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Liberating Legal Aid: Reducing COVID-19's Justice Gap and Promoting Health by Removing the Legal Services Corporation's Class Action and Advocacy Restrictions

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**LIBERATING LEGAL AID: REDUCING COVID-19'S
JUSTICE GAP AND PROMOTING HEALTH BY
REMOVING THE LEGAL SERVICES
CORPORATION'S CLASS ACTION AND
ADVOCACY RESTRICTIONS**

MOLLY C. SCHMIDT*

ABSTRACT

The Legal Services Corporation (“LSC”) is the single-largest funder of civil legal services, or legal aid, in the United States. The COVID-19 pandemic underscored a longstanding and growing problem faced by low-income Americans served by LSC-funded legal aid organizations: the growing “justice gap.” The justice gap represents the unmet civil legal needs of low-income Americans. The justice gap perpetuates poverty, conceals health-harming legal problems, and furthers racial disparities. Despite the LSC’s essential role in reducing the justice gap and promoting “equal access to justice,” Congress consistently underfunded the LSC before and during COVID-19. Congress has also prohibited the LSC-funded legal aid organizations from participating in class action lawsuits and advocacy activities for the past twenty-five years.

Throughout COVID-19, the justice gap has grown alongside the increase of health-harming legal needs, such as access to safe and affordable housing and food insecurity. Consequently, there are more legal needs than legal aid attorneys in the United States. The justice gap demonstrates the need for systemic, high-impact remedies, such as class-action lawsuits and advocacy activities. This Note argues that to support the LSC and empower legal aid attorneys to reduce the justice gap considering COVID-19, Congress must remove funding restrictions on class-action lawsuits and advocacy activities. In doing so, this Note examines the history of the justice gap and legal aid, the relationship between the justice gap and health disparities, COVID-19’s impact on the justice gap and health inequity, and the harmful effects of the LSC funding restrictions. Ultimately, this Note proposes draft legislation that removes class action and advocacy restrictions on LSC-funded legal aid organizations.

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CONTENTS

I.	INTRODUCTION	511
II.	EXPLAINING THE JUSTICE GAP’S GROWTH AND IMPACT ON HEALTH DURING COVID-19.....	514
	A. <i>What is the Justice Gap?</i>	514
	B. <i>The Justice Gap Harms Health and Contributes to Health Disparities</i>	516
	1. What is Health Equity?.....	516
	2. Access to Justice as a Remedy to Health Disparities	517
	3. Health-Harming Legal Needs and Health Disparities During COVID-19... ..	518
	C. <i>What is the Legal Services Corporation (LSC)?</i>	518
	D. <i>Legal Aid Attorneys Have the Expertise and Skillset to Reduce the Justice Gap and Improve Health Outcomes</i>	520
	E. <i>For over 25 Years, Congress Imposes Burdensome Funding Restrictions on Legal Aid as the Justice Gap Continues to Grow</i>	520
	1. Funding Restrictions Prevent Reduction of the Justice Gap	520
	2. Congress Consistently Underfunds Legal Aid	522
	F. <i>COVID-19 Has Fueled the Justice Gap and Health Disparities</i>	525
	1. Housing.....	525
	2. Health Insurance	527
	3. Food Insecurity	529
III.	CONGRESS MUST REMOVE BURDENSOME FUNDING RESTRICTIONS	530
	A. <i>Congress Must Empower the LSC to Fund and Support Legal Aid Attorneys in Class Actions and Advocacy Activities</i>	531
	1. Restriction on Class Action Lawsuits.....	532
	2. Restriction on Advocacy Activities.....	535
	B. <i>Access to Legal Aid Will Improve Health</i>	535
	1. Housing.....	535
	2. Class Actions Are a Tool to Fight Unsafe Housing	536
	3. Advocating for Protection of Low-Income Tenants.....	537
	C. <i>Funding for the LSC Must be Increased</i>	537
IV.	PROPOSAL FOR CHANGE	539
	A. <i>Terminate the Class Action and Advocacy Restrictions</i>	539
	B. <i>Increase and Stabilize LSC Funding on a Multi-Year Basis</i>	542

C. <i>An Alternative to Terminating LSC Restrictions: Modifying the Class Action Restriction</i>	542
V. CONGRESS MUST ACT TO FIGHT THE JUSTICE GAP DURING COVID-19.....	543

I. INTRODUCTION

For the past two years, the COVID-19 pandemic (“COVID-19”) has underscored the growth of unmet civil legal needs throughout the United States. Unmet legal needs among low-income community members, known as the “justice gap,” perpetuates poverty and compromises the lives of low-income households.¹ The challenges of the justice gap and COVID-19 are most strongly felt by people of color.² The relationship between COVID-19 and health-harming legal needs makes it clear that legal and advocacy resources are important tools to remedy health and justice disparities for people of color and low-income populations.³

The justice gap includes systemic policies and practices which further health-harming legal needs. For example, landlords often take advantage of their power differential over low-income tenants.⁴ Landlords, as property owners, have significantly greater political power than their tenants.⁵ Low-income tenants have limited social and financial resources to either (A) hold the landlord accountable or (B) find other housing.⁶ As a result, landlords often take advantage of the opportunity to exploit their low-income, vulnerable tenants.⁷ Landlords neglect their properties

¹ See James Teufel et al., *Legal Aid Inequities Predict Health Disparities*, 38 *HAMLIN L. REV.* 329, 330 (2015).

² See JungHo Park, *Who is Hardest Hit by a Pandemic? Racial Disparities in COVID-19 Hardship in the U.S.*, 25.2 *INT’L J. URB. SCI’S.* 149, 150, 152 (2021); Yael Cannon, *Closing the Health Justice Gap: Access to Justice in Furtherance of Health Equity*, 53 *COLUM. HUM. RTS. L. REV.* 517, 534 (2022).

³ See Emily A. Benfer et al., *Eviction, Health Inequity, and the Spread of COVID-19: Housing Policy as a Primary Pandemic Mitigation Strategy*, 98.1 *J. URB. HEALTH* 1, 2 (2021); Cannon, *supra* note 2, at 524–25.

⁴ Matthew Desmond, *Eviction and the Reproduction of Urban Poverty*, 118 *AM. J. SOCIO.* 88, 95, 115–16 (2012) (noting unfair landlord eviction tactics like “strong-arm lockouts” or “paying tenants \$200 to leave over taking them to eviction court” in informal evictions to finding reasons to evict tenants who have called building inspectors despite laws prohibiting retaliatory evictions).

⁵ *Id.* at 95, 115–16, 118–19.

⁶ *Id.* at 119 (noting that tenants who avoided direct confrontation with their landlord by reporting them to the Department of Neighborhood Services faced a “greatly increased risk of eviction” and eviction often cost families their possessions for lack of financial support to move or looking for alternative housing).

⁷ See *Bad Landlords in Federal Housing Complaints*, U.S. DEP’T OF HOUS. AND URB. DEV., <https://www.hud.gov/complaints/badlandlord> (last visited Oct. 15, 2022) (referring to landlord failure “to provide safe and decent housing for the poor, while enriching themselves on taxpayer-funded subsidies”).

and create severely unsafe living conditions.⁸ The housing hazards created and enabled by landlords, such as rodent and insect infestation, collapsing infrastructure, and lead paint, are unhealthy and often unjust.⁹ Landlords also leverage their political power to evict low-income and vulnerable tenants.¹⁰ Access to legal resources, such as legal aid attorneys, can empower tenants by protecting them from unfair evictions and securing safe housing. Many tenants facing unfair housing practices fall into the justice gap and do not have adequate legal resources to pursue justice.¹¹

The justice gap perpetuates poverty, conceals harmful legal challenges faced by low-income individuals, and contributes to racial disparities.¹² Without legal aid, low-income individuals do not have access to adequate legal resources.¹³ The Legal Services Corporation (“LSC”) is the single-largest funder of civil legal services in the United States.¹⁴ Despite the LSC’s essential role in reducing the justice gap, Congress has consistently underfunded the LSC both before and during the COVID-19 pandemic.¹⁵ For twenty-five years, Congress has also imposed burdensome restrictions prohibiting LSC grantees from participating in class action lawsuits (“class actions”) and political activities.¹⁶ These restrictions and inadequate funding co-exist

⁸ *E.g.*, Desmond *supra* note 4, at 111 n. 14 (performing a case study wherein a landlord’s neglect led to rejection of the trailer park’s license renewal due to “high levels of police calls and property code violations and finding that its conditions posed an ‘environmental biohazard’ to residents,” but whose renewal was granted after the landlord accepted, not performed, a list of demands from the city).

⁹ See Marisa Peñaloza, *Housing Conditions in This Low-Income Neighborhood Pushed Tenants to Sue the Landlord*, NPR (July 22, 2021, 8:16 AM), <https://www.npr.org/2021/07/22/1018018025/housing-low-income-neighborhood-tenants-landlord-lawsuit>.

¹⁰ See Kathryn A. Sabbeth, *(Under)Enforcement of Poor Tenants’ Rights*, 27 GEO. J. POVERTY L. POL’Y 97, 103 (2019) (citing comparatively weaker low-income political power as cause of “underenforcement of poor tenants’ rights”).

¹¹ Yael Cannon, *Unmet Legal Needs as Health Injustice*, 56 U. RICH. L. REV. 801, 814–15 (2022) (“Viewing these unmet legal needs through the lens of health and health equity is particularly timely and urgent during a pandemic that has disproportionately impacted people of color and those who are low-income.”).

¹² See Teufel et al., *supra* note 1, at 358.

¹³ Cannon, *supra* note 11, at 816 (noting how the current climate presents “many unmet legal needs [that] are harming health, driving inequity, and have special urgency during this pandemic”).

¹⁴ *Who We Are*, LEGAL SERVS. CORP., <https://www.lsc.gov/about-lsc/who-we-are> (last visited Sep. 30, 2022).

¹⁵ Letter from Congresswoman Mary Gay Scanlon & Congressman Brian Fitzpatrick to Chairman Matt Cartwright, Subcomm. on Com., Just., Sci., and Related Agencies, Comm. on Appropriations (Jan. 19, 2021) (on file with Legal Services Corporation).

¹⁶ Rebekah Diller & Emily Savner, *A Call to End Federal Restrictions on Legal Aid for the Poor*, BRENNAN CTR. FOR JUST. (June 22, 2009), https://www.brennancenter.org/sites/default/files/2019-08/Report_A-Call-to-End-Federal-

with and undermine the LSC’s mission “to promote equal access to justice in our Nation and to provide high-quality legal assistance to low-income persons.”¹⁷

The justice gap also compounds health risks associated with COVID-19. Social determinants of health are “conditions in the places where people live, learn, work, and play that affect a wide range of health risks and outcomes.”¹⁸ Housing, for example, is a social determinant of health because where an individual lives affects their health risks and outcomes.¹⁹ Housing insecurity, including evictions and unsafe housing conditions, affects health risks and outcomes.²⁰ Housing inequalities during COVID-19 also reflect significant racial disparities.²¹ Housing injustice leads to a lack of health insurance and food insecurity.²² Solutions to housing injustice—and the challenges to health and racial disparities associated with it—lie in law and policy.²³ Legal aid attorneys are trained in addressing health-harming legal issues, equipping them to pursue legal remedies and advance solutions in housing policy that improve access to safe, affordable housing.²⁴ In effect, improving access to safe housing will improve the health and COVID-19 outcomes of community members.

Restrictions-Legal-Aid-Poor.pdf (Congressional “restrictions have effectively denied countless people equal access to justice . . . they have prevented victims of predatory lending and consumer fraud from obtaining their full measure of justice”).

¹⁷ *What We Do: Our Mission*, U LEGAL SERVS. CORP., <https://www.lsc.gov/about-lsc/who-we-are/what-we-do> (last visited Oct. 28, 2021).

¹⁸ *About Social Determinants of Health (SDOH)*, CTR. FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/socialdeterminants/about.html> (last visited Feb. 14, 2022).

¹⁹ The legal issues related to accessing safe housing are an example of “health-harming legal needs.” *Id.*

²⁰ *Economic Stability*, U.S. DEP’T OF HEALTH AND HUM. SERVS., <https://health.gov/healthypeople/objectives-and-data/browse-objectives/housing-and-homes> (last visited Sep. 30, 2022).

²¹ Cannon, *supra* note 2, at 819 (identifying low income and minority tenants facing “substandard housing conditions” as facing significant health risks as a result).

²² Thomas Kottke et al., *Access to Affordable Housing Promotes Health and Well-Being and Reduces Hospital Visits*, 22 PERMANENTE J. 1 (2017) (asserting the connection between lack of health insurance and thus “affordable, accessible health care” due to housing insecurity); Margot B. Kushel et al., *Housing Instability and Food Insecurity as Barriers to Health Care Among Low-Income Americans*, 21(1) J. GEN. INTERNAL MED. 71, 74 (2006) (“Among those with housing instability, 76.7% reported food insecurity.”).

²³ It is important to note that racial, housing, and health inequities are complex and stem from various problems in American society, many of which are beyond the scope of this Note. Remedies to these inequities span various fields, such as medicine, public health, biotechnology, etc. This Note addresses a specific avenue to securing improved justice and health and is not intended to be all-inclusive.

²⁴ Elizabeth Tobin-Tyler & Joel B. Teitelbaum, *Medical-Legal Partnership: A Powerful Tool for Public Health and Health Justice*, 134(2) PUB. HEALTH RPTS. 201, 203 (2019) (wherein medical-legal partnership attorneys work with teams of healthcare professionals to “identify[] structural and legal barriers to health, help[] patients navigate complex and overtaxed social service systems, and help[] patients access resources. Integration of social care into clinical care

The growth of the justice gap during COVID-19 indicates a significant need to accomplish system-wide solutions to health-harming legal problems, such as housing. Longstanding federal restrictions on class actions and advocacy activities have led to significantly more legal needs in the United States than there are attorneys. To improve access to justice and health outcomes, legal aid attorneys must have the opportunity to pursue systemic legal remedies on their client's behalf, such as engaging in class actions and advocacy. Additionally, there must be an increase in legal aid funding to increase the number of legal aid attorneys. Empowering LSC-funded legal aid organizations to choose how to use their funds will ensure the most effective use of scarce resources. Improving access to individual representation and advocacy resources will remedy health-harming legal needs, such as housing. Doing so will also improve the health outcomes of low-income individuals and families.

To empower the LSC and legal aid attorneys to reduce the justice gap, Congress must remove the restrictions on class actions and political activities. This Note will (1) review the history of the justice gap and restrictions on legal aid; (2) highlight the relationship between the justice gap and health disparities; (3) describe how federal policies and practices lay the foundation for growth of the justice gap; (4) explain how COVID-19 has elevated the justice gap and health inequity, with a specific focus on housing; (5) determine that Congress, through inadequate funding and persistent restrictions, stands in the way of legal aid organizations; and (6) finally, this Note will propose draft legislation that, for the first time in 25 years, removes class action and advocacy restrictions on LSC-funded organizations.

II. EXPLAINING THE JUSTICE GAP'S GROWTH AND IMPACT ON HEALTH DURING COVID-19

A. *What is the Justice Gap?*

Individuals who do not have access to necessary legal resources are in the “justice gap.”²⁵ Unmet civil legal needs burden low-income individuals and families and reinforce poverty, often at a high social cost.²⁶ The justice gap describes “the difference between the civil legal needs of low-income Americans and the resources available to meet those needs.”²⁷ “Low-income” is used to refer to individuals, families, or households with an income at or below 125% of the poverty threshold.²⁸

... is an important advancement in linking medicine to public health by recognizing that clinical care is but one (small) part of health”).

²⁵ Sarah Chamness Long & Alejandro Ponce, *Measuring the Justice Gap: A People-Centered Assessment of Unmet Justice Needs Around the World*, WORLD JUST. PROJECT (2019), <https://worldjusticeproject.org/news/measuring-justice-gap-report>.

²⁶ *Id.*

²⁷ Lewis Creekmore et al., *The Justice Gap: Measuring the Unmet Civil Legal Needs of Low-Income Americans*, LEGAL SERVS. CORP. (June 2017), <https://www.lsc.gov/sites/default/files/images/TheJusticeGap-FullReport.pdf>.

²⁸ *The Justice Gap: Section 2: Today's Low-Income America*, LEGAL SERVS. CORP., <https://justicegap.lsc.gov/resource/section-2-todays-low-income-america> (last visited Sept. 3, 2022).

Approximately fifty million Americans, including more than fifteen million children, live in households that are low-income.²⁹

The justice gap's continued increase and burden on low-income households, unfortunately, is not surprising. Research consistently demonstrates that the justice gap persists throughout the United States with no signs of improvement.³⁰ Those living at or near the poverty level consistently face challenges to obtaining civil legal services.³¹ In 2017, 86% of low-income Americans' civil legal problems received inadequate or no legal assistance.³² A 2019 intake census by the LSC revealed 42% of legal issues presented to an LSC-funded organization received no legal services of any kind.³³

In response to COVID-19's impact on the justice gap, the LSC contracted with the National Opinion Resource Center ("NORC") at the University of Chicago to conduct an updated assessment of the justice gap among low-income Americans in 2022.³⁴ The results showed that 74% of low-income households experienced at least one civil legal problem, 39% experienced five or more problems, and 20% experienced ten or more problems in the past year.³⁵ Without legal advice or representation, approximately 55% of the individuals experiencing these civil legal problems reported substantial effects on their lives, including their finances, mental and physical health, safety, and relationships.³⁶ The LSC's research revealed that low-income households did not get any or did not get adequate legal assistance for 92% of their civil legal

²⁹ 125% of the federal poverty level includes an annual income below \$34,500 for a family of four. *Id.*

³⁰ The Legal Services Corporation has assessed the justice gap in 2005, 2009, 2017, and 2022. *Justice Gap Research*, LEGAL SERVS. CORP., <https://www.lsc.gov/initiatives/justice-gap-research> (last visited Oct. 26, 2021); see Legal Services Corporation, *The Justice Gap: The Unmet Civil Legal Needs of Low-Income Americans*, YOUTUBE (Apr. 28, 2022), <https://www.youtube.com/watch?v=iMLPZRZTkWg>.

³¹ Benjamin C. Carpenter, *A Solution Hidden in Plain Sight: Closing the Justice Gap by Applying to Legal Aid the Market Incentives that Propelled the Pro Bono Revolution*, 25 CHAPMAN L. REV. 1 (2022) (explaining that LSC-funded legal aid organizations are generally prohibited from representing individuals with incomes above 125% of the federal poverty level).

³² Creekmore et al., *supra* note 27, at 6.

³³ LEGAL SERVS. CORP., LSC FY 2022 BUDGET REQUEST 1, 2 (2022), <https://www.lsc.gov/our-impact/publications/budget-requests/2022-budget-request>.

³⁴ The LSC's 2022 study relies on data from the 2021 Justice Gap Measurement Survey and LSC's 2021 Intake Census. *The Study*, LEGAL SERVS. CORP., <https://justicegap.lsc.gov/the-study/#methodology> (last visited Sept. 3, 2022); *The Justice Gap: Section 2: Today's Low-Income America*, *supra* note 28.

³⁵ *The Justice Gap Executive Summary*, LEGAL SERVS. CORP., <https://justicegap.lsc.gov/resource/executive-summary> (last visited Sept. 2, 2022).

³⁶ *Id.*

problems.³⁷ The LSC's research also showed COVID-19's link to civil legal problems. The study demonstrated that 33% of low-income Americans experienced a civil legal problem that was linked to COVID-19, such as income maintenance, education, and housing.³⁸

B. The Justice Gap Harms Health and Contributes to Health Disparities

1. What is Health Equity?

The relationship between the justice gap and health must be viewed through a health equity lens. A focus on "health equity" requires health care leaders, scholars, and practitioners to focus on historical inequities that have "diminished, disrupted, and fragmented American health."³⁹ The Robert Wood Johnson Foundation explains that:

Health equity means that everyone has a fair and just opportunity to be as healthy as possible. This requires removing obstacles to health such as poverty, discrimination, and their consequences, including powerlessness and lack of access to good jobs with fair pay, quality education and housing, safe environments, and health care.⁴⁰

There is no one-size-fits all approach to health equity.⁴¹ COVID-19 has demonstrated how closely linked health and the law are, and how this connection reflects racial injustice.⁴² COVID-19 mortality rates also reflect racial disparities: Black and Latinx patients with COVID-19 suffered increased risks of mortality than non-Hispanic white patients.⁴³ At the same time, health-harming civil legal problems disproportionately impacted non-Hispanic Blacks and Hispanics, including those

³⁷ *Id.*

³⁸ *Impact of the COVID-19 Pandemic*, LEGAL SERVS. CORP., <https://justicegap.lsc.gov/resource/executive-summary> (last visited Sept. 3, 2022).

³⁹ Laura Kolbe & Joseph J. Fins, *Health Equity, History, and a New Presidential Bioethics Commission: Lessons from the "Lost" Reports*, 37 J. GEN. INTERNAL MED. 3471, 3473 (2022).

⁴⁰ P. Braveman et al., *What is Health Equity?*, ROBERT WOOD JOHNSON FOUND. (May 1, 2017), <https://www.rwjf.org/en/library/research/2017/05/what-is-health-equity-.html>.

⁴¹ Another definition of health equity is: "Health equity refers to an environment in which all people are afforded the opportunity to attain the highest level of health, irrespective of social position or circumstance, and our nation's health inequities are the result of more than individual choice or simple randomness: 'They are the result of the historic and ongoing interplay of inequitable structures, policies, and norms that shape lives.'" Joel Teitelbaum & Ellen Lawton, *The Roots and Branches of the Medical-Legal Partnership Approach to Health: From Collegiality to Civil Rights to Health Equity*, 17 YALE J. HEALTH POL'Y L. & ETHICS 343, 372 (2017) (quoting NAT'L ACAD. OF SCI., ENG'G., AND MED., COMMITTEE ON COMMUNITY-BASED SOLUTIONS TO PROMOTE HEALTHY EQUITY IN THE UNITED STATES, COMMUNITIES IN ACTION: PATHWAYS TO HEALTH EQUITY 504 (A. Baciu et al., eds.) (2017)); Braveman et al., *supra* note 40.

⁴² Cannon, *supra* note 2, at 546.

⁴³ Donald J. Alcendor, *Racial Disparities-Associated COVID-19 Mortality among Minority Populations in the US*, 9 J. CLINICAL MED. 2442, 2443 (2020).

related to housing instability, health problems, education, employment, and food.⁴⁴ It is clear that the compounding nature of COVID-19 and racial disparities require health-harming legal needs to be viewed as concerns of health equity.⁴⁵

2. Access to Justice as a Remedy to Health Disparities

Social determinants of health are among the factors that contribute to health inequity. Social determinants of health are “the non-medical factors that influence health outcomes.”⁴⁶ Where a person is born, grows, works, lives, and ages results in circumstances that shape a person’s health.⁴⁷ Research shows that up to 80% of a person’s health is determined by non-medical factors.⁴⁸ Social determinants of health include legal issues which harm health, or “health-harming legal needs.”⁴⁹ Unfairly applied civil laws, for example, create social conditions that lead to poor health.⁵⁰ Legal aid attorneys have the training to mitigate health-harming legal needs by addressing legal and policy factors.⁵¹

Pursuing health equity for people of color and those living in poverty requires the utilization of legal aid to thoroughly address legal needs and remedy structural policies rooted in racism.⁵² Further, research supports that reducing racial disparities in housing, safe neighborhoods, good-paying jobs, and access to food could help increase Black Americans’ resilience to health disparities, such as those that arise from COVID-19.⁵³

⁴⁴ See generally Park, *supra* note 2.

⁴⁵ *Id.*; Cannon, *supra* note 11, at 805, 809.

⁴⁶ *Social determinants of health: Overview*, WORLD HEALTH ORG., https://www.who.int/health-topics/social-determinants-of-health#tab=tab_1 (last visited Aug. 24, 2022).

⁴⁷ *Id.*

⁴⁸ See Cannon, *supra* note 11, at 803; Alice Setrini, *Treating Poverty: Legal Tools for Health-Harming Needs*, 69 DEPAUL L. REV. 777, 778 (2020).

⁴⁹ Jemima John et al., *Efficacy of Medical Legal Partnerships to Address Health Harming Legal Needs: A Systematic Review of Experimental Studies in the Field*, RESEARCH SQUARE (June 14, 2022), <https://assets.researchsquare.com/files/rs-1625222/v1/36008863-8878-4989-a414-d6f6df44fae9.pdf?c=1655221124>.

⁵⁰ Amy Lewis Gilbert et al., *Understanding the Health Harming Legal Needs of Adolescents*, 64 J. ADOLESCENT HEALTH 1 (2019).

⁵¹ Teitelbaum & Lawton, *supra* note 41, at 348–49.

⁵² *Id.*; Cannon, *supra* note 2, at 523.

⁵³ Richard B. Duque, *Black Health Matters Too... Especially in the Era of Covid-19: How Poverty and Race Converge to Reduce Access to Quality Housing, Safe Neighborhoods, and Health and Wellness Services and Increase the Risk of Co-morbidities Associated with Global Pandemics*, 8 J. RACIAL AND ETHNIC HEALTH DISPARITIES 1012, 1024 (2021).

3. Health-Harming Legal Needs and Health Disparities During COVID-19

Black and Hispanic residents experienced greater incidence of infection and increased rates of hospitalization throughout the COVID-19 pandemic.⁵⁴ COVID-19 is only one health condition that “disproportionately affect[s] Black and Brown lives in the United States.”⁵⁵ As a result of racist systems and policies, Black patients experience a greater prevalence of communicable and noncommunicable conditions, higher infant mortality rates, and shorter average life spans compared to white patients.⁵⁶ Decades of scientific research have established that social, economic, historical, and institutional factors play a critical role in the relationship between racism and health disparities.⁵⁷

Black and Hispanic individuals living in densely populated conditions are at a greater risk of COVID-19 infection and poor health outcomes.⁵⁸ A study of more than 11,000 patients across ninety-two hospitals found that Black patients lived in more socially disadvantaged neighborhoods.⁵⁹ Broad social and environmental conditions that result from long-standing racist social policies and practices are largely responsible for the health-harming neighborhood conditions faced by Black patients in the study.⁶⁰ Households in low-income neighborhoods reported poorer housing conditions, less income, and fewer education and employment opportunities.⁶¹

C. *What is the Legal Services Corporation (LSC)?*

The LSC is the single largest funder of civil legal aid organizations in the United States.⁶² Congress established the LSC in 1974 to “promote equal access to justice in

⁵⁴ Neighborhood segregation is one result of long-standing systemically racist social policies, resulting in generations of wealth inequity, poor safety, and poor life opportunities for Black U.S. residents compared to white U.S. residents. L. Ebony Boulware, *Race Disparities in the COVID-19 Pandemic—Solutions Lie in Policy, Not Biology*, JAMA NETWORK OPEN 1 (2020).

⁵⁵ *Id.*; see Teufel et al., *supra* note 1, at 330, 335–56.

⁵⁶ Boulware, *supra* note 54, at 1.

⁵⁷ Ruth Enid Zambrana & David R. Williams, *The Intellectual Roots of Current Knowledge on Racism and Health: Relevance to Policy and the National Equity Discourse*, 41.2 HEALTH AFFAIRS 163, 168–69 (2022) (arguing a shift is needed away from frameworks that center on behavior or characteristics of individuals or their cultures to explain health disparities).

⁵⁸ Boulware, *supra* note 54, at 1–2.

⁵⁹ *Id.*; see Baligh R. Yehia et al., *Association of Race with Mortality Among Patients Hospitalized with Coronavirus Disease 2019 (COVID-19) at 92 US Hospitals*, JAMA NETWORK OPEN 1, 6 (2020).

⁶⁰ Since the founding of the United States, systemically racist social policies and practices have faced Black U.S. residents and led to “wealth inequity, poorer safety, housing segregation, and poorer life opportunities.” Boulware, *supra* note 54, at 1.

⁶¹ *Id.*

⁶² *About LSC*, LEGAL SERVS. CORP., <https://www.lsc.gov/about-lsc> (last visited Oct. 28, 2021).

our Nation and to provide high quality civil legal assistance to low-income persons.”⁶³ The LSC’s purpose is outlined under 42 U.S.C. § 2996 *et seq.* Congress found that:

- (1) there is a need to provide equal access to the system of justice in our Nation for individuals who seek redress of grievances;
- (2) there is a need to provide high quality legal assistance to those who would be otherwise unable to afford adequate legal counsel and to continue the present vital legal services program;
- (3) providing legal assistance to those who face an economic barrier to adequate legal counsel will serve best the ends of justice and assist in improving opportunities for low-income persons consistent with the purposes of this Act;
- (4) for many of our citizens, the availability of legal services has reaffirmed faith in our government of laws;
- (5) to preserve its strength, the legal services program must be kept free from the influence of or use by it of political pressures; and
- (6) attorneys providing legal assistance must have full freedom to protect the best interests of their clients in keeping with the Code of Professional Responsibility, the Canons of Ethics, and the high standards of the legal profession.⁶⁴

The LSC is an independent nonprofit corporation under 35 U.S.C. § 501(c)(3) that receives annual appropriations from Congress.⁶⁵ Congress grants LSC appropriations for the fiscal year, beginning October 1st and running through September 30th of the following year.⁶⁶ In pursuit of its mission to promote “equal access to justice,” the LSC uses its annual appropriation to award grants to legal aid organizations throughout the United States.⁶⁷ Currently, the LSC funds 132 independent nonprofit legal aid programs (“LSC-funded organizations”).⁶⁸ Generally, LSC-funded organizations may use LSC grants to serve low-income households, within the justice gap, with incomes at or below 125% of the federal poverty level.⁶⁹

⁶³ 42 U.S.C. § 2996; *see* LEGAL SERVS. CORP., FY 2020 ANNUAL FREEDOM OF INFORMATION ACT REPORT OF THE LEGAL SERVICES CORPORATION 1, <https://lsc-live.app.box.com/s/8z1yv2yz9fy6f5hr41i6ohnupj1fz30> (last visited Oct. 10, 2021).

⁶⁴ 42 U.S.C. § 2996.

⁶⁵ *LSC to Work With GAO on Improving Grants Management*, PA. LEGAL AID NETWORK, <https://palegalaid.net/news/lsc-work-gao-improving-grants-management> (last visited Oct. 18, 2022).

⁶⁶ Michelle D. Christensen, Cong. Rsch. Serv., RS20152, *The Executive Budget Process Timetable 4* (2012).

⁶⁷ *About LSC*, *supra* note 62.

⁶⁸ *Id.*

⁶⁹ Creekmore et al., *supra* note 27, at 15.

D. *Legal Aid Attorneys Have the Expertise and Skillset to Reduce the Justice Gap and Improve Health Outcomes*

Legal aid organizations work to fight the imbalance of access to justice within the United States. When legal problems go unaddressed, other social and personal challenges multiply.⁷⁰ Legal aid is the only opportunity for many individuals in the justice gap to access legal resources.⁷¹ Clients are empowered to protect their legal rights when given adequate legal resources.⁷² Legal aid can help low-income clients overcome challenging legal problems and secure long-term stability.⁷³ Research shows that legal aid empowers clients to secure stability throughout many aspects, including finance, family, health, housing, and education.⁷⁴ While civil legal assistance directly impacts clients, improved stability for individuals and families leads to improved quality of life and broader social benefits.⁷⁵

E. *For over 25 Years, Congress Imposes Burdensome Funding Restrictions on Legal Aid as the Justice Gap Continues to Grow*

Inadequate funding and support from Congress leave the LSC with a significant lack of resources to support legal aid. The National Center for Justice argues there should be ten legal aid attorneys for every 10,000 people living below 200% of the federal poverty level.⁷⁶ In other words, one attorney for every 1,000 people living below 200% of the federal poverty level. About half of U.S. states had fewer than one legal aid attorney per 10,000 people in poverty.⁷⁷ Only six states and Washington, D.C. had more than two civil legal aid attorneys per 10,000 people below 200% of poverty.⁷⁸ Not only are there not enough legal aid attorneys to meet civil legal needs, but unfair and burdensome restrictions also obstruct access to justice.

1. *Funding Restrictions Prevent Reduction of the Justice Gap*

In 1996, adamantly opposed to legal aid's participation in law reform initiatives, Congress took action by reducing the LSC's funding appropriation and enacting

⁷⁰ See Teitelbaum & Lawton, *supra* note 41, at 360.

⁷¹ *Id.* at 361.

⁷² LEGAL SERVS. CORP., *supra* note 33, at II.

⁷³ *Securing Stability: Legal Aid's Lasting Impact*, THE CTR. FOR CMTY. SOLUTIONS, 1 <https://www.legalaidimpact.org/wp-content/uploads/2019/06/Security-Stability-Executive-Summary-061019-1.pdf> (last visited Oct. 18, 2021).

⁷⁴ *Id.*

⁷⁵ *Id.* at 3.

⁷⁶ *Attorney Access*, NAT'L CTR. FOR ACCESS TO JUST., <https://ncj.org/state-rankings/2020/attorney-access> (last visited Oct. 12, 2021).

⁷⁷ *Id.*

⁷⁸ *Id.*

several funding restrictions.⁷⁹ This limited the types of services LSC-funded legal aid attorneys could provide.⁸⁰ In 1996, President Clinton signed the budget and restrictions into law.⁸¹ Most damaging to the LSC's mission to promote "equal access to justice," Congress prohibited legal aid attorneys from initiating or participating in class actions.⁸²

To this day, the restrictions remain in effect.⁸³ For example, legal aid organizations and attorneys that receive LSC funding may not: (1) provide representation in a fee-generating case;⁸⁴ (2) participate in criminal cases;⁸⁵ (3) lobby in any government office, agency, or legislature;⁸⁶ (4) use funding for any political activities;⁸⁷ (5) organize;⁸⁸ (6) *conduct training programs to advocate for public policy or political activities*;⁸⁹ (7) participate in non-therapeutic abortion litigation or non-litigation activities;⁹⁰ or (8) *provide legal assistance to issues regarding the desegregation of*

⁷⁹ J. Dwight Yoder, *Justice or Injustice for the Poor: A Look at the Constitutionality of Congressional Restrictions on Legal Services*, 6 WM. & MARY BILL RTS. J. 827, 829 (1998).

⁸⁰ Omnibus Consolidated Rescissions and Appropriations Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009 (1996); William P. Quigley, *The Demise of Law Reform and the Triumph of Legal Aid: Congress and The Legal Services Corporation from the 1960's to the 1990's*, 17 ST. LOUIS U. PUB. L. REV. 241, 248 (1998); *see also* 45 C.F.R. § 1617.

⁸¹ The new restrictions, combined with existing restrictions on the LSC, went into effect in 1997. Yoder, *supra* note 79, at 829; *see also* 42 U.S.C. § 2996f(b).

⁸² Under section 504(a)(7) of the Omnibus Consolidated Rescissions and Appropriations Act of 1996, Congress prohibited LSC-funded organizations from participating in class actions. Omnibus Consolidated Rescissions and Appropriations Act § 504(a); *see* LSC Act, LEGAL SERVS. CORP., <https://www.lsc.gov/about-lsc/laws-regulations-and-guidance/lsc-act> (last visited Oct. 18, 2022).

⁸³ Omnibus Consolidated Rescissions and Appropriations Act § 504(a), 110 Stat. 1321; *see* Quigley, *supra* note 80; *see also* 45 C.F.R. § 1617.

⁸⁴ 45 C.F.R. § 1609.

⁸⁵ 45 C.F.R. § 1613.

⁸⁶ An LSC-funded organization may, however, use non-LSC funds for lobbying on issues involving its own state or local government, or for responding to public rulemakings or written requests from the government. *LSC Restrictions and Other Funding Sources*, LEGAL SERVS. CORP., <https://www.lsc.gov/about-lsc/laws-regulations-and-guidance/lsc-restrictions-and-other-funding-sources> (last visited Oct. 18, 2022); *see* 45 C.F.R. § 1612.

⁸⁷ 45 C.F.R. § 1608.

⁸⁸ 45 C.F.R. § 1612.

⁸⁹ *Id.*

⁹⁰ 42 U.S.C. § 2996f(b)(8).

public schools.⁹¹ When enacting these restrictions, Congress ignored how these forms of legal representation protect low-income clients.⁹²

Over the past twenty-five years, scholarship has examined the harmful effects of restrictions on LSC-funded organizations. The class action restriction resulted in legal aid organizations abandoning over 600 class action cases involving more than 400,000 clients.⁹³ The class action restriction also prevented pro-bono volunteer attorneys specialized in class actions from assisting legal aid organizations.⁹⁴ The inefficiency of the class action restriction quickly resulted in legal aid attorneys having to duplicate work for multiple clients seeking redress from the same party.⁹⁵ The decision to enact the class action restriction itself was politically motivated and based on the illegitimate fear that legal aid attorneys were misusing federal funds.⁹⁶ Contrary to assumptions made by LSC critics, the number of class-action lawsuits pursued by LSC grantees was not unreasonable compared to the total number of clients represented and services offered.⁹⁷ Class actions are necessary for effective representation of low-income individuals and families.

2. Congress Consistently Underfunds Legal Aid

In 1981, President Reagan attempted to de-fund the LSC.⁹⁸ Since then, Congress has consistently underfunded the LSC. Congress funds the LSC through annual federal

⁹¹ 42 U.S.C. § 2996f(b)(9).

⁹² The legislative history suggests members of Congress prioritized their own political motives by accusing legal aid attorneys of doing so. In a hearing before the Subcommittee on Commercial and Administrative Law of the House Committee on the Judiciary in 1996, the Chairman of the National Legal and Policy Center, Kenneth F. Boehm, stated: "From the very inception of the legal services program up until today, the controversies which marked the program have been the same. In the name of helping the poor, program resources were used to promote political and ideological causes. Lobbying, congressional redistricting cases, abortion litigation and legal attacks on welfare reform and laws against welfare fraud all served to mark this program as being a far cry from the traditional legal aid offered to the poor by the legal profession over the years." Liza Q. Wirtz, *The Ethical Bar and the LSC: Wrestling with Restrictions on Federally Funded Legal Services*, 59 VAND. L. REV. 971, 972–73 (2006); see, e.g., Quigley, *supra* note 80, at 261 (quoting Hearing Before the Subcomm. on Commercial and Admin. Law of the House Comm. on the Judiciary, 104th Cong., 2d Sess. 36 (1996)).

⁹³ Joshua D. Blank & Eric A. Zacks, *Dismissing the Class: A Practical Approach to the Class Action Restriction on the Legal Services Corporation*, 110 PENN ST. L. REV. 1, 17 (2005).

⁹⁴ *Id.* at 18.

⁹⁵ *Id.* at 19–20.

⁹⁶ See Quigley, *supra* note 80, at 249.

⁹⁷ Legal Services Corporation: Hearing Before the Subcomm. on Com. and Admin. Law of the Comm. on the Judiciary H.R., 104th Con. 85 (1996) (statement of Jack W. London, Esq.).

⁹⁸ Zachary H. Zarnow, *Obligation Ignored: Why International Law Requires the United States to Provide Adequate Civil Legal Aid, What the United States is Doing Instead, and How Legal Empowerment Can Help*, 20 AM. U. J. GENDER & SOC. POL'Y & L. 273, 286 (2011).

budget appropriations.⁹⁹ Each fiscal year, the LSC researches and writes a robust budget proposal to be considered by Congress.¹⁰⁰ The budget request reflects the needs and outcomes of LSC grantees and legal aid best practices.¹⁰¹ Over the past decade, regardless of best practices and demonstrated need, Congress consistently granted the LSC a fraction of its requested budget.¹⁰² Without an adequate budget appropriation, LSC-funded organizations cannot meet the legal needs of the communities they serve.

⁹⁹ *Congressional Oversight*, LEGAL SERVS. CORP., <https://www.lsc.gov/about-lsc/who-we-are/congressional-oversight> (last visited Oct. 27, 2021).

¹⁰⁰ *Budget Requests*, LEGAL SERVS. CORP., <https://www.lsc.gov/our-impact/publications/budget-requests> (last visited Oct. 12, 2021).

¹⁰¹ *Id.*

¹⁰² For information on the FY 2023 LSC Budget, *see* LEGAL SERVS. CORP., LSC FY 2023 BUDGET PROPOSAL 4, 6, <https://lsc-live.app.box.com/s/ip5pqq3dht40qvr16hxz3l68fnivdssg> (last visited Oct. 21, 2022). For information on the FY 2022 LSC Budget, *see* LEGAL SERVS. CORP., LSC FY 2022 BUDGET PROPOSAL 2, 5, <https://lsc-live.app.box.com/s/qy5hspwdu0ljnrxr8vp09ohopu2esdl1> (last visited Oct. 21, 2022). For information on the FY 2021 LSC Budget, *see* LEGAL SERVS. CORP., LSC FY 2021 BUDGET PROPOSAL 3, <https://lsc-live.app.box.com/s/k911jrg5s91kwxlb7x3ir6ximl8f510> (last visited Oct. 21, 2022). For information on the FY 2020 LSC Budget, *see* LEGAL SERVS. CORP., LSC FY 2020 BUDGET PROPOSAL 1, <https://lsc-live.app.box.com/s/vhmgkumcyxr4q6htd7kmgmlfuf7i46oj> (last visited Oct. 21, 2022). For information on the FY 2019 LSC Budget, *see* LEGAL SERVS. CORP., LSC FY 2019 BUDGET PROPOSAL 1–2, <https://lsc-live.app.box.com/s/9gw0ua9dayg0peh1jd710yce072820q5> (last visited Oct. 21, 2022). For information on the FY 2018 LSC Budget, *see* LEGAL SERVS. CORP., LSC FY 2018 BUDGET PROPOSAL 1–2, <https://lsc-live.app.box.com/s/33y4kma0u7dqm008r990ivg8vp4mm4dv> (last visited Oct. 21, 2022). For information on the FY 2017 LSC Budget, *see* LEGAL SERVS. CORP., LSC FY 2017 BUDGET PROPOSAL 1, <https://lsc-live.app.box.com/v/LSCFY2017BudRequest> (last visited Oct. 21, 2022). For information on the FY 2016 LSC Budget, *see* LEGAL SERVS. CORP., LSC FY 2016 BUDGET PROPOSAL 1, A-1, <https://lsc-live.app.box.com/s/fwbrt0yprye47zo3hm5pqj95xz9tjfln> (last visited Oct. 21, 2022).

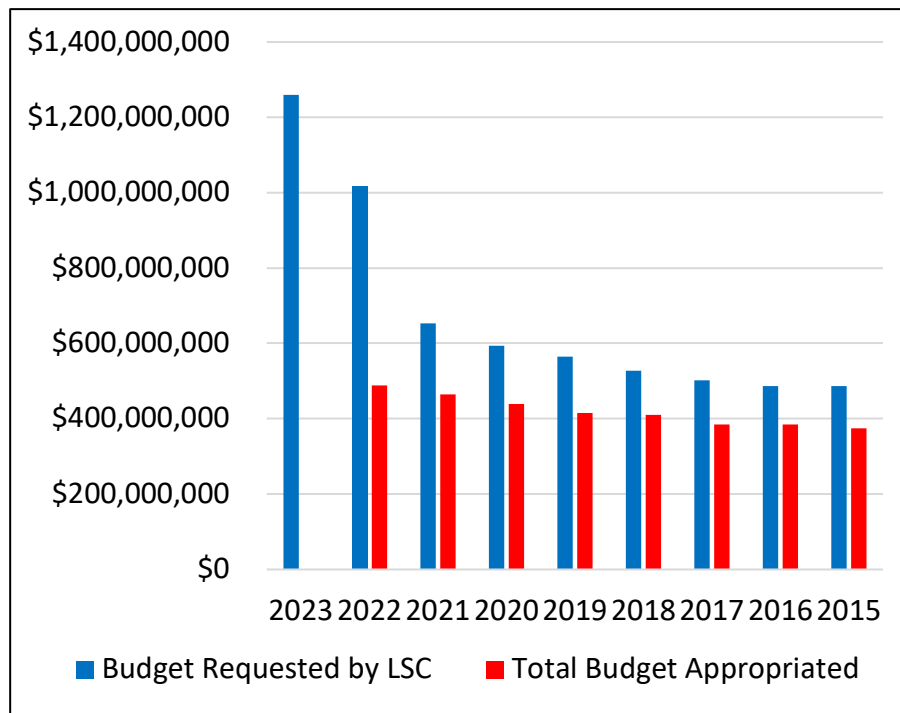


Figure 1: LSC Budget Requests and Appropriations, FY 2015–2023.

The LSC has requested \$1.26 billion in funding for FY 2023.¹⁰³ The LSC determined the billion-dollar budget was critical to address the disproportionate impact of COVID-19 on low-income communities.¹⁰⁴ Specifically, LSC-funded organizations need the resources to assist clients facing increased risks of evictions, foreclosures, and domestic violence.¹⁰⁵ This critical surge is an additional challenge to the LSC's goal of serving 75% more civil legal problems in FY 2023.¹⁰⁶

Inadequate funding of the LSC prevents LSC-funded organizations from substantially meeting the needs of the communities they serve. In 2021, due to limited resources, LSC-funded organizations only had enough resources to fully resolve one-half of clients' civil legal problems.¹⁰⁷ The LSC's research and data on the justice gap during COVID-19 demonstrates that inadequate funding prevents LSC-funded organizations from reducing the justice gap.

¹⁰³ LEGAL SERVS. CORP., *FY 2023 Budget Request*, <https://lsc-live.app.box.com/s/ip5pqq3dht40qvr16hxz3168fnivdssg> (last visited Sept. 2, 2022).

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ LEGAL SERVS. CORP., *FY 2023 Budget Request*, <https://lsc-live.app.box.com/s/ip5pqq3dht40qvr16hxz3168fnivdssg> (last visited Sept. 2, 2022).

¹⁰⁷ *The Justice Gap: Executive Summary*, LEGAL SERVS. CORP., <https://justicegap.lsc.gov/resource/executive-summary/> (last visited Sept. 3, 2022).

F. *COVID-19 Has Fueled the Justice Gap and Health Disparities*

COVID-19 has negatively impacted the health of low-income Americans.¹⁰⁸ The health and economic disruption by COVID-19 has exacerbated longstanding social determinants of health. This Subpart highlights COVID-19's impact on (1) housing, (2) health insurance, and (3) food insecurity as social determinants of health impacted by COVID-19. For each social determinant of health, COVID-19's impact on health disparities is also discussed.

1. Housing

Access to affordable housing is essential to mitigating the spread of COVID-19. While the relationship between health-harming legal issues and health disparities during COVID-19 may be described as bi-directional, the U.S. housing crisis is not new to the COVID-19 pandemic.¹⁰⁹ Historically, the U.S. housing crisis disproportionately harmed people of color.¹¹⁰ For example, a comprehensive investigation of court documents from 2012 to 2016 found that property owners disproportionately file for and receive eviction judgments against Black renters.¹¹¹ Additionally, Black and Latinx female renters faced higher eviction rates than their male counterparts.¹¹² Research has also shown that low-income and minority communities experienced greater economic hardship and adverse impacts of COVID-19.¹¹³

COVID-19 increased housing inequalities and disproportionately impacted renters of color and families with children.¹¹⁴ Prior to COVID-19, there were typically one

¹⁰⁸ See Benjamin P. Cooper, *Preliminary Thoughts on Access to Justice in the Age of COVID-19*, 56 GONZ. L. REV. 227, 232 (2020).

¹⁰⁹ Rosemary M. Caron & Amanda Rodrigues Amorim Adegboye, *COVID-19: A Syndemic Requiring an Integrated Approach for Marginalized Populations*, 9 FRONTIERS IN PUB. HEALTH 1–8 (2021). See Benfer et al., *supra* note 3, at 2.

¹¹⁰ See Benfer et al., *supra* note 3, at 2.

¹¹¹ Published in December 2020, this is the most comprehensive study of racial and gender disparities among American renters to date. The authors reviewed millions of court records from across the country from 2012 to 2016. Peter Hepburn et al., *Racial and Gender Disparities Among Evicted Americans*, 7 SOCIO. SCI. 649, 653 (2020).

¹¹² *Id.* at 657.

¹¹³ “In the long-term, eviction results in severe and lasting poor health outcomes and economic costs that further threaten individual health and well-being and hampers pandemic control and recovery.” Benfer et al., *supra* note 3, at 2.

¹¹⁴ Erik Gartland, *Families with Children at Increased Risk of Eviction, With Renters of Color Facing Greatest Hardship*, CTR. ON BUDGET AND POL'Y PRIORITIES (Nov. 2, 2021, 5:00 AM), [https://www.cbpp.org/blog/families-with-children-at-increased-risk-of-eviction-with-renters-of-color-facing-greatest-;](https://www.cbpp.org/blog/families-with-children-at-increased-risk-of-eviction-with-renters-of-color-facing-greatest-) see Jaboa Lake, *The Pandemic Has Exacerbated Housing Instability for Renters of Color*, CTR. FOR AM. PROGRESS 2–3 (Oct. 30, 2020), https://cdn.americanprogress.org/content/uploads/2020/10/29/133957/Renters-of-Color-2.pdf?_ga=2.210962069.1427704590.1633629772-1365222335.1633029730.

million evictions each year in the United States.¹¹⁵ Research suggests the CARES Act and CDC eviction moratoria prevented an estimated 1.6 million eviction filings in 2020.¹¹⁶ The eviction moratoria reduced eviction filings dramatically.¹¹⁷ The CDC eviction moratorium, however, ended on August 26, 2021.¹¹⁸ Low-income individuals and families face increased cost burdens, higher eviction rates, and discrimination in obtaining and maintaining housing.¹¹⁹ Each of these contributes to higher rates of homelessness.¹²⁰ Civil legal issues, left unaddressed, threaten the livelihood and safety of low-income individuals and families.¹²¹ Without protection, millions of renters throughout the United States face threats of eviction due to non-payment of rent.¹²² Lack of safe and stable housing severely threatens health and well-being.¹²³ It is well-established that housing is a social determinant of health.¹²⁴ Recent research suggests that eviction-led housing insecurity may have exacerbated the COVID-19 pandemic.¹²⁵ One study by the American Journal of Epidemiology found that states

¹¹⁵ Through 2018, there were almost one million evictions each year in the United States. For national estimates on eviction filings and evictions, see *National Estimates: Eviction in America*, EVICTION LAB (May 11, 2018), <https://evictionlab.org/national-estimates/>; Joe Fish et al., *Eviction Moratoria have Prevented Over a Million Eviction Filings in the U.S. during the COVID-19 Pandemic*, EVICTION LAB (Dec. 15, 2020), <https://evictionlab.org/missing-eviction-filings/> (showing a lack of filings).

¹¹⁶ Fish et al., *supra* note 115. See Peter Hepburn et al., *U.S. Eviction Filing Patterns*, 7 SOCUS: SOCIO RECH. FOR A DYNAMIC WORLD 1, 11 (2021).

¹¹⁷ Fish et al., *supra* note 115.

¹¹⁸ *Housing: COVID-19 Renter Protections*, OHIO LEGAL HELP, <https://www.ohiolegalhelp.org/topic/covid-19-renter-protections> (last visited Sept. 26, 2022).

¹¹⁹ Lake, *supra* note 114, at 2–3.

¹²⁰ *Id.*

¹²¹ Creekmore et al., *supra* note 27.

¹²² Erik Gartland, *Millions Still Months Behind on Rent After Eviction Moratorium Ends*, CTR. ON BUDGET AND POL'Y PRIORITIES (Sept. 24, 2021), <https://www.cbpp.org/blog/millions-still-months-behind-on-rent-after-eviction-moratorium-ends>.

¹²³ Lauren Taylor, *Housing and Health: An Overview of the Literature*, HEALTH AFF. HEALTH POL'Y BRIEF (June 7, 2018), <https://www.healthaffairs.org/doi/10.1377/hpb20180313.396577/>.

¹²⁴ *Id.*

¹²⁵ Sebastian Sandoval-Olascoaga et al., *Eviction Moratoria Expiration and COVID-19 Infection Risk Across Strata of Health and Socioeconomic Status in the United States*, 4(8) JAMA NETWORK OPEN (2021) (finding that residents, particularly those with lower socioeconomic status and comorbidities, in states that lifted eviction moratoria had an increased risk of testing positive for COVID-19 twelve weeks after the moratorium was lifted). See Elissa Abrams et al., *The COVID-19 Pandemic: Adverse Effects on the Social Determinants of Health in Children and Families*, ANNALS OF ALLERGY, ASTHMA & IMMUNOLOGY (identifying

who ended their eviction moratoria before the federal moratoria experienced two times the incidence of COVID-19 infections compared to states who did not end their eviction moratoria.¹²⁶

Along with an increased risk of contracting COVID-19, Black individuals are also more likely to face health-harming legal issues such as unsafe housing.¹²⁷ Racial residential segregation is an example of systemic racism that results in disproportionate shares of households of color living in high-poverty neighborhoods.¹²⁸ Along with segregation comes economic disadvantage and limited opportunities for education and employment.¹²⁹ When compared to white people with similar incomes, Black and Latinx people are more likely to live in neighborhoods with concentrated disadvantage and adverse health outcomes.¹³⁰ Segregation increases exposure to health harming conditions such as air pollution, toxic waste, mold, and other environmental conditions.¹³¹ This reflects decades of racist urban planning and housing policies and practices.

2. Health Insurance

Health-harming legal needs have taken on a new meaning.¹³² Access to health insurance, for example, has been a longstanding barrier to improving health outcomes for low-income patients.¹³³ The United States is the only high-income country that

increased COVID-19 related morbidity associated with households experiencing homelessness and housing insecurity). *See also* Benfer et al., *supra* note 3, at 7–8.

¹²⁶ The study found that mortality also increased five-fold. Cannon, *supra* note 11, at 804 (citing Kathryn M. Leifheit et al., Expiring Eviction Moratoriums and COVID-19 Incidence and Mortality, 190 AM. J. EPIDEMIOLOGY 2563, 2563 (2021)).

¹²⁷ Cannon, *supra* note 2 at 523, 537–38.

¹²⁸ The United States remains highly segregated, despite the Fair Housing Act of 1968 outlawing the segregation originally created by the Jim Crow Laws. Paula A. Braveman et al., *Systemic and Structural Racism: Definitions, Examples, Health Damages, And Approaches to Dismantling*, 41.2 HEALTH AFF. 171, 178 (2022). *See America's Rental Housing*, JOINT CTR. FOR HOUS. STUD. AT HARVARD UNIV. (2022), https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_Americas_Rental_Housing_2022.pdf.

¹²⁹ Jorge De la Roca et al., *Race and Neighborhoods in the 21st Century: What Does Segregation Mean Today?*, 47 REG'L SCI. URB. ECON. 138, 139 (2014).

¹³⁰ Braveman et al., *supra* note 128.

¹³¹ *Id.* at 175.

¹³² *See* Emily A. Benfer & Lindsay F. Wiley, *Health justice strategies to combat COVID-19: protecting vulnerable communities during a pandemic*, HEALTH AFF. BLOG (Mar. 19, 2020), <https://www.healthaffairs.org/doi/10.1377/forefront.20200319.757883/full/>.

¹³³ *See* Jennifer Tolbert et al., *Key Facts About the Uninsured Population*, KAISER FAM. FOUND. (Nov. 6, 2020), <https://www.kff.org/uninsured/issue-brief/key-facts-about-the-uninsured-population/>.

does not have universal health insurance coverage.¹³⁴ As a result, patients in the United States face larger income-related inequities than other countries.¹³⁵ The lack of affordable health insurance coverage has resulted in medical financial hardship throughout the United States.¹³⁶ COVID-19 has proven health insurance coverage is also an important public health measure to mitigate COVID-19.¹³⁷ The rate of uninsured patients throughout COVID-19 has remained steady but high.¹³⁸ As of April 2021, an estimated one in ten adults were uninsured.¹³⁹ More children in poverty were uninsured in 2020 than in 2018, with 9.3% of children in poverty having no form of health insurance coverage.¹⁴⁰

At the same time, the United States has led the world in cumulative COVID-19 cases and deaths.¹⁴¹ Low-income, uninsured patients face the highest stakes during COVID-19.¹⁴² Patients without insurance must choose whether to pay out of pocket for COVID-19 prevention or forego testing and treatment entirely.¹⁴³ Depending on the severity of the patient's condition, uninsured COVID-19 patients could pay

¹³⁴ Eric C. Schneider et al., *Mirror, Mirror 2021: Reflecting Poorly Health Care in the U.S. Compared to Other High-Income Countries*, THE COMMONWEALTH FUND (August 4, 2021), <https://www.commonwealthfund.org/publications/fund-reports/2021/aug/mirror-mirror-2021-reflecting-poorly>.

¹³⁵ See Michelle M. Doty et al., *Income-Related Inequalities in Affordability and Access to Primary Care in Eleven High-Income Countries: 2020 Commonwealth Fund International Health Policy Survey*, THE COMMONWEALTH FUND (Dec. 9, 2020), <https://www.commonwealthfund.org/publications/surveys/2020/dec/2020-international-survey-income-related-inequalities>. See also Joachim O. Hero et al., *The United States Leads Other Nations in Differences By Income in Perceptions of Health and Health Care*, 36 HEALTH AFF. (June 2017).

¹³⁶ Robin K. Yabroff et al. *Prevalence and Correlates of Medical Financial Hardship in the USA*, 34 J. GEN. INTERNAL MED. 1494, 1494–1502 (2019).

¹³⁷ Emily A. Benfer et al., *Health Justice Strategies to Combat the Pandemic: Eliminating Discrimination, Poverty, and Health Inequity During and After COVID-19*, 19 YALE J. HEALTH POL'Y, L., AND ETHICS, 122, 164 (2020).

¹³⁸ Katie Keith, *Uninsured Rate Steady but High; More Work Needed*, HEALTH AFF. (Sept. 9, 2021), <https://www.healthaffairs.org/doi/10.1377/forefront.20210908.389313/full#>.

¹³⁹ *Id.*

¹⁴⁰ Katherine Keisler-Starkey & Lisa N. Bunch, *Health Insurance Coverage in the United States: 2020*, U.S. CENSUS BUREAU, P60-274 (September 14, 2021), <https://www.census.gov/content/dam/Census/library/publications/2021/demo/p60-274.pdf>.

¹⁴¹ *World Health Organization Coronavirus (COVID-19) Dashboard, Situation by Region, Country, Territory & Area*, WORLD HEALTH ORG., <https://covid19.who.int/table?tableDay=yesterday> (last visited Sept. 30, 2022).

¹⁴² See *World Report 2021, United States Events of 2020*, HUMAN RTS. WATCH, <https://www.hrw.org/world-report/2021/country-chapters/united-states> (last visited Sept. 26, 2022).

¹⁴³ *Id.*

anywhere between \$42,486 and \$74,310 for hospitalization.¹⁴⁴ Paying for treatment will lead to the crippling financial hardship, but the alternative is to risk suffering the adverse effects of COVID-19.¹⁴⁵ A low-income individual who pays out of pocket for COVID-19 treatment is left financially vulnerable and faces a significant disadvantage in securing legal resources to protect themselves from COVID-19.

3. Food Insecurity

Food insecurity is another health-harming legal need linked to COVID-19 that has disproportionately impacted low-income households. Survey data collected in September and October 2021 revealed that 9% of all adults in the United States, approximately 20 million adults, reported their household sometimes or often did not have enough to eat in the past week.¹⁴⁶ Black and Latinx adults were more than twice as likely than white adults to not have enough to eat.¹⁴⁷ Based on the same survey, an estimated seven to thirteen percent of adults with children reported their children sometimes or often did not have enough to eat.¹⁴⁸

Access to the Supplemental Nutrition Assistance Program (“SNAP”) is a crucial public benefit to promote access to nutrition for low-income households.¹⁴⁹ Households with SNAP benefits experienced increased food insecurity during the pandemic.¹⁵⁰ Research shows that Black families enrolled in SNAP but who lived in neighborhoods where it was difficult to find affordable or good quality food experienced increased food insecurity.¹⁵¹ Physicians and researchers have identified opportunities for advocacy to ensure long-term policies to protect food-insecure

¹⁴⁴ Kim Rodgers, *Brief: The Projected Economic Impact of the COVID-19 Pandemic on the US Healthcare System*, FAIR HEALTH (Mar. 25, 2020), <https://www.naccho.org/blog/articles/brief-the-projected-economic-impact-of-the-covid-19-pandemic-on-the-us-healthcare-system>.

¹⁴⁵ *U.S.: Ensure Affordable COVID-19 Treatment: Cost of Coronavirus Care Could Lead to Crushing Medical Debt*, HUMAN RTS. WATCH (March 20, 2020, 6:00 AM), <https://www.hrw.org/news/2020/03/20/us-ensure-affordable-covid-19-treatment#>.

¹⁴⁶ *Tracking the COVID-19 Economy’s Effects on Food, Housing, and Employment Hardships*, CTR. ON BUDGET AND POL’Y PRIORITIES, <https://www.cbpp.org/research/poverty-and-inequality/tracking-the-covid-19-economys-effects-on-food-housing-and> (Feb. 10, 2022).

¹⁴⁷ *Id.*; see Park, *supra* note 2, at 155, 157.

¹⁴⁸ *Tracking the COVID-19 Economy’s Effects on Food, Housing, and Employment Hardships*, *supra* note 146.

¹⁴⁹ *Policy Basics: The Supplemental Nutrition Assistance Program (SNAP)*, CTR. ON BUDGET AND POL’Y PRIORITIES (June 9, 2022), <https://www.cbpp.org/research/food-assistance/the-supplemental-nutrition-assistance-program-snap>.

¹⁵⁰ Sameer M. Siddiqi et al., *SNAP Participants and High Levels of Food Insecurity in the Early Stages of the COVID-19 Pandemic*, 136 PUB. HEALTH REP. 457, 463 (2021).

¹⁵¹ *Id.* at 461. See Duque, *supra* note 53, at 1014.

households.¹⁵² Legal aid attorneys can address food insecurity by empowering individuals to know their rights and advocate for clients if they do not lawfully receive SNAP.¹⁵³ Legal aid attorneys, however, are prohibited from enforcing state compliance with federal law and may not participate in local, state, or national policy activities.¹⁵⁴ As food insecurity increases because of COVID-19, unjustified federal restrictions on the LSC exacerbate the justice gap.¹⁵⁵

III. CONGRESS MUST REMOVE BURDENSOME FUNDING RESTRICTIONS

Litigation, of course, is not the only or even the most secure means of aiding the poor and promoting social change. In the very era Reginald Smith pioneered pro bono lawyering, other lawyers, seeking to advance the public good, *recognized that their best forum for enduring change was often the Legislature*, not the generally restrained, precedent-bound Judiciary.

– Justice Ruth Bader Ginsburg, *April 9, 2001*¹⁵⁶

Low-income individuals and families face multiple barriers due to poverty. For individuals and families working hard to make ends meet, inability to afford an attorney means health-harming legal needs persist.¹⁵⁷ Access to necessities, such as safe and affordable housing, food, and medical care, is disrupted.¹⁵⁸ Problems linked to poverty are sophisticated and often require an attorney's expertise and scope of services. Legal aid attorneys provide high quality legal services to low-income individuals and families, often securing the very necessities of life for those living in

¹⁵² See, e.g., Deborah A. Frank et al., *SNAP is Medicine for Food Insecurity*, 146 PEDIATRICS (2020).

¹⁵³ Andrew Hammond & Mackenzie Speer, *SNAP's Time Limits: Emerging Issues in Litigation and Implementation*, 2017 CLEARINGHOUSE REV. 3 (2017).

¹⁵⁴ See 45 C.F.R. § 1608 (1978).

¹⁵⁵ See generally Michele Statz & Paula Termulen, *Rural Legal Deserts are a Critical Health Determinant*, AM. J. PUB. HEALTH (Sept. 9, 2020); Alan W. Houseman, *Civil Legal Assistance for Low-Income Persons: Looking Back and Looking Forward*, 29 FORDHAM URB. L. J. 1213 (2001–2002).

¹⁵⁶ Ruth Bader Ginsburg, J. U.S., In Pursuit of the Public Good: Lawyers who Care, Univ. of the D.C. David Clarke Sch. of L. (April 9, 2001) (emphasis added) (transcript available at CLEV. ST. L. REV.). See John M. A. DiPippa, *Reginald Heber Smith and Justice and the Poor in the 21st Century*, 40 CAMPBELL L. REV. 73, 101 (2018).

¹⁵⁷ Joel B. Teitelbaum & Sara E. Wilensky, ESSENTIALS OF HEALTH POLICY AND LAW, 130 (Jones & Bartlett Learning 2017); G.A. Res. 217 (III) A, Universal Declaration of Human Rights, U.N. Doc. A/810 at 71, art. 25 (Dec. 10, 1948) (“Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.”).

¹⁵⁸ Sunam Jassar, *Access to Justice as a Social Determinant of Health: The Basis for Reducing Health Disparity and Advancing Health Equity of Marginalized Communities*, 37 WINDSOR Y.B. ACCESS JUST. 359, 364–65 (2021).

poverty.¹⁵⁹ For more than two decades, however, unfair funding restrictions have prohibited legal aid attorneys from taking on class actions or advocacy activities, even when those measures are necessary for the best interest of their client.¹⁶⁰ By prohibiting participation in class actions, Congress also denies legal aid attorneys a meaningful opportunity to represent a greater number of individuals and families in the justice gap, which has only worsened during COVID-19.¹⁶¹ Revoking the class action and advocacy restrictions go together in reducing the justice gap. Legal aid attorneys should have the opportunity to advocate for policy changes in the best interest of the communities they serve, and in turn, low-income individuals must have access to legal representation to enforce these health-promoting policies.¹⁶²

A. *Congress Must Empower the LSC to Fund and Support Legal Aid Attorneys in Class Actions and Advocacy Activities*

The LSC restrictions do not serve as meaningful or effective managerial restrictions. Undue restrictions require LSC-funded organizations to accommodate unhelpful requirements that do not serve the best interests of legal aid clients.¹⁶³ Legal aid attorneys dedicate their work to serving clients in crisis.¹⁶⁴ Throughout COVID-19, legal aid attorneys continue to serve clients who have faced hardship and circumstances worsened by COVID-19.¹⁶⁵ Even though legal aid attorneys find meaningful ways to serve their clients, restrictions which dictate how legal aid may use its scarce dollars is an undue burden to justice.¹⁶⁶ The restrictions, particularly the class action and advocacy restrictions, are limiting LSC-funded organizations' capacity to secure legal relief for low-income community members.¹⁶⁷ As a result,

¹⁵⁹ See G.A. Res. 217, *supra* note 157.

¹⁶⁰ See Rebekah Diller & Emily Savner, *Restoring Legal Aid for the Poor: A Call to End Draconian and Wasteful Restrictions*, 36 FORDHAM URB. L. J. 687, 692–93 (2009).

¹⁶¹ Elisabeth Jacobs, *FACT SHEET: The Restriction Barring LSC-Funded Lawyers from Bringing Class Actions*, BRENNAN CTR FOR JUST. (Sept. 26, 2003), <https://www.brennancenter.org/our-work/research-reports/fact-sheet-restriction-barring-lsc-funded-lawyers-bringing-class-actions>; Hina Jilani et al., *The COVID-19 pandemic is widening the justice gap*, THE ELDERS (Apr. 8, 2020), <https://theelders.org/news/covid-19-pandemic-widening-justice-gap>.

¹⁶² See generally Cannon, *supra* note 11, at 876–77.

¹⁶³ Camille D. Holmes et al., *Race-Based Advocacy: The Role and Responsibility of LSC-Funded Programs*, May–June 2002 J. OF POVERTY L. AND POL'Y 61 (2002); see also *LSC Restrictions and Other Funding Sources*, LEGAL SERVS. CORP., <https://www.lsc.gov/about-lsc/laws-regulations-and-guidance/lsc-restrictions-and-other-funding-sources> (table showing the types of restrictions on funds expended) (last visited Sept. 26, 2022).

¹⁶⁴ Steven Eppler-Epstein, *Passion, Caution, and Evolution: The Legal Aid Movement and Empirical Studies of Legal Assistance*, 126 HARV. L. REV. 102, 103 (2012–2013).

¹⁶⁵ See generally *The Justice Gap Executive Summary*, *supra* note 35.

¹⁶⁶ See, e.g., 45 C.F.R. § 1617 (1996); 45 C.F.R. § 1612 (1997).

¹⁶⁷ See generally Diller & Savner, *supra* note 16.

health-harming legal problems compound with the health risks of COVID-19 to further compromise the health and safety of low-income community members.¹⁶⁸ Black and Hispanic households were generally hit the hardest by hardships linked to COVID-19.¹⁶⁹ Disparities in housing, safe neighborhoods, and employment are associated with increased health disparities, including those associated with COVID-19.¹⁷⁰

It is true that “high-impact” litigation organizations, such as the American Civil Liberties Union (ACLU), exist to address civil rights issues.¹⁷¹ Financial resources, however, are scarce and the need for civil legal services continues to grow.¹⁷² LSC-funded organizations are trusted with funding from Congress to represent low-income individuals and families.¹⁷³ To best represent low-income individuals, legal aid attorneys should also be trusted to pursue a broad range of legal services to best serve their client’s needs.¹⁷⁴ Congress’ failure to seriously re-consider the restrictions demonstrates that it is not focused on promoting “equal access to justice.”¹⁷⁵ Congress must use its authority to remove restrictions on class actions and political advocacy, as well as to increase funding. Increasing access to legal aid resources by removing the class action and political activities restrictions will reduce the justice gap and alleviate health-harming legal needs.

1. Restriction on Class Action Lawsuits

A class action is a means to serve many ends by allowing an attorney to seek legal redress for more than one party under a single action.¹⁷⁶ Lack of access to safe and affordable housing, for example, is a sophisticated, systemic issue and stands as a significant barrier to poverty.¹⁷⁷ Legal aid, however, is a scarce resource.¹⁷⁸ Class actions are an avenue to bring relief to many low-income community members.¹⁷⁹

¹⁶⁸ Cannon, *supra* note 11, at 802–03.

¹⁶⁹ Park, *supra* note 2, at 157.

¹⁷⁰ Duque, *supra* note 53, at 1023–24.

¹⁷¹ See *FAQS*, AM. C.L. UNION, <https://www.aclu.org/faqs> (last visited Sept. 26, 2022).

¹⁷² *LSC FY 2023 Budget Request*, *supra* note 103.

¹⁷³ Teitelbaum & Lawton, *supra* note 41, at 361.

¹⁷⁴ *Id.*

¹⁷⁵ *What We Do*, LEGAL SERVS. CORP., <https://www.lsc.gov/about-lsc/who-we-are/what-we-do> (last visited Sept. 4, 2022).

¹⁷⁶ Joshua D. Blank & Eric A. Zacks, *Dismissing the Class: A Practical Approach to the Class Action Restriction on the Legal Services Corporation*, 110 PENN ST. L. REV. 1, 9–10 (2005).

¹⁷⁷ Setrini, *supra* note 48, at 780.

¹⁷⁸ *LSC FY 2023 Budget Request*, *supra* note 103.

¹⁷⁹ See Diller & Savner, *supra* note 16, at 9.

The class action restriction, however, prevents legal aid attorneys from addressing systemic legal issues facing legal aid clients.¹⁸⁰ Permitting legal aid attorneys to participate in class actions presents a valuable opportunity to utilize scarce legal resources as efficiently as possible.

In a class action, “one or more members of a class may sue or be sued as representative parties on behalf of all members.”¹⁸¹ Where more than one party stands to benefit, an attorney may bring a class action to achieve legal relief for many community members.¹⁸² Class actions may also be utilized to achieve several goals.¹⁸³ A class action may discourage unlawful activity by private actors, and it may also be a tool to hold the government accountable to following the law or fulfilling its obligations.¹⁸⁴ Consequently, class actions are an invaluable tool to challenge illegal, systemic actors threatening low-income community members.¹⁸⁵ LSC-funded organizations, however, are prohibited from participating in any class actions under 42 U.S.C. § 2996e(d)(5).¹⁸⁶

Forbidding legal aid attorneys from participating in class actions is a significant hindrance to their ability to alleviate the justice gap and “promote equal access to justice.”¹⁸⁷ Many of the legal challenges faced by low-income clients are institutional.¹⁸⁸ Legal aid attorneys work closely with communities and are well-positioned to identify systemic problems.¹⁸⁹ For example, institutional racism is based in policies and practices that produce different outcomes for different racial groups.¹⁹⁰ Attorneys must address racist policies and practices by affirmative, systemic litigation, including class actions.¹⁹¹ Even if a low-income individual can access legal aid representation, an individual lawsuit cannot remedy past or future discrimination or

¹⁸⁰ *Id.*

¹⁸¹ FED. R. CIV. P. 23(a). *See* Jacobs, *supra* note 161.

¹⁸² *See* Jacobs, *supra* note 161.

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ *See* Blank & Zacks, *supra* note 93, 13–14. *See also* Diller & Savner, *supra* note 16, at 9.

¹⁸⁶ *See* 45 C.F.R. § 1617.1 (1996); 42 U.S.C. § 2996e(d)(5); 2021 *Grant Terms and Conditions*, LEGAL SERVS. CORP. 1, <https://www.lsc.gov/i-am-grantee/grantee-guidance/grant-terms-conditions/2021-basic-field-grant-terms-and-conditions> (last visited Oct. 28, 2021).

¹⁸⁷ *What We Do*, LEGAL SERVS. CORP., <https://www.lsc.gov/about-lsc/who-we-are/what-we-do> (last visited Sept. 4, 2022); Diller & Savner, *supra* note 16, at 9.

¹⁸⁸ Diller & Savner, *supra* note 16, at 10.

¹⁸⁹ David Udell, *The Civil Legal Aid Movement: 15 Initiatives that are Increasing Access to Justice in the United States*, 2 N.Y.U. IMPACT CTR. PUB. INT. L. 73, 75 (2016).

¹⁹⁰ *See, e.g.*, Alan W. Houseman, *Racial Justice: The Role of Civil Legal Assistance*, 36 CLEARINGHOUSE REV. 5, 5–6 (2002).

¹⁹¹ *Id.* at 9–10.

harassment.¹⁹² Nor is it an effective remedy to balance a power differential between the client and the institution.¹⁹³ Even though an individual lawsuit may ensure the client gains some economic benefit, class actions provide long-lasting relief and institutional impact.¹⁹⁴

Class actions are vital to addressing the justice gap and the health disparities perpetuated by COVID-19. Legal aid attorneys are the sole opportunity for low-income clients to secure remedies to health-harming legal issues, such as evictions and unsafe housing conditions.¹⁹⁵ The amount of unmet legal needs among low-income individuals, however, significantly exceeds the limited funding resources provided to LSC-funded organizations.¹⁹⁶ By requiring legal aid attorneys to independently represent clients facing the same legal issue imposed by the same bad actor one-by-one, Congress puts an unjustified strain on already scarce legal resources.¹⁹⁷ For example, LSC-funded organizations are prevented from using resources to secure safe housing for as many low-income clients as possible. As a result, health disparities also continue to persist during COVID-19.

The value of empowering legal aid attorneys to participate in class actions far outweighs any unjustified concern that class actions promote personal political motives. Opponents of legal aid have argued that class actions are merely an opportunity for legal aid attorneys to promote their political agendas.¹⁹⁸ This position, however, is disproved by empirical research published in 1992, prior to the class action restriction.¹⁹⁹ Class actions do not have the political significance that Congress asserted.²⁰⁰ There is no evidence of Congress' assertion that class actions brought by legal aid attorneys were self-serving or had political significance.²⁰¹ On the contrary, class actions brought by legal aid attorneys were not activist in the sense of advocating for the creation of new law, but have merely challenged existing laws.²⁰²

¹⁹² Marie A. Failing & Larry May, *Litigating Against Poverty: Legal Services and Group Representation*, 45:1 OHIO ST. L.J. 17 (1984).

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ LSC FY 2023 Budget Request, *supra* note 103.

¹⁹⁶ *Id.* at 4.

¹⁹⁷ Jacobs, *supra* note 161.

¹⁹⁸ *Id.*

¹⁹⁹ Bryant G. Garth, *Power and Legal Artifice: The Federal Class Action*, 26 LAW & SOC'Y REV. 237, 238, 259 (1992).

²⁰⁰ *Id.* at 259.

²⁰¹ *Id.*

²⁰² *See* Jacobs, *supra* note 161.

2. Restriction on Advocacy Activities

The COVID-19 justice gap requires the federal government to evaluate how its policies and practices perpetuate poverty in the United States.²⁰³ The political activities restrictions impede the political power of low-income communities, especially during COVID-19.²⁰⁴ Lack of political power prevents low-income communities from accessing key resources and opportunities needed to secure justice.²⁰⁵

Restrictions on advocacy prevent LSC-funded organizations from addressing the root causes of their client's legal needs. Legal aid attorneys cannot advocate for their clients in the local, state, or federal legislature.²⁰⁶ In effect, legal aid attorneys cannot exercise their discretion in pursuing what they may professionally determine to be the most meaningful form of redress for their clients.

B. Access to Legal Aid Will Improve Health

1. Housing

Lack of access to safe, affordable housing is an example of how the restrictions harm access to justice and health for low-income households. For example, there is a significant power imbalance between landlords and low-income tenants.²⁰⁷ Without access to an attorney, a low-income tenant's odds of getting evicted is significantly increased.²⁰⁸ Many tenants who have strong legal defenses do not have access to an

²⁰³ Daren Bakst et al., *Big Government Policies that Hurt the Poor and How to Address Them*, 176 HERITAGE FOUND. 1 (April 5, 2017), <https://www.heritage.org/poverty-and-inequality/report/big-government-policies-hurt-the-poor-and-how-address-them>; LEGAL AID INTERAGENCY ROUNDTABLE, ACCESS TO JUSTICE IN THE AGE OF COVID-19: ROUNDTABLE REPORT (2021), <https://www.justice.gov/ag/page/file/1445356/download>.

²⁰⁴ Legal aid attorneys employed by LSC-funded organizations are prohibited from participating in any political activities, advocating public policies, or encouraging political activities. See 42 U.S.C. §§ 2996f(a)(6)(a), (b)(4), (b)(6); LEGAL AID INTERAGENCY ROUNDTABLE, *supra* note 203.

²⁰⁵ Braveman et al., *supra* note 128, at 175.

²⁰⁶ See Part 1612 Lobbying Activities, OP. LEGAL SERVS. CORP. OFF. LEGAL AFFS., 2–5, 9, No. AO-2014-005 (Jun. 9, 2014), <https://www.lsc.gov/about-lsc/laws-regulations-and-guidance/advisory-opinions/advisory-opinion-2014-005>.

²⁰⁷ See Alexa Eisenberg & Katlin Brantley, *Crisis Before the Emergency: Evictions in Detroit Before and After the Onset of COVID-19* 13 (Univ. Mich.: Poverty Sol. Working Paper, June 2022), <https://www.bridgedetroit.com/wp-content/uploads/2022/06/PovertySolutions-Covid-Evictions-PolicyBrief-r2-2.pdf>.

²⁰⁸ In Chicago, odds of getting an eviction order were 25% in 2021. In New York, 51% of tenants without legal representation received eviction judgments against them, whereas only 22% of tenants with representation received judgments against them. Michelle D. Layser et al., *Mitigating Housing Instability During the COVID-19 Pandemic*, UNIV. ILL. SYS. 10 (2021), <https://igpa.uillinois.edu/report/policy-spotlight-mitigating-housing-instability-during-covid-19-pandemic>.

attorney, whereas landlords are often represented by attorneys.²⁰⁹ If low-income tenants had political power, and a choice to leave, landlords would not be inclined to leave homes in disrepair.²¹⁰ Housing is a necessity, and as such, bad-faith landlords exploit low-income tenants who have limited housing resources and options.²¹¹ Legal aid organizations are positioned to work with low-income clients in their communities.²¹² For example, legal aid attorneys can offer low-income tenants help in negotiating solutions with landlords.²¹³ Legal aid provides low-income community members with a source of political power to combat exploitation by landlords.

2. Class Actions are a Tool to Fight Unsafe Housing

Without access to legal resources, housing insecurity threatens health. During COVID-19 especially, evicting a family can cause poor physical and mental health for years after the eviction.²¹⁴ Economic conditions and housing discrimination are also barriers to safe and affordable housing.²¹⁵ Laws, policies, and systems are responsible for racial disparities in access to housing and legal resources.²¹⁶ Importantly, laws, policies, and systems can be reformed to reduce those disparities.²¹⁷ Legal aid attorneys are uniquely positioned to represent low-income individuals and families when faced with immediate health-harming legal needs.

²⁰⁹ Seven cities have right-to-counsel programs for tenants facing eviction: New York City, San Francisco, Newark, N.J., Cleveland, Philadelphia, Boulder, and Baltimore. Right to counsel programs of civil legal aid in eviction and foreclosure helps stave off homelessness. Sandra Park & John Pollock, *Tenants' Right to Counsel is Critical to Fight Mass Evictions and Advance Race Equity During the Pandemic and Beyond*, AM. CIV. LIBERTIES UNION 10 (Jan. 12, 2021), <https://www.aclu.org/news/racial-justice/tenants-right-to-counsel-is-critical-to-fight-mass-evictions-and-advance-race-equity-during-the-pandemic-and-beyond/>. See Laysner et al., *supra* note 208, at 10.

²¹⁰ Marisa Penalzo, *Housing Conditions in This Low-Income Neighborhood Pushed Tenants to Sue the Landlord*, NPR (July 22, 2021, 8:16 AM), <https://www.npr.org/2021/07/22/1018018025/housing-low-income-neighborhood-tenants-landlord-lawsuit>.

²¹¹ Matthew Desmond & Nathan Wilmers, *Do the Poor Pay More for Housing? Exploitation, Profit, and Risk in Rental Markets*, 124 AM. J. SOCIO. 1090, 1090 (2019).

²¹² Brenda Parker & Janet Lynn Smith, *Policy Spotlight: Women's Housing Precarity During and Beyond COVID-19*, U. ILL. SYS. 10 (2021), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3896504.

²¹³ *Id.*

²¹⁴ *Id.* at 8.

²¹⁵ Braveman et al., *supra* note 128, at 175.

²¹⁶ *Id.*

²¹⁷ *Id.*

3. Advocating for Protection of Low-Income Tenants

Systemic housing policies and practices, including lack of eviction protections, increases health disparities and the spread of COVID-19. Policies and practices created with the goal of establishing opportunities for safe and affordable housing stability are important to reducing the justice gap and health disparities in COVID-19.²¹⁸ For example, once the federal eviction moratoria ended, eviction filings quickly rose to historic levels.²¹⁹ Research also showed that absence and lifting of eviction moratoria is associated with increased COVID-19 infection and mortality.²²⁰ There are policies and resources that can protect low-income tenants and people of color from the health-harming legal needs associated with eviction. Civil legal aid can assist clients in obtaining supportive legal and financial measures.²²¹ Along with individual representation, legal aid attorneys can advocate for changes in policies and practices to eliminate the root cause of disparities in housing and health.²²² Effective reduction of the justice gap and health disparities requires that legal aid attorneys have the discretion to advocate for their clients.

C. Funding for the LSC Must be Increased

The Center on Budget and Policy Priorities, looking to inflation-adjusted terms, found that congressional funding of the LSC has declined over the past forty-four years.²²³ The Congressional Budget and Impoundment Control Act of 1974 provides a framework for Congress' budget resolution process.²²⁴ The budget resolution is a concurrent congressional resolution.²²⁵ The House and the Senate must pass an identical version of the budget resolution.²²⁶ First, the President submits a budget request for the coming fiscal year.²²⁷ The House and Senate Budget Committees then

²¹⁸ Benfer et al., *supra* note 3, at 7–8.

²¹⁹ *Id.* at 6.

²²⁰ *Id.*

²²¹ *Id.* at 7.

²²² *See id.*

²²³ David Reich, *Additional Funding Needed for Legal Service Corporation*, CTR. ON BUDGET & POL'Y PRIORITIES (Feb. 1, 2021, 2:15 PM), <https://www.cbpp.org/blog/additional-funding-needed-for-legal-service-corporation>.

²²⁴ Congressional Budget and Impoundment Control Act of 1974, Pub. L. No. 93-344, 88 Stat. 297, 297.

²²⁵ *Types of Legislation*, U.S. S., https://www.senate.gov/legislative/common/briefing/leg_laws_acts.htm (last visited Dec. 1, 2021).

²²⁶ *Policy Basics: Introduction to the Federal Budget Process*, CTR. ON BUDGET & POL'Y PRIORITIES (April 2, 2020), <https://www.cbpp.org/research/introduction-to-the-federal-budget-process>.

²²⁷ *Id.*

develop the budget resolution.²²⁸ Once the Budget Committees in each house pass the budget resolutions, either house may amend the resolutions.²²⁹ Once the House-Senate conference reconciles any differences, both houses must pass the conference agreement to set the budget resolution for the year.²³⁰

Year after year, the LSC consistently receives less than its requested budget. The LSC's FY 2021 budget appropriation was 55 % below the 1979 funding level when the LSC budget peaked.²³¹ For FY 2022, the LSC was granted only \$489 million, less than half of its requested budget.²³² As the justice gap increases, essential legal aid funding decreases.²³³ Instead of ensuring the LSC has the financial support needed to address systemic causes of the justice gap, Congress inadequately funds the LSC to serve a fraction of the justice gap.²³⁴ In doing so, Congress promotes poverty by failing to secure the funding necessary for the LSC to reduce the justice gap.²³⁵ Inadequate funding of the LSC is a stark example of Congress limiting the impact of legal aid attorneys rather than promoting the LSC's mission of "equal access to justice."²³⁶

Each year, the LSC researches and submits a federal funding appropriation budget request to the President and to Congress.²³⁷ In its most recent budget request, the LSC assessed its 2022 justice gap survey and intake census to determine the level of funding necessary to ensure legal aid organizations can serve 75% more civil legal problems.²³⁸ For FY 2023, the LSC requested a \$1.26 billion budget.²³⁹ The LSC

²²⁸ *Id.*

²²⁹ *Id.*

²³⁰ *Id.*

²³¹ Reich, *supra* note 223.

²³² LEGAL SERVS. CORP., *FY 2023 Budget Request*, <https://lsc-live.app.box.com/s/ip5pqq3dht40qvr16hxx3168fnivdssg> (last visited Sept. 2, 2022) ("In March 2022, Congress enacted a final FY 2022 omnibus package that included \$489 million for LSC, an increase of \$24 million over FY 2021. LSC had requested \$1.018 billion for FY 2022.").

²³³ Total Budget Appropriated for FY 2022 is estimated based on the White House's proposed LSC budget (Dec. 5, 2021). *See, e.g.*, Reich, *supra* note 223. *See also LSC Submits 2021 Budget as White House Again Calls for Defunding*, LEGAL SERVS. CORP. (Feb. 10, 2020); Robert H. Frank, *How Rising Inequality Has Widened the Justice Gap*, N.Y. TIMES (Aug. 31, 2018), <https://www.nytimes.com/2018/08/31/business/rising-inequality-widened-justice-gap.html>.

²³⁴ *FY 2023 Budget Request*, *supra* note 103, at 4.

²³⁵ *Id.* at 5, 19–20.

²³⁶ *About LSC*, *supra* note 63.

²³⁷ 42 U.S.C. § 2996f(g).

²³⁸ *FY 2023 Budget Request*, *supra* note 103, at 4.

²³⁹ *Id.*

determined this request, the largest in LSC history, is necessary to respond to the impact of COVID-19 on already scarce civil legal resources available to low-income communities.²⁴⁰ Regardless of the evidence supporting the need for the LSC's request, Congress will likely only provide a fraction of the \$1.26 billion appropriations deemed necessary by the LSC.²⁴¹

The LSC relies on evidence-based information to determine the level of funding necessary to alleviate the justice gap.²⁴² For FY 2023, the LSC determined LSC-funded organizations “desperately need additional resources to assist vulnerable people facing increases in evictions, foreclosures, domestic violence and problems with unemployment insurance and consumer scams.”²⁴³ Failing to provide the LSC with the resources to address the surge of legal challenges linked to COVID-19 will force the LSC to ration already scarce legal resources.²⁴⁴ Inadequate funding of the LSC, especially during the COVID-19 pandemic, demonstrates that Congress is not concerned with alleviating poverty itself.

As COVID-19 persists, Congress must face the increased demand for civil legal services. In doing so, Congress must consider how COVID-19 changes the priorities of the LSC in pursuing its mission to promote equal access to justice. LSC-funded organizations must continue to focus on how to best serve their communities during, and after, COVID-19. Congress' priority must be to provide support to the LSC. First, Congress must empower LSC grantees to use their discretion when serving their clients to meet the needs of their clients effectively and meaningfully. Second, Congress must ensure the LSC has the financial resources to respond to the increased demand for legal services.

IV. PROPOSAL FOR CHANGE

A. *Terminate the Class Action and Advocacy Restrictions*

Finally, this Note proposes draft legislation that, for the first time in 25 years, does not include class action or advocacy restrictions on LSC-funded organizations. At the time of its enactment in 1996, Congress was significantly opposed to the participation of legal aid in class actions.²⁴⁵ In 2022, however, Congress faces different challenges and priorities linked to COVID-19.²⁴⁶ The current restrictions on LSC funding

²⁴⁰ *Id.*

²⁴¹ *Id.*; see Chinkwu Osakwe, *Top company lawyers ask Congress to fix 'stagnant' federal legal aid budget*, REUTERS (May 18, 2022, 6:45 PM), <https://www.reuters.com/legal/government/top-company-lawyers-ask-congress-fix-stagnant-federal-legal-aid-budget-2022-05-18/>.

²⁴² The LSC conducts research on the justice gap and conducts annual intake census reports. See *FY 2023 Budget Request*, *supra* note 103, at 5.

²⁴³ *Id.* at 4.

²⁴⁴ *Id.*

²⁴⁵ Yoder, *supra* note 79, at 837–38.

²⁴⁶ See generally Cannon, *supra* note 2, at 540.

prevents legal aid from using dollars to eliminate root causes of poverty.²⁴⁷ The legal aid movement has also matured since 1996.²⁴⁸ COVID-19 has proven that legal resources are scarce, yet necessary, for the well-being of millions of individuals in the United States.²⁴⁹ We have more knowledge of the justice gap and its impact on health and well-being.²⁵⁰ Compelling research demonstrates that class actions equip legal aid attorneys to meet clients' needs effectively and efficiently.²⁵¹

A senator or representative of Congress must propose a bill to explicitly amend the provisions of 42 U.S.C. § 2996e(d)(5), which currently prohibits LSC-funded organizations from initiating or participating in class actions.²⁵² The proposed amendment to § 2996e(d)(5) should strike the current text.²⁵³ Striking the text will effectively repeal the existing class action restriction.²⁵⁴ The amendment must satisfy bicameralism and presentment requirements to repeal the class action and advocacy restrictions.²⁵⁵ Repealing the class action restriction is the most reliable way to ensure legal aid attorneys have the discretion to participate in class actions as needed. For example, Congress' Consolidated Appropriations Act for the fiscal year 2023 should include explicit language repealing the class action and advocacy restrictions, such as the following draft provisions:

Legal Services Corporation²⁵⁶

For payment to the Legal Services Corporation to carry out the purposes of the Legal Services Corporation Act of 1974, \$1,263,900,000, of which \$1,220,000,000 is for basic field programs and required independent audits; \$5,000,000 is for Technology Initiative Grants; \$2,000,000 is for a Loan Repayment Assistance Program; \$5,000,000 is for a Pro Bono Innovation

²⁴⁷ See generally Jay Doran & Beth Leonard, *The Power of Story: How Legal Aid Narratives Affect Perceptions of Poverty*, 15 SEATTLE J. SOC. JUST. 333, 341–43 (2016).

²⁴⁸ Eppler-Epstein, *supra* note 164, at 108.

²⁴⁹ *FY 2023 Budget Request*, *supra* note 103, at 16–17.

²⁵⁰ *Id.*; see generally Cannon, *supra* note 2, at 544.

²⁵¹ Blank & Zacks, *supra* note 93, at 17.

²⁵² 42 U.S.C.A. § 2996e(d)(5) (“No class action suit, class action appeal, or amicus curiae class action may be undertaken, directly or through others, by a staff attorney, except with the express approval of a project director of a recipient in accordance with policies established by the governing body of such recipient.”).

²⁵³ *Id.*

²⁵⁴ Richard S. Beth, *CRS Report for Congress: How Bills Amend Statutes*, CONGRESSIONAL RESEARCH SERVICE 1 (Aug. 4, 2003), <https://sgp.fas.org/crs/misc/RS20617.pdf>.

²⁵⁵ For more information on the legislative process, see *How Laws Are Made and How to Research Them*, USA.GOV, <https://www.usa.gov/how-laws-are-made> (Aug. 10, 2022).

²⁵⁶ This draft legislation is based on Consolidated Appropriations Act of 2022, Pub. L. No. 117-103, 133 Stat. 142, <https://www.congress.gov/bill/117th-congress/house-bill/2471/text>.

Fund; \$26,200,000 is for Management and Grants Oversight; and \$5,700,000 is for the Office of Inspector General . . .

Administrative Provisions – Legal Services Corporation

Requirements and Restrictions. (a) None of the funds appropriated in this Act to the Legal Services Corporation shall be expended for any purpose previously prohibited or limited by, or contrary to any of the provisions of –

- (1) sections 501, 503, 505, and 506 of Public Law 105-119 (111 Stat. 2440),²⁵⁷ and all funds appropriated in this Act to the Legal Services Corporation shall be subject to the same terms and conditions as set forth in such sections, except that all references to 1997 and 1998 shall be deemed to refer instead to 2023, respectively; and
- (2) section 504 of Public Law 104-134 (110 Stat. 1321-50), and all funds appropriated to the Legal Services Corporation shall be subject to the same terms set forth in such section, except that –
 - (A) subsections (a)(1), (4), and (7) of such section 504 shall not apply.²⁵⁸

Terminating the restrictions prohibiting legal aid attorneys from participating in advocacy-related activities is more politically and practically challenging. Like the class action restriction, the most effective way to terminate the political activities restrictions is through an explicit amendment. The political activities restrictions are authorized under numerous sections of the U.S. Code.²⁵⁹ The proposed amendment striking the political activities restrictions must strike the current text of each section authorizing the political activities restrictions.²⁶⁰ Just as with the class action restriction, completely repealing the political activities restrictions will ensure legal aid attorneys are not prohibited from advocating on behalf of their clients.

²⁵⁷ Sections 501, 503, 505, and 506 of Public Law 105-119 do not address the class action or “advocacy” restrictions and are not addressed in this Note. *See* Departments of Commerce, Justice, and State, The Judiciary, and Related Agencies Appropriations Act of 1998, Pub. L. No. 105-119 §§ 501–06, 111 Stat. 2440, <https://www.govinfo.gov/content/pkg/PLAW-105publ119/html/PLAW-105publ119.htm>.

²⁵⁸ Section 504(a)(1)-(7) of Public Law 104-134 includes the class action and advocacy restrictions currently in effect. Act of Apr. 26th, 1996, Pub. L. No. 104-134 §§ 504(a)(1)-(7), 110 Stat. 1321, <https://www.govinfo.gov/content/pkg/PLAW-104publ134/pdf/PLAW-104publ134.pdf>.

²⁵⁹ *See* 45 C.F.R. § 1608 (1978); *see* 45 C.F.R. § 1612 (1997).

²⁶⁰ The “advocacy” restrictions are authorized under: 42 U.S.C.A. §§ 2996e(b)(5), 2996f(a)(5)–(6); 42 U.S.C.A. §§ 2996f(b)(4), (6), (7); 42 U.S.C.A. § 2996(5); 42 U.S.C.A. § 2996d(b)(2); 42 U.S.C.A. § 2996e(b)(3); 42 U.S.C.A. § 2996e(b)(5)(B); 42 U.S.C.A. § 2996e(d)(3); 42 U.S.C.A. § 2996e(d)(4); 42 U.S.C.A. § 2996e(e)(1); 42 U.S.C.A. § 2996e(e)(2); 42 U.S.C.A. § 2996f(a)(6).

B. *Increase and Stabilize LSC Funding on a Multi-Year Basis*

Congress should enact an increased, multi-year budget for the LSC. If Congress increases the LSC's budget, the LSC will be on track to meet its goal of serving more legal needs as well as the surge in legal needs, such as “unemployment claims, evictions, and incidents in domestic violence arising from the pandemic.”²⁶¹ Consistent, long-term funding will provide LSC grantees with more stability and opportunity to effectively ration their funds rather than commit time and resources to anticipate a decrease in funding at the end of the fiscal year.

Congress should give the LSC's budget request for the fiscal year deference when authorizing funding of the LSC. For FY 2023, the LSC projected how much funding would be necessary to serve 75% more individuals in the justice gap.²⁶² Payment to the LSC for FY 2023 should enact the LSC's budget request as closely as possible. This authorization will ensure basic field grants receive \$1.22 billion, compared to the \$448 million in Basic Field grants that Congress authorized for FY 2022.²⁶³ To provide legal aid services to 75% more civil legal problems and to provide pandemic-related legal services, the LSC's Basic Field budget must be increased.²⁶⁴ Congress should secure LSC funding by authorizing funding of the LSC on a multi-year basis. Authorization of federal agency funding is not required to follow the federal appropriations process, and Congress may authorize agency funding for a multi-year basis.²⁶⁵ Additionally, Congress must consider the LSC's most recent budget request when determining the number of years to authorize funding.

C. *An Alternative to Terminating LSC Restrictions: Modifying the Class Action Restriction*

Considering Congress' history of strong opposition to legal aid attorneys participating in law reform activities, Congress may not be willing to repeal the class action and political activities restrictions.²⁶⁶ A 2005 article written by Joshua D. Blank and Eric A. Zacks proposed a compromise to the current LSC restriction on class actions.²⁶⁷ The proposed legislation would allow LSC-funded attorneys to participate in class actions after receiving the permission of the executive director of the local legal services office.²⁶⁸ Blank and Zacks proposed four criteria:

²⁶¹ See *FY 2023 Budget Request*, *supra* note 103, at 4.

²⁶² *Id.*

²⁶³ *Id.*; Consolidated Appropriations Act, *supra* note 256.

²⁶⁴ See *FY 2023 Budget Request*, *supra* note 103, at 4.

²⁶⁵ *Budget of the U.S. Government*, USA.GOV (Jun. 7, 2022), <https://www.usa.gov/budget>; see, e.g., CTR. ON BUDGET AND POL'Y PRIORITIES, *supra* note 149.

²⁶⁶ Quigley, *supra* note 80, at 256–58.

²⁶⁷ Blank & Zacks, *supra* note 93, at 29.

²⁶⁸ *Id.* at 30.

- (1) the lawsuit would directly benefit current clients of the legal services center;
- (2) the lawsuit would be the only means by which to acquire relief from a regulatory or government agency;
- (3) the lawsuit would enable the legal services center to operate in a more efficient manner; and
- (4) the lawsuit would otherwise respond to relevant Congressional concerns.²⁶⁹

Opponents of legal aids' involvement in class actions will likely reject a complete repeal of the restrictions.²⁷⁰ The amendment must explicitly strike the current text and insert the new, modified restriction in its place to modify the class action restriction.²⁷¹ The proposed bill must make specific modifications to provisions in 42 U.S.C. § 2996e(d)(5) to ensure the class action restriction is modified and legal aid attorneys may participate in class actions. A modified class action restriction may be a balance that is practically more feasible while still benefiting the legal aid community.²⁷²

V. CONGRESS MUST ACT TO FIGHT THE JUSTICE GAP DURING COVID-19

The restrictions on the LSC hinder the effective use of scarce legal resources. Legal aid attorneys do not have the discretion to recommend what may be the most appropriate form of representation, such as a class actions or advocacy.²⁷³ Instead, LSC-funded organizations must tailor their professional responsibilities to satisfy unjustified funding restrictions, many of which may be antithetical to the direct interests of their clients. Justice is rarely attainable for low-income clients, even when legal aid resources are within reach. Justice certainly does not prevail, however, where legal aid attorneys do not have the opportunity to pursue legal remedies based solely on the interests of their clients. Under the LSC funding restrictions, clients do not have a chance at “equal access to justice.”²⁷⁴

Most low-income individuals do not have access to adequate legal resources, trapping them in the justice gap. COVID-19 has worsened the hardship of individuals in the justice gap and has strained scarce legal resources. There are solutions within Congress' control, including supporting legal aid organizations' participation in class actions and advocacy and increasing LSC's funding. Congress must remove restrictions on class actions and political activities that are currently limiting the ability of legal aid organizations to secure safe housing for low-income community members. Unsafe housing has exacerbated health disparities, particularly among Black and

²⁶⁹ *Id.*

²⁷⁰ *See generally id.* at 31.

²⁷¹ Beth, *supra* note 254, at 2.

²⁷² Blank & Zacks, *supra* note 93, at 31.

²⁷³ *See* 42 U.S.C.A. § 2996e(d)(5).

²⁷⁴ LSC.GOV, <https://www.lsc.gov>; *see FY 2023 Budget Request, supra* note 103, at 4, 7.

Hispanic communities.²⁷⁵ With the support of Congress, LSC-funded organizations can most effectively use scarce legal resources to significantly reduce the justice gap by serving 75% more civil legal problems. Empowering legal aid attorneys to focus on the needs of their clients and communities will reduce the justice gap, promote the health and wellbeing of communities, and help secure “equal access to justice” during and after COVID-19.

²⁷⁵ Cannon, *supra* note 2, at 537.