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## A Mile Away, A World Apart: Life Expectancy Inequality in the United States

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**A MILE AWAY, A WORLD APART: LIFE EXPECTANCY INEQUALITY IN THE  
UNITED STATES**

SCOTT A. BUDOW<sup>1</sup>

*“Where systematic differences in health are judged to be avoidable by reasonable action they are, quite simply, unfair. It is this that we label health inequity. Putting right these inequities – the huge and remediable differences in health between and within countries – is a matter of social justice. Reducing health inequities is, for the Commission on Social Determinants of Health[], an ethical imperative. Social injustice is killing people on a grand scale.”*  
-World Health Organization, *Commission on Social Determinants of Health*<sup>2</sup>

Ted Reid lived a full life. Born during the Great Depression, Ted served active duty in Korea before earning a law degree. He was hired out of law school by the law firm Davis Polk & Wardwell, where he made partner and spent his career. He served on numerous boards and cultural associations, ran marathons, and raised a family in Brooklyn Heights, a charming residential neighborhood. Ted passed away peacefully there at the age of 90.<sup>3</sup>

Curtis Hodges lived just over a mile away, but under very different circumstances. Hodges lived at the Walt Whitman Houses, a public housing

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<sup>1</sup> Scott Budow is an Adjunct Professor of Law at Fordham Law School. The views expressed in this article are solely the views of the author.

<sup>2</sup>WORLD HEALTH ORGANIZATION, *Closing the Gap in a Generation: Final Report of the Commission on Social Determinants of Health* (2008), [http://apps.who.int/iris/bitstream/handle/10665/43943/9789241563703\\_eng.pdf;jsessionid=4D82C9D15038C9672DEC907B90477B38?sequence=1](http://apps.who.int/iris/bitstream/handle/10665/43943/9789241563703_eng.pdf;jsessionid=4D82C9D15038C9672DEC907B90477B38?sequence=1).

<sup>3</sup> *Brooklyn Heights Mourns Ted Reid, 90, Davis Polk partner, BBG board members, Brooklyn Museum to Bargemusic* (July 28, 2020), BROOKLYN DAILY EAGLE. <https://brooklyneagle.com/articles/2020/07/28/brooklyn-heights-mourns-ted-reid-90-davis-polk-partner-bbg-board-member-brooklyn-museum-to-bargemusic/>.

complex run by the New York City Housing Authority (NYCHA), where he shared an apartment with his granddaughter and two kids.<sup>4</sup> Like Reid, Hodges was a fixture in his community and was someone who was “loved by everyone” and considered the “neighborhood grandfather.”<sup>5</sup> However, the NYCHA houses he lived in were chronically underfunded and in such dire need of vital repairs<sup>6</sup> that one resident compared them to “living in prison.”<sup>7</sup> The kitchens and electrical systems required particular maintenance.<sup>8</sup> One Saturday afternoon, Hodges ventured into his kitchen and a fire broke out. When firefighters arrived, he was unconscious on the kitchen floor with severe burns covering his body. Paramedics rushed him to the nearby Brooklyn Hospital, but he died shortly later of cardiac arrest at the age of 73.<sup>9</sup>

It is not surprising that Reid lived to be 90 while Hodges only lived to be 73. In Reid’s neighborhood, the life expectancy is 89 years. In Hodges’ neighborhood, just over a mile away, the life expectancy is just under 73 years, meaning that Hodges lived an average life, despite his tragic death. To put that

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<sup>4</sup> Will Yakowicz, *Man Dies in Kitchen Fire in the Walt Whitman Houses*, PATCH (Dec. 18, 2011), <https://patch.com/new-york/fortgreene/man-dies-in-kitchen-fire-in-the-walt-whitman-houses>.

<sup>5</sup> *Id.*

<sup>6</sup> Kathleen Culliton, *Brooklyn's Worst NYCHA Housing Needs \$4B Repairs, Study Finds*, PATCH, (Nov. 27, 2018), <https://patch.com/new-york/bed-stuy/brooklyns-worst-nycha-housing-needs-4b-repairs-study-finds>.

<sup>7</sup> *Id.*

<sup>8</sup> *Physical Needs Assessment 2017*, N.Y. CITY HOUSING AUTHORITY (Mar. 25, 2018), <https://www1.nyc.gov/assets/nycha/downloads/pdf/PNA%202017.pdf>.

<sup>9</sup> Yakowicz, *supra* note 4.

remarkable disparity into context, if Reid’s neighborhood was a country, it would have the highest life expectancy of any country in the world by several years; by contrast, the life expectancy in Hodges’ neighborhood was comparable to Libya.<sup>10</sup>

The life expectancy gap between these two neighborhoods reflects a national epidemic replicated across the country.<sup>11</sup> People may have always suspected that the rich live longer than the poor, but the size of this gap reveals a stunning level of inequality on the most fundamental metric of human existence.

This gap does not have to be inevitable. It is the residue of society’s decisions, both affirmatively and by neglect. Those decisions are codified in statutes and explained in judicial opinions, but they are also in bills that never became law and longstanding assumptions that have not been revisited. Life expectancy inequality has been thoroughly incorporated into the American experience through a comprehensive legal infrastructure that can be deconstructed and reconfigured at our will.

This article explains how our legal system contributes to unequal health outcomes for different neighborhoods and proposes responsive solutions. Specifically, it tracks the “social determinants of health,” which focus on how

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<sup>10</sup> World Development Indicators, *Life Expectancy at birth, total (years)*, THE WORLD BANK, last updated Apr. 27, 2022,

[https://data.worldbank.org/indicator/SP.DYN.LE00.IN?most\\_recent\\_value\\_desc=true](https://data.worldbank.org/indicator/SP.DYN.LE00.IN?most_recent_value_desc=true).

<sup>11</sup> *Life Expectancy at Birth for U.S. States and Census Tracts, 2010-2015*, Centers for Disease Control and Prevention, <https://www.cdc.gov/nchs/data-visualization/life-expectancy/index.html>; Sabrina Tavernise and Albert Sun, *Same City, but Very Different Life Spans*, N.Y. TIMES (Apr. 28, 2015), <https://www.nytimes.com/interactive/2015/04/29/health/life-expectancy-nyc-chi-atl-richmond.html>.

“conditions in the environments where people are born, live, learn, work, play, worship, and age affect a wide range of health, functioning, and quality-of-life outcomes and risks.”<sup>12</sup> The social determinants of health, which are predetermined by the legal system, largely explain life expectancy inequality in the U.S.

### I. A SNAPSHOT OF THE TWO NEIGHBORHOODS

Reid and Hodges practically lived in two separate universes. The average person that Reid would have encountered in his neighborhood was educated, prosperous, and white. Today, almost two-thirds of the people in his neighborhood have a bachelor’s degree, the median household income is above \$100,000, and more than three in four are white.<sup>13</sup> The average person in Hodges’ neighborhood was not as educated, earned far less, and was not white. Today, approximately 15% have bachelor’s degrees, the median household income is just above \$17,000, and less than five percent of the neighborhood is white.<sup>14</sup>

A quick way to understand the differences between two neighborhoods is to analyze the neighborhood’s area deprivation index (ADI). The ADI looks at 17

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<sup>12</sup> *Social Determinants of Health*, U.S. DEP’T HEALTH AND HUMAN SERVICES, <https://health.gov/healthypeople/objectives-and-data/social-determinants-health>.

<sup>13</sup> *Life Expectancy by Census Tract in New York State*, NYS HEALTH FOUND., <https://nyshealthfoundation.org/resource/life-expectancy-by-census-tract-in-new-york-state/#life-expectancy-variation-by-census-tract-map>

<sup>14</sup> *Id.*

variables associated with health outcomes, including education, income, and housing metrics, to identify which neighborhoods require additional social services.<sup>15</sup> Unsurprisingly, Hodges' neighborhood had an ADI approximately 225% that of Reid's neighborhood,<sup>16</sup> meaning that Curtis's neighborhood was significantly more socioeconomically deprived relative to Reid's neighborhood.

## II. WHY IT'S THE NEIGHBORHOOD, NOT THE PEOPLE IN THE NEIGHBORHOOD

These vast differences in income, education, and life expectancy may be because financially successful, healthy people cluster in sought-after neighborhoods, while disadvantaged and unhealthy people cluster in undesirable neighborhoods. In other words, it is possible that the differences in what brings people to live in certain neighborhoods may be driving divergent health outcomes. The data, however, demonstrates otherwise. Researchers have tracked children's outcomes using anonymous census data, allowing us to see what their lives look like at age 35. We can therefore answer basic questions about children born in Hodges' census tract and compare them to children born in Reid's census tract.

By the age of 35, a person born in Hodges' neighborhood earns far less, is

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<sup>15</sup> Andrew Maroko et. al., *Integrating Social Determinants of Health With Treatment and Prevention: A New Tool to Assess Local Area Deprivation*, 13 PREVENTING CHRONIC DISEASE: PUB. HEALTH RSCH., PRACTICE, AND POLICY 1 (2015), <http://dx.doi.org/10.5888/pcd13.160221>.

<sup>16</sup> Life Expectancy by Census Tract, *supra* note 13 (Compare census tract 185.01 (Curtis) to census tract 3.01 (Ted)).

far less likely to be married, is less likely to be employed, and is far more likely to be incarcerated than a person born in Reid’s neighborhood:

<b>Child’s Outcome in Adulthood<sup>17</sup></b>	<b>Hodges’ Census Tract</b>	<b>Reid’s Census Tract</b>
Annual Household Income at Age 35	\$23,000	\$65,000
Individual Income (Excluding Spouse) at Age 35	\$21,000	\$44,000
Fraction Married at Age 35	12%	52%
Incarceration Rate	4%	< 1%
Employment Rate at Age 35	73%	79%
Fraction in top 20% based on Household Income	2.8%	47%
Fraction in top 20% based on Individual Income	9.9%	44%

These outcomes are truly startling. As depicted in the chart above, 1 in 25 children from Hodges’ neighborhood are *currently* incarcerated, compared to

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<sup>17</sup> *The Opportunity Atlas*, <https://www.opportunityatlas.org/> (Compare census tract 185.01 (Hodges) to census tract 3.01 (Reid)).

fewer than 1 in 100 in Reid's neighborhood. A child born in Reid's neighborhood is almost 17 times more likely to have a household income in the top 20% than a child born in Hodges' neighborhood. Further, children from Hodges' neighborhood are more than four times less likely to be married by age 35, limiting their ability to rely on another individual for support.

### III. GROWING UP

To understand the different life expectancies for people like Reid and Hodges, one must start at the beginning of life. The United States has made two hugely consequential educational decisions that help explain divergent outcomes decades later. First, we lack universal pre-K. Instead, we have a patchwork system where a child's attendance is largely dependent on the wealth of the child's parents, leading to an achievement gap that never narrows. Second, primary education is funded largely through local property taxes that are dependent on a neighborhood's underlying wealth. This further increases the existing achievement gap between rich and poor students.

#### *A. Education*

##### *i. Pre-K*

Despite the clear health and economic benefits of investing in early childhood development, the United States has largely failed to do so. States and cities have largely abdicated responsibility on this issue: only two states and a few

major cities offer universal pre-K.<sup>18</sup> Overall, only 55% of America’s three- and four-year-olds attend formal preschool, and this rate varies substantially by family income, with children from richer households being far more likely to attend than children from poorer households.<sup>19</sup>

According to the Centers for Disease Control and Prevention (CDC), “[c]hildhood development is an important determinant of health over a person’s lifetime.”<sup>20</sup> Research clearly demonstrates that “[t]he developmental and educational opportunities that children have access to in their early years have a lasting impact on their health as adults.”<sup>21</sup> For example, children who participated in a high-quality and comprehensive early childhood education program were in better health later in life, than those who did not.<sup>22</sup> Overall, “[a]ddressing the disparities in access to early childhood development and education opportunities can greatly bolster young children’s future health outcomes.”<sup>23</sup>

The federal government nearly enacted universal pre-K half a century

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<sup>18</sup> *Universal Pre-K*, NEW AMERICA, <https://www.newamerica.org/education-policy/reports/2020-education-tracker/universal-pre-k/>.

<sup>19</sup> Heather Long, *By age 3, inequality is clear: Rich kids attend school. Poor kids stay with a grandparent*, WASH. POST (Sept. 26, 2017), <https://www.washingtonpost.com/news/wonk/wp/2017/09/26/by-age-3-inequality-is-clear-rich-kids-attend-school-poor-kids-stay-with-a-grandparent/>.

<sup>20</sup> *Early Childhood Development and Education*, U.S. DEP’T HEALTH AND HUMAN SERVICES, <https://health.gov/healthypeople/objectives-and-data/social-determinants-health/literature-summaries/early-childhood-development-and-education>.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

ago.<sup>24</sup> In 1971, a bipartisan Congress passed the Comprehensive Child Development Act, which would have established comprehensive child care centers to provide quality education, nutrition, and medical services.<sup>25</sup> However, President Nixon vetoed the bill, arguing that instituting such a program was fiscally irresponsible, administratively unworkable, and had “family-weakening implications.”<sup>26</sup> Today, there is still no such program.

As a result, inequality continues to define access to pre-K, leading to an achievement gap between rich and poor kids. Indeed, “[c]hildren who don’t get formal schooling until kindergarten start off a year behind in math and verbal skills and they never catch up.”<sup>27</sup> Consequently, researchers have consistently found that “socioeconomic status of a child’s parents has always been one of the strongest predictors of the child’s academic achievement and educational attainment.”<sup>28</sup>

## ii. *Primary Education*

“In 1954, the Supreme Court decreed in *Brown v. Board of Education* that public education ‘is a right which must be made available to all on equal terms,’ yet all across the United States (U.S.), there are many millions of students who are unable to

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<sup>24</sup> Nancy Cohen *Why America Never Had Universal Child Care*, THE NEW REPUBLIC (Apr. 24, 2013), <https://newrepublic.com/article/113009/child-care-america-was-very-close-universal-day-care>.

<sup>25</sup> *Id.*

<sup>26</sup> *Excerpts from Nixon’s Veto Message*, N.Y. TIMES (Dec. 10, 1971), <https://www.nytimes.com/1971/12/10/archives/excerpts-from-nixons-veto-message.html>.

<sup>27</sup> Long, *supra* note 19

<sup>28</sup> Sean F. Reardon, *The Widening Academic Achievement Gap Between the Rich and the Poor: New Evidence and Possible Explanations*, WHITHER OPPORTUNITY?: RISING INEQUALITY, SCHOOLS, AND CHILDREN’S LIFE CHANCES 91-115 (2011).

access a quality public education due to inequities in public education finance. With insufficient financial resources, our nation's public schools generally struggle to provide a quality education on equal terms and evidence is concrete that the U.S. educational system is one of the most unequal in the industrialized world, and students routinely receive dramatically different learning opportunities based on their social status."<sup>29</sup>

So begins a 2018 report about public schools from the U.S. Commission on Civil Rights.

How did we get here? First, localities historically decided to fund public schools largely with property taxes; naturally, richer neighborhoods spent more per student than poorer neighborhoods due to higher property values.<sup>30</sup> Second, the U.S. Supreme Court concluded that these differences were constitutionally permissible, providing the necessary approval for the system to continue for the last half century.

Nearly two decades after the U.S. Supreme Court declared that racially segregated education is unconstitutional in *Brown v. Board of Education*, it confronted a similarly momentous issue about how public schools operate. This time, the question was whether wealth rather than race presented constitutional issues. The Court determined by a 5-4 vote in *San Antonio Independent School District v. Rodriguez* that unequal funding for schools did not violate the 14<sup>th</sup>

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<sup>29</sup> *Public Education Funding Inequity*, U.S. COMM'N ON CIVIL RTS. (2018) <https://www.usccr.gov/files/pubs/2018/2018-01-10-Education-Inequity.pdf> (some internal citations omitted).

<sup>30</sup> Cory Turner, *Why America's Schools Have A Money Problem*, NPR, (Apr. 18, 2016, <https://www.npr.org/2016/04/18/474256366/why-americas-schools-have-a-money-problem..>

Amendment's Equal Protection Clause because (1) poor people do not constitute a suspect class,<sup>31</sup> (2) education is not a fundamental right,<sup>32</sup> and (3) local financing has a rational relationship to a legitimate state purpose because it “permits and encourages a large measure of participation in and control of each district's schools at the local level.”<sup>33</sup> Consequently, the decision to spend more tax dollars to educate Reid than Hodges is constitutionally permissible.

Still, just because states *can* fund education unequally does not mean that they *must* do so. However, the public has consistently favored local control of public schools in recent decades.<sup>34</sup> While the public also favors state and federal government involvement to ensure equity across all schools,<sup>35</sup> the pervasive lack of equity has not been sufficient to change conditions.

Today, high-poverty districts spend approximately 15% less per student than low-poverty districts,<sup>36</sup> which translates into about \$1,000 less per student in state and local funding that high-poverty districts receive.<sup>37</sup> Indeed, in New York,

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<sup>31</sup> *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 29 (1973).

<sup>32</sup> *Id.* at 37.

<sup>33</sup> *Id.* at 49.

<sup>34</sup> Michele Molnar, *Public Strong on Local Control of Schools, Study Finds*, EDUC. WEEK (July 17, 2012), <https://www.edweek.org/education/public-strong-on-local-control-of-schools-study-finds/2012/07>

<sup>35</sup> *Id.*

<sup>36</sup> Alana Semuels, *Good School, Rich School; Bad School, Poor School*, THE ATLANTIC, (Aug. 25, 2016), <https://www.theatlantic.com/business/archive/2016/08/property-taxes-and-unequal-schools/497333/>.

<sup>37</sup> Lauren Camera, *In Most States, Poorest School Districts Get Less Funding*, U.S. NEWS AND WORLD REPORT (Feb. 27, 2018), <https://www.usnews.com/news/best-states/articles/2018-02-27/in-most-states-poorest-school-districts-get-less-funding#:~:text=School%20districts%20with%20the%20highest%20rates%20of%20poverty%20receive%20about,Tuesday%20by%20The%20Education%20Trust.>

“overall average spending per pupil in the highest need districts in the State is still approximately only two-thirds of the overall average spending per pupil in the wealthiest districts (\$17,758 versus \$27,845), in large part as a result of the disparity in revenue-raising abilities of low-wealth versus high-wealth districts.”<sup>38</sup>

This is particularly irrational because students like Hodges, who are already behind due to the lack of equitable access to pre-K and are likelier to be exposed to the stresses of poverty, which can further impair learning ability.<sup>39</sup>

This difference in spending matters. A 20% increase in per-pupil spending a year for poor children can lead to approximately one additional year of completed education, 25% higher earnings in their adulthood employment, and a 20% reduction in the incidence of adulthood poverty.<sup>40</sup> Indeed, the “literature that relates school spending to student outcomes overwhelmingly support a causal relationship between increased school spending and student outcomes . . . [and] [b]y and large, the question of whether money matters is essentially settled.”<sup>41</sup>

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<sup>38</sup> *Education Equity in New York: A Forgotten Dream*, NEW YORK ADVISORY COMMITTEE TO THE U.S. COMMISSION ON CIVIL RIGHTS (Feb. 10, 2020), <https://www.usccr.gov/files/pubs/2020/02-10-Education-Equity-in-New%20York.pdf>.

<sup>39</sup> Eunice Kennedy Shriver National Institute of Child Health and Human Development, *Stresses of poverty may impair learning ability in young children*, NAT'L INST. OF HEALTH (Aug. 28, 2012) <https://www.nih.gov/news-events/news-releases/stresses-poverty-may-impair-learning-ability-young-children>; Ivy Morgan & Ary Amerikaner, *Funding Gaps* 1, 7 (EDUC. TR., 2018), <https://s3-us-east-2.amazonaws.com/edtrustmain/wp-content/uploads/2014/09/20180601/Funding-Gaps-2018-Report-UPDATED.pdf>. (Indeed, the federal government Title I formula assumes that it costs a school 40% more to educate a student in poverty.)

<sup>40</sup> C. Kirabo Jackson et. al, *The Effect of School Finance Reforms on the Distribution of Spending, Academic Achievement, and Adult Outcomes*, 1, 5 (NAT'L BUREAU OF ECON. RESEARCH, 2014), [https://gsppi.berkeley.edu/~ruckerj/Jackson\\_Johnson\\_Persico\\_SFR\\_LRImpacts.pdf](https://gsppi.berkeley.edu/~ruckerj/Jackson_Johnson_Persico_SFR_LRImpacts.pdf).

<sup>41</sup> *Id.* at 13-14.

Ultimately, educational attainment is strongly associated with health outcomes. A comprehensive “body of research documenting trends in educational differences in mortality since 1960 has demonstrated that educational attainment has become a very strong differentiator of men's mortality and longevity over the past 50 years.”<sup>42</sup> Overall, high school graduates live approximately six and a half years longer than those who have not earned a high school degree.<sup>43</sup>

#### IV. ADULTHOOD

Once Reid and Hodges enter adulthood, their life expectancy continues to be dictated by social determinants of health. Relative to Hodges, Reid is more likely to complete college and obtain a higher-paying job, allowing him to live in higher quality housing in neighborhoods with lower crime rates.

##### *A. Higher Education*

By the time Reid and Hodges graduate from high school, they are likely in vastly different positions. Reid’s family is likely wealthier than Hodges’, making cost less of a barrier to more education. Thus, Reid is more likely to attend and

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<sup>42</sup> Robert Hummer and Elaine Hernandez, *The Effect of Educational Attainment on Adult Mortality in the United States*, 68 POPUL BULL. 1, 5 (2013), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4435622/>.

<sup>43</sup> *Id.* at 10.

ultimately graduate from college.<sup>44</sup>

As with primary education, obtaining a college degree is associated with substantially better health.<sup>45</sup> College graduates live about five years longer than high school graduates<sup>46</sup> and are less likely to report conditions such as heart disease, high blood pressure, diabetes, anxiety, and depression.<sup>47</sup>

This does not mean that college is the best course for every student or that all colleges will deliver the same benefits. Indeed, pushing some students to attend college can be counterproductive. Almost 40% of students do not complete college within six years,<sup>48</sup> leaving many with all of the costs and none of the benefits of a college education. Vocational degrees may be a better choice for some, especially men.<sup>49</sup>

Despite those caveats, every student of equal merit should have an equal

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<sup>44</sup> Joshua S. Wyner et. al, *Achievement Trap: How America is Failing Millions of High-Achieving Students from Lower-Income Families*, JACK KENT COOKE FOUND. (Sept. 2007), <https://www.jkcf.org/research/achievement-trap-how-america-is-failing-millions-of-high-achieving-students-from-lower-income-families/>.

<sup>45</sup> Elizabeth Lawrence, *Why Do College Graduates Behave More Healthfully than Those Who Are Less Educated?*, 58 J. HEALTH SOC. BEHAV. 291, 292 (2017), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5570614/>.

<sup>46</sup> Hummer and Hernandez, *supra* note 42.

<sup>47</sup> Office of Disease Prevention and Health Promotion, *Enrollment in Higher Education*, U.S. DEP'T OF HEALTH AND HUMAN SERVICES, <https://health.gov/healthypeople/objectives-and-data/social-determinants-health/literature-summaries/enrollment-higher-education>.

<sup>48</sup> National Center for Education Statistics, *Fast Facts – What are the graduation for students obtaining a bachelor's degree*, U.S DEP'T OF EDUC., <https://nces.ed.gov/fastfacts/display.asp?id=40#:~:text=That%20is%2C%20by%202018%20some,at%20private%20for%2Dprofit%20institutions>.

<sup>49</sup> Eric Brunner et. al., *The Effects of Career and Technical Education: Evidence from the Connecticut Technical High School System I*, 27 (BROWN UNIVERSITY, 2019), <https://www.edworkingpapers.com/sites/default/files/ai19-112.pdf>.

opportunity to graduate from college. However, wealth often plays a defining role in higher education. While most high-achieving high school students from low-income and high-income households attend college, high-achieving lower income students are (1) less likely to complete a bachelor's degree, (2) less likely to attend the most selective colleges, and (3) less likely to graduate even when they attend the least selective colleges.<sup>50</sup> In fact, low-income college students with top test scores have the same chance of graduating college as high-income students with mediocre scores.<sup>51</sup>

Wealth has become more important in recent decades because the cost of attending college has skyrocketed,<sup>52</sup> largely due to public policy. Public funding for colleges has declined, shifting the cost of college from the general public to individual students.<sup>53</sup> Because approximately three in four college students attend public colleges, the decrease in state funding is particularly significant.<sup>54</sup> At the same time, grants from the federal government to cover expenses have not

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<sup>50</sup> Wyner et. al., *supra* note 44.

<sup>51</sup> Jordan Weissmann, *Smart Poor Kids Are Less Likely to Graduate From College Than Middling Rich Kids*, SLATE (June 2, 2015), <https://slate.com/business/2015/06/college-graduation-rates-for-low-income-students-why-poor-kids-drop-out.html>.

<sup>52</sup> Emmie Martin, *Here's how much more expensive it is for you to go to college than it was for your parents*, CNBC (Nov.29, 2017), <https://www.cnbc.com/2017/11/29/how-much-college-tuition-has-increased-from-1988-to-2018.html>.

<sup>53</sup> Michael Mitchel et. al., *State Higher Education Funding Cuts Have Pushed Costs to Students, Worsened Inequality*, CTR ON BUDGET AND POLICY PRIORITIES (Oct. 24, 2019), <https://www.cbpp.org/research/state-budget-and-tax/state-higher-education-funding-cuts-have-pushed-costs-to-students>.

<sup>54</sup> Kurt Bauman and Stephen Cranney, *School Enrollment in the United States: 2018 (2020)*, U.S. CENSUS BUREAU, <https://www.census.gov/content/dam/Census/library/publications/2020/demo/p20-584.pdf>.

kept pace with these rising costs. For example, approximately one-third of students receive a Pell Grant from the federal government to attend college,<sup>55</sup> but those grants cover less than half of the costs that they covered in 1975.<sup>56</sup>

### *B. Employment*

By the time they enter the workforce, people like Reid are in a much better position to support themselves through employment than people like Hodges. Indeed, students from the top income quartile are approximately five times more likely to graduate from college than students from the lowest income quartile.<sup>57</sup>

These disparities impact health in myriad ways. First, because most people receive health insurance through their employer, being unemployed can make it more difficult to obtain medical services when necessary.<sup>58</sup> This is a particularly cruel phenomenon because unemployed individuals suffer more than others from stress-related illnesses such as high blood pressure, stroke, heart

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<sup>55</sup>National Center for Education Statistics, *Trend Generator – Financial Aid: What is the percent of undergraduate students awarded Pell grants?*, U.S. DEP'T OF EDUC., <https://nces.ed.gov/ipeds/TrendGenerator/app/answer/8/35>.

<sup>56</sup>Shiros Protopsaltis & Sharon Parrott, *Pell Grants — a Key Tool for Expanding College Access and Economic Opportunity — Need Strengthening, Not Cuts*, CTR ON BUDGET AND POLICY PRIORITIES, <https://www.cbpp.org/research/federal-budget/pell-grants-a-key-tool-for-expanding-college-access-and-economic>.

<sup>57</sup>Margaret W. Cahalan, et. al., *Indicators of Higher Education Equity in the United States: 2021 Historical Trend Report*, THE PELL INST. 177 (2021), [http://pellinstitute.org/downloads/publications-Indicators\\_of\\_Higher\\_Education\\_Equity\\_in\\_the\\_US\\_2021\\_Historical\\_Trend\\_Report.pdf](http://pellinstitute.org/downloads/publications-Indicators_of_Higher_Education_Equity_in_the_US_2021_Historical_Trend_Report.pdf).

<sup>58</sup>Katherine Keisler-Starkey & Lisa N. Bunch, *Health Insurance Coverage in the United States: 2019*, U.S. CENSUS BUREAU (Sept. 2020), <https://www.census.gov/library/publications/2020/demo/p60-271.html>.

attack, heart disease, and arthritis.<sup>59</sup>

Among those who are employed, low-wage workers have more dangerous jobs.<sup>60</sup> They are therefore more likely to be one of the nearly 5,000 people who die at work and one of the nearly three million people who get injured at work each year.<sup>61</sup>

Perhaps the most pervasive health impact of low-wage work is higher stress levels. Low-wage workers are more likely to find that their work has a negative impact on their stress level.<sup>62</sup> Research demonstrates that “[l]ower wage workers are more likely to work part-time, at lower hourly rates, with few to no benefits and often mandatory part-time schedules — all of which create work-life challenges for families and single parents[.]”<sup>63</sup> The work tasks themselves can also be more stressful; for example, repetitive lifting, pulling, or pushing heavy loads are all stressors that can negatively impact health.<sup>64</sup>

In addition, the most prominent barriers to work for low-wage workers, other than educational attainment, are lack of access to transportation and

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<sup>59</sup> Office of Disease Prevention and Health Promotion, *Employment, U.S. Department of Health and Human Services*, U.S. DEP'T HEALTH AND HUMAN SERVICES, <https://health.gov/healthypeople/objectives-and-data/social-determinants-health/literature-summaries/employment>.

<sup>60</sup> *The Workplace and Health*, ROBERT WOOD JOHNSON FOUNDATION (July 11, 2016), <https://www.rwjf.org/en/library/research/2016/07/the-workplace-and-health.html>.

<sup>61</sup> *Employment*, *supra* note 59.

<sup>62</sup> *The Workplace and Health*, *supra* note 60.

<sup>63</sup> *Work, Stress, and Health & Socioeconomic Status*, AMERICAN PSYCHOLOGICAL ASSOCIATION, <https://www.apa.org/pi/ses/resources/publications/work-stress-health>.

<sup>64</sup> *Employment*, *supra* note 59.

childcare.<sup>65</sup> In particular, the cost of childcare and its availability are significant concerns for low-income parents who would like to work.<sup>66</sup> Because childcare can be so expensive for low-income earners, it may not be financially worthwhile to work if avoiding childcare costs saves more than working would earn.<sup>67</sup>

Transportation can also be a significant barrier for people in low- and moderate-income areas. The average commute range is 5 to 12.8 miles, but households in low-income areas are significantly less likely to have access to a vehicle.<sup>68</sup>

Finally, the percentage of money that workers retain from employment is impacted by taxes. State and local taxes are often regressive because they rely on sales and excise taxes imposed equally regardless of income.<sup>69</sup> Indeed, on average, the top one percent pay an effective state and local tax rate of 7.4%, while the bottom 20% pay an average tax rate of 11.4%.<sup>70</sup>

### *C. Housing*

Both the quality and permanence of one's housing impact health. Poor

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<sup>65</sup> Kelly D. Edmiston, *Why Aren't More People Working in Low-and Moderate-Income Areas?*, FEDERAL RESERVE BANK OF KANSAS CITY, <https://www.kansascityfed.org/documents/919/2019-Why%20Aren%E2%80%99t%20More%20People%20Working%20in%20Low-%20and%20Moderate-Income%20Areas%3F.pdf>.

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Who Pays: A Distributional Analysis of the Tax Systems in All 50 States*, THE INSTITUTE ON TAXATION & ECONOMIC POLICY, <https://ittp.org/whopays/>.

<sup>70</sup> *Id.*

quality housing is associated with chronic disease, injury, and poor mental health.<sup>71</sup> Low-income families are more likely to live in poor-quality housing that harms their health.<sup>72</sup> Similarly, unstable housing — which encompasses diverse challenges such as having trouble paying rent, overcrowding, moving frequently, and spending the bulk of household income on housing — negatively affects physical health by raising stress levels and makes it more difficult to access healthcare.<sup>73</sup>

Housing instability is largely a function of two forces: stagnant incomes and rising rents. About 23 million low-income renters use more than half of their income to pay for housing, which is largely because of the continued rising cost of housing and the stagnation of incomes.<sup>74</sup> Employment and tax policies, discussed above, can effectively increase income, but will not address rising housing costs. Rather, these rising costs are largely due to zoning policies baked into our legal system.

Today, there is a shortage of nearly seven million affordable rental units.<sup>75</sup> The lack of housing supply leaves more than 500,000 people homeless on any

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<sup>71</sup> *Quality of Housing*, U.S. DEP'T OF HEALTH AND HUMAN SERVICES, <https://health.gov/healthypeople/objectives-and-data/social-determinants-health/literature-summaries/quality-housing>.

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> Alicia Mazzara, *Rents Have Risen More Than Incomes in Nearly Every State Since 2001*, CENTER ON BUDGET AND POLICY PRIORITIES (Dec. 10, 2019), <https://www.cbpp.org/blog/rents-have-risen-more-than-incomes-in-nearly-every-state-since-2001>.

<sup>75</sup> *The Gap: A Shortage of Affordable Rental Homes*, NATIONAL LOW INCOME HOUSING COALITION, <https://reports.nlihc.org/gap>.

given night<sup>76</sup> and increases the cost of housing for everyone else.<sup>77</sup> One particular zoning policy deserves the lion's share of blame for the lack of housing: single-family zoning. Indeed, "[i]t is illegal on 75 percent of residential land in many American cities to build anything other than a detached single-family home."<sup>78</sup>

Single-family zoning restrictions were enacted over the course of the 20th century as a way to keep other types of housing out.<sup>79</sup> Initially, zoning laws explicitly prevented Black residents from living in majority-white neighborhoods.<sup>80</sup> However, the U.S. Supreme Court struck down racially explicit zoning bans for violating the Fourteenth Amendment.<sup>81</sup> This decision "provoked urgent interest in [single-family] zoning as a way to circumvent the ruling."<sup>82</sup> By essentially raising the cost of housing, "[s]ingle family zoning effectively

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<sup>76</sup> *The State of Homelessness in America*, NATIONAL ALLIANCE TO END HOMELESSNESS, <https://endhomelessness.org/homelessness-in-america/homelessness-statistics/state-of-homelessness-report-legacy/#:~:text=There%20are%20an%20estimated%20553%2C742,people%20in%20the%20general%20population.>

<sup>77</sup> Jared Bernstein et. al., *Alleviating Supply Constraints in the Housing Market*, THE WHITE HOUSE (Sept. 1, 2021), <https://www.whitehouse.gov/cea/written-materials/2021/09/01/alleviating-supply-constraints-in-the-housing-market/>.

<sup>78</sup> Emily Badger and Quoctrung Bui, *Cities Start to Question an American Ideal: A House With a Yard on Every Lot*, N.Y. TIMES (June 18, 2019), <https://www.nytimes.com/interactive/2019/06/18/upshot/cities-across-america-question-single-family-zoning.html?action=click&module=Top%20Stories&pgtype=Homepage.>

<sup>79</sup> Erin Baldassari and Molly Solomon, *The Racist History of Single-Family Home Zoning*, KQED (Oct. 5, 2020), <https://www.kqed.org/news/11840548/the-racist-history-of-single-family-home-zoning.>

<sup>80</sup> Elliott Anne Rigsby, *Understanding Exclusionary Zoning and Its Impact on Concentrated Poverty*, THE CENTURY FOUNDATION (June 25, 2016), <https://tcf.org/content/facts/understanding-exclusionary-zoning-impact-concentrated-poverty/>.

<sup>81</sup> *Buchanan v. Warley*, 245 U.S. 60 (1917).

<sup>82</sup> Richard D. Kahlenberg, *The Ugly History of Single-Family Zoning Resurfaces*, THE CENTURY FOUNDATION, (Sept. 16, 2020), <https://tcf.org/content/commentary/ugly-history-single-family-zoning-resurfaces/?agreed=1.>

excluded most African-American families from higher-income, predominantly White neighborhoods without any explicit reference to race.”<sup>83</sup>

In 1977, the U.S. Supreme Court heard a case with the potential to reduce the prevalence of single-family zoning.<sup>84</sup> A nonprofit housing developer challenged a zoning ordinance in a suburb which barred the construction of multi-family housing units.<sup>85</sup> The developer wanted to build some two-story units for low- and moderate-income tenants but could not do so due to the ordinance.<sup>86</sup> Accordingly, when the suburb prevented the developer from building the units, the developer sued, claiming that the ordinance had a racially discriminatory effect that violated the Fourteenth Amendment’s Equal Protection Clause.<sup>87</sup>

The Supreme Court rejected the developer’s claim.<sup>88</sup> The Court reiterated its previous holding in *Washington v. Davis* where it noted that “official action will not be unconstitutional solely because it results in a racially disproportionate impact.”<sup>89</sup> As a result, without some explicit intent to exclude minorities, single-family zoning is constitutionally permissible.<sup>90</sup>

However, single-family zoning is not solely responsible for the nation’s

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<sup>83</sup> *Id.*

<sup>84</sup> *Arlington Heights v. Metropolitan Housing Dev. Corp.*, 429 U.S. 252 (1977)

<sup>85</sup> *Id.* at 257-60.

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> *Arlington Heights v. Metropolitan Housing Dev. Corp.*, 429 U.S. 252, 268-271 (1977)

<sup>89</sup> *Id.* at 265.

<sup>90</sup> Katherine Shaver, *Single-family zoning preserves century-old segregation, planners say. A proposal to add density is dividing neighborhoods*, THE WASHINGTON POST, (Nov. 20, 2021), <https://www.washingtonpost.com/transportation/2021/11/20/single-family-zoning-race-equity/>.

housing problems; other policies contribute too. For example, federal housing assistance as a share of the national budget has dramatically decreased since the 1970's.<sup>91</sup> Specifically, public housing, like the apartment that Hodges and 1.2 million other households live in,<sup>92</sup> is chronically underfunded.<sup>93</sup>

#### *D. Food*

Throughout their lives, Hodges was far more likely to lack consistent access to nutritious food than Reid. In Hodges' neighborhood, one out of every three residents is food insecure,<sup>94</sup> meaning that they lack consistent access to enough food for an active, healthy life.<sup>95</sup> In Reid's neighborhood, approximately one out of every 16 residents is food insecure.<sup>96</sup>

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<sup>91</sup> *Fact of the Week: Housing Assistance Budget Authority as a Share of GDP Has Declined Precipitously, Spending Relatively Consistent, Since the 1970s*, NATIONAL LOW INCOME HOUSING COALITION, (Apr. 8, 2019), <https://nlihc.org/resource/fact-week-housing-assistance-budget-authority-share-gdp-has-declined-precipitously>.

<sup>92</sup> *Public Housing*, U.S. DEP'T OF HOUSING AND URBAN DEVELOPMENT, [https://www.hud.gov/program\\_offices/public\\_indian\\_housing/programs/ph](https://www.hud.gov/program_offices/public_indian_housing/programs/ph)

<sup>93</sup> *Policy Basics: Public Housing* (June 16, 2021), CTR ON BUDGET AND POLICY PRIORITIES, <https://www.cbpp.org/research/public-housing>.

<sup>94</sup> *Food Insecure*, DATA 2GO NEW YORK CITY, [https://data2go.nyc/map/?id=302\\*36047018501\\*food\\_insecure\\_tract!undefined!ns\\*!other\\_pop\\_cd\\_506~ahdi\\_puma\\_1~sch\\_enrol\\_cd\\_112~age\\_pyramid\\_male\\_85\\_plus\\_cd\\_20~median\\_household\\_income\\_puma\\_397~median\\_personal\\_earnings\\_puma\\_400~dis\\_y\\_perc\\_puma\\_102~poverty\\_ceo\\_cd\\_417~unemployment\\_cd\\_408~pre\\_k\\_cd\\_107!\\*air\\_qual\\_cd~ahdi\\_puma\\*family\\_homeless\\_cd\\_24\\_5#17/40.69350/-73.97321](https://data2go.nyc/map/?id=302*36047018501*food_insecure_tract!undefined!ns*!other_pop_cd_506~ahdi_puma_1~sch_enrol_cd_112~age_pyramid_male_85_plus_cd_20~median_household_income_puma_397~median_personal_earnings_puma_400~dis_y_perc_puma_102~poverty_ceo_cd_417~unemployment_cd_408~pre_k_cd_107!*air_qual_cd~ahdi_puma*family_homeless_cd_24_5#17/40.69350/-73.97321).

<sup>95</sup> *Understanding Food Insecurity*, FEEDING AMERICA, <https://hungerandhealth.feedingamerica.org/understand-food-insecurity/>.

<sup>96</sup> *Food Insecure*, DATA 2GO NEW YORK CITY, [https://data2go.nyc/map/?id=302\\*36047000301\\*food\\_insecure\\_tract!undefined!ns\\*!other\\_pop\\_cd\\_506~ahdi\\_puma\\_1~sch\\_enrol\\_cd\\_112~age\\_pyramid\\_male\\_85\\_plus\\_cd\\_20~median\\_household\\_income\\_puma\\_397~median\\_personal\\_earnings\\_puma\\_400~dis\\_y\\_perc\\_puma\\_102~poverty\\_ceo\\_cd\\_417~unemployment\\_cd\\_408~pre\\_k\\_cd\\_107!\\*air\\_qual\\_cd~ahdi\\_puma\\*family\\_homeless\\_cd\\_24\\_5#18/40.69761/-73.99650](https://data2go.nyc/map/?id=302*36047000301*food_insecure_tract!undefined!ns*!other_pop_cd_506~ahdi_puma_1~sch_enrol_cd_112~age_pyramid_male_85_plus_cd_20~median_household_income_puma_397~median_personal_earnings_puma_400~dis_y_perc_puma_102~poverty_ceo_cd_417~unemployment_cd_408~pre_k_cd_107!*air_qual_cd~ahdi_puma*family_homeless_cd_24_5#18/40.69761/-73.99650).

Those who are food insecure are at increased risk for a variety of negative health outcomes, including obesity and chronic disease.<sup>97</sup> Food insecure adults are understandably stressed from not knowing when or where they will eat next and often prioritize finding food over other health-related behaviors, such as refilling medications and making doctor appointments.<sup>98</sup>

Access to fresh, nutritious food is also a problem in low-income communities. Food deserts — where large proportions of households have low incomes, inadequate access to transportation, and a limited number of food retailers that provide fresh produce and healthy groceries for affordable prices<sup>99</sup> — disproportionately affect poor communities.<sup>100</sup>

One of the major reasons such food deserts exist is due to customer preference. Approximately 90% of available food choices are driven by customer demand,<sup>101</sup> and low-income shoppers often prefer less nutritious food due to incorrect assumptions that healthy food is always more expensive.<sup>102</sup> In addition,

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<sup>97</sup> *Food Insecurity*, U.S. DEP'T HEALTH AND HUMAN SERVICES, <https://health.gov/healthypeople/objectives-and-data/social-determinants-health/literature-summaries/food-insecurity>.

<sup>98</sup> Understanding Food Insecurity, *supra* note 95.

<sup>99</sup> Paul Dutko et. al., *Characteristics and Influential Factors of Food Deserts*, UNITED STATES DEPARTMENT OF AGRICULTURE (Aug. 2012), [https://www.ers.usda.gov/webdocs/publications/45014/30940\\_err140.pdf](https://www.ers.usda.gov/webdocs/publications/45014/30940_err140.pdf).

<sup>100</sup> 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, 303–04 (2015).

<sup>101</sup> Hunt Allcott, et al., *Food Deserts and the Causes of Nutritional Inequality*, THE QUARTERLY JOURNAL OF ECON., <https://doi.org/10.1093/qje/qjz015>.

<sup>102</sup> Kelly Haws et. al., *Why is healthy food so expensive? Maybe because we expect it to be.*, THE WASHINGTON POST (Jan. 5, 2017), <https://www.washingtonpost.com/posteverything/wp/2017/01/05/why-is-healthy-food-so-expensive-maybe-because-we-expect-it-to-be/>

many unhealthy foods are both addictive<sup>103</sup> and make one literally feel better, which is particularly appealing for those stressed out in the first place.<sup>104</sup>

### *E. Crime and the Criminal Justice System*

Both crime and the criminal justice system contribute to life expectancy disparities between people from Reid's neighborhood and people from Hodges' neighborhood.

Crime reduces life expectancy both directly and indirectly. Most obviously, homicides end someone's life; the U.S. homicide rate is approximately seven times higher than in other high-income countries, driven by a gun homicide rate that is 25.2 times higher.<sup>105</sup> Further, the tragedy of homicides is not shared equally across society. Rather, homicides are concentrated in poor neighborhoods.<sup>106</sup> One study demonstrated that homicides reduce the life span of black males by approximately 2.1 years.<sup>107</sup> Another study found that in some low-

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<sup>103</sup> *Why Are Certain Foods so Addictive?*, CLEVELAND CLINIC (Mar. 4, 2021), <https://health.clevelandclinic.org/why-are-certain-foods-so-addictive/>.

<sup>104</sup> *Why stress causes people to overeat*, HARVARD MED. SCH. (Feb. 15, 2021), <https://www.health.harvard.edu/staying-healthy/why-stress-causes-people-to-overeat>.

<sup>105</sup> Erin Brinshteyn and David Hemenway, *Violent Death Rates: The US Compared with Other High-income OECD Countries*, THE AM J OF MED (2010), [https://www.amjmed.com/article/S0002-9343\(15\)01030-X/pdf](https://www.amjmed.com/article/S0002-9343(15)01030-X/pdf).

<sup>106</sup> Alicia Aufrichtig et. al., *Want to fix gun violence in America? Go local.*, THE GUARDIAN, <https://www.theguardian.com/us-news/ng-interactive/2017/jan/09/special-report-fixing-gun-violence-in-america>.

<sup>107</sup> Matt Redelings et al., *Years off your life? The effects of homicide on life expectancy by neighborhood and race/ethnicity in Los Angeles county*, J. URBAN HEALTH (2010), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2900567/>.

income urban neighborhoods, homicides decrease life expectancy in black males by 5 years.<sup>108</sup>

Exposure to crime is also harmful to health. Those who survive violent crime often endure both physical and mental suffering.<sup>109</sup> Those who fear crime in their communities engage in less physical activity, likely leading to higher levels of obesity.<sup>110</sup>

Those who commit crime also suffer declines in life expectancy.<sup>111</sup> Despite recent declines, the U.S. still has the highest incarceration rate in the world.<sup>112</sup> The U.S. imprisons about nine times as many people as Germany, Denmark, and Switzerland.<sup>113</sup> Mass incarceration overall has reduced U.S. life expectancy by nearly two years; further, each year in prison reduces a person's life by two years.<sup>114</sup>

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<sup>108</sup> *Id.*

<sup>109</sup> *Crime and Violence*, U.S. DEP'T HEALTH AND HUMAN SERVICES, <https://health.gov/healthypeople/objectives-and-data/social-determinants-health/literature-summaries/crime-and-violence>.

<sup>110</sup> *Id.*

<sup>111</sup> Daza, S., Palloni, A., & Jones, J. (2020). *The Consequences of Incarceration for Mortality in the United States*. *Demography*, 57(2), 577–598. <https://doi.org/10.1007/s13524-020-00869-5>

<sup>112</sup> John Gramlich, *America's incarceration rate falls to lowest level since 1995*, PEW RESEARCH CENTER (Aug. 16, 2021), <https://www.pewresearch.org/fact-tank/2021/08/16/americas-incarceration-rate-lowest-since-1995/#:~:text=The%20World%20Prison%20Brief's%20data,564%20inmates%20per%20100%2C000%20people>).

<sup>113</sup> *Highest to Lowest - Prison Population Rate*, WORLD PRISON BRIEF, [https://www.prisonstudies.org/highest-to-lowest/prison\\_population\\_rate?field\\_region\\_taxonomy\\_tid=All](https://www.prisonstudies.org/highest-to-lowest/prison_population_rate?field_region_taxonomy_tid=All).

<sup>114</sup> Emily Widra, *Incarceration shortens life expectancy*, PRISON POLICY INITIATIVE, (June 26, 2017), [https://www.prisonpolicy.org/blog/2017/06/26/life\\_expectancy/](https://www.prisonpolicy.org/blog/2017/06/26/life_expectancy/); Emily Widra, *New data: People with incarcerated loved ones have shorter life expectancies and poorer health*, PRISON POLICY INITIATIVE, (July 12, 2021), <https://www.prisonpolicy.org/blog/2021/07/12/family-incarceration/> (Incarceration also impacts the life expectancy of family members.)

There are also subtler effects on life expectancy from incarceration. For example, it harms the financial prospects of inmates after release.<sup>115</sup> Children of incarcerated individuals are especially vulnerable — they often have higher rates of learning disabilities, developmental delays, speech/language problems, attention disorders, and aggressive behaviors.<sup>116</sup> Perhaps most troubling, children of incarcerated parents are up to five times as likely to enter the criminal justice system than children of non-incarcerated parents.<sup>117</sup>

If both crime and the criminal justice system negatively impact health, a health-centered approach would target incarceration for those whose actions reduce life expectancy and limit sentencing in a proportionate manner given its effects on inmates, family members, and children. In other words, the punishment should fit the crime, as measured by the overall impact on life expectancy.

For too many, that is not the case due to state and local approaches to prosecutorial sentencing decisions. The vast majority of prisoners are held in state systems<sup>118</sup> and the vast majority of all criminal cases are decided by plea bargain.<sup>119</sup> Plea deals with state level prosecutors account for more than 80% of

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<sup>115</sup> Bernadette Rabuy and Daniel Kopf, *Prisons of Poverty: Uncovering the pre-incarceration incomes of the imprisoned*, PRISON POLICY INITIATIVE (July 9, 2015), <https://www.prisonpolicy.org/reports/income.html>.

<sup>116</sup> *Incarceration*, U.S. DEP'T HEALTH AND HUMAN SERVICES, <https://health.gov/healthypeople/objectives-and-data/social-determinants-health/literature-summaries/incarceration>.

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> Adam Gopnik, *How We Misunderstand Mass Incarceration* (Apr. 3, 2017), THE NEW YORKER, <https://www.newyorker.com/magazine/2017/04/10/how-we-misunderstand-mass-incarceration>.

those in prison.<sup>120</sup> Historically, prosecutors have been incentivized to seek harsh punishment because many are elected rather than appointed.<sup>121</sup> Indeed, a tough-on-crime approach is both easy to explain and consistent with what many voters want. But, an approach to crime dictated by political realities can seem irrational in retrospect. For example, between 1990 and 2007, crime rates fell but the number of line prosecutors went up by 50% and the number of prisoners rose with it.<sup>122</sup>

The war on drugs also contributed to the rise of mass incarceration but has not been the main driver. About one in six state prisoners are serving time on drug charges, and about one in 20 are both low-level and non-violent offenders.<sup>123</sup> Nonetheless, the number of people serving time for drug offenses has ballooned in recent decades: the number of Americans incarcerated for drug offenses rose from 40,900 in 1980 to 430,926 in 2019.<sup>124</sup>

#### *F. Unhealthy Behaviors: Alcohol, Smoking, Lack of Exercise*

People may suspect that poor people largely suffer from worse health at least in part due to their own unhealthy behaviors. Indeed, there has long been a

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<sup>120</sup> Based on computation from previous two footnotes.

<sup>121</sup> German Lopez, *Why you can't blame mass incarceration on the war on drugs*, VOX (May 30, 2017), <https://www.vox.com/policy-and-politics/2017/5/30/15591700/mass-incarceration-john-pfaff-locked-in>.

<sup>122</sup> Gopnik, *supra* note 119.

<sup>123</sup> Lopez, *supra* note 121.

<sup>124</sup> *Criminal Justice Facts*, THE SENTENCING PROJECT, <https://www.sentencingproject.org/criminal-justice-facts/>.

belief that those who suffer from poor health have only themselves to blame.<sup>125</sup> Low-income groups smoke significantly more than higher income groups,<sup>126</sup> they tend to binge drink alcohol more (but drink less overall),<sup>127</sup> and they tend to get less aerobic exercise.<sup>128</sup> Therefore, at first glance, it may seem that many of the neighborhoods with both poor health and low income suffer from poor health due to personal decisions.

However, the differences appear to be symptoms of the underlying disparities between neighborhoods rather than causes of health disparities. For example, while the poor smoke more than other groups, and smoking is indisputably bad for one's health, the reason this disparity exists is likely largely due to the stress of being poor. In particular, "financial stress is associated with smoking and has been found to impede cessation."<sup>129</sup> Further, there is a widespread perception that smoking reduces stress and serves as a coping

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<sup>125</sup> See, e.g., John H. Knowles, *The Responsibility of the Individual*, 106 DAEDALUS 57,59 (1977), <http://www.jstor.org/stable/20024456>.

<sup>126</sup> *Cigarette Smoking and Tobacco Use Among People of Low Socioeconomic Status*, CTR. FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/tobacco/disparities/low-ses/index.htm>.

<sup>127</sup> Dr. Srinivasa Vittal Katikireddi et. al., *Socioeconomic status as an effect modifier of alcohol consumption and harm: analysis of linked cohort data*, 2 THE LANCET (2017), [https://www.thelancet.com/journals/lanpub/article/PIIS2468-2667\(17\)30078-6/fulltext?elsca1=tlxpr#seccestitle160](https://www.thelancet.com/journals/lanpub/article/PIIS2468-2667(17)30078-6/fulltext?elsca1=tlxpr#seccestitle160).

<sup>128</sup> Steven H. Woolf et. al., *How Are Income and Wealth Linked to Health and Longevity*, URBAN INSTITUTE (2015) <https://www.urban.org/sites/default/files/publication/49116/2000178-How-are-Income-and-Wealth-Linked-to-Health-and-Longevity.pdf>.

<sup>129</sup> Carl A. Latkin et al., *The Relationship between Neighborhood Disorder, Social Networks, and Indoor Cigarette Smoking among Impoverished Inner-City Residents*, 94 J URBAN HEALTH 534,534 (2017), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5533668/>.

mechanism to deal with this stress, which may be accurate,<sup>130</sup> making cigarettes particularly appealing to stressed out communities.<sup>131</sup>

Alcohol use is also not explanatory. Those with low socio-economic status do not drink more than others and may actually drink less,<sup>132</sup> but the poor suffer worse health consequences when they drink.<sup>133</sup> This is likely because the poor start out in worse health, so they are more prone to suffer adverse consequences.<sup>134</sup>

Finally, to the extent that the poor exercise less, this likely reflects underlying socio-economic status rather than individual decision-making. The top reason people do not work out more is that they lack the time, but the cost, convenience, and lack of home equipment can also be factors in this decision.<sup>135</sup> Further, crime rates may also contribute to exercise habits, because people who live in low-crime areas with higher perceived safety are substantially more likely to exercise outside than those who live in high-crime areas.<sup>136</sup>

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<sup>130</sup> Darmee Choi et. al., *Does cigarette smoking relieve stress? Evidence from the event-related potential (ERP)*, 98 INT'L J OF PSYCHOPHYSIOLOGY 3, <https://www.sciencedirect.com/science/article/pii/S0167876015300374>.

<sup>131</sup> Latkin, *supra* note 129.

<sup>132</sup> Susan E. Collins, *Associations Between Socioeconomic Factors and Alcohol Outcomes*, 38 Alcohol Res. (2016), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4872618/>.

<sup>133</sup> *Id.*

<sup>134</sup> Katikireddi, *supra* note 127.

<sup>135</sup> Tyler Schmall, *This is why most Americans don't exercise more*, NEW YORK POST (Jan. 13, 2019), <https://nypost.com/2019/01/13/this-is-why-most-americans-dont-exercise-more/>.

<sup>136</sup> Erika Rees-Punia et. al., *Crime, perceived safety, and physical activity: A meta-analysis*, 111 PREVENTIVE MEDICINE 307 (2018), <https://www.sciencedirect.com/science/article/abs/pii/S0091743517304589?via%3Dihub>.

Overall, some unhealthy habits are more prevalent among the poor while other unhealthy habits are less prevalent, but the underlying reasons for even the unhealthy habits appear to be derivatives of larger social conditions.

## V. GETTING OLDER

After having lived largely different lives, Hodges and Reid will both need health care. However, it is likely that Hodges lacks health insurance and/or finds medical care inaccessible due to cost, despite having insurance. As a result, Hodges is once again disadvantaged relative to Reid. Even still, the preceding years of inequality — through education, employment, housing, food, and exposure to crime and the criminal justice system — are far more important than lack of access to medical care in determining one's life expectancy.<sup>137</sup>

### A. Access to Health Care

As Reid and Hodges age, they will almost certainly require health care.<sup>138</sup> Unlike every other large, rich country on earth, the U.S. does not guarantee health

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<sup>137</sup> Sanne Magnan, *Social Determinants of Health 101 for Health Care: Five Plus Five*, NATIONAL ACADEMY OF MEDICINE (Oct. 9, 2017), <https://nam.edu/social-determinants-of-health-101-for-health-care-five-plus-five/#:~:text=Medical%20care%20is%20estimated%20to,socioeconomic%20factors%2C%20and%20environmental%20factors>.

<sup>138</sup> Institute of Medicine (US) Committee on the Future Health Care Workforce for Older Americans. *Retooling for an Aging America: Building the Health Care Workforce*. Washington (DC): National Academies Press (US); 2008. 2, Health Status and Health Care Service Utilization, <https://www.ncbi.nlm.nih.gov/books/NBK215400/>, <https://www.ncbi.nlm.nih.gov/books/NBK215400/#:~:text=Older%20adults%20use%20far%20more%20health%20care%20services%20than%20do%20younger%20groups.&text=As%20a%20result%2C%20an%20increasing,needs%20for%20health%20care%20services>.

coverage.<sup>139</sup> While health care reform can reduce the gap in life expectancy between rich and poor, health care only accounts for 10-20% of the modifiable contributors to healthy outcomes for a population.<sup>140</sup> Therefore, improving access to medical care is necessary but not sufficient in eliminating disparities that began decades earlier.<sup>141</sup>

Still, approximately 28 million people in the U.S. lack access to health insurance,<sup>142</sup> which contributes to these health disparities.<sup>143</sup> For the vast majority of the uninsured, the basic reason that they are uninsured is because they do not have enough money.<sup>144</sup> This leads those without insurance to delay or entirely forgo needed care and preventative services for chronic conditions.<sup>145</sup>

The unaffordability of health care in the U.S. creates barriers to access

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<sup>139</sup> *America is a health-care outlier in the developed world*, THE ECONOMIST, (Apr. 26, 2018), <https://www.economist.com/special-report/2018/04/26/america-is-a-health-care-outlier-in-the-developed-world>.

<sup>140</sup> Magnan, *supra* note 137.

<sup>141</sup> *Marmot Review report – 'Fair Society, Healthy Lives*, LOCAL GOV'T ASS'N, [https://www.local.gov.uk/marmot-review-report-fair-society-healthy-lives#:~:text=The%20Marmot%20Review%20looks%20at,of%20neighbourhood%20and%20so%20on](https://www.local.gov.uk/marmot-review-report-fair-society-healthy-lives#:~:text=The%20Marmot%20Review%20looks%20at,of%20neighbourhood%20and%20so%20on.). (Indeed, the same social gradient of health inequality exists between rich and poor in the United Kingdom, despite the fact that the poor can access health care in virtually the same manner as the rich.)

<sup>142</sup> Katherine Keisler-Starkey & Lisa N. Bunch, *Health Insurance Coverage in the United States: 2020*, U.S. CENSUS BUREAU, <https://www.census.gov/library/publications/2021/demo/p60-274.html>.

<sup>143</sup> *Access to Health Services*, OFF. DISEASE PREVENTION AND HEALTH PROMOTION, <https://www.healthypeople.gov/2020/topics-objectives/topic/social-determinants-health/interventions-resources/access-to-health>.

<sup>144</sup> Jennifer Tolbert et. al., *Key Facts about the Uninsured Population* (Nov. 6, 2020), KFF, <https://www.kff.org/uninsured/issue-brief/key-facts-about-the-uninsured-population/>.

<sup>145</sup> *Access to Health Services*, OFF. DISEASE PREVENTION AND HEALTH PROMOTION, <https://www.healthypeople.gov/2020/topics-objectives/topic/social-determinants-health/interventions-resources/access-to-health>.

even for those who are insured. Approximately 41 million people are underinsured,<sup>146</sup> meaning that they have health insurance but cannot reasonably afford medical care.<sup>147</sup> Technically having health insurance is little comfort to those who cannot see a doctor or get necessary prescription drugs due to financial barriers.

## VI. SOLUTIONS

If our current legal system can dictate divergent health outcomes, then a modified set of laws can also dictate a fairer future.

### *A. Early Childhood Development and Primary Education*

The most obvious first step is to make pre-K universal. Because only 2 of 50 states have agreed to do so,<sup>148</sup> a universal solution lies with the federal government.

The federal government is not starting on a blank slate. Rather, it can and should expand on the existing Head Start program, which currently serves one million children and their families each year throughout the United States.<sup>149</sup>

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<sup>146</sup> Sara R. Collins et. al., *U.S. Health Insurance Coverage in 2020: A Looming Crisis in Affordability*, THE COMMONWEALTH FUND, (2020), <https://www.commonwealthfund.org/publications/issue-briefs/2020/aug/looming-crisis-health-coverage-2020-biennial>.

<sup>147</sup> *Id.*

<sup>148</sup> Universal Pre-K, *supra* note 18.

<sup>149</sup> *Head State History*, U.S. DEP'T HEALTH & HUMAN SERVICES, <https://www.acf.hhs.gov/ohs/about/history-head-start>.

Head Start “promotes school readiness for children in low-income families by offering educational, nutritional, health, social, and other services.”<sup>150</sup> In order to serve just half of all low-income children, Congress would need to substantially increase funding for Head Start by approximately \$14.4 billion.<sup>151</sup> Although money will not completely resolve this disparity, increasing funding for Head Start would be a significant first step.

For K-12 education, Congress can also play a role in leveling inequities. Specifically, as the U.S. Commission on Civil Rights noted, Congress should adopt legislation that achieves the following outcomes:

- (1) incentivizes states to adopt equitable public school finance systems that provide meaningful educational opportunity, promote student achievement for all students, and close achievement gaps where they exist;
- (2) incentivizes states to ensure adequate funding for students with disabilities, without incentivizing classifying students into special education;
- (3) incentivizes states to invest in facilities which can help to provide an equitable environment for students to achieve;

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<sup>150</sup> *Head Start Program Facts: Fiscal Year 2019*, U.S. DEP’T HEALTH & HUMAN SERVICES, <https://eclkc.ohs.acf.hhs.gov/sites/default/files/pdf/no-search/hs-program-fact-sheet-2019.pdf>.

<sup>151</sup> Rutgers University Graduate School of Education, *State(s) of Head Start*, NIEER (2016), [https://nieer.org/wp-content/uploads/2016/12/HS\\_Full\\_Reduced.pdf](https://nieer.org/wp-content/uploads/2016/12/HS_Full_Reduced.pdf).

- (4) increases federal funding to supplement state funding with a goal to provide meaningful educational opportunity on an equitable basis to all students in the nation’s public schools;
- (5) promotes the collection, monitoring, and evaluation of school spending data to determine how funds are most effectively spent to promote positive student outcomes; and
- (6) develops mechanisms to monitor and evaluate the effectiveness of federal spending on enhancing student achievement and closing achievement gaps[.]<sup>152</sup>

States can act without waiting for Congress. State education funding efforts should primarily address three questions: (1) how much funding do we provide per student?; (2) how equitably is this funding distributed?; and (3) is the level of funding per student adequate given the size of the state’s economy?<sup>153</sup> Overall, because poorer students typically require more funding than richer students, equalizing funding is necessary but not sufficient. Nonetheless, states should adopt spending formulas that at least balance out existing inequities.

### *B. Higher Education*

To fix the college affordability issue, states must provide more support for

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<sup>152</sup> Public Education Funding Inequity, *supra* note 29.

<sup>153</sup> *Making the Grade*, EDUC. LAW CENTER (2021), [https://edlawcenter.org/assets/MTG%202021/2021\\_ELC\\_MakingTheGrade\\_Report\\_Dec2021.pdf](https://edlawcenter.org/assets/MTG%202021/2021_ELC_MakingTheGrade_Report_Dec2021.pdf).

higher education. To do so, states may need to increase taxes, which have declined in recent decades.<sup>154</sup>

The federal government can also take steps to expand access to higher education. First, the federal government should increase Pell Grant funding.<sup>155</sup> Further, Pell Grants should be permanently tied to inflation to avoid erosion.<sup>156</sup> In addition, the federal government should provide greater assistance for community college, which is particularly important for low-income students.<sup>157</sup>

Finally, the U.S. should invest significantly more in vocational education, which can vastly increase earnings for those students who do not attend college. The federal government currently spends about \$4 billion on high school, postsecondary career education, and adult workforce programs, but not all students have access to high quality programs.<sup>158</sup> Overall, there are 30 million jobs in the U.S. that pay an average of \$55,000 and do not require bachelor's

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<sup>154</sup> Erica York and Jared Walczak, *State and Local Tax Burdens, Calendar Year 2019*, TAX FOUND. (Mar. 18, 2021), <https://taxfoundation.org/state-tax-burden-2019/>.

<sup>155</sup> Inst. Coll. Access & Success, *How to Secure and Strengthen Pell Grants to Increase College Access and Success* (Oct. 16, 2018), [https://ticas.org/wp-content/uploads/legacy-files/pub\\_files/pell\\_recs\\_one\\_pager.pdf](https://ticas.org/wp-content/uploads/legacy-files/pub_files/pell_recs_one_pager.pdf).

<sup>156</sup> *Id.*

<sup>157</sup> Rachel Fulcher Dawson et. al, *Why expanded student supports can improve community college outcomes and boost skill attainment*, BROOKINGS (Apr. 7, 2021), <https://www.brookings.edu/blog/brown-center-chalkboard/2021/04/07/why-expanded-student-supports-can-improve-community-college-outcomes-and-boost-skill-attainment/#:~:text=Given%20their%20low%20tuition%20and,rewarded%20in%20the%20labor%20market.>

<sup>158</sup> *Building a Strong Middle Class Through Career Pathways Programs*, CTR AM. PROGRESS (May 18, 2020), <https://www.americanprogress.org/article/building-strong-middle-class-career-pathways-programs/>.

degrees,<sup>159</sup> which all students should ultimately be able to fill.

### C. Employment

While it may be difficult to eliminate the disparities between the different work experiences that people like Reid and Hodges experience, policy changes can mitigate those differences.

First, the federal government can raise the minimum wage. The national minimum wage today is approximately 31% less than it was in 1968, adjusted for inflation.<sup>160</sup> Raising the minimum wage gradually to \$15 per hour by June 2025 and then adjusting it to increase at the same rate as median hourly wages would ultimately raise the wages of as many as 27 million workers and reduce the number of people in poverty by 900,000.<sup>161</sup>

Second, states and localities can essentially increase take-home pay by making their tax systems more progressive. Right now, 45 states have tax structures that exacerbate income inequality by relying heavily on regressive sales and excise taxes rather than progressive graduated income taxes.<sup>162</sup> Specifically, states should adopt or expand upon refundable earned income tax credits that

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<sup>159</sup> Anthony Carnevale et. al., *Good Jobs that Pay without a BA*, GEO. U. CTR EDUC. AND WORKFORCE (2017), <https://goodjobsdata.org/wp-content/uploads/Good-Jobs-wo-BA-final.pdf>.

<sup>160</sup> David Cooper, *Congress has never let the federal minimum wage erode for this long*, ECON. POL'Y INST. (June 17, 2019), <https://www.epi.org/publication/congress-has-never-let-the-federal-minimum-wage-erode-for-this-long/>

<sup>161</sup> *The Budgetary Effects of the Raise the Wage Act of 2021*, CONG. BUDGET OFF., at 2 (Feb 2021), <https://www.cbo.gov/system/files/2021-02/56975-Minimum-Wage.pdf>.

<sup>162</sup> Who Pays: A Distributional Analysis of the Tax Systems in All 50 States, *supra* note 69.

target low-income families with children.<sup>163</sup>

The federal government and state governments should also play an expanded role in removing work barriers for low-income workers. As explained above, besides education, the two biggest barriers to work for people who live in low- and moderate-income areas are childcare and transportation. Existing legislative proposals can dramatically expand access to childcare.<sup>164</sup> To partially address transportation issues, states and localities should make public transportation more accessible during off-peak commuting hours, as many low-income workers in the service sector do not work regular 9-to-5 schedules.<sup>165</sup>

Finally, the federal government should increase enforcement actions by the Occupational Safety and Health Administration (OSHA) to reduce workplace death and injury, which disproportionately impacts low-income workers.<sup>166</sup> Thousands of workers are killed on the job every year, and millions more are injured, leading to lingering earnings losses for years after a workplace incident.<sup>167</sup> At the same time, the number of OSHA inspectors today is

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<sup>163</sup> *Id.*

<sup>164</sup> Andrew Prokop, *Democrats' child care plan could help millions — or it could be a big mess* VOX (Nov. 22, 2021), <https://www.vox.com/22744837/house-senate-democrats-build-back-better-child-care>.

<sup>165</sup> Transportation Needs of Disadvantaged Populations: Where, When, and How?, FED. TRANSIT ADMIN. (Feb. 2013), [https://www.transit.dot.gov/sites/fta.dot.gov/files/FTA\\_Report\\_No.\\_0030.pdf](https://www.transit.dot.gov/sites/fta.dot.gov/files/FTA_Report_No._0030.pdf).

<sup>166</sup> *Adding Inequality to Injury: the Costs of Failing to Protect Workers on the Job*, OCCUPATIONAL SAFETY & HEALTH ADMIN, 5 (June 2015) [https://www.osha.gov/sites/default/files/inequality\\_michaels\\_june2015.pdf](https://www.osha.gov/sites/default/files/inequality_michaels_june2015.pdf).

<sup>167</sup> *Id.*

significantly lower than it was 40 years ago, despite a larger economy with more workers.<sup>168</sup>

#### D. Housing

The most pervasive problem in housing is supply. To increase the availability of housing and reduce its cost, states and cities should reduce single-family zoning and unnecessary zoning restrictions, such as minimum lot sizes, overly stringent construction requirements, and allowable height sizes for units.<sup>169</sup> States<sup>170</sup> and cities<sup>171</sup> have begun to limit single-family zoning, which will increase the supply of housing.<sup>172</sup> While zoning decisions are made at the state and local levels, the federal government can end needless zoning restrictions by providing financial incentives to localities that reduce exclusionary zoning.<sup>173</sup>

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<sup>168</sup> Deborah Berkowitz, *Workplace Safety & Health Enforcement Falls to Lowest Levels in Decades*, NELP (Dec. 17, 2019), <https://www.nelp.org/publication/workplace-safety-health-enforcement-falls-lowest-levels-decades/>.

<sup>169</sup> Alexander Von Hoffman, *Single Family Zoning: Can History be Reversed?*, JOINT CTR HOUSING STUD. OF HARV. U. (Oct. 5, 2021), <https://www.jchs.harvard.edu/blog/single-family-zoning-can-history-be-reversed>.

<sup>170</sup> Jerusalem Demas, *California is ending a rule that helped cause its housing crisis*, VOX (Sept. 17, 2021), <https://www.vox.com/2021/9/17/22679358/california-newsom-duplex-single-family-zoning>.

<sup>171</sup> Richard D. Kahlenberg, *How Minneapolis Ended Single-Family Zoning*, CENTURY FOUND. (Oct. 24, 2019), <https://tcf.org/content/report/minneapolis-ended-single-family-zoning/>.

<sup>172</sup> Ben Metcalf et. al., *Will Allowing Duplexes and Lot Splits on Parcels Zoned for Single-Family Create New Homes?* TERNER CENTER FOR HOUSING INNOVATION AT UC BERKELEY, at 2 (July 2021), <https://ternercenter.berkeley.edu/wp-content/uploads/2021/07/SB-9-Brief-July-2021-Final.pdf>.

<sup>173</sup> Richard D. Kahlenberg, *Tearing Down the Walls: How the Biden Administration and Congress Can Reduce Exclusionary Zoning*, CENTURY FOUND. (Apr. 18, 2021), <https://tcf.org/content/report/tearing-walls-biden-administration-congress-can-reduce-exclusionary-zoning/>.

The federal government can also provide significant assistance in other areas. For example, it can and should expand the Section 8 Housing Choice Voucher program, which requires that low-income renters pay no more than 30% of their income in rent.<sup>174</sup> Right now, only three out of every ten eligible families receive vouchers.<sup>175</sup> Expanding this program would both reduce homelessness and alleviate burdens for low-income renters.<sup>176</sup> To help pay for this expansion, the federal government should reform the mortgage interest deduction tax credit, which overwhelmingly benefits wealthy households and increases the cost of housing.<sup>177</sup>

The federal government can also increase funding for the Public Housing Capital Fund and the National Housing Trust Fund. This would improve public housing and increase the availability of new housing for low-income families. While it may not be possible to say exactly why a fire started in Hodges' apartment, it is clear that the public housing complex he lived in was

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<sup>174</sup> *Housing Choice Vouchers Fact Sheet*, U.S. DEP'T HOUSING AND URB DEV., [https://www.hud.gov/program\\_offices/public\\_indian\\_housing/programs/hcv/about/fact\\_sheet](https://www.hud.gov/program_offices/public_indian_housing/programs/hcv/about/fact_sheet).

<sup>175</sup> Kathryn Reynolds et. al, *Federal Reforms to Strengthen Housing Stability, Affordability, and Choice*, URB INST., at 6 (Mar. 21, 2021), <https://www.urban.org/sites/default/files/publication/103916/federal-reforms-to-strengthen-housing-stability-affordability-and-choice.pdf>.

<sup>176</sup> Ann Oliva, *Why Expanding Housing Choice Vouchers Is Essential to Ending Homelessness*, CTR ON BUDGET AND POL'Y PRIORITIES (June 9, 2021), <https://www.cbpp.org/research/housing/why-expanding-housing-choice-vouchers-is-essential-to-ending-homelessness>.

<sup>177</sup> Christine Smith, *Why Economists Don't Like the Mortgage Interest Deduction* (May 8, 2018), FED. RES. BANK OF ST. LOUIS, <https://www.stlouisfed.org/open-vault/2018/may/why-economists-dont-like-mortgage-interest-deduction>.

underfunded.<sup>178</sup> Increasing funding can mitigate potential safety concerns for the 1.2 million households that live in public housing.<sup>179</sup>

Finally, while it may sound simplistic, building homes for the homeless is the best way to end homelessness. The federal government should expand its existing McKinney-Vento program, which provides permanent housing for people experiencing homelessness or at risk of homelessness.<sup>180</sup> Providing permanent housing first to individuals experiencing homelessness — largely without preconditions — has already significantly reduced veteran homelessness and can lead to similar outcomes for other homeless populations.<sup>181</sup>

### E. Food

To address food insecurity, the federal government can permanently implement a version of the recently enacted Child Tax Credit, which provided up to \$300 per child every month to millions of families.<sup>182</sup> This program

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<sup>178</sup> Final Report – Physical Needs Assessment 2017, *supra* note 8.

<sup>179</sup> Joseph Ax, *After fatal fire, watchdog finds safety neglect in NYC public housing*, REUTERS (Oct. 4, 2016), [https://www.hud.gov/program\\_offices/public\\_indian\\_housing/programs/ph](https://www.hud.gov/program_offices/public_indian_housing/programs/ph).

<sup>180</sup> Steve Berg, *Homeless Assistance: McKinney-Vento Homeless Assistance Programs*, NAT'L ALLIANCE TO END HOMELESSNESS, <https://www.nlihc.org/sites/default/files/2014AG-98.pdf>.

<sup>181</sup> *Secretaries of HUD, VA joint statement on ending Veteran homelessness*, U.S. DEP'T OF HOUSING AND URB. DEV. (Apr. 12, 2021), [https://www.hud.gov/press/press\\_releases\\_media\\_advisories/HUD\\_No\\_21\\_059#:~:text=AHAR%20showed%20investments%20from%20Congress,homelessness%20between%202010%20and%202016](https://www.hud.gov/press/press_releases_media_advisories/HUD_No_21_059#:~:text=AHAR%20showed%20investments%20from%20Congress,homelessness%20between%202010%20and%202016).

<sup>182</sup> Abha Bhattarai, *Fewer groceries, more debt: Families brace for first month without child tax payments*, WASH POST (Jan. 14, 2022), <https://www.washingtonpost.com/business/2022/01/14/child-tax-credit-lapse-january/>.

immediately slashed child poverty rates by 30%.<sup>183</sup> Similarly, increasing the current Supplemental Nutrition Assistance Program maximum benefits by 20% would reduce food insecurity among recipients by nearly half,<sup>184</sup> resulting in almost 20 million<sup>185</sup> fewer hungry households.

To tackle food deserts, governments should incentivize healthier eating habits by taxing unhealthy foods. Indeed, “[o]ne thing that definitely does work is taxing unhealthy foods such as sugary drinks.”<sup>186</sup> The federal government can promote a national solution by imposing a junk food excise tax on food manufacturers, rather than consumers, that incentivizes manufacturers to reformulate more nutritious food.<sup>187</sup>

Finally, the federal government should change the composition of its overall subsidy program. It spends far more subsidizing junk food ingredients than healthy foods like apples, creating “very strong perverse incentives

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<sup>183</sup> *November Child Tax Credit payment kept 3.8 million children from poverty*, CTR ON POVERTY & SOC POL’Y AT COLUM U. (Dec. 15, 2021), <https://www.povertycenter.columbia.edu/news-internal/monthly-poverty-november-2021>.

<sup>184</sup> Steven Carlson et. al., *More Adequate SNAP Benefits Would Help Millions of Participants Better Afford Food*, CTR. BUDGET AND POL’Y PRIORITIES (July 15, 2021), <https://www.cbpp.org/research/food-assistance/more-adequate-snap-benefits-would-help-millions-of-participants-better>.

<sup>185</sup> *The 42 Million Americans Who Receive SNAP Benefits Are Set To Get \$36 More A Month*, NPR (Aug. 22, 2021), <https://www.npr.org/2021/08/22/1030099959/the-42-million-americans-who-receive-snap-benefits-are-set-to-get-36-more-a-mont>.

<sup>186</sup> James Devitt, *What Really Happens When a Grocery Store Opens in a ‘Food Desert’?*, NYU NEWS (Dec. 10, 2019), <https://www.nyu.edu/about/news-publications/news/2019/december/what-really-happens-when-a-grocery-store-opens-in-a--food-desert.html>.

<sup>187</sup> *Junk Food Tax is Legally and Administratively Viable, Finds New Analysis*, NYU NEWS (Jan. 10, 2018), <https://www.nyu.edu/about/news-publications/news/2018/january/junk-food-tax-is-legally-and-administratively-viable--finds-new-.html>.

discouraging farmers from growing fresh fruits and vegetables[.]”<sup>188</sup> Subsidizing healthy food and either eliminating or vastly reducing subsidies for unhealthy food may ultimately promote different dietary habits.

#### F. *Crime and the Criminal Justice System*

What causes crime generally is complicated. There are competing theories about why crime declines, and the answer involves many inter-related factors.<sup>189</sup> Mass incarceration played a limited role in reducing crime.<sup>190</sup> Nonetheless, much is unclear. For example, there is inconclusive, moderate evidence that indicates several common gun policies actually impact crime.<sup>191</sup>

The ways to reduce mass incarceration, however, are clearer. To address aggressive prosecutors, states and cities should provide adequate funding for public defenders,<sup>192</sup> who are notoriously underfunded.<sup>193</sup> This would equalize plea negotiations, allowing the attorney for the accused more time to adequately prepare due to reduced case load. More generally, the public needs to elect local

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<sup>188</sup> *Apples to Twinkies*, U.S. PIRG EDUC. FUND (2012),

[https://uspig.org/sites/pirg/files/reports/Apples%20to%20Twinkies%20vUS\\_2.pdf](https://uspig.org/sites/pirg/files/reports/Apples%20to%20Twinkies%20vUS_2.pdf).

<sup>189</sup> Lauren-Brooke Eisen, *What Caused the Crime Decline?*, THE BRENNAN CENTER FOR JUSTICE (Feb. 12, 2015), <https://www.brennancenter.org/our-work/research-reports/what-caused-crime-decline>.

<sup>190</sup> *Id.*

<sup>191</sup> *See How Gun Policies Affect Violent Crime*, THE RAND CORP. (Apr. 22, 2020),

<https://www.rand.org/research/gun-policy/analysis/violent-crime.html>.

<sup>192</sup> Gopnik, *supra* note 119.

<sup>193</sup> Robert Bukaty, *Public Defenders Fight Back Against Budget Cuts, Growing Caseloads*, PEW (Nov. 21, 2017) <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2017/11/21/public-defenders-fight-back-against-budget-cuts-growing-caseloads>.

prosecutors who pursue detention and incarceration for a more limited set of offenses.<sup>194</sup>

States and localities should also reconsider whether incarceration is necessary beyond a certain age. People generally age out of crime by their late 30s and 40s,<sup>195</sup> yet approximately 40% of state prisoners are 40 or older.<sup>196</sup> States and localities should consider adopting presumptive releases beyond a certain age for most offenses, provided there is a minimum amount of time served. This would dramatically reduce the prison population, targeting those least likely to re-offend, while also permitting exceptions where the danger to public safety outweighs the benefits of release.

There are also ways to substantially limit the war on drugs. State and local governments can roll back mandatory minimum sentence laws, three strikes laws, and truth in sentencing laws, which extend prison sentences for many drug-related offenders.<sup>197</sup> The federal government can also overturn the provisions of the Anti-Drug Abuse Act of 1986 that create huge disparities in sentencing

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<sup>194</sup> This has started to occur in significant ways. See e.g., Katie Meyer, *Philly DA Larry Krasner cruises to reelection victory* WHYY (Nov. 2, 2021), <https://whyy.org/articles/philly-da-larry-krasner-cruises-to-reelection-victory/>.

<sup>195</sup> Lopez, *supra* note 121.

<sup>196</sup> E. Ann Carson and William J. Sabol, *Aging of the State Prison Population, 1993-2013*, DEP'T OF JUSTICE (May 2016), <https://bjs.ojp.gov/content/pub/pdf/aspp9313.pdf>.  
<https://www.rand.org/research/gun-policy/analysis/violent-crime.html>.

<sup>197</sup> THE NATIONAL ACADEMIES PRESS, *THE GROWTH OF MASS INCARCERATION IN THE UNITED STATES* 70 (2014). <https://www.nap.edu/read/18613/chapter/5#72>.

between crack and powder cocaine.<sup>198</sup>

### *G. Health Care*

Leading U.S. legislators have proposed that everyone be eligible for Medicare, rather than just those over 65, in order to expand access to health care.<sup>199</sup> States can also expand eligibility for Medicaid; the Affordable Care Act vastly expanded Medicaid eligibility, but the U.S. Supreme Court found that the manner in which it did so was unconstitutional.<sup>200</sup> Nonetheless, states retain the option of expanding access, and approximately 2.2 million people would gain coverage if the 14 remaining states expanded eligibility for Medicaid.<sup>201</sup>

To address cost — which also impacts health care access in practical terms — health care administration needs to be far simpler. The federal government should set standardized rules to reduce the unjustifiably expensive health care administration system.<sup>202</sup> In addition, states and/or the federal government should regulate medical costs.<sup>203</sup> Maryland already regulates costs for hospitals,<sup>204</sup> and

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<sup>198</sup> Rashawn Ray and William Galston, *Did the 1994 crime bill cause mass incarceration?*, BROOKINGS (Aug. 28, 2020), <https://www.brookings.edu/blog/fixgov/2020/08/28/did-the-1994-crime-bill-cause-mass-incarceration/>.

<sup>199</sup> H.R.1976 - Medicare for All Act of 2021, U.S. CONGRESS, <https://www.congress.gov/bill/117th-congress/house-bill/1976/cosponsors?r=3&s=1>.

<sup>200</sup> *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519 (2012).

<sup>201</sup> Rachel Garfield et. al., *The Coverage Gap: Uninsured Poor Adults in States that Do Not Expand Medicaid*, KFF (Jan. 21, 2021), <https://www.kff.org/medicaid/issue-brief/the-coverage-gap-uninsured-poor-adults-in-states-that-do-not-expand-medicaid/>.

<sup>202</sup> David Cutler, *The World's Costliest Health Care*, HARVARD MAGAZINE (May-June 2020), <https://www.harvardmagazine.com/2020/05/feature-forum-costliest-health-care>.

<sup>203</sup> *Id.*

<sup>204</sup> *HSCRC Overview*, STATE OF MARYLAND, <https://hscrc.maryland.gov/Pages/About-Us.aspx>.

many European countries regulate costs for pharmaceuticals.<sup>205</sup> There is no good reason for insulin to cost 10 times as much in the U.S. compared to Canada<sup>206</sup> or for hospital costs and common procedures to be far more expensive in the U.S. than in western European countries.<sup>207</sup>

## VII. THE NEXT GREAT PUBLIC HEALTH ACHIEVEMENT IN THE UNITED STATES

Over the last century, scientists, researchers, doctors, epidemiologists, and public health authorities have achieved miracles once only imaginable.<sup>208</sup> These advances have collectively reduced suffering and increased life expectancy, granting grandparents more time with grandkids, spouses more time with each other, and individuals more time to spend with the people and passions they care most about. That rising tide has lifted all boats, but vast inequality of life expectancy persists. The degree of inequality is indefensible. Regardless of one's moral outlook, surely it is unacceptable for the top one percent to live approximately 12 years longer than the bottom one percent.<sup>209</sup>

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<sup>205</sup> Cutler, *supra* note 202.

<sup>206</sup> *Id.*

<sup>207</sup> *International Federation of Health Plans 2012 Comparative Price Report*, [https://www.hushp.harvard.edu/sites/default/files/downloadable\\_files/IFHP%202012%20Comparative%20Price%20Report.pdf](https://www.hushp.harvard.edu/sites/default/files/downloadable_files/IFHP%202012%20Comparative%20Price%20Report.pdf).

<sup>208</sup> *Ten Great Public Health Achievements -- United States, 1900-1999*, CTR. FOR DISEASE CONTROL AND PREVENTION (Apr. 2, 1999), <https://www.cdc.gov/mmwr/preview/mmwrhtml/00056796.htm>.

<sup>209</sup> Raj Chetty et. al., *The Association Between Income and Life Expectancy in the United States, 2001–2014*, JAMA (Apr. 26, 2016), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4866586/pdf/nihms783419.pdf>.

The next great public health achievement can come from lawmakers spurred by public demands. Governments can change laws to eradicate, or at least vastly mitigate, the epidemic of suffering concentrated among the least fortunate. We can agree that increasing life expectancy should be foremost among our concerns and commit to supporting policies with a demonstrated capacity to improve this fundamental metric, regardless of political orientation. We can prioritize a health-centered dialogue that equally respects the dignity and value of every life, regardless of census tract, and we can collect and disperse public resources accordingly.

If we believe that both Reid and Hodges had every right to pursue equally full lives, then we must do more to make sure that people like Hodges have the opportunity to live as long as people like Reid.