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Thwarting the Inevitability of Over-Indebtedness

Lois R. Lupica

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THWARTING THE INEVITABILITY OF OVER- INDEBTEDNESS

*Lois R. Lupica**

*Zach Neumann***

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INTRODUCTION

Structural inequalities in the United States have led to millions of Americans struggling to pay their bills each month.¹ Financial instability is a constant for many families living in marginalized communities, and it casts a long shadow impacting every aspect of daily life.² A single emergency—a sick child, an unexpected car tow, or a reduction in hours at work—can force a low-income household to the brink of financial disaster, risking eviction and over-indebtedness.³

Such inequalities can be traced to a range of historical, economic, legal, and socio-political factors.⁴ The historical legacy of slavery, institutional racism, as well as the perceived threats and resulting animosity toward new immigrants has left continuing and ingrained disparities.⁵ This caste system manifests in unequal access to power, opportunities, and resources.⁶ Meaningful reform efforts are hampered by the power and influence of special interest groups supported by the “haves.”⁷

The adequacy of even limited government assistance is thwarted by a poverty of thinking about effective and efficient system development.⁸ The public-benefits infrastructure does not provide what is required by those in need, instead: processes are complex, application instructions are confusing, eligibility requirements are convoluted, and waits are long.⁹ Moreover, different programs

¹ See MATTHEW DESMOND, *POVERTY BY AMERICA* 6 (2023).

² See *id.* at 7.

³ See MARK R. RANK, *THE POVERTY PARADOX: UNDERSTANDING ECONOMIC HARDSHIP AMID AMERICAN PROSPERITY* 62 (2023).

⁴ See generally Danyelle Solomon et al., *Systemic Inequality and Economic Opportunity*, CTR. FOR AM. PROGRESS (Aug. 2019), <https://www.americanprogress.org/article/systematic-inequality-economic-opportunity> (exploring the impact that racist policies from over one hundred years ago still have on economic inequality today).

⁵ See *id.*

⁶ See *id.*

⁷ See *Fighting Special Interest Lobbyist Power over Public Policy*, CTR. FOR AM. PROGRESS (Sept. 27, 2017), <https://www.americanprogress.org/article/fighting-special-interest-lobbyist-power-public-policy> (referencing the overrepresentation of businesses in lobbying compared to individuals).

⁸ See generally JOHN BODY & NINA TERREY, *DESIGN FOR A BETTER FUTURE: A GUIDE TO DESIGNING IN COMPLEX SYSTEMS* (1st ed. 2019) (describing the complexity of operating large government systems).

⁹ See Justin Schweitzer, *How To Address the Administrative Burdens of Accessing the Safety Net*, CTR. FOR AM. PROGRESS (May 5, 2022), <https://www.americanprogress.org/article/how-to-address-the-administrative-burdens-of-accessing-the-safety-net> (reporting government-imposed obstacles, known as “administrative burdens,” and their effect on everyday Americans). Schweitzer notes that: “In fiscal year 2017, for example, Americans spent a collective 11.5 billion hours on paperwork requirements from just federal agencies—an average of 45 hours per adult.” *Id.*; see also Justin Schweitzer et al., *How Dehumanizing*

in the public-benefits infrastructure have varying application periods, approval timelines, and disbursement schedules.¹⁰ Plus, these programs have no institutionalized mechanisms or fiscal incentive structure to coordinate among themselves.¹¹ These programs are siloed and have a single-problem focus, which leads to fragmented responses and truncated interventions that fail to recognize and address the interconnectedness of the myriad issues that thwart self-sufficiency and financial stability.¹² The stories and perspectives of the benefit recipients—all of whom lack political and economic power—fail to be credited.¹³

The Law and Political Economy (“LPE”) framework offers a critical lens through which to analyze and understand the intricacies and dynamics of contemporary socio-economic and political systems.¹⁴ The LPE framework recognizes that law is not neutral, but a dynamic force that plays a central role in shaping economic relationships and distributional outcomes.¹⁵ The recognition that law is profoundly connected to economic arrangements allows for a critical examination of the processes that perpetuate economic disparities.

This Article focuses on how the law’s relationship with economic and political systems has dire effects upon communities at the local level. By challenging the ineffectiveness of these existing systems, this Article spotlights the stark inequalities in our society. This Article recognizes the bankruptcy system’s limitation as a remedy for debt relief and observes that bankruptcy is not a substitute for effective policies and programs that help the poor navigate financial crises.

Part I analyzes a case study of a single household to illustrate two central problems at issue in this Article: first, the barriers erected by public- and private-benefit system balkanization; second, low-income families’ lack of power in

Administrative Burdens Harm Disabled People, CTR. FOR AM. PROGRESS (Dec. 5, 2022), <https://www.americanprogress.org/article/how-dehumanizing-administrative-burdens-harm-disabled-people> (reporting on several people who received Supplemental Security Income, Social Security Disability Insurance, or both, focusing on the procedures and pitfalls of simply accessing this vital assistance). Again, Schweitzer notes that: “From 2014 to 2016, only 33.5 percent of applicants for SSDI and 32.6 percent of applicants for disability benefits with SSI were awarded benefits at any point in the process.” *Id.*

¹⁰ See *Burdens Harm Disabled People*, *supra* note 9.

¹¹ See *id.*

¹² See *id.*

¹³ See *infra* Part I.

¹⁴ See generally David Singh Grewal et al., *Toward a Manifesto*, LPE PROJECT, <https://lpeproject.org/lpe-manifesto/> (last visited May 17, 2024) (describing the fundamental principles of the Law and Political Economy framework).

¹⁵ See *About the LPE Project*, LPE BLOG, <https://lpeproject.org/about-the-blog> (last visited May 17, 2024).

their housing, credit, and transportation transactions. Part II discusses the financial challenges faced by low-income families as they struggle to pay for housing, health care, and transportation with inadequate wages. This Part also articulates the relationship between the markets for housing, health care, transportation, and consumer credit with the inevitable consequence of low-income families incurring high levels of high-cost debt when they cannot pay their bills. Part III asks an important question: Whose interests were served when the rules governing housing, credit, health care, and transportation were enacted and when the system for benefit access was designed? Part IV explores the extent to which lawyers can aid people in dire financial circumstances. Part V scrutinizes the role of the bankruptcy system through the LPE lens. Part VI offers suggestions for recalibrating the power imbalances that harm many low-income families in exigent financial circumstances. Part VII then discusses programs and strategies that can help stabilize families who emerge from financial crises. Finally, this Article concludes by reiterating the importance of challenging existing political and economic structures to smooth out the uneven landscape of inequality.

I. LOW-INCOME HOUSEHOLDS FACE STRUCTURAL INEQUALITIES: A CASE STUDY

Part I discusses the case study of Janet and Miguel,¹⁶ which illustrates both the structural inequalities low-income households face when accessing basic services, and the profound limitations in systems built ostensibly to provide assistance. Janet and Miguel's story demonstrates many of the issues discussed at length throughout this Article and provides a human foundation to contextualize the proposed solutions.

In 2020, Janet and Miguel experienced a common financial emergency: Miguel, a construction worker, was furloughed as a result of COVID-19-related work stoppages. With no money coming in, the family struggled to buy food and pay rent. They quickly exhausted their limited savings, maxed out their high-cost credit cards, and within weeks, missed a rental payment. Despite COVID-era prohibitions against eviction, their landlord, a large private equity investor, called and emailed them daily, demanding that they leave the property. When they refused, the landlord threatened them with an eviction lawsuit.¹⁷

¹⁶ This case study is drawn from CEDP clients' experiences. The names have been changed to protect the clients' privacy. Relevant documents are on file with the authors.

¹⁷ This happened despite a state and federal eviction moratorium. At the federal level, on September 4, 2020, Centers for Disease Control and Prevention and Department of Health and Human Services promulgated

During this time, Miguel's truck, a vehicle containing his construction tools needed for his work, was towed from his apartment parking lot. Purportedly, it was towed because the back-left tire of his truck had touched the dividing line of the parking space, though Miguel suspected it was retribution for a missed rental payment. When Miguel contacted the towing company, he was told that unless he could pay \$500+ in towing fees, his vehicle, and the tools inside it, would be sold at auction. Miguel called the towing company daily, trying to negotiate the release of his vehicle, but the total balance continued to increase, gradually doubling to over \$1,000.

At the same time, the landlord filed an eviction lawsuit against Janet and Miguel despite the federal and state eviction moratorium. The landlord could file the case because the judge in the county in which Janet and Miguel lived interpreted the relevant anti-eviction statute to provide that the eviction moratorium could be raised only as an affirmative defense. Rather than reading the rule as prohibiting eviction actions from being filed in the first place—this judge shifted the risk to the tenant, who had to use their scarce resources to file an answer, come to court, and plead their defense.¹⁸

Because they received limited advice from a legal aid attorney, Janet and Miguel prepared an answer themselves and filed it with the court, asserting that they were protected by overlapping state and federal eviction moratoria. However, in preparing the answer pro se, they naturally made several mistakes, and ultimately received a default eviction judgment. They moved with their

85 F.R. 55292 temporarily halting eviction. Temporary Halt in Residential Evictions To Prevent the Further Spread of COVID-19, 85 Fed. Reg. 55292 (Ctr. for Disease Control & Prevention, Dep't Health & Human Servs. Sept. 4, 2020), <https://www.federalregister.gov/documents/2020/09/04/2020-19654/temporary-halt-in-residential-evictions-to-prevent-the-further-spread-of-covid-19>. At the state level, Colorado Governor, Jared Polis, issued executive orders D 2020-012, D 2020-031, and D2020-051, temporarily limiting residential and commercial eviction in the state. Order Limiting Evictions, Foreclosures, and Public Utility Disconnections and Expediting Unemployment Insurance Claim Processing To Provide Relief to Coloradans Affected by COVID-19, D 2020-012 (Colo. St. Gov. Mar. 20, 2020); Amending and Extending Executive Order D 2020-012 Limiting Evictions, Foreclosures, and Public Utility Disconnections and Expediting Unemployment Insurance Claim Processing To Provide Relief to Coloradans Affected by COVID-19, D 2020-031 (Colo. St. Gov. Apr. 6, 2020); Amending and Extending Executive Orders D 2020-012 and D 2020-031 Limiting Evictions, Foreclosures, and Public Utility Disconnections and Expediting Unemployment Insurance Claim Processing To Provide Relief to Coloradans Affected by COVID-19, D 2020-051 (Colo. St. Gov. Apr. 30, 2020).

¹⁸ Renters have faced difficulty and confusion when availing themselves of protections available under state and federal eviction moratoriums implemented in response to the COVID-19 Pandemic. Despite intensive efforts to prevent eviction and displacement, many tenants lost their housing due to misunderstandings or legal loopholes. See generally Danya E. Keene et al., "A Little Bit of a Security Blanket": Renter Experiences with COVID-19-Era Eviction Moratoriums, 97 SOC. SERV. REV. 423 (2023).

children to a motel before the sheriff could physically remove them from their home.

During this time, Janet and Miguel sought help from various public assistance providers. They applied for emergency rental assistance from the State, but the application process was confusing, required documents that took weeks to gather,¹⁹ and, when it was finally submitted, the application took months to process. The State did not begin work on their rental assistance application until they had already been displaced, rendering the aid useless.

They also sought legal and financial help to recover Miguel's truck and work tools from the towing company. They were told by the towing company that they had no legal or administrative route to recover the vehicle, in the absence of payment, as Miguel had no proof that he had not parked on a line. The towing company's advice was to take on further debt to retrieve their vehicle.

In the meantime, Janet and Miguel began seeking various forms of financial assistance for food and other necessary expenses. They applied for the Supplemental Nutrition Assistance Program, but were told that the application review process would take eighteen weeks.²⁰ They sought assistance from Temporary Assistance for Needy Families, but met similar review time and application obstacles.

Within six weeks of missing a rental payment during a national public health crisis, Janet, Miguel, and their children, were using high-interest debt to pay for a single motel room far from their apartment, the children's schools, and their support community. Miguel had lost his vehicle and the tools he used to earn a living. The family, stripped of savings and assets and deeply in debt, were left waiting for government assistance to arrive.

II. IT IS ABOUT HAVING ENOUGH MONEY TO LIVE

Janet and Miguel's story highlights only part of the problem that low-income households currently face in the United States. Over the past decades, it has become increasingly difficult for Americans to purchase the products and services needed to live a "good life." To access essential services, Americans with limited income or a low credit score must navigate high prices, predatory

¹⁹ Finding all necessary documentation was made all the more challenging by the fact that they had to move their belongings quickly.

²⁰ While the typical review time was six weeks, the cited delay was likely due to interruptions in service because of the COVID-19 Pandemic.

service providers, and sub-optimal choices, where the penalties for a bad deal or a missed payment are often extreme. Many consumers purchase what they need at prices they cannot afford, subject to terms they cannot sustain, with penalties and fees for non-compliance they cannot endure.²¹ And yet, because these products are essential to survival, people pay and agree to what they must.²²

For consumers earning limited incomes, the process of purchasing products, which are essential to survival or well-being, is often characterized by: (1) high, fixed prices, with little room for negotiation with a powerful seller; (2) significant asymmetries of information, reflected in complex contracts with variable financial terms; (3) extreme consequences and penalties for non-payment or late payment; and (4) the absolute necessity of the product being purchased.²³ Taken in concert, these features mean that in many necessary low-income consumer transactions the risk of loss is shifted to the consumer.

Part II explores how low-income consumers, like Janet and Miguel, interact with sellers of essential goods and services, including rental housing, consumer credit, health care, and transportation. Absent broad changes in the way we structure systems, enact policies, make rules, and affirmatively recognize that politics and the economy are inseparable and “constructed by law,” this Article argues that the burdens and disadvantages imposed on consumers by these markets are foreordained.²⁴

A. *The Low-Income Rental Housing Market*

Safe, clean, and affordable housing is essential to every person’s health and well-being.²⁵ Housing is a product that consumers must purchase, usually within a pre-defined geographical area that is reasonably close to work, school, family, and social networks. Despite its critical importance, consumers earning limited incomes must navigate a housing market defined by high prices,²⁶ an absence of

²¹ See DAVID SHIPLER, *THE WORKING POOR* 26–27 (2004).

²² See *id.*

²³ See generally Albert Choi & George Triantis, *The Effect of Bargaining Power on Contract Design*, 98 VA. L. REV. 1665 (2012) (discussing how asymmetries in bargaining power affect consumers); Jedediah S. Purdy et al., *Building a Law-and-Political-Economy Framework: Beyond the Twentieth-Century Synthesis*, 129 YALE L.J. 1784 (2020) (describing the LPE framework).

²⁴ See *About the LPE Project*, *supra* note 15.

²⁵ See Maggie Mwoka et al., *Housing as a Social Determinant of Health: Evidence from Singapore, the UK, and Kenya: The 3-D Commission*, 98 J. URB. HEALTH 15, 16–17, 23 (2021) (addressing the linkages between housing policies, health, and well-being).

²⁶ See Yanling Mayer, *US Rent Affordability Drops to Lowest Level in Decades*, CORELOGIC (Oct. 2, 2023),

accessible public subsidy or support,²⁷ high barriers to entry,²⁸ confusing contracts,²⁹ predatory fees,³⁰ and, in most states, a set of consequences for non-payment that are severe and escalating.³¹ For many renters, the aggregation of these factors results in permanent instability, with an ever-present threat of eviction.³²

The inability to find and keep safe and affordable housing has dire consequences.³³ Housing instability and homelessness are associated with reduced physical and mental health, food insecurity,³⁴ increased difficulty in

<https://www.corelogic.com/intelligence/us-rent-affordability-drops-lowest-level-decades> (“As of August 2023, the median asking rent for U.S. single-family detached or attached housing units was \$2,600, up by 4% year over year.”).

²⁷ See Sonya Acosta & Erik Gartland, *Families Wait Years for Housing Vouchers Due to Inadequate Funding*, CTR. ON BUDGET & POL’Y PRIORITIES (July 22, 2021),

<https://www.cbpp.org/research/housing/families-wait-years-for-housing-vouchers-due-to-inadequate-funding> (finding that 75% of eligible families seeking housing-choice vouchers are routinely denied access to housing because of inadequate program funding and because demand far outweighs supply).

²⁸ Alex Williamson, *Security Deposits Are a Barrier to Affordable Housing. What Can Be Done?*, SHELTERFORCE (June 1, 2021),

<https://shelterforce.org/2021/06/01/security-deposits-are-a-barrier-to-affordable-housing-what-can-be-done> (criticizing the costs of paying “routinely two to three” months of rent to a landlord at the beginning of a lease). The cost of fronting rent is even more perverse when you consider that “landlords held back about 36 percent of all deposits on average.” *Id.*

²⁹ ARIEL NELSON ET AL., TOO DAMN HIGH: HOW JUNK FEES ADD TO SKYROCKETING RENTS, NAT’L CONSUMER L. CTR. (2023), <https://www.nclc.org/wp-content/uploads/2023/03/JunkFees-Rpt.pdf>. This report explores how unavoidable fees impact the affordability of housing. The report references several fees landlords often require tenants to pay, hiding these fees in their length lease agreements.

³⁰ *Id.* at 6 (“landlords will advertise rentals for \$1100, but after pet fees, deposits, utility deposits, third-party company deposits, pest control fees, valet trash fees . . . the rent will be up to \$1800 per month.”).

³¹ *Id.* at 8 (exploring that if tenants fail to pay fees, subsequent collections actions or credit reporting are frequent).

³² See Matthew Desmond et al., *Forced Relocation and Residential Instability Among Urban Renters*, 89 SOC. SERV. REV. 227, 228, 230, 249 (2015) (discussing “residential instability” from eviction, foreclosure, or condemnation have on people and how it particularly affects low-income people).

³³ *State of Homelessness: Homelessness in Metro Denver Through a Lens of Racial Equity and Lived Experience*, METRO DENV. HOMELESS INITIATIVE (2023), https://static1.squarespace.com/static/5fea50c73853910bc4679c13/t/63d52624683a6c1fefa15cdc/1674913319640/State+of+Homelessness_Final.

³⁴ The prevalence of food insecurity among poor families can be attributed to a combination of systemic factors that perpetuate economic inequality and limit access to adequate resources. First, as noted below, the legal framework surrounding labor and employment often fails to provide sufficient protections for low-wage workers, leaving them vulnerable to exploitative working conditions, low wages, and unstable employment. See *infra* note 185. This makes it difficult for families to earn a livable income and afford nutritious food. In addition, the political economy structure, influenced by powerful corporate interests, can result in policies that prioritize profit over the well-being of marginalized communities. For example, agricultural subsidies may disproportionately benefit large agribusinesses, leading to the production of cheap, processed foods while making fresh and healthy produce less affordable and accessible. Furthermore, the lack of comprehensive social safety nets and inadequate public assistance programs further exacerbate food insecurity, as families are left

finding and keeping a job, and difficulties building and sustaining relationships.³⁵ Moreover, children in households that have difficulty making rental payments experience adverse health relative to their peers and often struggle in school.³⁶

For many low-income individuals, renting a home can overstretch already-thin finances. For example, in 2022, the national median income was just over \$71,000, while the average monthly rent was nearly \$1,800.³⁷ That would mean a person making the national median income would still be spending a little over 30% of their income on their monthly rent, making them “rent-burdened.”³⁸

Low-income families typically spend more than 30% of their pre-tax income on rent, leaving little money left for other essentials.³⁹ Those who are rent-burdened are more likely to be single-parent households, households of color, indigenous families, or immigrants.⁴⁰ Given the essential nature of housing, research shows that many rent-burdened consumers will pay rent before they pay for childcare, service debts, or even purchase food. In almost all cases, “the rent eats first.”⁴¹

without sufficient support to meet their basic needs. *See generally* Angela M. Odoms-Young, *Examining the Impact of Structural Racism on Food Insecurity: Implications for Addressing Racial/Ethnic Disparities*, FAM. CMTY. HEALTH, Apr.–June 2018.

³⁵ *See How Housing Instability Impacts Individual and Family Well-Being*, U.S. DEP’T HOUS. & URB. DEV. (Feb. 4, 2019), <https://www.huduser.gov/portal/pdredge/pdr-edge-featd-article-020419.html>; *see also* Lindsay S. Mayberry et al., *Families Experiencing Housing Instability: The Effects of Housing Programs on Family Routines and Rituals*, 84 AM. J. ORTHOPSYCHIATRY 95, 104, 108–09 (2014).

³⁶ *See* Kathleen M. Ziol-Guest & Claire C. McKenna, *Early Childhood Housing Instability and School Readiness*, 85 CHILD DEV. 103, 103–04, 110 (2014) (assessing the consequences that housing instability has on a child during their first five years of life); *cf.* Christian King, *Food Insecurity and Housing Instability in Vulnerable Families*, REV. ECON. HOUSEHOLD 1, 2–3 (2016) (focusing on the relationship food insecurity has with housing insecurity); Allison K. Groves et al., *Housing Instability and HIV Risk: Expanding Our Understanding of the Impact of Eviction and Other Landlord-Related Forced Moves*, 25 AIDS & BEHAV. 1913, 1914 (2021) (explaining landlord-related force moves, including eviction, and their relationship to people living with or at risk of HIV).

³⁷ *See* Anna Kodé, *The Typical American Renter Is Now Rent-Burdened, a Report Says*, N.Y. TIMES (Jan. 25, 2023), <https://www.nytimes.com/2023/01/25/realestate/rent-burdened-american-households.html#>.

³⁸ “HUD defines cost-burdened families as those ‘who pay more than 30 percent of their income for housing’ and ‘may have difficulty affording necessities such as food, clothing, transportation, and medical care.’” *Rental Burdens: Rethinking Affordability Measures*, U.S. DEP’T HOUS. & URB. DEV. (Sept. 22, 2014), https://www.huduser.gov/portal/pdredge/pdr_edge_featd_article_092214.html.

³⁹ Kodé, *supra* note 37 (explaining that for the first time in U.S. history, the typical American renter pays at least 30% of their pre-tax income for housing, making them rent-burdened). Moreover, as recently as 2018, nearly 47.5% of U.S. renters spend more than 30% of their income on rent, which is considered housing-cost burdened. *See* Whitney Airgood-Obrycki et al., *The Rent Eats First: Rental Housing Unaffordability in the US*, JOINT CTR. FOR HOUS. STUD. HARV. U. at 3 (2021).

⁴⁰ Airgood-Obrycki et al., *supra* note 39, at 14–15, 23.

⁴¹ *See* MATTHEW DESMOND, *EVICTED* 302 (1st ed. 2016).

Rental prices continue to trend up every year, outpacing increases in wages.⁴² In 2022 for example, listed rents for apartments in professionally managed, multi-family properties increased by 10% or more in many large metro markets, significantly outpacing inflation.⁴³ Without drastic intervention, the housing affordability crisis will continue to escalate.

Some low-income renters use vouchers and other public subsidies to defray high rent costs.⁴⁴ When available, these programs dramatically reduce the risk of eviction and homelessness, minimize overcrowding, and improve household stability. Despite their effectiveness in improving housing stability, federal voucher programs are limited in their reach; multi-year waiting periods are not uncommon, with some applicants never getting to the top of the list.⁴⁵ Even when a voucher becomes available, it is confusing, time-intensive, and deeply frustrating for a family to take the necessary steps to ultimately receive the benefit: required documentation is difficult to understand, processing times are long, and a shortage of appropriate and available units means that getting to the top of the voucher list is merely the first step in the quest for affordable housing.⁴⁶

⁴² See Sophia Wedeen, *Record-Breaking Rent Growth in Markets in the South and West*, JOINT CTR. FOR HOUS. STUD. HARV. U. (Aug. 31, 2022), <https://www.jchs.harvard.edu/blog/record-breaking-rent-growth-markets-south-and-west> (explaining that, in April 2022, the consumer price index of rent for primary residences was up 4.8% year-over-year which is the largest increase in over thirty-five years).

⁴³ *Id.*

⁴⁴ These payments are often made directly to landlords. See *Housing Choice Vouchers Fact Sheet*, U.S. DEP'T HOUS. & URB. DEV., https://www.hud.gov/topics/housing_choice_voucher_program_section_8 (last visited May 17, 2024). While direct payments ensure that the landlord is paid and that housing is maintained, they also circumvent families in need of cash in a paternalistic manner. Putting money directly into the hands of landlords also does little to deter or persuade the landlord into reducing housing costs; so long as they are getting paid, they can keep prices high.

⁴⁵ Brian J. McCabe, *Ready To Rent: Administrative Decisions and Poverty Governance in the Housing Choice Voucher Program*, 88 AM. SOCIO. REV. 86, 89 (2023) (explaining that an applicant for a voucher program must wait years to join a waitlist, and after that, they may wait years before actually receiving a voucher).

⁴⁶ See James Barron, *It's Getting Harder To Be Poor in New York*, N.Y. TIMES (Oct. 4, 2023), <https://www.nytimes.com/2023/10/04/nyregion/its-getting-harder-to-be-poor-in-new-york.html>. The New York Times reviewed the 2023 Mayor's Management Report, described as a "statistics-filled account of the city's performance during [Mayor] Adams' first year in City Hall." The Report's findings include:

The city is taking significantly longer to prepare vacant public housing apartments for new residents, even as homelessness soars. The city took more than twice as long to process rent-freeze requests from low-income seniors and disabled people last year, a problem that officials blame partly on budget-related staffing shortages. The city processed only 40 percent of applications for food stamps within a month, the legally mandated time frame, compared with 60 percent the year before and 93 percent before the pandemic. The city processed only 29 percent of applications for cash assistance on time, compared with 95 percent in 2019. The delays violate state and federal law, a federal judge in Manhattan ruled in July, and the city must figure out a path to compliance by early next year. Of

Facing long wait times for public aid, low-income renters are often forced to navigate a private and expensive housing marketplace. In many states, renters who are considered “high risk”—those with a high debt-to-income ratio, low credit scores, and a history of evictions—report filling out numerous rental applications and paying multiple non-refundable application fees, only to be turned away.⁴⁷ For many households, this process can take months and consumes already limited funds.⁴⁸

If an offer of housing is ultimately extended, it generally comes in the form of a convoluted rental agreement. Many standard lease agreements offered by large private landlords extend beyond fifty-pages and include tedious addenda covering a range of topics.⁴⁹ Commonly, and often unbeknownst to the renter, these agreements include terms which are prohibited by state or local law,⁵⁰ require arbitration in a third-party jurisdiction, and prohibit participation in class action lawsuits against the landlord.⁵¹ Lease terms are typically non-negotiable, with tenants signing agreements the day they move in, with limited time to review, and without the advice or guidance of an attorney or community navigator. Tenants in need of shelter who have been rejected by multiple landlords rarely challenge or question the terms of a lease, as doing so may lead the landlord to revoke their offer.

65 “critical indicators” used to gauge progress in social services, slightly more than half had slipped. Roughly a third showed improvement. Seven were stable.

Id.; Camille Joseph Varlack & Daniel Steinberg, *Mayor’s Management Report*, NYC (Sept. 2023), https://www.nyc.gov/assets/operations/downloads/pdf/mmr2023/2023_mmr.pdf.

⁴⁷ This practice is so pervasive and expensive that states like Colorado are working to reduce the cost of simply applying to rental units. See Andrew Kenney, *Colorado Renters Won’t Have To Pay So Many Application Fees Starting in August*, CPR NEWS (May 5, 2023), <https://www.cpr.org/2023/05/05/colorado-renters-application-fees-law>.

⁴⁸ See McCabe, *supra* note 45, at 89.

⁴⁹ For example, a Boulder, Colorado model lease contains ten pages and dozens of bare bones sections for landlords to add more language as they see fit. See *Boulder Model Lease*, CITY OF BOULDER (Oct. 19, 2023), <https://bouldercolorado.gov/media/735/download?inline>. Another example is this public housing lease from the U.S. Department of Housing and Urban Development (“HUD”), which contains only two sections, but spans over thirty pages. See *Sample Public Housing Authority Lease Agreement*, U.S. DEP’T HOUS. & URB. DEV., https://www.hud.gov/sites/documents/DOC_10768.PDF (last visited May 17, 2024).

⁵⁰ Juliana Kaplan, *Illegal Lease Terms Have Grown for Decades, Study of Philadelphia Landlords Finds*, BUS. INSIDER (Mar. 12, 2021), <https://www.businessinsider.com/landlords-illegal-leases-bad-terms-philadelphia-decades-study-penn-harvard-2021-3>. A study by the University of Pennsylvania and New York University found that from 2000 to 2019, the prevalence of illegal or unenforceable terms in a lease rose from 34% to over 43%.

⁵¹ Dena Calo et al., *Minimizing Litigation: Arbitration Agreements and Class-Action Waivers in Leases*, MULTIFAMILY EXECUTIVE (Aug. 6, 2019), https://www.multifamilyexecutive.com/property-management/minimizing-litigation-arbitration-agreements-and-class-action-waivers-in-leases_o (advising property managers and landlord on the legalities of arbitration agreements and class action waivers in leases).

Leases for low-income renters often include the requirement that tenants pay one-time upfront fees that provide a guarantee against landlord casualties, placing the risk of financial loss squarely on the tenant. In many states, compulsory security deposits are equal to multiple months of rent, safeguarding the landlord against damage to the property.⁵² Occasionally, in lieu of a deposit, tenants may be required to pay for an insurance policy for their landlord, thereby providing the landlord with complete protection against economic loss.⁵³

In addition to deposit or insurance requirements, lease agreements may also include other confusing monthly fees. Tenants renting from large private landlords must navigate a range of mandatory fees (also known as “junk fees”) which may, or may not, appear in the lease agreement. These include vague charges for things like “bridge risk liability,” “lease fulfillment,” “convenience fees,” “administration,” and “common area maintenance.”⁵⁴ Even worse, these fees often change based on arbitrary formulas.⁵⁵

Non-rent costs create financial insecurity for low-income renters by: (1) increasing the monthly balance a tenant must pay beyond the rent they signed up for, thereby increasing the percentage of income dedicated to housing; and (2) introducing variability in total rent costs, making it harder to predict how much will be owed each month. This uncertainty increases the risk that a tenant will be able to make only a partial rent payment or delay a full payment, which can, in turn, lead to additional penalties, late fees, as well as the threat of eviction.⁵⁶

⁵² Megan Bullock, *How Much Should You Charge for a Security Deposit?*, APARTMENTS.COM (Jan. 26, 2024), <https://www.apartments.com/rental-manager/resources/payments/how-much-should-you-charge-security-deposit>. This article, from one of the largest rental organizations, advises landlords on how much they should charge their tenants for a security deposit. The article advises that while landlords are limited by state laws in the amount they can charge, the average landlord “often charge[s] up to three months’ rent.”

⁵³ See Williamson, *supra* note 28 (exploring some of the “renters’ choice” programs and policies, looking specifically at New York City and Baltimore).

⁵⁴ Zach Neumann, *Opinion: There’s Rent, and Then There Are the Extra Fees*, COLO. SUN (Aug. 24, 2023, 1:30 AM), <https://coloradosun.com/2023/08/24/rent-extra-fees-colorado-housing-landlords-tenants- eviction-opinion/>.

⁵⁵ NELSON ET AL., *supra* note 29, at 15, 17, 28 (surveying ninety-five renters in various states and outlining the various fees they pay as part of their residential leases).

⁵⁶ Leases have become so confusing that the Biden White House and HUD Secretary, Marcia Fudge, have called on landlords to eliminate such confusing junk fees. The federal government recognizes that junk fees threaten everyday consumers. To address this issue, the executive agencies that oversee housing are calling on local lawmakers to eliminate junk fees altogether. *Fact Sheet: Biden-Harris Administration Takes on Junk Fees in Rental Housing to Lower Costs for Renters*, WHITE HOUSE (Jul. 19, 2023), <https://www.whitehouse.gov/briefing-room/statements-releases/2023/07/19/fact-sheet-biden-harris-administration-takes-on-junk-fees-in-rental-housing-to-lower-costs-for-renters>; Marcia Fudge, *Junk Fees*

If a tenant misses a rent payment, or makes a partial payment, eviction and displacement will often follow. In most states, Forcible Entry and Detainer (“FED”) statutes are the primary landlord remedy when rent is not paid on time or in full.⁵⁷ While the specifics vary significantly across jurisdictions,⁵⁸ in many parts of the U.S., the legal process of eviction can begin the day after a payment is missed for any balance outstanding, and can conclude with the tenant being removed from their home in as little as four weeks.⁵⁹

Once the eviction process is initiated, it is difficult for renters to catch up on payments in arrears. In addition to the original balance owed, delayed rental payments can lead to late fees, service of process fees, attorneys’ fees, and other charges associated with the landlord’s efforts to recover unpaid rent or remove the tenant from the property. Tenants trying to make such payments and avoid eviction often face charges that are 20–30% higher than their normal monthly

Memo., U.S. HOUS. & URB. DEV. (Mar. 7, 2023), https://www.hud.gov/sites/dfiles/PA/documents/Junk_Fees_Memo_SOHUD_signed.pdf.

⁵⁷ FED statutes in several jurisdictions include: COLO. REV. STAT. § 13-40-101; IOWA CODE § 648; TEX. PROP. CODE § 24.001; CONN. GEN. STAT. § 47a-43; NEB. REV. STAT. § 25-21,219; KY. REV. STAT. § 383.200.

⁵⁸ Compare COLO. REV. STAT. § 13-40-101 (“If any person enters upon or into any lands, tenements, mining claims, or other possessions with force or strong hand or multitude of people, whether any person is actually upon or in the same at the time of such entry . . .”), with CONN. GEN. STAT. § 47a-43 (“When any person (1) makes forcible entry into any land, tenement or dwelling unit and with a strong hand detains the same, or (2) having made a peaceable entry, without the consent of the actual possessor, holds and detains the same with force and strong hand . . .”).

⁵⁹ Following an eviction hearing, a court may order possession to be awarded to the landlord. Possession is often “executed” through a writ of restitution or writ of possession. The writ is the legal document that allows a landlord, often through a sheriff’s office, to physically remove persons and personal property and to regain possession. This process is the sheriff “executing” the writ. The length of time from when a court orders this writ and when a sheriff executes it varies from state to state. See KARIN M. TROENDLE & ALEX WITTEVELD, RIGHTS AND OBLIGATIONS: COLORADO LANDLORD-TENANT LAW FROM THE PERSPECTIVE OF A TENANT ADVOCATE 3–33 (9th ed. 2022). In Colorado, officers must wait until daylight hours and cannot begin removing persons and personal belongings until ten days after a court orders judgment for possession. COLO. REV. STAT. § 13-40-122(1)(b) (“A writ of restitution must be executed by the officer having the same only in the daytime and between sunrise and sunset, and the officer shall not execute a writ of restitution concerning a residential tenancy until at least ten days after entry of the judgment . . .”). In Connecticut, officers must give twenty-four-hour notice before they can begin removing persons and personal belongings from a property. CONN. GEN. STAT. § 47a-42(b) (“Before any such removal, the state marshal charged with executing upon any such judgment of eviction shall give the chief executive officer of the town twenty-four hours notice of the eviction . . .”). Finally, in Texas, officers are not awarded a writ of possession until six days after a court has ordered possession to the landlord, meaning officers cannot legally begin removing property or persons from a property until at least six days after the court order. TEX. PROP. CODE § 24.0061(b) (“A writ of possession may not be issued before the sixth day after the date on which the judgment for possession is rendered unless a possession bond has been filed and approved under the Texas Rules of Civil Procedure and judgment for possession is thereafter granted by default.”).

bill.⁶⁰ In many jurisdictions, if a balance is not paid within a few weeks, the eviction will proceed and the tenant will be removed from their home.⁶¹

The consequences of eviction are severe and long lasting. Families that are displaced or evicted from their homes face a higher risk of job loss, interruptions in education and training, greater risk of addiction, sharp declines in physical and mental health, disruption of established social networks, increased risk of institutionalization, difficulties accessing public services, and a higher likelihood of dissolution of the family unit.⁶²

Moreover, being evicted, or in some cases merely receiving an eviction notice,⁶³ makes it harder to secure housing in the future.⁶⁴ Landlords are hesitant to rent to tenants who have been evicted, threatened with eviction, or have unpaid debts to a housing provider.⁶⁵ Similarly, being evicted while using a housing voucher can lead to the revocation of the voucher, permanently eliminating a renter's eligibility for housing subsidy.⁶⁶ For renters who have been evicted, it can take years to return to permanent, stable housing.

B. For Low-Income Borrowers, Is Credit a Lifeline or an Anchor?

Given the severe, disproportionate health and economic consequences of being evicted, low-income renters frequently take extraordinary steps to retain their housing, including borrowing money from friends and family, taking on a

⁶⁰ Clark Merrefield, *Eviction: The Physical, Financial and Mental Health Consequences of Losing Your Home*, JOURNALIST'S RES. (Oct. 15, 2021), <https://journalistsresource.org/economics/evictions-physical-financial-mental-health/> (outlining the average cost of late fees and court costs and how those expenses can reach 20% of monthly rent).

⁶¹ COLO. REV. STAT. § 13-40-104(1)(b) (describing that Colorado gives tenants ten days to pay all amounts due to avoid an eviction); CONN. GEN. STAT. § 47a-23(1)(C) (describing that Connecticut gives tenants a nine day "grace period" before landlords can terminate lease agreements); TEX. PROP. CODE § 24.005(a) (describing that, unlike Connecticut, Texas does not require a demand for payment before a landlord can initiate an eviction action).

⁶² See Craig E. Pollack et al., *When Storms Collide: Evictions, COVID-19, and Health Equity*, HEALTHY AFFS. BLOG (Aug. 4, 2020), <https://www.healthaffairs.org/content/forefront/storms-collide-evictions-covid-19-and-health-equity> (exploring how evictions affect people's health); Barbara Shelley, *Children Will Bear the Brunt of a Looming Eviction Crisis*, HECHINGER REP. (Aug. 6, 2020), <https://hechingerreport.org/children-will-bear-the-brunt-of-a-looming-eviction-crisis>.

⁶³ Rather than going through the lengthy, stressful, and costly process of fighting an eviction, tenants may elect to vacate their unit once they receive an eviction notice. The threat of eviction can be enough to accomplish the property owner's goal of repossession.

⁶⁴ PREJUDGED: THE STIGMA OF EVICTION RECORDS, HOUS. ACTION ILL. & LAWS. COMM. FOR BETTER HOUS. 9 (Mar. 2018), <https://housingactionil.org/downloads/EvictionReport2018.pdf>.

⁶⁵ *Id.*

⁶⁶ 24 C.F.R. § 982.552(b)(2).

second job, selling property, or, if possible, seeking emergency financial assistance from a social services agency. Government benefits, however, are not designed to respond to the rapid nature of financial hardship.⁶⁷ In situations where the need for cash is immediate, credit cards, payday loans, installment loans, or other high-interest debt products are accessed because the loan application process is relatively simple and money arrives in time to address the emergent financial issue.⁶⁸

Such exigent financial crises require immediate and oftentimes short-term solutions. Accessing high-cost credit, however, has numerous long-term consequences, exposing financially precarious families to exceptional risk.⁶⁹ Such emergency borrowing can lead to a cycle of over-indebtedness: as individuals struggle to repay past loans, they incur new debt to cover additional ongoing expenses. With greater financial sophistication and market leverage, lenders have a significant bargaining advantage. In contrast, the need-borrower is unable to exert their agency, having little or no opportunity to negotiate terms. When borrowers are *in extremis*, their relationship with lenders reflects an extreme power imbalance.

Finally, broad economic and social factors can exacerbate financial risks for low-income consumers. During economic downturns or periods of financial instability, many consumers face job loss, reduced incomes, and increased expenses. When employment provides an insufficient wage, and public benefits fail to provide financial stabilization, high-cost emergency credit is often accessed to solve exigent problems. High levels of debt incurred out of necessity demonstrates two fundamental problems: first, that the law sanctions risk

⁶⁷ Data released by the Government Accountability Office in 2022 shows that families who receive assistance, used that aid to avoid eviction. When that money is not available, families have little choice but to face the eviction process. See *Emergency Rental Assistance Helped Prevent Evictions, but Oversight of Payments Was Limited*, U.S. GOV'T ACCOUNTABILITY OFF. (Dec. 20, 2022), <https://www.gao.gov/blog/emergency-rental-assistance-prevented-evictions-oversight-payments-was-limited> (describing how government benefits often have a long lead time before beneficiaries receive any assistance).

⁶⁸ Even families who usually manage to make ends meet, can be thrown off balance by an unexpected expense, such as a rent increase, medical issue, or car repair. In the absence of timely public benefit payments, savings or access to *affordable* credit, such families can find themselves mired in high cost, predatory debt. See PEW CHARITABLE TRS., *PAYDAY LENDING IN AMERICA: WHO BORROWS, WHERE THEY BORROW, AND WHY* 4–5 (2012).

⁶⁹ See, e.g., *About Check City*, CHECK CITY, <https://www.checkcity.com/company/about> (last visited May 17, 2024). Credit lender's marketing materials lure unassuming debtors into suspect loan agreements: "We've gone the extra mile to set up each Check City store in a convenient location near you. Each storefront is a clean and welcoming place where members of the community can come experience exceptional customer service and trustworthy financial products."

shifting in both housing and credit markets; and second, that there are sizeable holes in our social safety net.

1. *Health Care, Housing, and Debt*

The healthcare system in the U.S. places significant financial responsibility on the individual; even with health insurance—which is far from universal—people are expected to bear a substantial portion of their medical expenses. These expenses may include premiums, deductibles, copayments, and coinsurance.⁷⁰ This cost-sharing model shifts a considerable portion of the financial risk onto the consumer. These frequently unaffordable costs can delay health care and exacerbate health conditions, increasing the likelihood of incurring medical debt.⁷¹

The connection between access to health care, safe housing, and high levels of indebtedness is clear, particularly for low-income individuals.⁷² Substandard housing can cause and worsen illness—mold, rodents, a lack of ventilation, and

⁷⁰ The link between medical debt and housing insecurity is reinforced by the potential impact of medical debt on credit scores. Unpaid medical bills negatively affect an individual's credit score, making it harder to secure housing. "Unpaid medical bills may take a long time to show up on your credit report, but the damage to your credit score can be long-lasting once they do. Unpaid medical collection accounts over \$500 can remain on your credit report for seven years after they become delinquent; however once they are paid, they will be removed from your report." Karen Axelson, *How Does Medical Debt Affect Your Credit Score?*, EXPERIAN (Mar. 31, 2023), <https://www.experian.com/blogs/ask-experian/medical-debt-and-your-credit-score/>. Landlords and housing providers often conduct credit checks as part of their screening process, and a poor credit score resulting from medical debt can lead to denials or higher security deposits. This creates a vicious cycle, as housing instability can further exacerbate health issues, leading to additional medical expenses and debt. Recently, the three major credit reporting agencies—Equifax, Experian, and TransUnion—changed how they report medical debt, to the benefit of consumers. *Id.* Effective July 1, 2022, paid medical debts that were in collection are no longer reported, and the grace period for reporting unpaid medical debt in collection has been increased from six months to one year. In addition, as of early 2023, medical debt in collection under \$500 is no longer be included on consumer credit reports. Colorado recently enacted a first-in-the-nation law that excludes medical debt from credit reporting, including for housing purposes. COLO. REV. STAT. § 5-18-109(1)(f)(I). See Jeff Anastasio, *New Colorado Law Prevents Medical Debt From Showing on Your Credit Report*, DENVER7 (Aug. 23, 2023), <https://www.denver7.com/news/local-news/new-colorado-law-prevents-medical-debt-from-showing-on-your-credit-report>. The federal government is also taking similar steps, going through the rulemaking process to eliminate medical debt from appearing on credit reports. See *CFPB Kicks Off Rulemaking To Remove Medical Bills from Credit Reports*, CFPB (Sept. 21, 2023), <https://www.consumerfinance.gov/about-us/newsroom/cfpb-kicks-off-rulemaking-to-remove-medical-bills-from-credit-reports>.

⁷¹ See 3 *Effects of Rising Healthcare Costs and How Providers Should Respond*, EXPERIAN HEALTH (Nov. 2, 2023), <https://www.experian.com/blogs/healthcare/2022/09/3-effects-of-rising-healthcare-costs-and-how-providers-should-respond/#> (finding that, between 2021 and 2022, over half of the customers who canceled a healthcare appointment or procedure did so because of the high cost).

⁷² See Lauren A. Taylor, *Housing and Health: An Overview of the Literature*, HEALTH AFFS. (June 7, 2018), <https://www.healthaffairs.org/doi/10.1377/hpb20180313.396577>; Pollack et al., *supra* note 62.

faulty heating and cooling can all trigger adverse health conditions.⁷³ Ensuing doctor and hospital visits can be costly, stretching limited family budgets to their breaking point. When health care is necessary—even in the absence of catastrophic illness—high-cost debt is often the only option to pay for it. The financial strain of managing medical debt makes it challenging for a family to maintain a stable and secure living situation, thus perpetuating a cycle of instability.⁷⁴

2. *Transportation, Housing, and Debt*

Reliable and affordable transportation is an essential lifeline for many families. One need not look any further than Janet and Miguel’s story to see the devastating effects of losing a family’s only, or main, form of transportation.⁷⁵ Transportation is necessary to access employment, education, healthcare services, and childcare, but high transportation expenses can thwart a family’s ability to stay within a limited budget, thereby compromising their ability to remain housed. Dependable and convenient public transportation is hard to come by, particularly in low-income neighborhoods, as routes and schedules can be inconvenient and unreliable. Instead of using affordable public services, individuals are forced to use alternative, more expensive, transportation, such as taxis or rideshare services, further straining their limited financial resources.⁷⁶

⁷³ Paula Braveman et al., *Housing and Health*, ROBERT WOOD JOHNSON FOUND. (May 1, 2011), <https://www.rwjf.org/en/insights/our-research/2011/05/housing-and-health.html> (showing that “children in areas with higher rates of unaffordable housing tended to have worse health.”).

⁷⁴ Consider the case of a single parent who has a child with a chronic medical condition. If the parent incurs substantial medical expenses related to their child’s ongoing treatment, including doctor visits, medications, and specialized therapies, the cost of these medical expenses can become overwhelming. The parent may find themselves facing the choice of paying for needed medical interventions, while struggling to keep up with their monthly bills, or becoming embroiled in a debt trap. As medical debt accumulates, this parent may have to make the difficult choice between paying for their child’s healthcare needs and meeting their shelter obligations. “Denise Beasley, who also assists clients at CEDP in Denver, said many older people, who typically depend most on physicians and medications, believe they must pay their medical and pharmacy bills before anything else.” Noam Levey, *Medical Debt Nearly Pushed This Family into Homelessness. Millions More Are at Risk*, NPR NEWS (Sept. 11, 2023), <https://www.npr.org/sections/health-shots/2023/09/11/1198534328>.

⁷⁵ See *supra* Part I.

⁷⁶ See Gillian B. White, *Stranded: How America’s Failing Public Transportation Increases Inequality*, ATLANTIC (May 16, 2015), <https://www.theatlantic.com/business/archive/2015/05/stranded-how-americas-failing-public-transportation-increases-inequality/393419/> (explaining the effects of ineffective public transportation on a person’s economic mobility).

Even when bus and train routes are extensive, many cities are burdened with inadequate infrastructure and maintenance of public transportation systems.⁷⁷ In some instances, buses or trains may be old, poorly maintained, or prone to breakdowns, resulting in unreliable service, long wait times, overcrowding, and frequent delays.⁷⁸ This unreliability makes it difficult to be on time for work or other obligations, like daycare drop-offs, thus further destabilizing low-income families.

If public transportation is not convenient or available, the cost of purchasing a vehicle can be a major burden for low-income individuals.⁷⁹ High-interest vehicle financing is a significant burden: Many low-income individuals are forced to rely on subprime auto loans, which come with exorbitant interest rates and fees.⁸⁰ As noted above, opaque loan documentation means many borrowers fail to fully understand the long-term financial implications of such loans.⁸¹ As a result, borrowers find themselves burdened with payments that consume a significant percentage of their monthly income. These predatory lending practices disproportionately affect the poor, further trapping them in cycles of debt and making it even more difficult to escape poverty.

Low-income car owners are also particularly vulnerable to vehicle towing exposure. In many urban areas, parking violations or unpaid tickets can result in the towing of vehicles. In some jurisdictions, there are documented patterns of predatory towing—cruising low-income communities and towing cars for *de minimis* or no violations—like when Miguel’s truck was towed for merely touching a line with its back-left tire.⁸² The cost of retrieving a towed vehicle,

⁷⁷ *Id.*

⁷⁸ *E.g.*, *U.S. Commuters Wait Approximately 40 Mins. a Day for Public Transit*, METRO MAG. (Dec. 11, 2014), <https://www.metro-magazine.com/10037552/u-s-commuters-wait-approximately-40-mins-a-day-for-public-transit>.

⁷⁹ *See* Lydia DePillis, *How the Costs of Car Ownership Add Up*, N.Y. TIMES (Oct. 6, 2023), <https://www.nytimes.com/interactive/2023/10/07/business/car-ownership-costs.html> (“According to AAA, the average annual cost in the first five years of new-car ownership rose to \$12,182 this year, from \$10,728 last year, reflecting increased purchase prices, maintenance costs and finance charges. That’s 16 percent of the median household income, before taxes.”). According to the DePillis article, several families they studied had total annual car costs that exceeded \$20,000.

⁸⁰ Someone who has below a 500 credit score can expect an average interest rate for a new car to be around 14%, and 21% for a used car. Someone with a credit score between 500–600 can expect an 11% interest rate for a new car, and 18% for a used car. *See* Shannon Bradley, *Average Car Loan Interest Rates by Credit Score*, NERDWALLET (Nov. 2, 2023), <https://www.nerdwallet.com/article/loans/auto-loans/average-car-loan-interest-rates-by-credit-score>.

⁸¹ *See Accessing the Safety Net*, *supra* note 9.

⁸² For example, the Colorado Attorney General recently opened an investigation into a local towing company for predatory towing practices. It is alleged that the towing company, Wyatts, has a practice of towing

including fees for towing and storage, can be financially devastating for low-income individuals who are already struggling to make ends meet.⁸³

As this debt cycle continues, the individual becomes trapped by unaffordable payments, leaving them with limited funds for other essential expenses such as housing, food, and health care. Like landlords threatening eviction, secured auto lenders can threaten repossession, resulting in a cascading series of crises, including job loss, childcare inaccessibility, and ultimately the loss of housing.⁸⁴

III. WHOSE INTERESTS WERE SERVED WHEN THE RULES WERE ESTABLISHED?

The rules that govern housing, transportation, and credit make it difficult for millions of Americans to access the services needed to live stable and decent lives. Forced to struggle continually for basic necessities, people with limited income face anxiety and instability, constantly preparing for the next economic emergency.

Part III reflects upon the prevailing rules that govern access to both essential services and the public benefits system. It explores whose interests are served—and whose are sacrificed—under the current regime.

A. *The Rules Governing the Market for Housing Low-Income Families*

Low-income renters are forced to navigate harsh and inhospitable housing markets. This is not inevitable. It is a direct consequence of the rules governing the relationship between landlords and tenants. This reality raises the question of whose interests were served when these rules were developed.

cars regardless of signage and then charging high fees for an owner to get the car back. When car owners cannot repay the tow fee, Wyatts will offer high-interest loans to customers to pay the fee they charged. Laura Casillas & Steve Staeger, *Colorado Attorney General Opens Investigation into Wyatts Towing*, DENV. 9 NEWS (Aug. 28, 2023), <https://www.9news.com/article/news/local/colorado-attorney-general-investigation-wyatts-towing/73-155cad2-b59e-4f7e-8bb2-ade91272c680>; Sam Tabachnik, *A Quarter of All Towing Complaints in Colorado Are Against One Company: "These Guys Feel Particularly Predatory"*, DENV. POST (Nov. 21, 2021), <https://www.denverpost.com/2021/11/21/wyatts-towing-complaints/>; see also *supra* Part I.

⁸³ In Colorado, for example, “[f]or private property tows, the maximum ‘hook fee’ that can be charged is \$211.11 for vehicles under 10,000 pounds. An additional charge of \$3.80 per mile—up to 12 miles in certain areas and 16.5 in others, depending on how far from I-25 you are—also applies.” Samantha Jarpe, *Here’s How Much Towing Companies Can Charge in Colorado*, FOX 31 DENV. (Jan. 3, 2023), <https://kdvr.com/news/local/how-much-can-towing-companies-charge-in-colorado>.

⁸⁴ If the borrower fails to repay the loan, the creditor can unilaterally seize the collateral, through a mechanism called “self-help” repossession. If the collateral is not redeemed by its owner, it can be sold to recoup the creditor’s losses. See U.C.C. § 9-609(b); U.C.C. § 9-610(a). The financial consequences are also long lasting. See Bill Fay, *Car Repossession*, DEBT.ORG (Mar. 11, 2023), <https://www.debt.org/faqs/repossession>.

The absence of constraints on the rental housing market leaves many families vulnerable to dislocation and homelessness. There is a dearth of government subsidized “affordable” housing, and a long waitlist for federal housing vouchers.⁸⁵ Moreover, few jurisdictions have rent-control programs that serve to protect tenants from excessive rent increases, or just-cause eviction rules that would prevent many families from being evicted.⁸⁶ A lack of strict enforcement on affordable housing quotas, or zoning regulations that favor higher-income neighborhoods, can contribute to limited options for low-income renters.⁸⁷ Warranties of habitability are rarely enforced, except when raised as an affirmative defense in an eviction or return of security deposit action.⁸⁸

Rules regulating rental housing markets are few, and housing subsidy programs for those who need them are dramatically underfunded.⁸⁹ In many instances, current housing rules do not adequately protect the rights of low-income tenants. This can lead to abusive practices by landlords, including uninhabitable living conditions, predatory rental agreements, and unjust evictions.⁹⁰ For example, if a tenant has no viable legal recourse when faced with a landlord who refuses to address maintenance issues or frequently increases rent without valid reasons, the tenant’s interests have been subordinated to the landlord’s under the law.⁹¹

⁸⁵ It is not uncommon for Section 8 applicants to wait years for a chance at Section 8 housing assistance. Acosta & Gartland, *supra* note 27. A housing choice voucher can be used to supplement the cost of rent. Through HUD, a low-income family can pay 30% of their income to their landlord, with the Participating Housing Authority contributing the rest. However, the demand for these vouchers is incredibly high, and vouchers are awarded on a lottery system. Once a family is selected from the list, they are free to find housing approved by a participating housing authority. *Housing Choice Voucher Fact Sheet*, U.S. DEPT. HOUS. & URB. DEV. (2023), https://www.hud.gov/topics/housing_choice_voucher_program_section_8.

⁸⁶ Although there are significant legislative efforts, there are still currently thirty-two states that prohibit rent control or local control of “capping” rent prices. Andrew Kenney, *Rent Control Could Come to Some Colorado Cities Under a New Bill from State Democrats*, CPR NEWS (Jan. 24, 2023), <https://www.cpr.org/2023/01/24/colorado-rent-control-bill>.

⁸⁷ *See id.*

⁸⁸ *See* Kathryn A. Sabbeth, *(Under)Enforcement of Poor Tenants’ Rights*, 27 GEO. J. ON POVERTY L. & POL’Y 97, 117, 135 (2019) (finding that there is a severe underenforcement of habitability statutes and that this burden falls most heavily on poor people, thus forcing impoverished people to continue living in substandard housing).

⁸⁹ *See* Acosta & Gartland, *supra* note 27.

⁹⁰ *See generally* DESMOND, *supra* note 1 (describing the consequences of a lack of legal protections for low-income tenants).

⁹¹ *See generally* Phillip M.E. Garboden & Eva Rosen, *Serial Filing: How Landlords Use the Threat of Eviction*, 18 CITY & CMTY. 638 (2019) (describing how eviction laws are tilted in landlords’ favor); Elinor Chisholm et al., *Tenants’ Responses to Substandard Housing: Hidden and Invisible Power and the Failure of Rental Housing Regulation*, 37 HOUS. THEORY & SOC’Y 139 (2018) (explaining how the lack of rental housing regulation harms tenants).

Moreover, the rules governing landlord-tenant relationships may perpetuate discrimination against low-income tenants. Policies and practices traditionally relied on by many landlords serve to exacerbate inequalities based on race, ethnicity, or socioeconomic factors.⁹² In some neighborhoods, landlords may implement screening criteria that disproportionately exclude low-income applicants of certain racial or ethnic backgrounds.⁹³ This discriminatory behavior is reinforced when there are insufficient regulations and prevention mechanisms.

B. The Rules Governing the Consumer Credit Markets

The laws and regulations governing consumer borrowing and lending are anything but neutral. The consumer finance industry spends a great deal of money influencing state and federal legislators to develop rules that favor their interests.⁹⁴ When laws and regulations are biased in favor of the credit industry, or are weak and poorly defined, the risks associated with default are shifted from lenders to consumers. In such instances, unscrupulous lenders can and do exploit vulnerable consumers, trapping them in cycles of high-cost debt.

These markets, particularly the ones that target low-income consumers, are delimited by asymmetric information between borrowers and lenders.⁹⁵ Borrowers have circumscribed options and leverage in their choice of lenders and in their negotiation of loan terms.⁹⁶ This makes it even more difficult for

⁹² Nearly one-third of the U.S. population has some sort of criminal record. These numbers are due, in large part, to systemic racism which results in criminalizing people of color and people living in poverty at much higher rates than white or high-income people. Although denying housing for an illegitimate reason, like a low-level criminal record, can be housing discrimination, housing providers routinely follow the practice of denying housing to people with criminal records. HELEN KANOVSKY, OFFICE OF GENERAL COUNSEL GUIDANCE ON APPLICATION OF FAIR HOUSING ACT STANDARDS TO THE USE OF CRIMINAL RECORDS BY PROVIDERS OF HOUSING AND REAL ESTATE-RELATED TRANSACTIONS, DEP'T HOUS. & URB. DEV. at 1–2 (2016).

⁹³ *See id.*

⁹⁴ Pete Schroeder, *Banks Spent Record Amounts on Lobbying in Recent Election*, REUTERS (Mar. 8, 2017), <https://www.reuters.com/article/us-usa-banks-lobbying/banks-spent-record-amounts-on-lobbying-in-recent-election-idUSKBN16F26P> (“The financial sector spent \$2 billion on political activity from the beginning of 2015 to the end of 2016, including \$1.2 billion in campaign contributions . . .”).

⁹⁵ The subprime mortgage collapse of 2008 is a prime example. The sellers of the mortgage debt knew that their predatory practices were not sound, but continued anyway, harming millions of low-income people. *See* Evan Tarver, *How Financial Markets Exhibit Asymmetric Information*, INVESTOPEDIA (July 28, 2022), <https://www.investopedia.com/ask/answers/042915/how-do-financial-market-exhibit-asymmetric-information.asp>.

⁹⁶ *See* MICHAEL HUDSON, *Little Relief for Consumers*, in *MERCHANTS OF MISERY* 180, 181, 187 (1996); CHRISTOPHER L. PETERSON, *TAMING THE SHARKS: TOWARDS A CURE FOR THE HIGH-COST CREDIT MARKET* 129–31 (2004).

disadvantaged individuals to escape poverty and improve their economic prospects.

Distortions in the credit market can further result in barriers for marginalized individuals trying to build credit histories. Credit rating agencies have outsized power in the financial markets, and little accountability.⁹⁷ These lightly regulated private businesses can adversely impact a consumer's ability to rent an apartment, get a job, buy a car and reasonable insurance, as well as get a loan at an affordable cost for basic necessities—let alone borrow money to start a business, or purchase a home.⁹⁸ This creates a significant disadvantage in terms of wealth accumulation and social mobility, further widening the wealth gap.

1. *Predatory Lending*

The “fringe lending” industry⁹⁹ is governed by weak and porous regulations, allowing lenders to charge exorbitant interest rates and fees, often burdening and trapping needy borrowers.¹⁰⁰ These lenders target individuals who are in desperate need of quick cash and exploit their financial vulnerability by readily offering high-cost loans.¹⁰¹ As a consequence, borrowers often find themselves unable to escape the debt trap, as the costs of repayment leave them with little money for other essential expenses. Lax regulatory oversight encourages predatory lenders to maximize profit at the expense of the poor and

⁹⁷ See, e.g., Alice M. Rivlin & John B. Soroushian, *Credit Rating Agency Reform Is Incomplete*, BROOKINGS (Mar. 6, 2017), <https://www.brookings.edu/articles/credit-rating-agency-reform-is-incomplete/> (“In the six years since enactment of Dodd-Frank, regulators have not followed through on many of these reforms. The Department of Labor (DOL) has not removed credit ratings from its regulations.”).

⁹⁸ Cf. *In FTC Study, Five Percent of Consumers Had Errors on Their Credit Reports That Could Result in Less Favorable Terms for Loans*, FTC (Feb. 11, 2013), <https://www.ftc.gov/news-events/news/press-releases/2013/02/ftc-study-five-percent-consumers-had-errors-their-credit-reports-could-result-less-favorable-terms>. The process of error correction not only requires affirmative action by the consumer to check their credit report but also a time-consuming process of sending a notice with required documentation. Additionally, credit reporting agencies have included a “forced arbitration” clause in their contract. Since consumers do not typically have contracts with credit reporting agencies, there is no way to challenge these provisions. This puts consumers at a severe disadvantage when attempting to fix credit reporting errors and abuses. See also NELSON ET AL., *supra* note 29, at 3, 7–8.

⁹⁹ Fringe lending is the practice of payday lending or check-cashing services. This non-traditional lending is geared toward lower-income people with significantly higher interest rates than traditional lending. See HUDSON, *supra* note 96, at 183–184 (examining Americans’ “poverty industry”).

¹⁰⁰ See generally PETERSON, *supra* note 96, at 129–31 (illustrating how modern, “advanced” society is far more conducive to financial plundering of its citizens than ever before); TERESA A. SULLIVAN ET AL., *THE FRAGILE MIDDLE CLASS* 18, 22–24 (2000) (examining the financially fragile position many “middle class” consumers find themselves in).

¹⁰¹ See SULLIVAN ET AL., *supra* note 100, at 24.

marginalized, which has devastating consequences for individuals as well as entire communities.¹⁰²

Subprime auto lenders have employed some clever, yet nefarious, ways to protect their financial interests. Ignition blocks, also known as starter interrupt devices, have been used to guarantee repayment.¹⁰³ These devices are installed in vehicles by high-cost auto lenders and allow them to remotely disable the ignition if the borrower falls behind on loan payments. This extreme leverage exercised by predatory lenders disproportionately affects low-income individuals who rely heavily on their vehicles for transportation to work and other necessary destinations. The threat of having their vehicle disabled because of a financial setback can lead to compromising payments of other vital expenses, including food and housing.

Title loans are another tool that have grave potential to harm consumers.¹⁰⁴ Title lenders target the poor and exploit their need for quick cash by taking the title to a consumer's car in exchange for a loan.¹⁰⁵ Often carrying high-interest rates and fees, these loans put borrowers at risk of losing their vehicle if they are unable to repay the loan.¹⁰⁶

Banks, savings and loan institutions, credit unions, and other mainstream lenders are often just as exploitative to underserved communities as the fringe banking sector.¹⁰⁷ High fees, minimum balance requirements, and monthly

¹⁰² "Mainstream banks" tend to avoid areas of high poverty, leaving these communities with only fringe lenders. In areas with higher concentrations of fringe lenders, there are higher levels of poverty, home foreclosures, and a correlation between communities that use fringe banking practices and an increased prevalence of poor health. See Jerzy Eisenberg-Guyot et al., *From Payday Loans to Pawnshops: Fringe Banking, the Unbanked, and Health*, 37 HEALTH AFFS. 429, 429, 433 (2018); Jacob W. Faber, *Cashing in on Distress: The Expansion of Fringe Financial Institutions During the Great Recession*, 54 URB. AFFS. REV. 663, 664 (2017) (describing the growth of the fringe-banking industry in impoverished communities).

¹⁰³ As of 2014, about two million ignition blocks had been installed as a means to guarantee repayment. Robert Szytko, *Your Car Won't Start. Did You Make The Loan Payment?*, NPR (Oct. 16, 2014, 2:21 PM), <https://www.npr.org/sections/alltechconsidered/2014/10/16/356693782/your-car-wont-start-did-you-make-the-loan-payment>.

¹⁰⁴ Title loan lending is the practice of offering your car title as collateral for a short-term loan. The lender will place a lien on your car until the loan is paid off. This is a common option for lower-income people who might otherwise lack the necessary assets to secure a loan. Margaret Coker et al., *How Title Lending Works*, PROPUBLICA (Dec. 6, 2022, 5:00 AM), <https://www.propublica.org/article/how-title-loans-work>.

¹⁰⁵ See Margaret Coker et al., *How Title Lenders Trap Poor Americans in Debt with Triple-Digit Interest Rates*, PROPUBLICA (Nov. 14, 2022, 6:00 AM), <https://www.propublica.org/article/title-lenders-trap-georgia-residents-in-debt>.

¹⁰⁶ See *id.*

¹⁰⁷ Credit card interest rates are set by formula at a level that accounts for the risk of default presented by a certain percentage of borrowers. Many credit card lenders lobbied to make it harder to discharge a broader range of debts in the 2005 Bankruptcy Abuse Prevention and Consumer Protection Act's provisions. H.R. REP. NO.

maintenance fees are common and non-negotiable credit terms, disproportionately impacting low-income individuals.¹⁰⁸ It is difficult for those living paycheck-to-paycheck to maintain even a checking account, which forces reliance on alternative and predatory financial services.¹⁰⁹ The traditional banking industry's failure to provide affordable and accessible services to the poor perpetuates financial inequality and exacerbates the challenges faced by marginalized communities.¹¹⁰

109-31, pt. 1, at 373–602; *see also* Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 23. However, the lenders' "need" for additional financial protection from default is nothing more than double dipping.

¹⁰⁸ *See* David E. Beale, *Banking & Poverty: The Case for Eliminating Account Maintenance Fees*, GEO. J. ON POVERTY L. & POL'Y (Dec. 9, 2021), <https://www.law.georgetown.edu/poverty-journal/blog/banking-poverty-the-case-for-eliminating-account-maintenance-fees/> (finding that over 34% of respondents to their survey no longer had bank accounts because their bank fees were too high).

¹⁰⁹ Checking accounts may seem simple to manage for many, however:

Many interviewees reported being "unbanked"—meaning not having an account with a traditional bank. Having a bank account closed because of an overdrawn account was a common refrain. One interviewee observed, "my bank accounts always end up getting closed. I guess it is a lack of knowledge about how to build credit and stuff. Not knowing how to keep your credit." The banking industry's business model, requiring minimum balances and readily charging high overdraft fees and fines set the poor up for failure.

LOIS R. LUPICA, CCLP REPORT ON POVERTY AND DEBT 13 (2023) (on file with author). Check cashing services allow people without bank accounts to cash a check, usually for a fee. The average fee ranges from 1% all the way to 12% of the value of the check. George Morris, *What is Check Cashing?*, INCHARGE DEBT SOLS. (Dec. 22, 2023), <https://www.incharge.org/financial-literacy/check-cashing-services>.

¹¹⁰ The financial services industry makes a great deal of money lending to the poor, benefitting from a "political economy increasingly dependent on credit and debt to distribute, regulate, and control social resources." *See* Rachel E. Dwyer, *Credit, Debt, and Inequality*, 44 ANN. REV. SOCIO. 237, 237 (2018). The poor as a market for "easy credit" began in the early 1990s, when the consumer banking industry found the "good-credit-risk-market" close to saturated. *See Testimony of Capital One Financial Corporation: Hearing Before the S. Banking Comm.*, 109th Cong. 3–4, 7–8 (2005) (statement of Marge Connelly, Executive Vice President, Capital One Financial Corporation) ("The market was ripe for innovation, and the founders of Capital One saw an opportunity to use the information provided by our national credit reporting system to customize product offerings to customers based on their particular needs, interests and risk profiles."). This led to a decision by the banking industry to alter its business model and expand its reach into lower-income households. *See* ROBERT D. MANNING, CREDIT CARD NATION: THE CONSEQUENCES OF AMERICA'S ADDICTION TO CREDIT 89 (2000). With this market expansion, credit-card issuers sought to further increase profits by raising interest rates and charging higher fees, following the Supreme Court determination that late payment, over-limit, cash advance, returned check, membership and other fees fell within the definition of "interest" under the National Bank Act. *See also* *Smiley v. Citibank (S.D.), N.A.*, 517 U.S. 735, 740 (1996) (holding that a bank governed by the National Bank Act may charge loan customers "interest" at a rate allowed by the laws of the particular state in which a bank is located). These lower-income higher-risk borrowers more frequently carried a balance at high-interest rates than their low-risk middle-class counterparts, thus increasing bank profits exponentially. Dean Starkman, *Red Ink Rising: How the Press Missed a Sea of Change in the Credit-Card Industry*, COLUM. JOURNALISM REV., Mar.–Apr. 2008 ("[The credit card industry] shifted from a lending and underwriting paradigm to sales paradigm; penalties, fees, and default interest at rates that were illegal a generation ago are no longer regrettable outcomes to be avoided but central to the business model.").

2. *Predatory Terms*

The argument put forth that people “ought to repay their debts” fails to consider the role and responsibility of lenders in loan transactions. Many lenders, including money-center creditors as well as the range of fringe lenders, extend credit without consideration of the borrower’s ability to repay. These lenders do so knowing full well that due to high interest and fees, they will make a significant profit, even if the borrower ultimately defaults.¹¹¹ While the default may have a devastating effect on a low-income borrower, it is just another payday for the lender.¹¹²

The complexity and opacity of the legal agreements between borrowers and lenders further exacerbate the risk they pose to consumer debtors.¹¹³ Lending terms and conditions are typically written by the lender, with provisions designed to protect their interest. Even if consumers are given a meaningful opportunity to review these agreements (which is rare), they are rarely written so that they can be understood by the average consumer. It is not unusual that a borrower is faced with surprise fees, conditions, and penalties as part of the terms of their loan. Even if a consumer has a meaningful choice of credit products, this obfuscation of terms makes it difficult to make informed decisions.¹¹⁴

¹¹¹ During the pandemic, many fringe lenders specializing in payday lending reported record profits. Davide Scigliuzzo, *Charging 589% Interest in the Pandemic Is a Booming Business*, BLOOMBERG (May 17, 2021), <https://www.bloomberg.com/graphics/2021-payday-loan-lenders> (explaining that several predatory lenders reported record high revenues in 2020, the height of the COVID-19 Pandemic).

¹¹² Even mainstream lenders charge such high interest rates and fees that a borrower can quickly find themselves carrying dramatically increased balances. Credit card interest rates are compounded daily. If a credit card interest rate is, for example, 17% APR, and the card is carrying a \$5,000 balance, and the holder makes only the 4% minimum payment due, \$71 of interest would be added to the balance. The balance is now \$4,871. If not another dollar is charged, and the holder continues to pay the 4% minimum every month, it would take ten years and ten months to pay off the full debt. The payments would add up to \$7,627—including \$2,627 of interest—to pay off what started out as a \$5,000 debt.

¹¹³ Credit card agreements offer a clear example; they are typically lengthy, filled with complex legal language, and presented in small and difficult to read print. Most consumers have no idea what the specific terms and conditions of their loans are, and thus are surprised when they are faced with a host of fees and penalties for balance transfers, cash advances, late payments, and charges that exceed credit limits. Another example from a non-bank lender, CheckCity, has posted on its website rates and fees on a \$500 loan of \$15 maintenance fee, plus \$95 in interest, for three months, and an APR of over 118% in Colorado. Hidden costs and fees are confusing to consumers who expect a loan of only \$500 but are required to pay back significantly more than the loan is actually worth. *See Rates & Fees: Colorado*, CHECKCITY, <https://www.checkcity.com/rates-fees/colorado> (last visited May 17, 2024).

¹¹⁴ Consumers lack the ability to make “informed decisions” when they are not presented with accessible information regarding their loan. This structure is pervasive across all aspects of a consumer’s life, not just in lending practices. *See Hamza Shaban & Hartley Lin, An Illustrated Guide to How Fees Are Making Everything*

The high cost of credit is also not reined in by our legal and regulatory system.¹¹⁵ While most states have usury limits—capping the rate of interest that can be charged to a consumer—these caps are extremely high. Unfortunately, these exploitative usury limits are the *only* guardrail keeping the fringe lending sector, such as payday and installment lenders, from running wild.¹¹⁶ With limited opportunities for accessing credit, because banks and credit unions are subject to a more robust regulatory scheme,¹¹⁷ low-income consumers have little choice but to accept onerous terms to meet exigent financial needs.¹¹⁸

Moreover, private contracts, supported by laws and regulations in the realm of dispute resolution, are typically designed to protect the lenders' interests, rather than the interests of consumers.¹¹⁹ For example, the prevalence of mandatory arbitration clauses in consumer credit agreements requires consumers to waive their right to sue the lender in court and instead resolve any disputes through private arbitration.¹²⁰ This mandate heavily favors lenders, as arbitration typically tends to credit business interests over consumers.

Pricier, WASH. POST (Mar. 24, 2023, 6:00 AM), <https://www.washingtonpost.com/business/2023/03/24/extra-junk-fees-comic/>.

¹¹⁵ See generally Lynn Drysdale & Kathleen E. Keest, *The Two-Tiered Consumer Financial Services Marketplace: The Fringe Banking System and Its Challenge to Current Thinking About the Role of Usury Laws in Today's Society*, 51 S.C. L. REV. 589 (2000) (examining the intersection of law, politics, morality, and economics).

¹¹⁶ See Paul E. Kantwill & Christopher L. Peterson, *American Usury Law and The Military Lending Act*, 31 LOY. CONSUMER L. REV. 500, 521 (2019).

¹¹⁷ Another example was seen in the subprime mortgage crisis of 2008. Weak regulations and lax lending standards allowed lenders to offer mortgages to individuals who were not financially qualified. These subprime mortgages often had adjustable interest rates that would increase over time, making it difficult for borrowers to keep up with their payments. When the housing market crashed, many borrowers found themselves unable to refinance or sell their homes, leading to widespread foreclosures which had a devastating impact on the economy. See John V. Duca, *Subprime Mortgage Crisis: 2007–2010*, FED. RSRV. HIST. (Nov. 22, 2013), <https://www.federalreservehistory.org/essays/subprime-mortgage-crisis>.

¹¹⁸ Not surprisingly, many lenders have found ways to skirt even these inadequate guardrails. If an installment lender partners with a bank, and the bank issues a loan on behalf of the installment lender, usury limits do not apply. Adam J. Levitin, *Rent-A-Bank: Bank Partnerships and the Evasion of Usury Laws*, 71 DUKE L. J. 329, 332 n.6 (2021) (“Federal law does not exempt banks from state usury laws so much as provide a choice of law rule that enables banks to ‘export’ the usury cap from their home state to other states.”). Other lenders have chartered as national banks, which are exempt from state lending laws. *Id.* at 349. Another strategy employed by lenders is strategically locating in a state that has lax usury laws, such as South Dakota, Delaware, Utah, or Nevada. *Id.* at 350.

¹¹⁹ See PETER CARTWRIGHT, CONSUMER PROTECTION IN FINANCIAL SERVICES 7–10 (1999) (critiquing the role of regulation in the protection of consumers).

¹²⁰ In 2014, the newly formed Consumer Financial Protection Bureau (“CFPB”) surveyed checking accounts across the country finding that over half of the accounts contained a forced arbitration clause, requiring the customer to agree to litigate any claims against the institution through arbitration only, waiving any right to a trial by jury. Joe Valenti, *The Case Against Mandatory Consumer Arbitration Clauses*, CAP20 (Aug. 2, 2016), <https://www.americanprogress.org/article/the-case-against-mandatory-consumer-arbitration-clauses/>.

Arbitration proceedings are often opaque, lack the same level of procedural protections as court proceedings, and limit the ability of consumers to seek redress for their grievances.¹²¹

3. *Predatory Collecting*

The regulation of debt collection practices also fails to protect consumers' interests. Debt collectors often engage in aggressive tactics, including dinner-time phone calls, visits to employers and neighbors, threats, and intimidation.¹²² While there are laws in place to regulate debt collectors and protect consumers from abusive and harassing behavior, enforcement is weak, ineffective, and the penalties for violating these regulations are minimal.¹²³ Thus such behavior continues unabated.

Even in judicial debt collection actions, the legal system privileges the collection efforts of debt collectors as “repeat players” over consumers.¹²⁴ Debt collection cases are premised on a lack of judicial scrutiny over reliable “proof” of consumer indebtedness, and are typically brought in small claims courts where the rules of evidence often do not apply. Issues such as whether the consumer owes X amount to Y creditor, and that the debt is not time-barred are rarely challenged by consumers, even when they appear in court.¹²⁵ Documentation presented by debt collectors and approved by judges is sparse at best, and non-existent at worst.¹²⁶

¹²¹ *Id.*

¹²² Jim Puzzanghera, *Aggressive Debt Collection Tactics Are Drawing Federal Scrutiny*, L.A. TIMES (Aug. 20, 2012, 12:00 AM), <https://www.latimes.com/business/la-xpm-2012-aug-20-la-fi-debt-collection-20120820-story.html> (explaining that in 2012, just after the Great Recession, debt collection tactics were so aggressive that federal lawmakers began enacting legislation to curtail aggressive debt collection).

¹²³ Under federal law for instance, the Fair Debt Collection Practices Act (“FDCPA”) protects consumers in a narrow way and provides a cause of action wherein aggrieved consumers can sue unlawful debt collectors for a measly \$1,000 in damages. *What is Harassment by a Debt Collector?*, CFPB (Apr. 14, 2023), <https://www.consumerfinance.gov/ask-cfpb/what-is-harassment-by-a-debt-collector-en-336>. Compare that damage award with the over \$61 million profit that a collection agency made in 2012. See Puzzanghera, *supra* note 122. The sheer volume of the collection agency’s profit shows that the cause of action is insufficient to deter bad debt-collections practices.

¹²⁴ JOHN LEIBOWITZ ET AL., REPAIRING A BROKEN SYSTEM: PROTECTING CONSUMERS IN DEBT COLLECTION LITIGATION AND ARBITRATION 48 (2010), <https://www.ftc.gov/sites/default/files/documents/reports/federal-trade-commission-bureau-consumer-protection-staff-report-repairing-broken-system-protecting/debtcollectionreport.pdf>. The FTC found “that collectors and creditors succeeded in at least ninety-four percent of . . . [debt collection] arbitrations.” In New York City, a report found that debt-buyers, or the plaintiffs suing debtors, prevailed in 94% of cases. Nina Lea Oishi, *Judging Debt: How Judges’ Practices in Consumer-Credit Court Undermine Procedural Justice*, 133 YALE L.J.F. 271, 275 (2023).

¹²⁵ Lea Oishi, *supra* note 124, at 289.

¹²⁶ *Id.* at 285–291.

This systemic affront, however, is amplified by the fact that upward of 90% of debt-collection defendants fail to appear in court, resulting in a default judgment.¹²⁷ At the point of receipt of a summons and complaint, many borrowers do not know who to turn to for help, and are so lacking in resources¹²⁸ and heavily indebted that their engagement in the judicial system for debt collection seems pointless.¹²⁹

While the government has just begun to check some of the most abusive lending policies and practices,¹³⁰ by all accounts, exploitative lending practices continue to flourish.¹³¹ Even in states that have prohibited certain lending practices, such as payday lending,¹³² online financial service businesses have been able to successfully skirt these prohibitions.¹³³ Such lenders can operate outside of the jurisdiction of limiting state laws, making it difficult for regulators to enforce consumer protection measures. Further, online platforms can connect borrowers with multiple lenders, making it difficult for them to fully understand

¹²⁷ A study broke their survey pool into several theories of why people defaulted: (1) people did not know they were debtors, (2) people did not understand what was happening or how to respond to a suit against them, and (3) people faced psychological or social barriers to contesting the collections action. In addition to not understanding the complicated process, some people experience enormous amounts of shame, fear, and feelings of insignificance when facing powerful corporations. D. James Greiner & Andrea J. Matthews, *The Problem of Default, Part I*, at *6–9 (June 16, 2015) (unpublished manuscript) (available via SSRN), <https://ssrn.com/abstract=2622140>.

¹²⁸ This includes emotional resources. See D. James Greiner et al., *Self-Help, Reimagined*, 92 IND. L. J. 1119, 1129–30 (2017).

¹²⁹ Public interest lawyers are underfunded, and rarely have the capacity to take on debt collection cases. For example, a recent study found that only 20% of the nation’s low-income civil legal needs are met because of a severe lack of funding. *The Unmet Need for Legal Aid*, LEGAL SERVS. CORP. (2022), <https://www.lsc.gov/about-lsc/what-legal-aid/unmet-need-legal-aid>; see also Tarver, *supra* note 95.

¹³⁰ The 2010 Dodd Frank Act created the CFPB, tasked with protecting consumers across the country from predatory lending practices and helping consumers better understand lending. The Act also sought to streamline lending practices by requiring lenders to include disclosures for consumers to better understand their loans. Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010). The Fair Debt Collections Practices Act also has an exception for non-purchase money securities, prohibiting the predatory practice of allowing “household goods” to be used as collateral in the event of default. *Complying with the Credit Practices Rule*, FTC (Feb. 2023), <https://www.ftc.gov/business-guidance/resources/complying-credit-practices-rule>.

¹³¹ Scigliuzzo, *supra* note 111.

¹³² As of January 2024, Arizona, Arkansas, Colorado (through a usury cap), Georgia, Hawaii, Maryland, Massachusetts, Montana (through a usury cap), New Hampshire, New Mexico, New Jersey, New York, North Carolina, Pennsylvania, Vermont, West Virginia, and the District of Columbia have effectively prohibited payday lending. Heather Morton, *Payday Lending State Statutes*, NAT’L CONF. OF STATE LEGISLATURES (Feb. 28, 2023), <https://www.ncsl.org/financial-services/payday-lending-state-statutes>.

¹³³ Cf. Richie Bernardo, *Usury Laws by State, Interest Rate Caps, The Bible & More*, WALLETHUB (Jan. 10, 2023), <https://wallethub.com/edu/cc/usury-laws/25568>; see also *Legal Status of Payday Loans by State*, PAYDAY LOAN INFO. FOR CONSUMERS, <https://paydayloaninfo.org/state-information/>, (last visited May 17, 2024).

the cost of the loans they are taking out. High profits motivate these actors to find clever loopholes and use aggressive marketing tactics to attract borrowers.¹³⁴ A lack of transparency and oversight has allowed this predatory industry to thrive and continue to take advantage of consumers who have few other choices.¹³⁵

As noted, consumer borrowing and lending laws heavily influence the economic relationship between borrowers and lenders, as well as resource distribution. Biased or poorly defined laws shift default risks from lenders to consumers, allowing unscrupulous lenders to exploit vulnerable individuals, trapping them in high-cost debt cycles. These markets, particularly those targeting low-income consumers, suffer from limited choices and negotiation power due to asymmetric information between borrowers and lenders, perpetuating high levels of debt, financial insecurity, and hindering entire communities' escape from poverty.

C. *The Balkanization of Public Benefit Administration Systems*

Despite inadequate funding, millions of Americans rely on public benefit systems for housing and other household expenses.¹³⁶ The process of applying for these benefits, however, was intentionally designed to be difficult to navigate. Application forms are dense with text and are not written at a level that many people can understand.¹³⁷ Moreover, few applications are in a language other than English, or in any way culturally sensitive.¹³⁸ Gathering and

¹³⁴ Scigliuzzo, *supra* note 111.

¹³⁵ See Cassandra Jones Havard, *Democratizing Credit: Examining the Structural Inequities of Subprime Lending*, 56 SYRACUSE L. REV. 233, 263–265 (2006) (discussing racial and ethnic disparities in the prime and subprime lending markets).

¹³⁶ 64% of federal public benefit funding goes toward medical needs, housings, and food programs for qualifying individuals. See Joy Moses, *The Facts About Americans Who Receive Public Benefits*, CTR. FOR AM. PROGRESS (Dec. 16, 2011), <https://www.americanprogress.org/article/the-facts-about-americans-who-receive-public-benefits/>.

¹³⁷ For example, an application for public benefits in Colorado spans twenty-pages of dense text with many questions and information on each page. *Application for Public Assistance*, COLO. DEP'T HEALTH CARE POL'Y & FIN. & HUM. SERVS. (July 2022), <https://hcpf.colorado.gov/sites/hcpf/files/Colorado%20Application%20For%20Public%20Assistance%20-%20English.pdf>.

¹³⁸ *Id.* The sample application at times references “alien registration” when discussing non-citizens as well as asks applicants to identify if they are either male or female, with no other option available.

organizing required documentation can be both time-consuming and challenging, often serving as a barrier to a family in the application process.¹³⁹

In addition, many people do not apply for benefits for which they are eligible. Because the marketing of benefit programs is not robust and there is no affirmative outreach, millions of households do not know the extent to which help is available. Across the U.S., many families receive significantly less benefits than they are eligible for.¹⁴⁰ If entitlement programs had full participation, recipients would collectively receive \$447 billion rather than \$220 billion, reducing general poverty by 31% and child poverty by 44%.¹⁴¹

While some safety net programs have made limited efforts to market benefits to eligible populations,¹⁴² these efforts routinely fail to reach intended

¹³⁹ See Marianne Bitler et. al., *The Social Safety Net in the Wake of COVID-19* 2, 15–16 (Nat'l Bureau of Econ. Rsch., Working Paper No. 27796, 2020), <https://www.nber.org/papers/w27796> (exploring the significant delay in getting assistance to families during the COVID-19 Pandemic, given the increased demand).

¹⁴⁰ See *id.* at 15. For example, the Temporary Assistance for Needy Families (“TANF”) program, a primary means of providing financial assistance to families, only serves a third of eligible households across the U.S. In 2020, over two million households did not access TANF benefits they were likely qualified to receive. Aditi Shrivastava & Gina A. Thompson, *TANF Cash Assistance Should Reach Millions More Families To Lessen Hardship*, CTR. ON BUDGET & POL’Y PRIORITIES (Feb. 18, 2022), <https://www.cbpp.org/research/income-security/tanf-cash-assistance-should-reach-millions-more-families-to-lessen> (“If TANF had the same reach in 2020 as its predecessor, Aid to Families with Dependent Child (AFDC), did in 1996, 2.38 million more families nationwide would have received cash assistance.”).

¹⁴¹ Rachel Kenney, *How Much Would Poverty Decrease in Each State If Every Eligible Person Received Safety Net Benefits?*, URB. INST. (2022), <https://www.urban.org/projects/how-much-would-poverty-decrease-each-state-if-every-eligible-person-received-safety-net>.

¹⁴² The way poverty is measured in the U.S. has significant implications for the allocation of resources and the design of social policies. The current federal measurement of poverty fails to capture the full extent of economic hardship and inequality experienced by individuals and communities. The official poverty definition can be traced to the Johnson Administration. Calculating families’ food budget and multiplying by three resulted in the formal “poverty threshold.” Steven Pressman & Robert H. Scott, III, *Who are the Debt Poor?*, 43 J. ECON. ISSUES 423, 423–424 (2009). This poverty level is not reflective of how much money a family must have to survive, let alone thrive. In 2022, the CCLP set out to rectify this problem by publishing a report analyzing and identifying the level of income needed for Colorado families to meet basic living expenses (the “CCLP Report”). The Colorado Self-Sufficiency Standard developed in the CCLP Report, “describes how much income families of various sizes and compositions need to make ends meet without public or private assistance in each county in Colorado.” It is “based on the costs of basic needs for working families: housing, childcare, food, health care, transportation, and miscellaneous items, as well as the cost of taxes and the impact of tax credits.” As the CCLP Report notes, measuring the amount of income needed to be economically self-sufficient is a far more accurate standard than the official poverty measure. The “Self-Sufficiency Standard shows that incomes well above the official federal poverty thresholds are nevertheless *far below* what is necessary to meet families’ basic needs.” Annie Kucklick et al., *The Self-Sufficiency Standard for Colorado 2022*, COLO. CTR. ON L. & POL’Y (2022), cclponline.org/wp-content/uploads/2022/11/CO22_SSS.pdf (emphasis added). Moreover, the social policies that have grown out of the narrow approach taken to poverty measurement do not credit the structural factors that contribute to poverty, such as systemic racism, unequal access to education and health care, and the erosion of workers’ rights. As a result, the policies and programs designed to address poverty do not adequately target

beneficiaries due to cultural, linguistic, or other hurdles. For example, early in the COVID-19 Pandemic, awareness and enrollment in key social safety net programs increased marginally,¹⁴³ likely due to broad media coverage of available public benefits. However, even in the face of historic work stoppages and quarantines, many eligible recipients during the pandemic did not become aware of, or apply for, benefits programs that would have provided needed financial support.¹⁴⁴ Those who make the rules intentionally create these passive and ineffective information dissemination policies.

Even when people are aware of benefits programs, and recognize their eligibility, they struggle to submit applications for all the support to which they are entitled. In many parts of the U.S., benefits programs are scattered among different county and state agencies, have different application portals, require applicants to provide conflicting information and documentation, and have divergent review and approval thresholds.¹⁴⁵ Applicants hoping to access multiple programs are commonly forced to shuttle between agencies as they

those in dire financial circumstances, perpetuating the cycle of poverty and exacerbating existing inequalities. See Bettina M. Beech et al., *Poverty, Racism, and the Public Health Crisis in America*, FRONTIERS PUB. HEALTH (2021), <https://pubmed.ncbi.nlm.nih.gov/34552904/>.

¹⁴³ See Brendan Saloner et. al., *Access and Enrollment in Safety Net Programs in the Wake of COVID-19: A National Cross-Sectional Survey*, PLOS ONE (Oct. 6, 2020), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7537892/> (“The overall percentage reporting at least one program increased by 15.29 percentage points . . . , with the largest reported changes for unemployment insurance (7.87 percentage points . . .) and SNAP (4.27 percentage points . . .)”).

¹⁴⁴ See HEATHER HAHN ET AL., STRATEGIES FOR IMPROVING PUBLIC BENEFITS ACCESS AND RETENTION, URB. INST. 22 (2023), <https://www.urban.org/sites/default/files/2023-01/Strategies%20for%20Improving%20Public%20Benefits%20Access%20and%20Retention.pdf>.

¹⁴⁵ See *Application for Public Assistance*, supra note 137. Colorado’s public assistance application includes several public benefits on one form. The general Colorado database for public benefits breaks down the types of benefits into “Food,” “Energy,” “Cash,” “Disability,” or “Employment.” Within each of those categories, it is further broken down into several more programs with individual applications with dense information. See *Benefits Assistance*, COLO. DEP’T. OF HUM. SERVS., <https://cdhs.colorado.gov/benefits-assistance> (last visited May 17, 2024). While this specific breakdown is accessible, to a non-sophisticated applicant, this process can still be quite overwhelming. Texas’s public benefits website is similarly confusing. See *Your Texas Benefits*, TEX. HEALTH & HUM. SERVS., <https://www.yourtexasbenefits.com> (last visited May 17, 2024). The application page asks you to fill out a paper form online. The paper form link provides more than twenty-five different forms for a person to fill out. See *Get a Paper Form*, TEX. HEALTH & HUM. SERVS., <https://www.yourtexasbenefits.com/Learn/GetPaperForm> (last visited May 17, 2024). A national survey also confirms similar issues across the nation. Roughly 40% of adult respondents receiving TANF or Supplemental Nutrition Assistance Program (“SNAP”) benefits reported difficulty determining eligibility or providing the needed documentation. See Marla McDaniel et al., *Customer Service Experiences and Enrollment Difficulties Vary Widely Across Safety Net Programs*, ROBERT WOOD JOHNSON FOUND. (Jan. 2023), <https://www.urban.org/sites/default/files/2023-01/Custom%20Service%20Experiences%20and%20Enrollment%20Difficulties%20Vary%20Widely%20across%20Safety%20Net%20Programs.pdf>.

perform repetitive, time-consuming tasks.¹⁴⁶ The complicated and confusing processes associated with applying for public benefits consistently cause people to give up in frustration.¹⁴⁷ In some cases, applicants report spending dozens of hours over multiple weeks to submit a successful benefits application.¹⁴⁸

In most parts of the country, there is no single point-of-access for services and financial assistance in an emergency. In other words, legal aid and social services providers are balkanized: Programs that offer help for the same or interrelated problems are spread across a variety of public, nonprofit, and private organizations. The current system forces low-income households to manage financial precarity by juggling a number of different organizations, each overseeing a specific slice of the problem. These interactions require coordinated communication and frequently result in “dead-ends” for applicants when they do not qualify or the supporting agency lacks the capacity to provide assistance.¹⁴⁹ This creates tremendous work for people in search of help, who are forced to navigate among multiple service providers. In the absence of coordination or a shared strategy, it leads to the inefficient application of system-wide resources, as each service provider offers the tool they have available, rather than the one that would be most helpful.

The complications associated with applying for benefits are compounded by efforts to seek complementary services from social services agencies or nonprofits.¹⁵⁰ Seeking help becomes especially complicated when financial benefits and complementary services need to interact with one another to avoid a negative outcome such as an eviction. Even if a tenant facing an eviction is able to find a low- or no-cost attorney, they may find themselves consulting with a legal aid organization about their defenses, assembling a rental assistance application with a state agency that would cure the arrears, as well as exploring possible rehousing options and applying for a housing voucher to be prepared in

¹⁴⁶ See Ehren Dohler, *A Tangled Web: The Problem with Fragmented Housing Assistance*, SHELTERFORCE (Sept. 29, 2021), <https://shelterforce.org/2021/09/29/one-reason-rent-relief-isnt-getting-out/> (highlighting as one example, that Boston has ninety-four different housing authorities, just in the city).

¹⁴⁷ See Glenn Thrush & Conor Dougherty, *Why \$46 Billion Couldn't Prevent an Eviction Crisis*, N.Y. TIMES (Sept. 10, 2021), <https://www.nytimes.com/2021/09/10/business/evictions-rental-assistance.html>.

¹⁴⁸ Indeed, more than 40% of applicants for unemployment insurance, TANF, and SNAP report enrollment difficulties. Such difficulties include: challenges in establishing eligibility, confusion in providing required documents, and ultimately receiving benefits payments. See Marla McDaniel et al., *supra* note 145.

¹⁴⁹ See *Burdens Harm Disabled People*, *supra* note 9.

¹⁵⁰ See Thrush & Dougherty, *supra* note 147.

the event that none of the other efforts are successful.¹⁵¹ Because none of the various systems are in effective communication, a cash payment to stave off the eviction may arrive too late, to the wrong place, or in the wrong amount, undermining a lawyer's efforts to have the case dismissed and, thus resulting in an eviction.

Moreover, if the payment arrives on time, but the lawyer is unaware of its arrival, or fails to incorporate it in her defense, the tenant may be evicted, even though payment has already been made.¹⁵² If the tenant is evicted or displaced, they need a new home and the funds to pay for it, either in the form of a voucher or a one-time cash transfer. This re-housing process typically requires accessing totally different sources of aid. Unsurprisingly, the mechanism for *securing funds for new housing* is distinct from the process used to *identify the housing itself*, with different systems, rules, and applications for each.¹⁵³

The pace at which benefit agencies work can also thwart people's efforts to get needed assistance.¹⁵⁴ Depending on the specific benefit and application type, approval can take several weeks or even several months, with some applications requiring nearly a year before receiving a response.¹⁵⁵ During this wait, there is

¹⁵¹ For example, the CEDP, a leading legal aid organization out of Denver, Colorado provides legal representation to tenants as well as rental assistance. See *What We Do*, CEDP, <https://cedproject.org/what-we-do/> (last visited May 17, 2024).

¹⁵² See Joshua Fletcher, *Some Landlords Got a Piece of Texas' \$2 Billion in Rent Relief Money—and Evicted Their Struggling Tenants Anyway*, TEX. TRIB. (Apr. 11, 2022, 8:40 AM), <https://www.ketr.org/news/2022-04-11/some-landlords-got-a-piece-of-texas-2-billion-in-rent-relief-money-and-evicted-their-struggling-tenants-anyway>.

¹⁵³ See *Rapid Re-Housing: A History and Core Components*, NAT'L ALL. TO END HOMELESSNESS (Apr. 22, 2014), <https://endhomelessness.org/resource/rapid-re-housing-a-history-and-core-components/> (outlining how HUD addressed widespread housing displacement by identifying new funds and a new mechanism for rehousing displaced individuals); see also RAPID RE-HOUSING FOR HOMELESS FAMILIES DEMONSTRATION PROGRAMS EVALUATION REPORT, PART II: DEMONSTRATION FINDINGS—OUTCOMES EVALUATION, U.S. DEP'T HOUS. & URB. DEV. OFF. POL'Y & RSCH. (2016), <https://www.huduser.gov/portal/sites/default/files/pdf/RRHD-PartII-Outcomes.pdf> (compiling similar findings and discussions surrounding the new model for access to rehousing funds).

¹⁵⁴ Cf. Anna Blackburne-Rigsby & Nathan Hecht, *It Should Take More Than 10 Minutes To Evict Someone*, N.Y. TIMES (Jan. 13, 2022), <https://www.nytimes.com/2022/01/13/opinion/housing-eviction.html> (describing the alarming haste of the eviction process).

¹⁵⁵ See Maggie Bryan, *Backlog in Food Stamp Recertification Causing Burden for El Paso County Families*, KOAA NEWS 5 COLO. SPRINGS (May 9, 2023, 6:45PM), <https://www.koaa.com/news/covering-colorado/thousands-of-families-in-el-paso-county-waiting-for-snap-benefit-recertification> (“Logan said before the pandemic, staff was able to process SNAP recertification applications within 30 days. Now, that wait time is up to 60 days, leaving some people without food stamps for a month.”); *Security Disability Benefit Decisions Reach New High*, USA FACTS (2023), <https://usafacts.org/data-projects/disability-benefit-wait-time> (noting that disability applicants in early 2023 “on average . . . had waited around 223 days, or seven months and thirteen days, for that verdict.”).

often infrequent (or non-existent) communication about the status of the application or when financial assistance might arrive. When an application for assistance is finally approved, it can take several additional weeks or months for the supportive payment to be made. In many cases, public assistance arrives long after financial penalties, eviction, or repossession have occurred.¹⁵⁶

The system does not have to work this way. Political will is necessary to engage in system improvement—though it seems the requisite will is lacking among those in charge of city, county, state, and federal public benefit agencies.¹⁵⁷ In theory, benefits and public assistance can be helpful in addressing cash shortfalls; the problem is that in most instances, they are unable to be marshaled and processed in time to address financial emergencies. Janet and Miguel’s case, where SNAP and TANF benefits arrived too late to provide meaningful assistance, is a perfect illustration of the inadequate public benefits distribution infrastructure.¹⁵⁸ For people with exigent financial problems that threaten their well-being, the existing tools and services lack the speed, sophistication, coordination, and reach to be in any way effective.

IV. CAN LAWYERS HELP?

Over-indebted households who are vulnerable to eviction, or otherwise in a financial crisis frequently face lawsuits from lenders, landlords, and debt collectors, typically seeking to recover unpaid balances.¹⁵⁹ In 2022, nearly 75%

¹⁵⁶ Jaclyn Allen, *Denver’s Most Vulnerable Residents Report Delays in SNAP Food Assistance Benefits*, DENVER7 (May 22, 2023, 4:30 PM), <https://www.denver7.com/news/contact-denver7/denvers-most-vulnerable-residents-report-delays-in-snap-food-assistance-benefits>. This story follows a Denver mother who was faced with delays in SNAP benefits. Regarding not receiving her monthly SNAP benefit, the mother said “[DHS was] behind 30 to 45 days. I wasn’t even able to pay my rent because I had to make a decision about whether or not my kids were going to eat. And so now I’m facing eviction because I had to use my rent money to feed my children.”

¹⁵⁷ See Sharon Parrott et al., *Streamlining and Coordinating Benefit Programs’ Application Procedures*, CTR. ON BUDGET & POL’Y PRIORITIES (June 22, 2005), <https://www.cbpp.org/sites/default/files/legacy/05prosim.pdf> (exploring ways governments can streamline the process for applicants and how governments are slow to change).

¹⁵⁸ See *supra* Part I.

¹⁵⁹ See *The Justice Gap: Executive Summary*, LEGAL SERVS. CORP. (2022), <https://justicegap.lsc.gov/resource/executive-summary>. Debt collection agencies repeatedly sue debtors for payment over unsubstantiated accounts, often purchased in bulk and without review. In many states, debt collection cases represent 24% of all civil cases filed. Erika Rickard, *How Debt Collectors Are Transforming the Business of State Courts*, PEW (May 6, 2020), <https://www.pewtrusts.org/en/research-and-analysis/reports/2020/05/how-debt-collectors-are-transforming-the-business-of-state-courts>. In some states, nearly a third of debt collection lawsuits are filed to recover unpaid medical debt. Natasha Khwaja, *How State Courts Can Help Address America’s Medical Debt Problem*, PEW (July 25, 2023),

of all low-income households in the United States experienced one or more civil legal problems and 40% of low-income households faced five or more civil legal problems.¹⁶⁰ Tenants who struggle to submit full, on-time rental payments can be sued on a near-monthly basis, with fines and attorneys' fees accumulating alongside rent.¹⁶¹ These legal actions push up the true cost of housing each month and keep households in perpetual anxiety about whether they will retain housing.¹⁶²

The problem these legal actions present is two-fold. First, in those rare cases where low-income defendants can access legal advice or representation to help them, no level of lawyering can solve the underlying condition of not having enough money. Second, in most cases low-income defendants cannot even afford legal advice or representation and are left to navigate the complexities of the legal system on their own—often forsaking their legal rights because they are either unaware of their existence or how to use them.¹⁶³

Good lawyering can solve a great many problems. When unpaid balances are at issue, however, even with legal representation, low-income households struggle to prevail; in the absence of an infusion of cash, lawsuits seeking repayment of a debt or possession of property for nonpayment of rent are frequently unwinnable. As Professors Juliet Brodie and Larisa Bowman argued recently, in eviction proceedings, financial assistance to resolve an outstanding debt is far more valuable to tenants than the assistance of counsel.¹⁶⁴ While lawyers may be able to help defendants identify defenses to eviction or non-payment of debt, in most cases, the only cure is cash.¹⁶⁵

<https://www.pewtrusts.org/en/research-and-analysis/articles/2023/07/19/how-state-courts-can-help-address-americas-medical-debt-problem>.

¹⁶⁰ See *The Justice Gap: Executive Summary*, *supra* note 159.

¹⁶¹ Lillian Leung et al., *Serial Eviction Filing: Civil Courts, Property Management, and the Threat of Displacement*, 100 SOC. FORCES 316, 318 (2021).

¹⁶² *Id.* at 316 (“Using tract-level rent and filing fees, we estimate that each eviction filing translates into approximately \$180 in fines and fees for the typical renter household, raising their monthly housing cost by 20%.”).

¹⁶³ Studies suggest that in eviction lawsuits across the U.S., landlords are represented by counsel in 90% of cases while tenants have legal representation in only 10% of cases. Matthew Desmond, *Unaffordable America: Poverty, Housing, and Eviction*, 22 INST. FOR RSCH. ON POVERTY, Mar. 2015, at 1, 5. These numbers reflect trends in the broader civil-legal space, where 92% of low-income households report that they do not get “any or enough” legal help for problems that substantially impact them. See *The Justice Gap: Executive Summary*, *supra* note 159.

¹⁶⁴ Juliet M. Brodie & Larisa G. Bowman, *Lawyers Aren't Rent*, 75 STAN. L. REV. ONLINE 132, 134 (2023). While access to counsel can be invaluable in understanding the overall process, addressing inflated fees, or negotiating a settlement with a landlord or creditor, winning is unlikely when money is owed.

¹⁶⁵ *Id.* at 134.

Most low-income defendants, however, do not have the means to obtain a lawyer to defend themselves. Where a consumer defendant has legitimate defenses to an eviction or debt collection action and would benefit from representation, it is difficult to find low- or no-cost legal assistance. Of the 1.9 million civil legal problems nationwide that people seek assistance for, over 1.3 million go unrepresented because of the severe lack of legal aid funding.¹⁶⁶ State estimates show this number may be even higher, estimating that over 80% of legal needs are unmet.¹⁶⁷

This dearth of affordable lawyers has significant implications for individuals. The legal system is not designed for those who cannot afford an attorney. The rules of civil procedure baffle even the most dedicated first-year law student, marked by a complexity that cannot be overstated.¹⁶⁸ Courthouses are designed to be “intimidating” and it is by design that judges are elevated on benches above the parties.¹⁶⁹ Court documents are confusing, inaccessible, and often not available in languages other than English.¹⁷⁰ Deadlines for filings, hearings, and other critical steps can be unclear, and even when defendants know that an important deadline in their case is approaching, they do not know what the court expects of them.¹⁷¹ Agents of the court, bound by the outdated rules that prohibit providing legal advice, are often unable to provide guidance to pro se defendants attempting to navigate the court system.¹⁷² Without access to

¹⁶⁶ *The Unmet Need for Legal Aid*, *supra* note 129 (describing a recent study that found only “20% of all civil legal needs of low-income families and individuals are met.”).

¹⁶⁷ *Id.*

¹⁶⁸ One particularly challenging first-year civil procedure rule is the *Erie* doctrine that binds federal courts exercising diversity jurisdiction to apply state law. In essence, the federal court must apply the substantive law of the state where they are located but must apply federal *procedural* law. Asking a pro se litigant, much less a lawyer, to properly delineate between what is procedural law and what is substantive law is challenging to say the least.

¹⁶⁹ In England and Australia, judges and solicitors still wear robes and wigs, to make explicit to even the casual observer the difference between legal professionals and non-lawyers. See Grant Longstaff, *Why Do Barristers Wear Wigs?*, UNIV. L. BLOG (Apr. 25, 2023), <https://www.law.ac.uk/resources/blog/why-do-barristers-wear-wigs/>.

¹⁷⁰ As of 2016, there were over twenty-five million people living in the U.S. that had limited English proficiency. U.S. DEPT. JUST., LANGUAGE ACCESS IN STATE COURTS 2 (2016), https://www.justice.gov/d9/fieldable-panel-panes/basic-panes/attachments/2020/02/26/language_access_in_state_courts_508_091516.pdf. In fiscal year 2016 alone, there were 254,736 federal district court proceedings that required a Spanish interpreter. *Court Interpreters Deliver Justice in All Languages*, U.S. CTS. (Aug. 10, 2017), <https://www.uscourts.gov/news/2017/08/10/court-interpreters-deliver-justice-all-languages>.

¹⁷¹ See Nina Ingwer & Van Wormer, *Help at Your Fingertips: A Twenty-First Century Response to the Pro Se Phenomenon*, 60 VAND. L. REV. 983, 993 (2007) (discussing problems that arise in pro se litigation).

¹⁷² Cf. Natalie Anne Knowlton & Jessica Bednarz, *Community and Cooperation Action Steps Toward Unlocking Legal Regulation*, INST. FOR ADVANCEMENT AM. LEGAL SYS. 7–9 (July 2023),

affordable legal assistance, individuals may struggle to know the rules, understand their rights, and effectively advocate for themselves. This lack of access to legal help for those who have viable defenses to civil actions perpetuates existing power imbalances.

For those parties to civil cases who are being sued because they cannot pay rent or repay their indebtedness, however, the only effective defense is cash.¹⁷³ No legal assistance can help in such instances—only systemic changes that address the inequalities inherent in the policies that govern the employment, housing, healthcare, transportation, and credit systems.¹⁷⁴

V. BANKRUPTCY AS A REMEDY FOR THE SCOURGE OF OVER-INDEBTEDNESS?

After dealing with threats of eviction, over-indebtedness to high-cost lenders, and even lawsuits—with no relief in sight from a balkanized public benefits infrastructure—low-income individuals are frequently left with no choice but to file for bankruptcy. Each year, millions of consumers access the bankruptcy system. The causes of and reasons for these filings are commonly misunderstood, largely because of the way consumer bankruptcy is reported by the popular press.¹⁷⁵ People who file for bankruptcy relief are typically described as deadbeats who have failed to meet their financial obligations¹⁷⁶—they got in

https://iaals.du.edu/sites/default/files/documents/publications/community_cooperation_ulr.pdf (comparing various legal reforms, what those reforms may mean for access to justice in the U.S.—specifically for those without access to lawyers). See generally Lauren Sudeall, *The Overreach of Limits on “Legal Advice”*, 131 YALE L.J.F. 637 (2022) (exploring the ramifications of a narrow interpretation of the word “legal advice” with respect to non-lawyers providing advice).

¹⁷³ Brodie & Bowman, *supra* note 164, at 134.

¹⁷⁴ See generally *id.* (detailing the ways in which the current eviction system badly needs reform); Andre M. Perry et al., *The Racial Implications of Medical Debt: How Moving Toward Universal Health Care and Other Reforms Can Address Them*, BROOKINGS (Oct. 5, 2021), <https://www.brookings.edu/articles/the-racial-implications-of-medical-debt-how-moving-toward-universal-health-care-and-other-reforms-can-address-them/> (explaining how perverse medical debt is, with particular respect to racial justice and how the system can be reformed for the better).

¹⁷⁵ Compare Lorie Konish, *This Is the Real Reason Most Americans File for Bankruptcy*, CNBC (Feb. 11, 2019, 2:20 PM), <https://www.cnbc.com/2019/02/11/this-is-the-real-reason-most-americans-file-for-bankruptcy.html> (discussing medical expenses as the main reason that consumers file for bankruptcy), with *The 3 Most Common Reasons Why People File For Bankruptcy*, AM. BANKR. INST., <https://www.abi.org/feed-item/the-3-most-common-reasons-why-people-file-bankruptcy> (last visited May 17, 2024) (“The most common reason for bankruptcy is job loss . . .”).

¹⁷⁶ A few notable figures have perpetuated this myth. Steve Pfister, former Senior Vice President for government relations at the National Retail Federation, penned a letter to Congress who at the time was debating consumer protections, saying “[u]nfortunately, many of those losses are the result of misuse of the law by irresponsible, higher-income filers.” Former President George Bush also added, “In recent years, too many people have abused the bankruptcy laws. They’ve walked away from debts even when they had the ability to

over their head, or made a series of poor decisions, and because of that are unable to repay the debts they incurred.¹⁷⁷ The focus is always on the debtors' behavior and the debtors' circumstances underscored by the theme of personal responsibility.¹⁷⁸

This focus is misleading. Contrary to prevailing narratives, people take extreme measures to avoid discharging their debts; most people defer filing for bankruptcy relief for as long as possible, to their detriment.¹⁷⁹ Typically, people try to negotiate with their creditors, take on extra work, sell personal property, and withdraw from retirement accounts, all to try and make minimum payments on their existing debt.¹⁸⁰ This can go on for months, if not years, before the bankruptcy system is accessed.¹⁸¹

Even when these borrowers are left with no choice but to access the bankruptcy system, they are often unable to because of bankruptcy's restrictive nature. Navigating bankruptcy can be difficult because of the number of fees involved, the need for an attorney, and the burdensome paperwork. The difficulty in accessing the bankruptcy system has one main adverse effect: while waiting to finally approach the bankruptcy court, low-income debtors simultaneously see their debts accumulate while their assets rapidly vanish through creditors' out-of-court collection efforts.¹⁸² Debtors' insistence on

repay them." Michelle Singletary, *What Deadbeats?*, WASH. POST (Feb. 26, 2006) (quotations omitted), <https://www.washingtonpost.com/archive/business/2006/02/26/what-deadbeats/b7964d64-5959-4ec1-a039-f31b07219101/>.

¹⁷⁷ *See id.*

¹⁷⁸ *See id.*

¹⁷⁹ Cf. Ronald J. Mann, *Bankruptcy Reform and the "Sweat Box" of Credit Card Debt*, 2007 U. ILL. L. REV. 375, 377–79, 395–97 (2007).

¹⁸⁰ *How 1 Person Paid Off \$100k of Debt Working 2 Jobs*, ABC News (Sept. 18, 2015, 12:50 AM), <https://abcnews.go.com/Business/person-paid-off-100k-debt-working-jobs/story?id=33844062>; Elizabeth Gravier, *Don't Use Your 401(K) To Pay Off Credit Card Debt, Says 'Credit Junkie' With an 800+ Score Who Tried It Once*, CNBC SELECT (Nov. 9, 2023), <https://www.cnbc.com/select/should-you-withdraw-401k-for-debt/> (interviewing a man who pulled from his retirement account to pay off his debt and avoid collections); Michael Sainato, *'I'm Selling My Blood': Millions in US Can't Make Ends Meet with Two Jobs*, GUARDIAN (Nov. 5, 2022, 5:00 PM), <https://www.theguardian.com/us-news/2022/nov/05/multiple-jobs-census-data-inflation-us> (interviewing man working multiple jobs who said: "Most of his disposable income goes toward paying off credit cards, taxes, surprise bills like car repairs, and medical expenses.").

¹⁸¹ According to Debt.org, "[a] Chapter 7 bankruptcy usually takes about four to six months from filing to final discharge." See Maureen Milliken, *How Long Does Chapter 7 Bankruptcy Take?*, DEBT.ORG, <https://www.debt.org/bankruptcy/chapter-7/how-long-does-it-take/> (last visited May 17, 2024). During this time, before the debt is discharged, the borrower is expected to continue paying. Borrowers like those mentioned above will have to continue working second jobs while the bankruptcy process proceeds. Sainato, *supra* note 180.

¹⁸² Pamela Foohey, Robert M. Lawless, Katherine Porter & Deborah Thorne, *Life in the Sweatbox*, 94 NOTRE DAME L. REV. 219, 258 (2018).

going-it-alone to fix their own debt problem and avoid the stigma of bankruptcy, and the fact that the bankruptcy system itself is convoluted, means that these low-income borrowers lose their limited assets while struggling to pay off their debts. It is common for filers to enter bankruptcy with considerably higher debt loads than when they first considered filing, as well as the need for deferred maintenance items, including dental work, preventative medical care, as well as house and car repairs.¹⁸³

Unfortunately, even when individuals can discharge their debts through bankruptcy, the promised “fresh start” is actually a few days past expiration because these debtors lost their assets when trying to solve their debt problems on their own. As described above, American laws, policies, and go-it-alone culture has resulted in weak and inadequate financial assistance programs that have forced people to lean on debt out of necessity.¹⁸⁴ In many sectors, wages are too low to support a family, leaving significant gaps between income and everyday expenses.¹⁸⁵ Power imbalances between landlords and renters result in

¹⁸³ Mann, *supra* note 179, at 398 (“[T]he provisions that make filing more costly, more bureaucratic, and more humiliating should defer filings until people are deeper in distress.”). Deferring medical care or dental care before bankruptcy can be attributed to the United States Department of Justice (“DOJ”) taking a firm stance on bankruptcy fraud. The DOJ is seeking to crack down on cases where consumers attempt to offload their medical or dental expenses into their bankruptcy discharge by incurring the costs immediately prior to discharge. For fear of being investigated or even criminally convicted of fraud, consumers may attempt to defer their expenses. See DEP’T JUST., BANKRUPTCY AND BANKRUPTCY FRAUD 3 (2018), <https://www.justice.gov/usao/page/file/1046201/download> (articulating that prosecuting bankruptcy fraud is one of the primary objectives of the U.S. Trustee’s Office).

¹⁸⁴ See Alison A. Galbraith et al., *Out-of-Pocket Financial Burden for Low-Income Families with Children: Socioeconomic Disparities and Effects of Insurance*, 40 HEALTH SERVS. RSCH. 1722, 1722–36 (2005) (examining the socioeconomic disparities of out-of-pocket healthcare expenditures, which force individuals to take on debt); see also Thrush & Dougherty, *supra* note 147 (explaining how the eviction relief response post-COVID-19 was insufficient). See generally Saloner et al., *supra* note 143.

¹⁸⁵ Low wages in many sectors can be attributed to a combination of legal and structural factors that perpetuate income inequality and favor the interests of employers and corporations. See Angela Hanks et al., *Systematic Inequality: How America’s Structural Racism Helped Create the Black-White Wealth Gap*, CTR. FOR AM. PROGRESS (Feb. 21, 2018), <https://www.americanprogress.org/article/systematic-inequality>. The erosion of workers’ rights and the weakening of labor unions has resulted in a decline in collective bargaining power for workers. This has allowed employers to set wages at lower levels, as workers have limited leverage to negotiate for higher pay or improved working conditions. See generally DESMOND, *supra* note 1 (detailing the erosion of workers’ rights). In addition, the influence of corporate interests on policymaking has led to the prioritization of profit over fair wages. See Yannet Lathrop et al., *Quantifying the Impact of the Fight for \$15: \$150 Billion in Raises for 26 Million Workers, with \$76 Billion Going to Workers of Color*, NAT’L EMP. L. PROJECT (July 27, 2021), <https://www.nelp.org/publication/quantifying-the-impact-of-the-fight-for-15-150-billion-in-raises-for-26-million-workers-with-76-billion-going-to-workers-of-color/>. For example, minimum-wage laws are set at levels that are insufficient to provide a decent standard of living:

On average, a renter in search of a modest two-bedroom home, who is seeking to stay within the 30% income window, needs to earn \$24.90 per hour, the study says. (That figure is more than 3.4

many households being rent burdened, while also living in substandard housing.¹⁸⁶ Once rent-burdened, low-wage families have difficulty affording necessities, such as food, clothing, transportation, and medical care, further incurring debt.

That debt may be dischargeable in bankruptcy, but the bankruptcy system cannot prevent the further incurrence of debt out of necessity.¹⁸⁷ Nor can bankruptcy increase low wages, address power imbalances, unequal access to health care, inequitable labor markets, poor public education systems, or disparities in wealth. Despite the fact that bankruptcy serves as one of the very few financial safety nets in our society, the powers of the bankruptcy regime are sharply limited.

The lack of comprehensive healthcare coverage can leave individuals with high medical expenses and limited access to necessary treatments.¹⁸⁸ Additionally, the limited availability of affordable housing assistance can lead to homelessness and housing instability.¹⁸⁹ The absence of robust income support programs can leave individuals without a safety net during periods of unemployment or economic downturns.¹⁹⁰ These holes in the social safety net perpetuate inequality and exacerbate the financial hardships faced by those in

times the federal minimum wage.) Those in search of a one-bedroom are in a similar position; they need to make \$20.40 per hour.

Vanessa Romo, *Rents Are Out of Reach for Most Americans Earning Minimum Wage, a Study Says*, NPR (July 14, 2021, 10:42 PM), <https://www.npr.org/2021/07/14/1016230724/rents-are-out-of-reach-for-most-americans-earning-minimum-wage-a-study-says>. Furthermore, globalization and the outsourcing of jobs to countries with lower-labor costs have contributed to the downward pressure on wages for low-skilled workers. For example, a study from 2008 focusing on two industries found that: “Across a wide array of specifications, we find that the outsourcing wage penalty ranges between 4% and 7% for janitors and between 8% and 24% for guards.” Arindrajit Dube & Ethan Kaplan, *Does Outsourcing Reduce Wages in the Low-Wage Service Occupations? Evidence from Janitors and Guards* 1 (Inst. for Rsch. on Lab. and Emp., Working Paper No. 171-08, 2008), <https://irlr.berkeley.edu/files/2008/Does-Outsourcing-Reduce-Wages-in-the-Low-Wage-Service-Occupations.pdf>. Overall, the LPE lens highlights how legal and structural factors work together to maintain low wages for the poor, perpetuating income inequality and hindering economic mobility.

¹⁸⁶ Sabbeth, *supra* note 88, at 97–99.

¹⁸⁷ Bankruptcy provides a meaningful remedy only if a family’s financial distress is temporary. A bankruptcy discharge eliminates past debts, but does not address low wages, inadequate housing, high medical costs, expensive transportation, and all the other reasons low-income people incur debt in the first place. *See* 11 U.S.C. § 727(b). The ideal bankruptcy debtor is one who has suffered a set-back that resulted in the incurrence of debt but is able to land on their feet following the discharge of the past debt. That describes a middle-class debtor, not someone who is in perpetual financial distress.

¹⁸⁸ *See supra* notes 70–74 and accompanying text.

¹⁸⁹ *See supra* Part II.A.

¹⁹⁰ *See supra* Part III.C, which describes the shortcomings of some of our most crucial public benefits, with particular respect to unemployment.

dire need, highlighting the need for comprehensive and equitable social welfare policies. As has been observed:

For the people who file bankruptcy, their efforts, although significant, are insufficient in an economy and society that requires people to heavily fund their own healthcare and education while legislating a labor market in which many employees cannot make enough money to keep up with basic expenses, let alone save for unexpected expenses or for retirement.¹⁹¹

The limited remedy of bankruptcy for consumers reflects a broader systemic bias in credit-related laws and regulations that favor lenders over borrowers; strict eligibility criteria and burdensome requirements are imposed on consumers, making it difficult for those in dire financial circumstances to access the benefits, even in the instances where bankruptcy can provide meaningful relief.¹⁹²

From a law and political economy perspective, the limited social safety net in the United States has significant implications for individuals and communities, particularly those facing dire financial circumstances. As noted above, the existing social welfare system, characterized by inefficient, fragmented, and means-tested programs, often fails to provide adequate support and protection for vulnerable populations.¹⁹³ Pointing to the bankruptcy system as a “substitute” for public welfare benefits is both inaccurate and misguided.

VI. FOR PEOPLE IN EXIGENT FINANCIAL CRISES, IS THERE A WAY OUT OF THIS MESS?

Armed with the insight that political decision making, economic effects, and the enactment of laws governing our relationships are deeply intertwined with broader structural inequalities and power dynamics, how should one respond? Given that this reality has such a profoundly adverse impact on millions of

¹⁹¹ Pamela Foohey, *Bankruptcy as Social Safety Net*, LPE PROJECT (June 15, 2022), <https://lpeproject.org/blog/bankruptcy-as-social-safety-net/>.

¹⁹² For example, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 introduced stricter means testing and increased filing fees, as well as often unaffordable attorneys fees, creating additional barriers for individuals seeking relief. As a result, many consumers are left without a viable option to address their overwhelming debt burdens, perpetuating their financial distress and reinforcing the power imbalance between lenders and borrowers. Lois R. Lupica, *Consumer Bankruptcy Fee Study: Final Report*, 20 AM. BANKR. INST. L. REV. 17, 27–28 (2009).

¹⁹³ See generally Angela Littwin, *The Affordability Paradox: How Consumer Bankruptcy's Greatest Weakness May Account for Its Surprising Success*, 52 WM. & MARY L. REV. 1933 (2011) (exploring the paradox of consumer bankruptcy being a surprisingly expensive process, especially for low-income people who need money, rather than spending that on bankruptcy).

Americans, this question is worth considering. The LPE framework highlights the need for policies that prioritize the rights and needs of consumers, address systemic inequalities, improve the way systems operate, and challenge the dominance of powerful actors in shaping markets.

This Article proposes a two-step framework that mends holes in the bankruptcy safety net, and addresses certain problems low-income households face before and after filing for bankruptcy. First, the public-benefits infrastructure needs to be streamlined to create a one-stop shop for all public benefits needs. This solution addresses the balkanization of the public-benefits system by establishing a central base where struggling households can go and get help for any and all of their needs, including food, housing, health care, and transportation. Second, a universal basic income (“UBI”) should be offered as an upstream solution to address financial needs before a debtor must turn to bankruptcy. This two-step framework will hopefully provide struggling low-income families with the help they need, so that they do not have to resort to filing for bankruptcy, and if they do end up filing, it should prevent them from having to do so again.

A. Build a Better “Emergency Room”

The tools and services available to low-income households navigating a financial emergency lack the speed, sophistication, and reach to be effective. Absent broad changes to public policy or the widespread establishment of cash transfer programs, legal aid and social services providers need to update their service models to respond to the speed and complexity of financial exigency.

Specifically, agencies can improve service delivery by: (1) integrating complementary services, either in a single organization or closely managed network of providers, so that clients are not forced to engage with multiple providers; and (2) accelerating the payment of benefits so that public or philanthropic funds arrive in time to be helpful. Had a comprehensive “emergency room” solution such as this been available to Janet and Miguel, it could have helped mitigate their losses.¹⁹⁴

1. Integrating Complementary Services

Integrating complementary services for common legal and financial problems has the potential to improve people’s experience and outcomes. Rather

¹⁹⁴ See *supra* Part I.

than forcing families seeking assistance to coordinate among different providers, agencies can unite the services needed to address common legal and financial problems into a single organization or a closely managed network of providers.

Integration simplifies the experience of seeking assistance. It minimizes the research required to identify the different forms of support to address complex problems, unifies related services behind a single application, and provides a single point-of-contact for follow-up. It also reduces the personal burden of coordinating different interventions from different providers who may or may not be in contact.

Combining related services into a single organization or network has the potential to improve outcomes. Triage cases, assessing need, and providing accurate payments and supportive services in a closely managed continuum increases the likelihood of an effective intervention. Service providers with a range of different tools can utilize the right tool, on a timeline that matches the client's legal and financial deadlines, without the chaos and confusion that often occurs when numerous agencies coordinate services.

Finally, integrated service models use resources more efficiently than un-networked providers. When services for common problems are siloed among different agencies, each organization provides their intervention separately. However, providing services in an integrated continuum allows for select use of tools. A well-timed emergency rental assistance payment may prevent the need for an eviction defense attorney or rehousing services. Housing counseling and a timely payment from the homeownership assistance fund may avoid the need for legal representation in a foreclosure.

2. Rapid Benefits Payment

Speed is everything when providing financial assistance in an emergency. Payments that arrive before an eviction, foreclosure, or repossession can take place are extremely valuable. Funds that arrive after a home or asset are lost are only minimally helpful.

Given the high discount rate on financial assistance, agencies capable of providing rapid financial assistance are more likely to succeed in supporting clients. For this reason, governments and their for-profit and nonprofit partners should invest in the financial infrastructure needed to get money to clients quickly.

An increase in speed can be accomplished by accelerating the application and document review process, creating internal organizational deadlines tied to the legal deadlines of clients (like an eviction hearing), improving payment systems, and developing the internal financial infrastructure required to advance payments to clients who are at risk of immediate harm or loss.

Nonprofit payment systems that can rapidly supply bridge funds to people who are waiting for government benefits can be especially effective. By providing rapid payments using organizational funds, and receiving reimbursement from government agencies for qualifying payments later, nonprofit organizations can ensure that funds reach people in time to prevent hardship. In Colorado, the Community Economic Defense Project (“CEDP”) has built an emergency rental assistance fund that applies this concept at scale.¹⁹⁵ In partnership with state and county agencies, CEDP uses a revolving line of credit to make payments to households at imminent risk of eviction.¹⁹⁶ Government agencies review the payments and reimburse CEDP for payments that meet program guidelines.¹⁹⁷ This strategy circumvents slow government payment processes, and prevents households from having to take on high levels of high-cost debt.

B. People Who Are Poor Need More Money

It is self-evident that people who are poor need more money. That is the idea behind UBI programs. UBI programs provide cash assistance to families whose wages cannot support everyday needs, including housing, health care, and nutrition. Rather than providing public assistance in the form of government-siloed programs that provide stop-gap assistance at best, and no meaningful help at worst, UBI programs offer lump sum cash, trusting the recipient to spend it

¹⁹⁵ One of the authors, Zach Neumann, is co-founder of CEDP. He worked with co-founder Sam Gilman, to pilot and scale CEDP’s rental assistance payments model. The model began as a small fund and quickly evolved into a financial vehicle that has made more than \$100 million in payments to Colorado renters at risk of eviction. *Our History*, CMTY. ECON. DEF. PROJECT (2023), <https://cedproject.org/our-purpose> (“During the pandemic, this model served over 31,000 people and disbursed over \$100 million in rental assistance.”).

¹⁹⁶ John Walsh, *Distributing Emergency Rental and Mortgage Assistance to Vulnerable Households During the COVID-19 Pandemic: A Housing Innovation Program Case Study*, URB. INST., at *3 (Aug. 2023), https://www.urban.org/sites/default/files/2023-08/Distributing%20Emergency%20Rental%20and%20Mortgage%20Assistance%20to%20Vulnerable%20Households%20during%20the%20COVID-19%20Pandemic_0.pdf (examining how some of the COVID emergency relief money was distributed, including money disbursed to CEDP in Colorado).

¹⁹⁷ *See id.*

on what is needed. The UBI experiment has been implemented in a variety of places and has consistently shown positive outcomes.¹⁹⁸

The World Bank Group, alongside governments around the world, has tested the efficacy of conditional and unconditional cash transfer programs. India's social pension program (a targeted, unconditional cash transfer initiative)¹⁹⁹ and China's rural minimum living standard guarantee (Dibao) program²⁰⁰ performed well in meeting the needs of beneficiaries.²⁰¹ Cash transfer programs have lowered children's participation in the workforce by cushioning economic

¹⁹⁸ For example, the Alaska Permanent Fund Dividend is a UBI program where Alaskan residents receive an annual dividend from the returns of a state-owned investment fund. It has been in place since 1982 and has successfully distributed oil wealth to provide Alaskans with a base income. The program has helped reduce poverty rates, improve education outcomes, and stimulate the local economy. SCOTT GOLDSMITH, *THE ALASKA PERMANENT FUND DIVIDEND: A CASE STUDY IN IMPLEMENTATION OF A BASIC INCOME GUARANTEE* 8 (2010), https://iseralaska.org/static/legacy_publication_links/bien_xiii_ak_pfd_lessons.pdf (“The 2009 dividend added about \$900 million in purchasing power to the economy (before taxes), roughly equivalent to the total wages of state government or the retail trade sector.”). GiveDirectly is a nonprofit organization that implements UBI programs in various countries. In Kenya, GiveDirectly conducted a randomized controlled trial providing unconditional cash transfers to rural households. The program resulted in positive outcomes for recipients such as: increased consumption, improved nutrition, investment in productive assets, and enhanced well-being and mental health. Johannes Haushofer & Jeremy Shapiro, *The Impact of Unconditional Cash Transfers in Kenya*, INNOVATIONS FOR POVERTY ACTION (June 19, 2015), <https://poverty-action.org/impact-unconditional-cash-transfers-kenya> (finding that the recipients spent the money exclusively on necessities, and found “no increase in expenditures on temptation goods”). In the 1970s, the Canadian province of Manitoba conducted the “Mincome” experiment, providing guaranteed income to a town called Dauphin and selecting low-income households as a test group. The program reduced poverty, improved health outcomes, and did not significantly discourage work. See Travis Tomchuck, *Manitoba's Mincome Experiment*, CAN. MUSEUM FOR HUM. RTS. (Aug. 10, 2022), <https://humanrights.ca/story/manitobas-mincome-experiment> (disproving critics of the experiment who hypothesized that the income would reduce employment, when in fact, the income encouraged workers to continue working).

¹⁹⁹ See generally Puja Dutta et al., *Small but Effective: India's Targeted Unconditional Cash Transfers*, 52 *ECON. & POL. WKLY.* 63 (2010), https://crawford.anu.edu.au/pdf/staff/stephen%20howes/2011/SA122510_Small_but_Effective_Puja_Dutta.pdf (explaining that India focused its program on providing resources to the elderly, widows, and disabled people, referring to these payments as “social pensions”).

²⁰⁰ See generally Jennifer Golan et al., *Unconditional Cash Transfers in China: An Analysis of the Rural Minimum Living Standard Guarantee Program* (Soc. Prot. & Lab. Glob. Prac. Grp., Working Paper No. 7374, 2015), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2634272 (explaining that the Dibao program is one of the largest minimum income cash transfer schemes anywhere in the world).

²⁰¹ China's Dibao program “provided substantial income benefits to beneficiaries, but its overall poverty impact was limited.” This was due to the number of participants enrolled in the program relative to the total number of people experiencing poverty. *Id.* at *3.

shocks²⁰² and improved education and health outcomes without driving a meaningful increase in the purchase or consumption of temptation goods.²⁰³

The city of Denver implemented a pilot program called the Denver Basic Income Project in 2022, focusing on the unhoused population.²⁰⁴ The study divided subjects into three groups:

The Denver Basic Income Project (DBIP) is a 12-month guaranteed income project designed for 820 adults experiencing homelessness in Denver, Colorado. . . . Payment group A participants receive \$1,000 a month for 12 months, for a total of \$12,000 in a year. Payment group B participants receive \$6,500 upon enrollment and \$500 a month for the subsequent 11 months, for a total of \$12,000 in a year. Payment group C participants receive \$50 a month for 12 months, for a total of \$600 in a year.²⁰⁵

Between the time of enrollment and the six-month interim evaluation point, it was reported that, among the three enrolled cohorts (A, B, & C), “the number of participants staying in an apartment or home that they rent or own increased across the three groups. Additionally, the number of participants who reported sleeping outside decreased in each group, with no participants in Group A reporting sleeping outside at the six-month follow-up.”²⁰⁶

In addition, participants reported an increase in their sense of safety at their sleep location, a statistically significant improvement in financial well-being, some decrease in anxiety and distress, a decrease in food insecurity, some increase in transportation security, and some decrease in interactions with emergency rooms, hospitals, and social services organizations.²⁰⁷ Group C, the

²⁰² See generally Jacobus de Hoop & Furio C. Rosati, *Cash Transfers and Child Labor*, 29 WORLD BANK RSCH. OBSERVER 202 (2014) (reviewing the impact that cash transfers have on child labor globally).

²⁰³ See David K. Evans & Anna Popova, *Cash Transfers and Temptation Goods: A Review of Global Evidence* 3 (World Bank Pol’y Rsch., Working Paper No. 6886, 2014), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2439993 (focusing on how cash transfers lead to no substantial impact or even a negative impact on using the money for “temptation goods”). Temptation goods are defined by economists as products that are perceived as harmful (e.g., alcohol and tobacco). *Id.* at 2 (“[G]oods that generate positive utility for the self that consumes them, but not for any previous self that anticipates that they will be consumed in the future.”).

²⁰⁴ DANIEL BRISSON ET AL., DENVER BASIC INCOME PROGRAM PROJECT: INTERIM REPORT 1–2 (2023), <https://static1.squarespace.com/static/64f507a995b636019ef8853a/t/651ef5ac985acf3e896f0955/1696527789191/DBIP+Interim+Quantitative+Report.pdf> (describing a twelve-month guaranteed income project designed for 820 homeless individuals in Denver, Colorado).

²⁰⁵ *Id.* at 1.

²⁰⁶ *Id.* at 11.

²⁰⁷ See generally *id.*

cohort with the smallest cash transfer, overall showed the smallest improvements in well-being.²⁰⁸

It is important to note that this pilot program is small-scale, and at present, these findings are preliminary. Overall, while the concept of UBI has gained traction in Colorado and across the United States, there has not been a full-scale implementation of such a program in the state. Further research and experimentation are needed to fully understand the potential benefits and challenges of UBI in the context of Colorado and other regions.

Finally, the natural experiment conducted by the federal government during the COVID-19 Pandemic demonstrated the efficacy of a broad social safety net in reducing poverty and instability.²⁰⁹ In response to the Pandemic, Congress passed a suite of legislation designed to stabilize people and businesses, including the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act and the American Rescue Plan (“ARP”).²¹⁰ Collectively, these laws provided eligible Americans with direct cash transfers, expanded SNAP and TANF payments, increased unemployment insurance payments, created the homeownership assistance fund to stop foreclosures, and established a nationwide emergency rental assistance program.²¹¹ In 2020 and 2021, social safety net programs reduced poverty in the United States by 64% and 67%, respectively, with the child poverty rate dropping to 5.2% in 2021, an all-time low.²¹² This experiment tells us that the sting of harsh policies and programs on low-income families is blunted when people acquire the leverage that comes with having an adequate amount of money.

UBI models, if adopted widely, can also potentially reduce bankruptcy filings by addressing some of the root causes of over-indebtedness. By providing a regular, unconditional sum of money, UBI programs aim to create a financial

²⁰⁸ See *id.* at 15, 16, 33.

²⁰⁹ Asha Banerjee & Ben Zipperer, *Pandemic Safety Net Programs Kept Millions Out of Poverty in 2021*, *New Census Data Show*, ECON. POL’Y INST.: WORKING ECON. BLOG (Sept. 13, 2022, 3:34 PM), <https://www.epi.org/blog/pandemic-safety-net-programs-kept-millions-out-of-poverty-in-2021-new-census-data-show/> (“[T]he third and final economic impact stimulus payment was measurably effective in alleviating economic distress, keeping close to 9 million people from poverty.”).

²¹⁰ Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, 134 Stat. 281 (2020); American Rescue Plan of 2021, Pub. L. No. 117-2, 135 Stat. 4.

²¹¹ See *COVID Money Tracker*, COMM. FOR A RESPONSIBLE FED. BUDGET, <https://www.covidmoneytracker.org> (last visited May 17, 2024) (showing what programs have been created and how much they have been funded in the wake of COVID-19).

²¹² DANILO TRISI, GOVERNMENT’S PANDEMIC RESPONSE TURNED A WOULD-BE POVERTY SURGE INTO A RECORD POVERTY DECLINE 1–2 (2023), <https://www.cbpp.org/research/poverty-and-inequality/governments-pandemic-response-turned-a-would-be-poverty-surge-into>.

cushion so that people are less likely to turn to high-cost credit to bridge the gap between income and expenses. Moreover, with a baseline income to augment low wages, there may be increased opportunities for a family to develop a savings plan. With savings in the bank, an unexpected event such as a car repair, medical expense, or job loss is less likely to lead to over-indebtedness and bankruptcy. The income stream can also serve as a buffer during periods of un- or under-employment, thus generally increasing a family's financial stability.

If an individual does file for bankruptcy, a regular, supplemental cash flow can help them achieve a more solid foundation for financial recovery post-discharge. They can use the stability UBI potentially provides to invest in preventative health care, education, training, and increase their savings. By making it easier to make timely payments on rent, utilities, hospital bills, and other obligations, credit profiles may also gradually improve.

VII. ONCE THE FIRE IS OUT: LONG-TERM STRATEGIES FOR STABILIZATION AND WEALTH CREATION

After individuals have made it out of the emergency room, and are reasonably stable—meaning they (1) are earning a living wage, (2) are in safe and affordable housing, (3) have affordable access to health care, (4) have reliable transportation, and (5) are not reliant on high-cost debt to bridge the gap between income and expenses—broader strategies with a focus on preventing crises, maintaining stability, and building wealth can be considered.

A. *Reducing Structural Inequalities Through Better Policy*

Significant adjustments to public policy could serve to reduce the structural inequalities and risk-shifting that burdens low-income households. Specifically, policymakers should limit practices that drive financial emergencies for low-income households while also placing guardrails around the legal and financial consequences for delayed or missed payments.

If policies were put in place, for example, that limit towing and booting for alleged parking violations,²¹³ bar excessive fines and fees for minor

²¹³ See GRACE BROMBACH, GETTING OFF THE HOOK OF A PREDATORY TOW 12 (2021), <https://pirg.org/edfund/wp-content/uploads/2023/10/Getting-off-the-Hook-of-a-Predatory-Tow-1.pdf> (identifying excess fees and fines as the worst problems insurers and consumers face when dealing with towing companies).

infractions,²¹⁴ prohibit variable work schedules,²¹⁵ and cap unexpected administrative fees and charges on rental housing, then the risk of a household being forced to deal with an unexpected expense would be significantly minimized. By placing guardrails around the variability of a family's expenses—a leading driver of poverty and instability²¹⁶—policymakers can reduce hardship and curb the need for emergency assistance.

Policy frameworks that curtail the likelihood of an unexpected financial emergency can be further strengthened by sharply limiting the severity of consequences for missed payments. For renters, capping late fees, lengthening the time between a missed payment and when an eviction may be filed, and extending cure periods through execution of a writ of restitution, would reduce the potential financial harm of a delayed rental payment. Policymakers should cap the amount of late fees that can be charged following a missed payment, and create a “grace period” under law. Doing so would buy delinquent debtors time to get back on track. In addition, policymakers should extend the time between a missed rental payment and when a landlord may initiate the eviction process. Such a change would reduce serial filings and the use of eviction as a debt collection tactic.

Policymakers can further reduce eviction filings by creating balance thresholds that must be met before an eviction may be filed or by designating some amount of a tenant's balance as civil debt and thus not the basis for an eviction. In this way, a family would still owe the debt, but would not be at risk of losing their housing.

Laws would complement these policies. For example, giving tenants the right to cure until a judgment has been entered, coupled with mandatory mediation between landlord and tenants, would reduce the practical and financial obstacles to responding to an eviction case by providing the tenant access to counsel as well a greater opportunity to find emergency rental assistance.

²¹⁴ See Cortney Sanders & Michael Leachman, *Step One to an Antiracist State Revenue Policy: Eliminate Criminal Justice Fees and Reform Fines*, CTR. ON BUDGET AND POL'Y PRIORITIES (Sept. 17, 2021), <https://www.cbpp.org/sites/default/files/9-17-21sfp.pdf> (exploring the inverse impact fines and fees have on crime and criminality in our communities).

²¹⁵ LONNIE GOLDEN, *IRREGULAR WORK SCHEDULING AND ITS CONSEQUENCES* 1, 7 (2015), <https://www.epi.org/publication/irregular-work-scheduling-and-its-consequences> (examining the harsh impacts that irregular schedules actually have on consumer spending and the greater economy).

²¹⁶ See JONATHAN MORDUCH & RACHEL SCHNEIDER, *THE FINANCIAL DIARIES: HOW AMERICAN FAMILIES COPE IN A WORLD OF UNCERTAINTY* 76 (2017).

Similarly, statutes that limit when and how a mobile home may be removed from a rented lot,²¹⁷ constrain the ability of homeowner associations to assess fines and foreclose on properties,²¹⁸ and place guardrails on when secured creditors may seize and sell the assets of borrowers, would keep simple missed payments from spiraling into a significant loss of wealth or property.

Unfortunately, many of the industries most directly contributing to financial instability have strong voices in state capitol buildings and city halls. In many states, the local apartment association, common-interest communities, towing carriers, and car dealers have considerably more power than the consumers they serve. For this reason, it is often hard to advance policies that limit severe penalties for late or delayed payments.

These industry lobbies must not be the only ones with a seat at the policymaking table. Organizations on the front lines of addressing financial precarity can play an active role in the policymaking process. By working with everyday people, public benefit providers can offer policymakers a unique perspective on how laws governing eviction, repossession, and debt collection impact struggling families. Service organizations can advocate for the government to fund economic security programs, encourage state and local agencies to change administrative policies governing core anti-poverty and benefits programs, and identify holes in the social safety net. While some anti-poverty organizations are barred from policy advocacy,²¹⁹ those that are not can serve as a critical counterbalance to powerful local lobby groups.

B. *Creating Opportunities To Build Wealth*

The opportunity to build wealth has not been available to many low-income Americans. The historical legacy of slavery, institutional racism, coupled with policies, regulations, and laws that privilege the wealthy and powerful, has

²¹⁷ See Sonia Gutierrez & Julio Sandoval, *Colorado's Mobile Home Parks Are Becoming a Lucrative Business, but Not for Residents*, ROCKY MOUNTAIN PBS (July 21, 2022), <https://www.rmpbs.org/blogs/news/mobile-home-parks-colorado-lucrative-business/>.

²¹⁸ See Sarah Holder, *When the Homeowners Association Comes for Your Home*, BLOOMBERG (Sept. 14, 2023, 6:00 AM), <https://www.bloomberg.com/news/features/2023-09-14/hoa-foreclosures-continue-in-colorado-despite-reform> (following a family subject to a home owners' association foreclosure); COLO. REV. STAT. § 38-33.3-209.5 (2022).

²¹⁹ According to the Internal Revenue Service ("IRS"), "In general, no organization may qualify for section 501(c)(3) status if a substantial part of its activities is attempting to influence legislation (commonly known as lobbying)." See *Lobbying*, IRS (Dec. 4, 2023), <https://www.irs.gov/charities-non-profits/lobbying>. If an anti-poverty organization is a 501(c)(3) organization, like many civil legal aid societies, they risk their tax-exempt status by engaging in lobbying or policy advocacy efforts.

resulted in sharp economic disparities that have prevented large swaths of working people from achieving financial stability.

In the United States, the top 10% of households hold almost 70% of total household wealth while the bottom 50% hold only 2.5%.²²⁰ As inequality has accelerated, homeownership for middle- and low-income Americans has declined. In 2020, 27.2% of low-income Americans were homeowners, down from the 38.1% who owned a home in 2010.²²¹

Policies and investments that facilitate community and employee ownership can play a role in reversing these trends. By giving people a stake in their homes, the companies they work at, and the financial institutions they bank with, community ownership models promote both wealth and control.

1. *Community Ownership of Property: The Right of First Refusal*

The enactment of right of first refusal statutes is a good place to start. These statutes grant tenants, collectively, an opportunity to purchase multi-family residential properties before they come to market. Such policies give residents the power to control the land and property in their neighborhoods and keep housing affordable by stabilizing monthly costs and allowing residents to benefit from increases in underlying property values.²²² Community ownership also eliminates predatory landlord behavior and lowers the risk of displacement and eviction.

To facilitate tenant ownership, state and local governments need to enact additional legislation that will create an enabling environment for property purchases. The legislation must include levers to create: enough time for community groups to make a competitive offer in fast-moving real estate

²²⁰ Ana Hernández Kent & Lowell R. Ricketts, *The State of U.S. Wealth Inequality*, FED. RESRV. BANK OF ST. LOUIS (Oct. 18, 2023), <https://www.stlouisfed.org/institute-for-economic-equity/the-state-of-us-wealth-inequality> (collecting data from the second quarter of 2023). Most of this wealth is held in stocks and private businesses. Indeed, in 2021, the top 1% of Americans gained an additional \$4.3 trillion in wealth through the appreciation of stocks and mutual funds. See also Robert Frank, *Soaring Markets Helped the Richest 1% Gain \$6.5 Trillion in Wealth Last Year, According to the Fed*, CNBC (Apr. 1, 2022, 12:13 PM), <https://www.cnbc.com/2022/04/01/richest-one-percent-gained-trillions-in-wealth-2021.html>.

²²¹ Scholastica Cororaton, *Distribution of Housing Wealth Across Income Groups from 2010–2020*, NAT'L ASSOC. OF REALTORS (Mar. 11, 2022), <https://www.nar.realtor/blogs/economists-outlook/distribution-of-housing-wealth-across-income-groups-from-2010-2020>.

²²² See David C. Blount et al., *Pursuing Housing Justice: Interventions for Impact: Community Ownership*, URB. INST. (May 24, 2023), <https://www.urban.org/apps/pursuing-housing-justice-interventions-impact/community-ownership> (showing the power of community ownership in action through tenant associations being given the right of first refusal).

markets; the capital to make the purchase, in the form of government grants, combined with public or nonprofit financing; and the services of experienced technical advisers who can help resident-owners implement systems to manage their community over the long-term. When implemented at scale, right-to-purchase programs can shift power away from investors and towards communities, leading to healthier, more stable neighborhoods.²²³

2. *Employee Ownership*

Worker ownership models can build wealth by creating opportunities for workers to share in the productivity and profitability of their employers. In the U.S., employee ownership can take many forms, including worker-owned cooperatives, employee-ownership trusts, and employee stock ownership plans.²²⁴ Companies with elements of worker ownership are frequently eligible for preferential tax treatment under the Internal Revenue Code, alongside state-level support in the form of additional tax benefits and complementary investment dollars.

Employee-owned companies, in many instances, can be vehicles for delivering higher wages, and ultimately wealth to workers.²²⁵ Research suggests that companies with meaningful levels of worker ownership experience higher sales and productivity growth than comparable companies that are not employee-owned.²²⁶ Employee-owners report wages that are 33% higher than non-employee-owners, median household wealth that is 92% higher than that of non-employee-owners, and a median job-tenure that is 53% longer than non-employee-owners.²²⁷

²²³ See Tracy Hadden Loh & Hanna Love, *The Emerging Solidarity Economy: A Primer on Community Ownership of Real Estate*, BROOKINGS (July 19, 2021), <https://www.brookings.edu/articles/the-emerging-solidarity-economy-a-primer-on-community-ownership-of-real-estate> (examining the benefits of community ownership, finding these communities have better access to resources, a better sense of community, and are more fiscally resilient).

²²⁴ *Types of Employee Ownership*, PROJECT EQUITY, <https://project-equity.org/learn/types-of-employee-ownership/> (last visited May 17, 2024).

²²⁵ See Thomas Dudley & Ethan Rouen, *The Big Benefits of Employee Ownership*, HARV. BUS. REV., May 13, 2021, at 3 (analyzing how shifting to employee-owned business can help lessen the dramatic income inequality gap between the wealthiest 10% and the rest).

²²⁶ See generally Joseph Blasi et al., *Firm Survival and Performance in Privately Held ESOP Companies*, in 14 ADVANCES IN THE ECONOMIC ANALYSIS OF PARTICIPATORY & LABOR-MANAGED FIRMS: SHARING OWNERSHIP, PROFITS, AND DECISION-MAKING IN THE 21ST CENTURY 109 (Douglas Kruse ed., 2013).

²²⁷ NAT'L. CTR. FOR EMP. OWNERSHIP, EMPLOYEE OWNERSHIP & ECONOMIC WELL-BEING 1 (2017), https://www.ownershipconomy.org/wp-content/uploads/2017/05/employee_ownership_and_economic_wellbeing_2017.pdf.

In some employee-ownership models, workers can play a direct role in setting the strategy of the business.²²⁸ This can include seats on the board,²²⁹ votes on key decisions established in the company's by-laws, and the ability to shape internal policies and procedures.²³⁰ Marshalling this power among worker-owners can lead to a better work environment, in addition to the economic benefits that come with ownership.

3. *Community Banking*

As noted above, traditional banks often fail to meet the financial needs of low-income communities.²³¹ Minimum balances and high fees are incompatible with many households' banking needs. In contrast, Community Development Financial Institutions ("CDFIs") can play a critical role in providing underserved communities with financial services. CDFIs often focus their banking services and lending in communities with significant poverty and unemployment.²³²

Credit unions, one of the most common and widely recognized CDFI structures, are owned by their members and provide many of the financial services of a traditional bank.²³³ Because they are member owned and controlled, credit unions reinvest the profits they generate from lending activities into the products they offer their members, lowering the costs of loans, credit cards, and other forms of borrowing. Because most credit unions serve the geography where their members live, lending supports the overall economic growth and development of the community they serve.²³⁴

²²⁸ See *Worker Cooperative*, PROJECT EQUITY, <https://project-equity.org/learn/types-of-employee-ownership/worker-cooperatives> (last visited May 17, 2024) (focusing on employee ownership of businesses to help stimulate the economy and promote employee led industries).

²²⁹ See *id.*

²³⁰ See Alana Semuels, *Getting Rid of Bosses*, ATLANTIC (July 8, 2015), <https://www.theatlantic.com/business/archive/2015/07/no-bosses-worker-owned-cooperatives/397007/> (following a bakery that chose to operate a co-op).

²³¹ See *supra* notes 107–10.

²³² MICHAEL SWACK ET AL., CDFIS STEPPING INTO THE BREACH: AN IMPACT EVALUATION—SUMMARY REPORT 5 (2014), <https://scholars.unh.edu/cgi/viewcontent.cgi?article=1235&context=carsey> ("CDFIs are delivering from roughly 65 to over 90 percent of loan volume to historically underserved borrowers. These borrowers include low-income households and business owners . . .").

²³³ See CDFI CERTIFICATION: A BUILDING BLOCK FOR CREDIT UNION GROWTH, CREDIT UNION NAT'L ASSOC. (May 2014), <https://www.cdfifund.gov/sites/cdfi/files/documents/cdfi-certification.pdf> (outlining the affect that CDFIs have had on credit unions throughout the country and exploring the history of credit unions).

²³⁴ *Id.*

C. *Collective Actions as Ways of Changing and Enforcing Policy*

Collective actions can also play a vital role in addressing problems that are challenging to tackle on an individual scale. A current example is a class action lawsuit recently filed in Denver District Court against Wyatts Towing.²³⁵ This lawsuit has grown out of years of advocacy and struggle to shift the financial incentives so that the consumer is not exploited by the towing industry's quest for high profit.

In recent years, the Attorney General of Colorado opened an investigation against Wyatts Towing, and myriad consumer complaints have been filed with the regulatory agency responsible for towing.²³⁶ In addition, in August 2022, the Colorado legislature enacted the Towing Bill of Rights "to better protect [Colorado] consumers [and drivers who park on private property] from predatory tows."²³⁷

Despite the Attorney General's investigation, consumer complaints, and passage of this law, Wyatts Towing's predatory and abusive practices have not been curbed.²³⁸ Tow trucks continue to prowl apartment complex parking lots in low-income communities, often in the middle of the night, looking for *de*

²³⁵ See *How v. Towing Holdings, LLC*, 2023-CV-31996 (Dist. Ct. Arapahoe Cnty. Oct. 13, 2023); see also Rachael Krause, *Class Action Lawsuit Filed Against Wyatts Towing over Allegations of Predatory Towing*, 9NEWS (Oct. 25, 2023), <https://www.9news.com/article/news/local/class-action-lawsuit-wyatts-towing/73-b58ae909-c33a-4f9a-a8e6-9dc552c06d9a>.

²³⁶ The Public Utilities Commission, the regulator of towing in Colorado, reported 473 complaints during 2022–23. Sam Tabachnik, *The Radical Idea To Combat Colorado's Predatory Towing Problem*, DENV. POST (Oct. 1, 2023), <https://www.denverpost.com/2023/09/29/wyatts-towing-vertical-integration-legislation/>.

²³⁷ COLO. REV. STAT. § 40-10.1-401 (2023); Tabachnik, *supra* note 236.

²³⁸ *How*, 2023-CV-31996; see also Krause, *supra* note 235; Faith Miller, *Abusive Tow Truck Practices Said To Be Systemic. A New Bill Contains 'Guardrails'*, COLO. NEWSLINE (Mar. 23, 2022, 5:00 AM), <https://coloradonewsline.com/2022/03/23/abusive-tow-truck-systemic-bill-guardrails> ("We have created a system where the incentives for the towing carriers to engage in practices that are abusive, that are economically harmful, that in many cases drive people into debt, are strongly incentivized. There are just enormously strong incentives to engage in bad practices and there are very little guardrails around them. It's basically tow first, ask questions later, and if they can't pay, keep their vehicle and sell it.").

minimis or imagined violations.²³⁹ Thousands of tenants have woken up to find their car—and personal items such as car seats, tools, and eyeglasses—gone.²⁴⁰

Moreover, advocates discovered that Wyatts is not just a towing company, but is also affiliated with a permitting company, an automobile auction house, and a car dealer.²⁴¹ This vertical integration gives Wyatts the incentives and the leverage to act in ways that are harmful to vulnerable consumers, and very little incentive to curb their exploitative and profitable practices.

One of the major advantages of collective actions is that they provide vulnerable communities a stronger voice to speak out against injustices such as these. By joining forces in a class action, individuals who have suffered losses individually, can raise awareness of the widespread nature of the problem, challenge the oppressive system, and drive systemic changes that are impossible to achieve individually. By mobilizing a collective force, communities can pressure decision-makers to enforce existing rules, provide remedies for past wrongs, and shift the risk of loss off consumers.

D. Empowering Families and Communities

The Family Independence Initiative (“FII”), pioneered and championed by Mauricio Lim Miller, offers some insights into effective stabilization techniques when households emerge from financial crisis. The FII recognizes that service providers and case workers that may be necessary when families are in dire

²³⁹ See Matt Bloom, *This Aurora Resident Was Towed Illegally and Charged \$500. With the Help of a New Colorado Law, She Got Her Money Back*, CPR NEWS (Sept. 28, 2022, 4:00 AM), <https://www.cpr.org/2022/09/28/colorado-towing-law-what-to-know>; see also Jaelyn Allen, *Towing Complaints Increase After Colorado’s Towing Bill of Rights Takes Effect*, DENVER7 (Oct. 25, 2022, 11:44 PM), <https://www.denver7.com/news/contact-denver7/towing-complaints-increase-after-colorados-towing-bill-of-rights-takes-effect>; Tabachnik, *supra* note 82.

²⁴⁰ The complaint alleges that Wyatts regularly circumvented the law’s requirement that a tow must be authorized by property owners, by having its affiliated permitting company issue blanket standing authorizations. In addition, the complaint details three additional allegations:

- Wyatts fails to provide vehicle owners with 24-hours’ notice that the vehicle is parked unlawfully and may be towed;
- Wyatts fails to take photographs evidencing the condition of the vehicle or the reason for the tow and to make such photographs and other required information available upon request; and
- Wyatts fails to post signage specifically required by statute that states “Authorized Parking Only,” and that contains text no less than 1 inch in size.

How, 2023-CV-31996.

²⁴¹ Tabachnik, *supra* note 236 (“Wyatts, though, doesn’t just tow cars. Its owners also run companies that deal in the parking, auction and auto sale realms.”).

financial circumstances, do not “message success to the low-income people,” at the point when they become relatively stable—meaning, they do not provide a roadmap to prevent a return to financial crisis.²⁴² As observed:

(i) many of the families caught in poverty have stopped believing that their efforts can lead to success and they focus on surviving paycheck to paycheck (ii) there is a societal distrust that low-income families have the personal initiative to lead their own change or that they will help one another (iii) there are very few initiatives that trust families to self-organize, lead their own efforts and then make capital and connections to opportunities available directly to those self-organized efforts.²⁴³

The idea that poor but stable families can benefit from self-empowerment tools, as well as the message that communities can be self-reliant and build wealth is worthy of consideration.²⁴⁴ For example, financial education programs can equip individuals with the skills and knowledge necessary to make informed financial decisions. Even families with limited resources can learn how to maximize their income, prioritize spending, make long-term investments and develop a savings habit that can insulate them from having to access high-cost exploitive credit products.

Additionally, skill development programs, vocational training, community networking opportunities, and mentorship initiatives can enhance employability, broaden networks, and help navigate professional challenges. This, in turn, can open doors to better job opportunities, higher incomes, and upward social mobility for families.²⁴⁵

²⁴² See *Mauricio Lim Miller*, ASHOKA U.S., <https://www.ashoka.org/en-us/fellow/mauricio-lim-miller> (last visited May 17, 2024).

²⁴³ See *id.*

²⁴⁴ *Id.* (“FII provides practical tools to get families started. These include: Access to some capital, earned through FII for contributing data, meeting regularly to share stories, and helping the effort expand; and a laptop that allows families to report on their progress through FII’s online data-tracking system. Family clusters meet in person each month to review their progress and help each other in a myriad of practical ways. These meetings are part social, part business. . . . Each family is also responsible for committing to a longer-term goal of improving their lives in the ways that they determine.”).

²⁴⁵ Scott Santens, *The Monsters, Inc. Argument for Unconditional Basic Income*, UBI GUIDE (May 18, 2018), <https://www.scott santens.com/the-monsters-inc-argument-for-unconditional-basic-income>. This article uses an extended analogy, relating the Pixar film *Monsters, Inc.* to UBI:

Monsters, Inc. takes place in a universe that literally runs on fear. Monsters enter the human world at night through bedroom closets to scare children for the purpose of energy production. You see, whereas the world we know mostly runs on fossil fuels, hydropower, nuclear, and increasingly solar and wind, the world of monsters runs on the emotion of fear. When kids scream, their screams are harvested as energy. That energy powers a world of monsters. And so every night, monsters enter

The message of communities being self-reliant and capable of building wealth emphasizes the importance of leveraging local resources, talents, and collaboration. Communities that are self-reliant proactively identify and utilize their strengths to address challenges. Collective economic success can result in strong social structures as well as long-term sustainability and serve to thwart the power that is concentrated in those with greater resources.

CONCLUSION

Legal institutions, regulations, and policies in this country privilege the affluent, leaving sharp economic disparities in their wake. The LPE framework recognizes that such laws and policies are not neutral as they work to shape economic relationships and distributional outcomes. Unequal access to power, opportunities, and resources leaves millions of Americans housing insecure and over-indebted.

As noted by sociologist David Shipler, there is a direct relationship between the downward cycle of poverty and the cost of credit.²⁴⁶ He cites the example of a twenty-four-year-old mother who was living “in the kind of housing . . . [that] cause[s] and exacerbate[s] asthma in children” and who recently purchased a used-car from a dealer “that didn’t do credit checks but charged her 15.747 percent interest.”²⁴⁷

On the surface, it seems odd that an interest rate can be determined by the condition of an apartment, which in turn can generate illness and medical bills, which may then translate into a poor credit rating, which limits the quality of an automobile that can be purchased, which jeopardizes a worker’s reliability in getting to work, which limits promotion and restricts the wage, which confines a family to the dilapidated apartment. Such are the interlocking deficits of poverty,

the world of humans, to make children scream, to mine their fear. However, all of that changes when through the course of the film, it’s accidentally discovered that the laughter of children is ten times more powerful than their screams. This discovery leads at the end of the film to a complete transformation of the company Monsters, Inc. as it pivots from fear-based energy production to joy-based energy production. . . . [As observed], we live in that same kind of world. [An economic and political environment that is] based on the fear of death by poverty, where fear of death is used to compel people into working

Id.

²⁴⁶ SHIPLER, *supra* note 21, at 27.

²⁴⁷ *Id.* at 26–27.

one reinforcing the other until an entire structure of want has been built.²⁴⁸

The redesign, integration, and coordination of programs, services, and financial assistance can result in a sharp reduction in inequality, economic exploitation, and exclusion, foster the potential to reduce poverty, and build and support sustainable communities.

²⁴⁸ *Id.* at 26.