jurisdiction might decide to prioritize the right to counsel for families with children because of the threat of tremendous cascading harms to whole families' health and well-being.

Moreover, other access to justice models could bring housing-related legal resources directly to pregnant people and parents. For example, pediatric medical–legal partnerships (MLPs) embed lawyers into pediatric practices, where they train pediatricians to proactively screen for unmet legal needs, such as housing insecurity, eviction, homelessness, and substandard housing conditions, and work collaboratively to address those legal needs and their health impacts on children and their caregivers.[400] Because those partnerships proactively screen for legal issues, they can often

394. THRIVING TOGETHER, *supra* note 236, at 33–34 (proposing policies to support housing stability).

395. Cannon, *supra* note 48, at 549, 536–39.

396. Cannon, *supra* note 52, at 256 (first citing Kathryn A. Sabbeth, *(Under)Enforcement of Poor Tenants' Rights*, 27 GEO. J. ON POVERTY L. & POL'Y 97, 120 (2019); and then citing Petersen, *supra* note 374, at 76).

397. *See* Kathryn A. Sabbeth, *Housing Defense as the New* Gideon, 41 HARV. J.L. & GENDER 55, 80 (2018).

398. NAT'L COAL. FOR A CIV. RIGHT TO COUNS., THE RIGHT TO COUNSEL FOR TENANTS FACING EVICTION: ENACTED LEGISLATION 3 (2024), http://civilrighttocounsel.org/uploaded_files/283/RTC_Enacted_Legislation_in_Eviction_Proceedings_FINAL.pdf [https://perma.cc/TC3S-24QE] (reporting that seventeen cities, two counties, and five states have enacted a right to counsel for tenants facing eviction).

399. Tanina Rostain, *Techno-Optimism & Access to the Legal System*, 148 DAEDALUS 93, 95 (2019); *see* Yael Zakai Cannon, *Medical-Legal Partnership as a Model for Access to Justice*, 75 STAN. L. REV. ONLINE 73, 74 (2023).

400. *See* Barry Zuckerman, Megan Sandel, Lauren Smith & Ellen Lawton, *Why Pediatricians Need Lawyers to Keep Children Healthy*, 114 PEDIATRICS 224, 224–26 (2004); Cannon, *supra* note 399, at 82–84.

provide legal intervention before a legal crisis such as an eviction and therefore operate more effectively as upstream multisolvers.[401] Perinatal MLPs similarly embed lawyers into labor and delivery units and health clinics that provide prenatal and postpartum care, where they can enforce housing-related rights for pregnant people and parents of infants, who are particularly vulnerable to the harms of housing insecurity and homelessness.[402] These types of MLPs can be especially impactful multisolving approaches because they provide access to counsel, housing rights information, and legal resources where pregnant and parenting people are already seeking healthcare. This holistic support in collaboration with healthcare providers recognizes the interconnected nature of housing and health, and how empowering pregnant people and parents to exercise their rights is health-promoting itself.[403]

Beyond enforcement of existing laws, law reform efforts are also needed to promote maternal and child housing stability and advance equitable thriving. State and local jurisdictions have successfully experimented with law and judicial reform efforts to curb harmful evictions and maintain tenancies, such as eviction diversion, mediation, and rental assistance programs.[404] Efforts like these can benefit children of color and particularly Black women and their children, given that they are evicted at higher rates than any other group.[405] However, as long as resources remain limited, legal approaches that specifically target children and their families could be particularly impactful, such as Seattle's ongoing school-year moratorium on evictions for students and educators.[406] Because this protection not only keeps children and their families housed but also ensures that children maintain access to education and its respective health benefits, Seattle's initiative could serve as a national model.

The Social Determinants for Moms Act, which is part of the Black Maternal Health Momnibus Act, also has the potential to facilitate multisolving by "provid [ing] increased funding for affordable housing and wraparound services for pregnant people and parents."[407] While currently stalled in Congress, this legislation reflects the capacity of housing supports to improve health and stability in multiple aspects of life, especially for young families.

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401. *See* Cannon, *supra* note 399, at 77, 82–83.

402. *See* Loral Patchen, Roxana Richardson, Asli McCullers & Vicki Girard, *Integrating Lawyers into Perinatal Care Teams to Address Unmet, Health-Harming Legal Needs*, 142 OBSTETRICS & GYNECOLOGY 1310, 1310–11 (2023); AM. MED. ASS'N, MATERNAL HEALTH: EXPANDING ON THE AMA'S RECOMMENDATIONS TO REDUCE DEATHS AND IMPROVE OUTCOMES 6–7 (2024).

403. *See* TOBIN-TYLER & TEITELBAUM, *supra* note 47, at 340.

404. *See, e.g.*, Aidan Gardiner, *How Philadelphia Kept Thousands of Tenants from Being Evicted*, N.Y. TIMES, https://www.nytimes.com/2023/07/13/headway/philadelphia-tenants-eviction.html (July 17, 2023) (providing eviction diversion, mediation, and rental assistance).

405. Sabbeth & Steinberg, *supra* note 392, at 1147 ("Evictions disproportionately affect Black women and their children."); Peter Hepburn, Renee Louis & Matthew Desmond, *Racial and Gender Disparities Among Evicted Americans*, 7 SOCIO. SCI. 649, 659 (2020).

406. SEATTLE, WASH., MUN. CODE § 22.205.110.

407. BHATNAGAR ET AL., *supra* note 42, at 17.

Because housing instability is a tangled threat, multisolving through improved enforcement and law reform can generate cascading positive effects on maternal and child health and well-being.

D. COMMUNITY-LED

Equitable thriving approaches promote community leadership and power in improving the conditions necessary for maternal and child health justice. LCHD emphasizes that the leadership of communities that have been marginalized in public health research is essential to uncover the needs of those communities and the interventions necessary for health optimization. Equitable thriving builds on these community-led research approaches to call for community leadership and power-building in law reform and implementation to advance maternal and child health justice.

1. Community Leadership as a LCHD Principle

The LCHD framework champions community leadership in research through an approach known as community-based participatory research (CBPR).[408] This type of research aims to "address health inequities by engaging with communities impacted by inequitable research relationships, structural racism, and other forms of systemic oppression."[409] For example, a study in Toronto, Canada, recruited people with lived experience of homelessness and diabetes to participate as coresearchers.[410] The study found that the participants not only benefitted from enhanced diabetes knowledge but also from many intangible social benefits, including feeling a sense of purpose in informing scientific research and interventions and bonding with others with shared life experiences.[411] Researchers can provide insights from these studies to guide interventions in areas critical to maternal and child thriving.

In a similar vein, Angela Aina, a public health researcher, activist, and founder of the Black Mamas Matter Alliance, has argued that addressing the poor health outcomes faced by Black pregnant and birthing people requires a true "scientific revolution," by prioritizing the leadership of Black pregnant and birthing people in the research process and producing evidence on issues that matter to marginalized communities to drive policy and budgetary change.[412] This is imperative because "[e]vidence of the current crisis includes the lack of attention to the problem of maternal morbidity and mortality at the federal level . . . specifically the

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

409. *Id.*

410. David J.T. Campbell et al., *Using a Community-Based Participatory Research Approach to Meaningfully Engage Those with Lived Experience of Diabetes and Homelessness*, BMJ DIABETES RSCH. & CARE, 2021, at 1, 6.

411. *Id.*

412. Angela D. Aina et al., Black Women Scholars & the Rsch. Working Grp. of the Black Mamas Matter Alliance*, Black Maternal Health Research Re-Envisioned: Best Practices for the Conduct of Research with, for, and by Black Mamas*, 14 HARV. L. & POL'Y REV. 393, 414–15 (2020).

lack of funding to design and test interventions to mitigate the burden of Black birthing people."[413]

Even children can provide leadership in research efforts to promote health. Youth participatory action research (YPAR) is similarly "a cyclical process of learning and action" through which youth are trained to perform research directly impacting their lives.[414] The University of California engaged in a multiyear YPAR to develop school health center programs, which provided youth with tangible research, advocacy, and leadership skills and yielded policies that meaningfully benefitted their communities.[415] YPAR can serve as a transformative tool that helps youth "take action on the inequities that they face."[416]

Increasingly championed in LCHD and other public health literature, community-based participatory research methods include partnering with communities in assessing their needs, developing interventions to address those needs, and implementing such interventions—methods which can be structured to shift power to communities to promote equitable maternal and child thriving.[417]

2. Lack of Power as a Threat to Maternal and Child Health Justice

Health justice demands a focus on greater social inclusion and community power. The U.S. Surgeon General has posited that loneliness, isolation, distrust, and disconnection are threats to health and well-being.[418] Tina experienced this phenomenon. Living in unsafe and unstable housing conditions that she felt powerless to address, Tina was experiencing a sense of isolation, mistrust, and distress, with negative implications for her mental and physical health.[419]

Conversely, the Surgeon General has suggested that social support in navigating challenges and a sense of community belonging can help people lead more resilient and fulfilling lives.[420] Indeed, the Surgeon General has identified "civic muscle," or "a sense of belonging and power to influence the policies, practices, and programs that shape the world" as a vital condition for health.[421]

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413. *Id.* at 414.

414. *Why YPAR?*, BERKELEY YPAR HUB, https://yparhub.berkeley.edu/why-ypar [https://perma.cc/7D2E-FN3U] (last visited Oct. 27, 2024).

415. *See* Samira Soleimanpour et al., *Incorporating Youth-Led Community Participatory Research into School Health Center Programs and Policies*, 123 PUB. HEALTH REPS. 709, 711, 714 (2008).

416. TAUCIA GONZÁLEZ & JOAN HONG, EQUITY BY DESIGN: YPAR FOR THE CLASSROOM: A GUIDE FOR THE CRITICAL AND CURIOUS EDUCATOR 11 (2022), https://greatlakesequity.org/sites/default/files/202207093096_brief.pdf [https://perma.cc/M2BV-HHUJ].

417. Nicholas Freudenberg & Emma Tsui, *Evidence, Power, and Policy Change in Community-Based Participatory Research*, 104 AM. J. PUB. HEALTH 11, 11 (2014).

418. U.S. DEP'T OF HEALTH & HUM. SERVS., COMMUNITY HEALTH AND ECONOMIC PROSPERITY: ENGAGING BUSINESSES AS STEWARDS AND STAKEHOLDERS–A REPORT OF THE SURGEON GENERAL 134 (2021), https://www.hhs.gov/sites/default/files/chep-sgr-full-report.pdf [hereinafter STEWARDS AND STAKEHOLDERS].

419. *See* Anthony Iton et al., *Building Community Power to Dismantle Policy-Based Structural Inequity in Population Health*, 41 HEALTH AFFS. 1763, 1769 (2022).

420. STEWARDS AND STAKEHOLDERS, *supra* note 418, at xviii.

421. *Id.* at 15.

Community power can protect maternal and child health directly, such as when a community successfully prevents the closure of a "safety net" hospital with a labor and delivery unit or the placement of a toxic waste facility near a childcare facility or school.[422] It can also protect and promote health indirectly, such as when community action and solidarity foster social support and inclusion, which can in turn build camaraderie among community members, encourage a sense of belonging, and improve mental health.[423] Thus, community power is linked to better physical, mental, and emotional health outcomes, such as reductions in cardiovascular risk factors, lower infant mortality, improved mental health, and increased confidence.[424] Research shows that individuals "have a better chance of achieving their health goals if they can participate with other people who are affected by the same or similar circumstances."[425] If Tina could connect with other tenants who are organizing for improved conditions in her community and experience a sense of solidarity, her feelings of powerlessness could be mitigated, with benefits to her and her daughter's well-being.

Racism, misogyny, and other forms of discrimination threaten this sense of power and belonging, thereby undermining health and well-being.[426] Indeed, "much of health inequity in [America] is a product of racism" and of targeted policies that have limited the power of communities to hold policymakers and institutions accountable for inequitable outcomes.[427] Consequently, the harms of health disparities are unduly borne by communities that also face substantial barriers to collective action that could improve those conditions, such as mistrust, mobilization fatigue, and disillusionment.[428] In other words, racially minoritized communities can experience compounding threats to health as a result of conditions that drive poor health outcomes and a sense of powerlessness to change those conditions. These health threats are felt profoundly by mothers and other caregivers of color, as they face barriers to raising their children with dignity in safe and healthy environments and to the community leadership and power necessary to meaningfully alter harmful conditions.

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422. *See, e.g.*, Maxwell Evans, *Activists, Health Care Workers Demand Pritzker, Lightfoot Keep Pressure on Mercy Hospital to Stay Open*, BLOCK CLUB CHI. (Dec. 22, 2020), https://blockclubchicago.org/2020/12/22/activists-health-care-workers-demand-pritzker-lightfoot-keep-pressure-on-mercy-hospital-to-stay-open/; Monte Reel, *The Left-for-Dead Hospital That Got a Second Chance for $1*, BLOOMBERG (Oct. 1, 2021, 5:00 AM), https://www.bloomberg.com/news/features/2021-10-01/mercy-hospital-gets-second-chance-to-provide-health-care-to-chicago-s-poor.

423. *See* Iton et al., *supra* note 419, at 1765.

424. *Id.*

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

426. STEWARDS AND STAKEHOLDERS, *supra* note 418, at 134.

427. *See* Iton et al., *supra* note 419, at 1769.

428. This phenomenon has been characterized as "collective participatory debt," a "type of mobilization fatigue that transpires when citizens engaged in policy processes are met with a lack of democratic transparency and responsiveness despite high levels of repeated participation." Sally A. Nuamah, *The Cost of Participating While Poor and Black: Toward a Theory of Collective Participatory Debt*, 19 PERSPS. ON POL. 1115, 1115–16 (2021).

As a result, "[b]uilding power for health justice means cultivating the political capacity of people with the most at stake, those who are disproportionately harmed by health injustice."[429] Elevating the power of affected communities to come together to drive the health equity agenda is an equitable thriving priority in and of itself.[430]

3. Community Leadership in Law Implementation and Reform

Equitable thriving requires tearing down the power of subordinating structures and instead promoting the power of marginalized communities to effect change.[431] To that end, the community leadership in research envisioned by CBPR can also be facilitated in law reform and implementation efforts.

Health justice scholars emphasize the importance of power-building strategies that build the capacity and power of marginalized communities to engender outcomes that reduce health inequity.[432] Indeed, health justice is not just the end, but also the process, which "entails transforming existing economic and political institutions to make them more inclusive, responsive, and accountable, particularly in relation to the needs and demands of those who are consistently and systematically marginalized."[433] In order for equitable thriving to be most relevant, helpful, and impactful, legal strategies should be guided by the stated needs, visions, goals, and ideas of people from communities experiencing the harms of health inequity,[434] especially Black and other racially minoritized pregnant people, caregivers, and children. The framework recognizes that those communities should not only have a seat at the table, but that the table is theirs.

Collective action by grassroots organizers to secure safe, healthy, and stable housing can help leverage existing laws and advance law reform to promote equitable thriving.[435] Grassroots community organizations are "among the most effective organizations to build power," as they can raise political consciousness about how laws on the books are driving racial health inequity and can help organize tenants to protect their rights.[436] Housing organizers have worked to pursue opportunities for homeownership among tenants, which shift power back to residents by supporting them in purchasing property in their neighborhoods, and to protect other

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

430. *See* PRAXIS PROJECT, CIVIC PARTICIPATION FOR ALL (CP4ALL): ORGANIZING BEYOND THE BALLOT BOX 2, 7 (2020), http://thepraxisproject.org/resource/2020/cp4all-organizing-beyond-the-ballot-box [https://perma.cc/CUW8-CLDQ].

431. *See id.*; Michener, *supra* note 429, at 659.

432. *See, e.g.*, Michener, *supra* note 429, at 658; Harris & Pamukcu, *supra* note 12, at 806; Benfer, *supra* note 9, at 346; Wiley et al., *supra* note 11, at 638.

433. Michener, *supra* note 429, at 657.

434. *See* Cannon & Tuchinda, *supra* note 184, at 783.

435. *See* Michener, *supra* note 429, at 659.

436. LILI FARHANG & XAVIER MORALES, NAT'L ACAD. MED., BUILDING COMMUNITY POWER TO ACHIEVE HEALTH AND RACIAL EQUITY: PRINCIPLES TO GUIDE TRANSFORMATIVE PARTNERSHIPS WITH LOCAL COMMUNITIES 2 (2022), https://nam.edu/building-community-power-to-achieve-health-and-racial-equity-principles-to-guide-transformative-partnerships-with-local-communities/.

important rights.[437] In fact, research suggests that an addition of ten new tenant organizations per 100,000 city residents is associated with a 10% reduction in eviction filings.[438] This work has significant impact for maternal and child health because "[t]he Americans most at risk of eviction are babies and toddlers."[439]

Tenant organizing can also be wielded to enforce housing codes and address housing hazards like mold that harm the health of parents and children, like Tina and her baby.[440] The impacts of this organizing were evident in the campaign to organize tenants at Washington, D.C.'s Marbury Plaza in the city's primarily Black Ward 7.[441] Tenants were living with unsafe and unhealthy conditions like mold and asbestos, hazards that can be particularly threatening to pregnant people and young children.[442] After building management ignored demands for remediation and city officials failed to respond, at least seventy tenants instituted a rent strike to enforce their rights to habitable housing,[443] and parents brought concerns for their children's health and safety to D.C. Councilmembers.[444]

These tenant organizing efforts got the attention of the D.C. Office of the Attorney General, which sued the property owner and management company.[445] The court eventually ordered a 50% rent abatement until code violations were addressed,[446] which highlights both the power of the law to put pressure on the

437. *Community Ownership*, URB. INST., https://www.urban.org/apps/pursuing-housing-justice-interventions-impact/community-ownership [https://perma.cc/G9ZM-UBHH] (last visited Oct. 28, 2024).

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

439. Emily Badger et al., *The Americans Most Threatened by Eviction: Young Children*, N.Y. TIMES (Oct. 2, 2023), https://www.nytimes.com/2023/10/02/upshot/evictions-children-american-renters.html; *see also* Nick Graetz et al., A Comprehensive Demographic Profile of the US Evicted Population, *in* PROCEEDINGS OF THE NATIONAL ACADEMY OF ARTS AND SCIENCES 1, 5 (PNAS, 2023), https://www.pnas.org/doi/epdf/10.1073/pnas.2305860120.

440. *See* Ben Gutman, *Tenants at Marbury Plaza Renew a Decade-old Rent Strike as COVID-19 Exacerbates a History of Neglect*, STREETSENSEMEDIA (Feb. 28, 2021), https://streetsensemedia.org/article/tenants-at-marbury-plaza-renew-a-decade-old-rent-strike-as-covid-19-exacerbates-a-history-of-neglect [https://perma.cc/A2N2-XNKV]; *'Not Paying to Live Like This': DC's Marbury Plaza Residents Weary of Worsening Conditions*, 7NEWS (Oct. 11, 2022), https://wjla.com/news/local/dc-marbury-plaza-residents-apartments-conditions-washington-district-bowser-racine-weary-worsening-conditions-not-paying-to-live-like-this-dmv-gentrification-neighborhood [https://perma.cc/8ANS-XFHQ].

441. *See* Gutman, *supra* note 440; *'Not Paying to Live Like This,' supra* note 440.

442. *See 'Not Paying to Live Like This,' supra* note 440.

443. *See* Gutman, *supra* note 440; *A Year of Pandemic Organizing at Marbury Plaza*, STOMP OUT SLUMLORDS (Apr. 27, 2021), https://www.stompoutslumlords.org/2021/04/27/a-year-of-pandemic-organizing-at-marbury-plaza/ [https://perma.cc/X72N-REZA].

444. *See* Dave Leval, *Tenants Take Their Complaints About Unsafe Living Conditions to DC Councilmembers,* DC NEWS NOW (Nov. 6, 2023, 9:47 PM), https://www.dcnewsnow.com/news/local-news/washington-dc/tenants-take-their-complaints-about-unsafe-living-conditions-to-dc-councilmembers.

445. Jasper Smith, *Marbury Plaza Tenants Say They Still Live in Terrible Conditions Amid Lawsuit*, DCIST (Sept. 6, 2022, 2:06 PM), https://dcist.com/story/22/09/06/marbury-plaza-lawsuit-housing-dc-2022/ [https://perma.cc/V3TV-C76A]; Gutman, *supra* note 440.

446. *Owners of Four Apartment Complexes in DC Ordered to Fix Hazardous Living Conditions*, OFF. OF ATT'Y GEN. NEWSROOM (May 26, 2023), https://oag.dc.gov/release/owners-four-apartment-complexes-dc-ordered-fix [https://perma.cc/9K9A-LULQ].

status quo but also the limits of the court system to fully address the root cause of the challenges that communities face. When the tenants' housing conditions remained unchanged, they expanded their demands to include acquisition of the building to establish tenant-controlled social housing, a fight which continues.[447] Tenant organizing often starts when tenants band together to address urgent needs. But it also has the potential to achieve longer-term power-building objectives, such as tenant ownership, and seal longer-term connections between tenants, a form of social support and solidarity that can promote well-being among parents and other tenants.[448] Scholars and advocates can provide support for community organizers working to enforce health-promoting laws on the books that bolster maternal and child flourishing.

In addition to collective action to ensure implementation and enforcement of existing laws, community leadership in law *reform* efforts is critical to equitable maternal and child thriving. Community leadership in law reform can be accomplished through impact litigation,[449] policy advocacy, planning, policymaking, and budgeting, which are all power-building tools that can cement connections between the fight against health disparities and the fight against subordination.[450] Parents and youth with lived experience can help identify policy gaps, develop solutions, and guide implementation and evaluation of equitable maternal and child thriving law reform efforts. To that end, community policymaking approaches build "grassroots leadership to create and advocate for policy solutions and changes to systems that produce inequities."[451]

Health and health equity leaders and practitioners in government and civil society often lead the charge for health-related law reform. Instead, they must pursue opportunities to partner with grassroots organizations to engage people with lived experience to design, enact, implement, and evaluate legislation to pursue a healthier, more equitable society.[452]

Policymakers and advocates, as well as researchers from law, medicine, and other fields, must learn to work alongside community organizations by serving as coconspirators and humble resource allies in service of the goals and leadership

447. Ida Domingo, *Tenants Rally for Action to Transform DC's Marbury Plaza into Community-Controlled Housing*, 7NEWS (Nov. 6, 2023, 11:09 AM), https://wjla.com/news/local/dc-marbury-plaza-tenants-rally-rent-princes-demand-social-housing-united-for-change-district-families-good-hope-road-se-metro-democratic-socialist-settlement-nonprofit-bad-conditions-fixes [https://perma.cc/MZH6-HMQK].

448. *See* URB. INST., *supra* note 437.

449. *See, e.g.*, *Community-Driven Litigation*, JUSTICEPOWER, https://justicepower.org/community-driven-litigation/ [https://perma.cc/3LXV-8M58] (last visited Sept. 18, 2024) (listing examples of community-led litigation efforts by immigration organizations).

450. *See* Harris & Pamukcu, *supra* note 12, at 813–14 n.222.

451. *Community Organizing*, URB. INST., https://www.urban.org/apps/pursuing-housing-justice-interventions-impact/community-power-building [https://perma.cc/5JWN-ZM39] (last visited Oct. 28, 2024).

452. *See* MANUEL PASTOR ET AL., USC DORNSIFE EQUITY RSCH. INST., A PRIMER ON COMMUNITY POWER, PLACE, AND STRUCTURAL CHANGE 24 (2020).

of those who are affected by maternal and child health inequity.[453] To do so, these practitioners should share resources and tools from practice and research that might advance the policy goals of the community.[454] Reproductive, environmental, and other justice movements are models to emulate, because they use power-building "as their touchstone, prioritizing community rights to participation in decisionmaking and policymaking."[455]

To advance equitable thriving, the voices and leadership of mothers and youth of color must be prioritized in policymaking. For example, the Black Swan Academy uses youth-led organizing by training youth of color to advocate and partner with legislators to advance social change around issues that affect youth and their broader communities, such as freedom from harmful exclusionary school discipline.[456]

Another method for community leadership in law reform is through participatory budgeting, "a democratic process in which community members decide how to spend part of a public budget" to better respond to their stated needs.[457] Studies have shown that participatory budgeting helped reduce child mortality by almost 20% in Brazil.[458] This community power-building approach has spread to thousands of cities across the globe,[459] engaging community members in their local budgeting process. For example, each year, the Fair Budget Coalition in Washington, D.C., proposes budget platforms to advance health, food, economic, and housing justice.[460] These types of community-led policymaking and budgeting processes can advance community power in guiding legislative efforts and appropriations towards equitable thriving.

CONCLUSION

Tina's story does not have to end with further entrenchment of health injustice. Envision a world where she, her daughter, and future generations have access to the conditions critical to building good health and thriving across the lifecourse. As a new LCHD-informed approach to health justice, equitable thriving does not settle for a goal of reduction of disease or premature death; instead, it advocates for the development of law and policy that explicitly support human flourishing

453. *See* Iton et al., *supra* note 419, at 1769.

454. *See id*. at 1768.

455. Harris & Pamukcu, *supra* note 12, at 810.

456. *See We Are Black Swan Academy*, BLACK SWAN ACAD., https://www.blackswanacademy.org/ [https://perma.cc/C9Y8-A9MM] (last visited Oct. 28, 2024).

457. *See Learn About PB*, PARTICIPATORY BUDGETING PROJECT, https://www.participatorybudgeting.org/about-pb/ [https://perma.cc/X9F4-E228] (last visited Oct. 28, 2024).

458. Michael Touchton & Brian Wampler, *Improving Social Well-Being Through New Democratic Institutions*, 47 COMP. POL. STUD. 1442, 1457–58 (2014) (finding that municipalities that have exercised participatory budgeting for at least eight years will experience an infant mortality rate about 19% lower than that have exercised PB for less than four years); *see also Learn About PB*, *supra* note 457.

459. *Learn About PB*, *supra* note 457.

460. *Fair Budget Coalition*, FAIR BUDGET COAL., https://fairbudget.org/ [https://perma.cc/AG43-B92M] (last visited Oct. 28, 2024).

for those who have been deprived of that foundational freedom.[461] Specifically, it calls for preventive, intergenerational, multisolving, and community-led approaches to achieve health justice. These principles embody a whole-person, whole-family, and whole-community view of well-being. Equitable thriving sets high goals for law's role in health equity, with ambitions to improve the lives of parents and children through a better understanding of how health and flourishing can be optimized through law.[462]

Equitable thriving is informed by LCHD and argues that LCHD research provides both a conceptual paradigm and an evidence base for the use of law to address negative drivers of health that keep racially minoritized parents and children from thriving. Within public health research, LCHD has been characterized as "increasingly productive and impactful" because it promotes a paradigm shift away from the focus on incremental improvement of prior models of disease causation, in turn creating ramifications for how health is measured and what the goals of our country should be in regards to health.[463] This theory recognizes "the tremendous plasticity of humans"[464] and the ways in which law can cultivate the conditions necessary to consign maternal and infant health disparities to our nation's history and to ensure that universal opportunities to thrive become our present and future. In addition to the aim of eliminating health-harming subordination, the health justice framework should also include equitable thriving as a core aspiration.

To achieve that goal, equitable thriving acknowledges that interventions enacted at certain parts of the lifecourse have ramifications across one's entire lifespan and across that of the next generation. Indeed, health should not be viewed within a moment of time. The research surrounding lifecourse health mechanisms underscores that maternal, infant, and child health pose key opportunities to reduce harms and promote positive conditions to advance health equity. In fact, understanding that health mechanisms stretch across the lifespan, across generations, and well past the doctor's office and the delivery room is critical to maternal and child health justice. As legal scholarship continues to call for plans to reduce mortality and morbidity, equitable thriving provides strategies for maternal and child flourishing across the lifecourse as additional requisites for maternal and child health justice.

Just as it grounds the work of law in a scientific evidence base, the equitable thriving approach also radically reimagines power dynamics, reflecting the imperative that interventions to promote health must "also embrace analytically the exercise of power."[465] Maximizing the impact of the equitable thriving

461. *See* Murphy, *supra* note 171, at 1367.

462. *See id.*

463. *See* Neal Halfon et al., *Life Course Research Agenda (LCRA), Version 1.0*, *in* HANDBOOK OF LIFE COURSE HEALTH DEVELOPMENT, *supra* note 16, at 625; *see also* Halfon et al., *supra* note 109, at 356.

464. Halfon & Forrest, *supra* note 16, at 37.

465. Paul H. Wise, *Framework as Metaphor: The Promise and Peril of MCH Life-Course Perspectives*, 7 MATERNAL & CHILD HEALTH J. 151, 155 (2003).

framework for racially minoritized populations requires promoting the power of these communities to not only participate in—but to lead and guide— research and policy change efforts.

The principles of equitable thriving are far-reaching. They can be applied to opportunities for equitable enforcement of laws on the books and for law reform well beyond the specific areas of law discussed herein. The four principles of equitable thriving are guideposts that can be used to identify opportunities to advance maternal and child health justice across many areas of law that implicate health. For example, environmental justice approaches could benefit from equitable thriving analysis. The placement of a toxic waste facility near a school in a predominantly Black community could implicate equitable thriving as a result of the health harms that may develop across the lifespan and across generations. Immigration justice may similarly implicate equitable thriving. When Latine immigrant children are systematically subjected to destructive family separation practices, those experiences can contribute to toxic stress that is correlated with chronic health problems in adulthood. Leveraging environmental, zoning, or immigration laws to prevent and mitigate these challenges in ways that embody the four principles of equitable thriving could help to advance maternal and child health justice. Researchers, policymakers, and advocates alike can use the equitable thriving lens to assess the efficacy of a wide range of laws or their implementation in advancing maternal and child health justice.

Equitable thriving may also have application beyond maternal and child health, especially in light of its emphasis on the interconnections between an individual's health and the health of those around them. LCHD began with investigations into the intergenerational health mechanisms between maternal and fetal health but has grown to envision leveraging maternal and child health in ways that can influence the future health of those children as adults and of their children and grandchildren for generations. And LCHD continues to develop and evolve with new scientific understanding. As such, equitable thriving sees individuals in the context of the health of those around them, including their family and community members, and the evolving research could offer additional lessons for other forms of justice and for other populations. Future work could examine the role of equitable thriving in assessing approaches in law to advance disability justice, elder justice, or justice for other populations.

Equitable thriving brings lessons from science to questions of justice. Indeed, "[i]t is impossible to talk about life-course patterns of health without talking about justice."[466] And justice necessitates that everyone has the freedom to thrive—throughout their lives and across generations.

466. *Id.*