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Robyn M. Powell
Stetson University College of Law, rpowell3@law.stetson.edu

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BEYOND DISABILITY RIGHTS: A WAY FORWARD AFTER THE 2020 ELECTION

ROBYN M. POWELL*

ABSTRACT

Throughout Donald Trump's presidency, people with disabilities and other historically marginalized communities experienced incessant attacks on their rights. From continuous attempts to repeal the Affordable Care Act, to decreased enforcement of federal disability rights laws, to reductions to social safety net programs, to the intentional disregard of the COVID-19 pandemic, Trump's presidency threatened nearly every facet of disabled people's lives. However, even before the Trump administration, people with disabilities experienced a range of pervasive and persistent social, economic, and health inequities. Moreover, many of these injustices endure today—nearly two years since President Trump left office.

The disability rights movement originated in the 1970s with the aim of securing civil rights protections for disabled people. Unfortunately, notwithstanding the disability rights movement's many achievements, people with disabilities—especially those who live at the intersection of disability and other historically marginalized identities—continue to experience widespread and assiduous injustices. Consequently, elucidating the root causes of these pervasive and persevering inequities is essential to finally confronting them. Importantly, the Trump presidency's further marginalization of people with disabilities illustrates the fragility of disability rights in the United States and underscores the urgent need to reimagine a more equitable approach to disability rights.

This Article critically examines the panoply of injustices experienced by people with disabilities and demonstrates why the prevailing approach to disability rights is insufficient for challenging the long-lasting and deeply entrenched subjugation of people with disabilities. Then, drawing from the tenets of disability justice, this Article proposes a vision to help activists, legal professionals, scholars, and policymakers conceive of and articulate the basic contours of a paradigm shift that supports reimagining the fight for justice for

* Robyn M. Powell, Ph.D., J.D. is the Bruce R. Jacob Visiting Assistant Professor at Stetson University College of Law. I extend my appreciation to Morgan Patipa for her invaluable research assistance.

disabled people in a way that finally disrupts the widespread oppression experienced by disabled people. In particular, the Article suggests normative and transformative legal and policy solutions necessary for achieving and delivering justice for all people with disabilities. In light of the 2020 election and President Joe Biden's professed commitment to people with disabilities, this Article offers essential and timely insights for reimagining the fight for justice for all people with disabilities by moving beyond the prevailing approach to disability rights and instead adopting disability justice.

I. INTRODUCTION

Shortly after winning the 2020 election, then-President-elect Joe Biden declared “[w]e must make the promise of the country real for everybody—no matter their race, their ethnicity, their faith, their identity, or their *disability*.”¹ This message of unity—coupled with the explicit inclusion of disabled people—was widely celebrated by people with disabilities as a stark departure from then-President Donald Trump’s divisive rhetoric and harmful policies.² Indeed, throughout Trump’s presidency, people with disabilities and other historically marginalized communities experienced incessant attacks on their rights.³ From continuous attempts to repeal the Affordable Care Act (ACA), to decreased enforcement of federal disability rights laws, to reductions to social safety net programs, to the intentional disregard of the COVID-19 pandemic, nearly every facet of disabled people’s lives were threatened during the Trump era.⁴ Still, even before his presidency, people with disabilities experienced myriad pervasive and persistent social, economic, and health inequities.⁵ In addition, many of these inequities endure today—nearly two years since he left office.⁶ Consequently, elucidating the root causes of these widespread and assiduous inequities is essential to finally confronting them. Importantly, such analysis requires a critical examination of extant disability rights laws and policies as well as the disability rights movement more broadly.

The disability rights movement originated in the 1970s as people with disabilities increasingly recognized the need for civil rights protections for disabled people.⁷ Before the 1970s, laws and policies concerning people with

1. Camila Domonoske & Barbara Sprunt, *Hope, Healing and ‘Better Angels’: Biden Declares Victory and Vows Unity*, NAT’L PUB. RADIO (Nov. 7, 2020, 3:23 PM) (emphasis added), <https://www.npr.org/sections/live-updates-2020-election-results/2020/11/07/932104693/biden-to-make-victory-speech-as-president-elect-at-8-p-m-et> (transcript of President Joe Biden’s victory speech on November 7, 2020).

2. Ja’han Jones, *Disability Advocates Express Joy After Biden Name-Checks Them with Important Word*, HUFFPOST (Nov. 8, 2020, 2:24 PM), https://www.huffpost.com/entry/joe-biden-disability-advocates-express-joy_n_5fa83941c5b66009569bb896.

3. Rebecca Vallas et al., *5 Ways President Trump’s Agenda is a Disaster for People with Disabilities*, CTR. FOR AM. PROGRESS (Mar. 8, 2017), <https://www.americanprogress.org/article/5-ways-president-trumps-agenda-disaster-people-disabilities/>.

4. See discussion *infra*, Part III.

5. Samuel R. Bagenstos, *Subordination, Stigma, and “Disability”*, 86 VA. L. REV. 397, 420 (2000).

6. Carrie Johnson, *Activists Wanted Biden to Revamp the Justice System. Many Say They’re Still Waiting*, NAT’L PUB. RADIO (Dec. 12, 2021, 5:00AM), <https://www.npr.org/2021/12/12/1062485458/biden-criminal-justice-system-clemency>; Abigail Abrams, *How Obamacare Helped Americans with Disabilities*, TIME (Aug. 2, 2021, 10:00 AM), <https://time.com/6086359/obama-care-health-insurance-people-disabilities/>.

7. DAVID L. BRADDOCK & SUSAN L. PARISH, *DISABILITY AT THE DAWN OF THE 21ST CENTURY AND THE STATE OF SOME STATES: AN INSTITUTIONAL HISTORY OF DISABILITY* 45–50 (Gary L. Albrecht et al. eds., 2001).

disabilities were limited mainly to welfare benefits, based on the notion that disabled people could not work.⁸ However, disability rights activists asserted that instead of charity or welfare, people with disabilities needed civil rights laws prohibiting discrimination against them.⁹ As a result of their steadfast activism, Congress enacted several federal laws, including Section 504 of the Rehabilitation Act (Section 504)¹⁰ and the Americans with Disabilities Act (ADA),¹¹ among others.¹² Collectively, these laws proscribe disability-based discrimination by federally funded entities, employers, state and local governments, places of public accommodation, public schools, and landlords.¹³ The statutes also require entities to provide reasonable accommodations, as needed, to ensure that they are fully accessible to disabled people.¹⁴

Notwithstanding these significant achievements and the broad legal protections secured because of the disability rights movement, pervasive and persistent social, economic, and health inequities endure for people with disabilities, especially those who live at the intersection of disability and other historically marginalized identities.¹⁵ For example, people with disabilities are largely excluded from the workforce and forced to live in poverty.¹⁶ Notably, the employment rate of disabled people remains staggeringly low, despite the desire of many disabled people to work.¹⁷ In addition, disabled people encounter barriers to adequate, affordable, and accessible health care, often leading to adverse health outcomes.¹⁸ Moreover, society continues to devalue the lives of people with disabilities.¹⁹ For example, throughout the COVID-19 pandemic, disabled people have experienced constant threats to their lives due to the

8. Samuel R. Bagenstos, *The Future of Disability Rights*, 114 YALE L.J. 1, 10–11 (2004).

9. *Id.* at 12–13.

10. 29 U.S.C. § 794(a).

11. Americans with Disabilities Act, 42 U.S.C. §§ 12101–213.

12. Although this Article primarily focuses on Section 504 and the ADA, there are other important federal disability rights laws that safeguard the rights of people with disabilities. *See, e.g.*, Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400–82; Fair Housing Amendments Act, 42 U.S.C. §§ 3601–19; *see also A Guide to Disability Rights Laws*, U.S. DEP'T JUST., <https://www.ada.gov/cguide.htm> (last updated Feb. 24, 2020) (describing a variety of federal disability rights laws).

13. 29 U.S.C. § 794(a); 42 U.S.C. § 12112(a).

14. 42 U.S.C. § 12111(9).

15. Bagenstos, *supra* note 5, at 420.

16. Silvia Bonaccio et al., *The Participation of People with Disabilities in the Workplace Across the Employment Cycle: Employer Concerns and Research Evidence*, 35 J. BUS. & PSYCH. 135, 135 (2019).

17. *Id.* at 135–37; Nicole Buonocore Porter, *A Defining Moment: A Review of Disability & Equity at Work, Why Achieving Positive Employment Outcomes for Individuals with Disabilities Requires a Universal Definition of Disability*, 18 EMP. RTS. & EMP. POL'Y J. 289, 293 (2014).

18. *See* discussion *infra* Section III.A.

19. Lama Assi et al., *Access to Food and Health Care During the COVID-19 Pandemic by Disability Status in the United States*, DISABILITY & HEALTH J., Jan. 19, 2022, at 1, 3.

government's failure to protect them adequately.²⁰ Appallingly, people with disabilities, especially people of color with disabilities, are disproportionately harmed by policing and the prison industrial complex, with markedly high rates of police violence victimization and incarceration.²¹

To be sure, laws like the ADA have opened countless doors, both literally and figuratively, for people with disabilities in the United States.²² Because of disability rights laws, most buildings are accessible; students with disabilities receive better education, often alongside their peers without disabilities; and disabled people are far more integrated into their communities.²³ However, as Samuel Bagenstos writes, "the proportion of Americans with disabilities who are not in the workforce remains stubbornly high; businesses still fail to comply with basic requirements of the ADA; services for people with disabilities are still too often delivered in segregated settings; and prejudice and discrimination persist."²⁴ These inequities are amplified for people who live at the intersection of disability and other historically marginalized identities.²⁵ Hence, while the successes of the disability rights movement should be celebrated, the shortcomings of existing disability rights laws and policies are increasingly evident and warrant interrogation.

Legal scholars have begun contemplating strategies for improving and expanding the fight for equity for disabled people.²⁶ For example, in analyzing barriers to employment for people with disabilities, Samuel Bagenstos posits that disability rights advocates must "move beyond" the "antidiscrimination/accommodation strategy"²⁷ by recognizing and advancing the importance of social welfare interventions, such as health insurance, as critical to improving employment opportunities.²⁸ Professor Mark Weber similarly opines that social welfare interventions, especially universal health benefits, are consistent with a civil rights approach and vital in achieving disability rights.²⁹ Meanwhile, Professors Michael Stein and Penelope Stein

20. See discussion *infra* Section III.C.

21. See discussion *infra* Section III.D.

22. Chai R. Feldblum et al., *The ADA Amendments Act of 2008*, 13 TEX. J. ON C. L. & C. R. 187, 187 (2008).

23. *A Guide to Disability Rights Laws*, *supra* note 12.

24. Samuel R. Bagenstos, *From Integrationism to Equal Protection: tenBroek and the Next 25 Years of Disability Rights*, 13 U. ST. THOMAS L.J. 13, 17 (2016).

25. See generally Natalie M. Chin, *Centering Disability Justice*, 71 SYRACUSE L. REV. 683, 684 (2021).

26. See, e.g., Ani B. Satz, *Overcoming Fragmentation in Disability and Health Law*, 60 EMORY L. J. 277, 320 (2010).

27. SAMUEL R. BAGENSTOS, *LAW AND THE CONTRADICTIONS OF THE DISABILITY RIGHTS MOVEMENT* 149 (2009).

28. *Id.* at 140–42, 149.

29. See generally Mark C. Weber, *Disability Rights, Welfare Law*, 32 CARDOZO L. REV. 2483, 2487 (2011).

endorse a “disability human rights paradigm[,]” which “combines the type of civil and political rights provided by antidiscrimination legislation . . . with the full spectrum of social, cultural, and economic measures . . . bestowed by many human rights treaties.”³⁰ Other legal scholars propose reframing disability rights through “targeted constitutional strategies”³¹ and “taking disability public” through public discourse and awareness of disability and disability-based discrimination.³² More recently, Professor Natalie Chin persuasively argues that the “future effectiveness of disability rights advocacy demands a re-centering that incorporates principles of Disability Justice.”³³ She explains that the “absence of a critical racism/ableism analysis is subsuming the goals of disability equality under the ADA.”³⁴ Undeniably, the pursuit of justice for all disabled people requires urgent analysis and advocacy.

Accordingly, this Article builds on, incorporates, and extends the existing scholarship examining current disability rights laws and policies and proposes a vision to help activists, legal professionals, scholars, and policymakers conceive of and articulate the basic contours of a paradigm shift that supports reimagining the fight for justice for disabled people in a way that finally confronts the widespread oppression experienced by disabled people. Part II describes the evolution of the disability rights movement, focusing on the conception of disability rights laws and policies in the United States. It then briefly explains the scope of Section 504 and the ADA, two prominent and far-reaching federal disability rights laws. Thereafter, Part III examines the pervasive and persistent social, economic, and health inequities experienced by people with disabilities before, during, and after Trump’s presidency. Next, Part IV presents the tenets of disability justice and explains why this intersectional movement, theory, and praxis is essential for analyzing and confronting the enduring oppression of disabled people. In particular, it demonstrates the urgent need to move beyond the current approach to disability rights and the importance of disability justice as a way to do so. Finally, guided by disability justice, Part V suggests normative and transformative legal and policy solutions necessary for achieving and delivering justice for all people with disabilities. Considering the 2020 election and President Biden’s professed commitment to disability rights,³⁵ this Article provides essential and timely insights for reimagining the fight for justice for all

30. Michael Ashley Stein & Penelope J.S. Stein, *Beyond Disability Civil Rights*, 58 HASTINGS L.J. 1203, 1205–06 (2007).

31. Michael E. Waterstone, *Disability Constitutional Law*, 63 EMORY L.J. 527, 533 (2014).

32. Jasmine E. Harris, *Taking Disability Public*, 169 U. PENN. L. REV. 1681, 1689 (2021); Jasmine E. Harris, *The Frailty of Disability Rights*, U. PENN. L. REV. ONLINE (2020) at 29, 32–33 [hereinafter *Frailty of Disability Rights*].

33. Chin, *supra* note 25, at 684.

34. *Id.*

35. *The Biden Plan for Full Participation and Equality for People with Disabilities*, BIDEN HARRIS, <https://joebiden.com/disabilities/> (last visited Jan. 13, 2021) [hereinafter *Biden Plan*].

people with disabilities by moving beyond the prevailing approach to disability rights and instead adopting disability justice.

The significance of this Article, therefore, is twofold. First, it offers a critical examination of the pervasive and persistent inequities experienced by people with disabilities and demonstrates why extant disability rights laws and policies are insufficient for confronting the enduring and deeply entrenched oppression of people with disabilities. Significantly, President Trump's further marginalization of people with disabilities illustrates the fragility of disability rights in the United States and underscores the need to reimagine a more equitable approach to disability rights.³⁶ Second, and importantly, the Article draws from disability justice to suggest normative and transformative legal and policy solutions for achieving justice for disabled people. Disability justice is an intersectional movement, theory, and praxis conceived in response to the disability rights movement.³⁷ It offers a more comprehensive approach to advancing equity for disabled people by confronting how ableism and other systems of oppression subjugate disabled people.³⁸ Undoubtedly, future work must intentionally investigate why current disability rights laws and policies fail people who live at the intersection of disability and other historically marginalized identities and develop strategies for challenging these shortcomings. Professor Jasmine Harris recently examined the absence of legal scholarship studying the intersection of race and disability, noting, "discussions of race and disability do not use a critical-intersectional lens to interrogate inequities or a central subject of legal inquiry."³⁹ This Article responds to this striking void in legal scholarship and contributes to the emergent body of legal scholarship actively engaging the tenets of disability justice.⁴⁰ In doing so, it seeks to elevate disability justice activists' revolutionary work and encourage other legal scholars to consider disability justice moving forward.

36. Vallas et al., *supra* note 3.

37. *See* discussion *infra* Part IV.

38. *Id.*

39. Jasmine E. Harris, *Reckoning with Race and Disability*, 130 YALE L.J.F. 916, 926–27 (2021).

40. *See, e.g.*, Katie Eyer, *Claiming Disability*, 101 BOS. U. L. REV. 547, 550 (2021) (using disability justice as a lens for understanding disability identity); Harris, *supra* note 39, at 931–35 (considering how disability justice has informed intersectional scholarship on people with disabilities); Robyn M. Powell, *Confronting Eugenics Means Finally Confronting Its Ableist Roots*, 27 WM. & MARY J. RACE, GENDER, & SOC. JUST. 607, 629–30 (2021) (applying a disability justice lens for disrupting eugenics); Jamelia N. Morgan, *Reflections on Representing Incarcerated People with Disabilities: Ableism in Prison Reform Litigation*, 96 DENV. L. REV. 973, 989 (2019) (employing disability justice as a framework for developing multidimensional consciousness); Robyn M. Powell, *Achieving Justice for Disabled Parents and Their Children: An Abolitionist Approach*, 33 YALE J.L. & FEMINISM (2022) [hereinafter *Achieving Justice*] (proposing a framework for abolishing the child welfare system guided by disability justice).

II. DISABILITY RIGHTS IN THE UNITED STATES

Today, people with disabilities constitute one of the largest historically marginalized groups in the United States, estimated at sixty-one million people, or twenty-six percent of the population.⁴¹ Although many disabled people are now integrated into their communities, that has not always been the case.⁴² The United States has a shameful history of stigmatizing and segregating people with disabilities.⁴³ In response, the disability rights movement arose in the 1970s, intending to attain civil rights for disabled people.⁴⁴ Their steadfast activism led to the enactment of several important federal laws.⁴⁵ To fully appreciate the need to reimagine our approach to achieving justice for people with disabilities, it is essential to understand the evolution of disability laws and policies in the United States. Accordingly, this Part begins with an overview of disability laws and policies, focusing primarily on the disability rights movement. Thereafter, it briefly explains the scope of Section 504⁴⁶ and the ADA,⁴⁷ two crucial and far-reaching federal disability rights laws.

A. *Historical Overview of Disability Rights*

People with disabilities have endured a lengthy battle against biases, stereotypes, and irrational fears.⁴⁸ Consequently, the stigmatization of disabled people gave rise to the social and economic marginalization of countless people with disabilities for centuries.⁴⁹ Regrettably, the effects of this dreadful history linger today.⁵⁰ Although a comprehensive account of disability laws and policies in the United States is beyond the scope of this Article,⁵¹ this Section briefly describes the evolution of disability rights, focusing primarily on the disability rights movement.

Exclusion and mistreatment broadly describe the country's treatment of people with disabilities. Before the late nineteenth and early twentieth centuries, most people with disabilities lived at home, where their families were

41. CATHERINE A. OKORO ET AL., CTDS. DISEASE CONTROL & PREVENTION, PREVALENCE OF DISABILITIES AND HEALTH CARE ACCESS BY DISABILITY STATUS AND TYPE AMONG ADULTS — UNITED STATES, 2016, at 882 (2018).

42. *The Importance of Community Integration for People with Disabilities*, UDS FOUND. (Mar. 2, 2021), <https://udservices.org/blog/community-integration-people-with-disabilities/>.

43. ANTI-DEFAMATION LEAGUE, A BRIEF HISTORY OF THE DISABILITY RIGHTS MOVEMENT (2018), <https://www.adl.org/media/6891/download>.

44. *Id.*

45. *See id.*

46. 29 U.S.C. § 794(a).

47. 42 U.S.C. §§ 12101–213.

48. A BRIEF HISTORY OF THE DISABILITY RIGHTS MOVEMENT, *supra* note 43.

49. *See id.*

50. *See id.*

51. For an in-depth exploration of the history of disability in Western society, *see generally* BRADDOCK & PARISH, *supra* note 7, at 11–68.

responsible for their care.⁵² Society further segregated disabled people during the late nineteenth and twentieth centuries by increasingly warehousing them in state institutions.⁵³ In addition, during this time, eugenicists supported policies that encouraged procreation among favored groups of people while constraining procreation—through forcible sterilization and institutionalization—of those deemed to have “defects.”⁵⁴ According to author Adam Cohen, eugenicists’ “greatest target was the ‘feebleminded,’ a loose designation that included people who were mentally [disabled], women considered to be excessively interested in sex, and various other categories of individuals who offended the middle-class sensibilities of judges and social workers.”⁵⁵ The nineteenth century also witnessed the popularization of “freak shows,” where people with disabilities were exhibits at circuses, fairs, and expositions.⁵⁶ Professors David Braddock and Susan Parish explain, “[f]reak shows served to institutionalize notions of disability as the ultimate deviance, thus solidifying Americans’ needs to perceive themselves as normal.”⁵⁷

During the early to mid-twentieth century, the country began to experience a shift in its treatment of people with disabilities.⁵⁸ For example, the federal government enacted laws and policies during World War I to ensure that disabled veterans would receive rehabilitation services.⁵⁹ Charities also began offering rehabilitation and sheltered work to people with disabilities.⁶⁰ Starting in the 1930s, as part of President Franklin D. Roosevelt’s New Deal programs, government assistance programs emerged for some groups of people with disabilities.⁶¹ Notwithstanding these initial laws and policies and increased recognition of people with disabilities, society remained largely inaccessible to most disabled people.⁶²

Inspired by the civil rights movement of the 1960s, the disability rights movement ascended in the 1970s in response to the nation’s then-dominant approach to people with disabilities, which centered on charity, public

52. *Id.* at 23.

53. *Id.* at 13.

54. See ADAM COHEN, *IMBECILES: THE SUPREME COURT, AMERICAN EUGENICS, AND THE STERILIZATION OF CARRIE BUCK* 5 (2016); see also *Bd. Tr.’s. Univ. Ala. v. Garrett*, 531 U.S. 356, 369 n.6 (2001) (“The record does show that some States, adopting the tenets of the eugenics movement of the early part of this century, required extreme measures such as sterilization of persons suffering from hereditary mental disease.”).

55. COHEN, *supra* note 54, at 6.

56. BRADDOCK & PARISH, *supra* note 7, at 37–38.

57. *Id.* at 38.

58. See *id.* at 13.

59. *Id.* at 42.

60. *Id.* at 43.

61. BRADDOCK & PARISH, *supra* note 7, at 41–42.

62. See *id.* at 42.

assistance, medical treatment, and rehabilitation.⁶³ Disability rights activists asserted that the prevailing medical approach to disability, which viewed disability as an inherent personal trait that should be fixed, was inappropriate.⁶⁴ Instead, activists believed that disability was a “characteristic that draws its meaning from social context.”⁶⁵ Activists contended, therefore, that perceiving disability as a “personal tragedy” led to dependence and charity.⁶⁶ Most significantly, disability rights activists argued that viewing disability as a personal misfortune leads to the social exclusion of people with disabilities.⁶⁷

Accordingly, disability rights activists sought to disrupt the prevailing perspectives on disability and push for explicit rights for disabled people.⁶⁸ Specifically, disability rights activists adopted the social model of disability, which posits that disability results from the interaction between a person with an impairment and a society inaccessible to them.⁶⁹ In other words, it is society that disables people rather than their disabilities. Consequently, activists believed that instead of charity or welfare, people with disabilities needed civil rights laws prohibiting discrimination against them.⁷⁰

In 1973, the disability rights movement achieved its first legislative success with the Rehabilitation Act, which was signed into law by President Richard Nixon.⁷¹ Included within this law that appropriated funding for services for disabled people was Section 504, a provision that prohibited disability-based discrimination by any entity that received federal funding.⁷² Section 504 was the first major federal law to prohibit discrimination against people with disabilities.⁷³ Still, despite the significance of Section 504, the federal government delayed implementing the law for years because the U.S. Department of Health, Education, and Welfare (HEW) failed to promulgate regulations for the statute.⁷⁴ Fed up with the federal government’s inaction, in 1977, disability rights activists organized demonstrations and sit-ins in HEW offices across the country, including in San Francisco, New York, and Washington, DC.⁷⁵ The sit-in in San Francisco lasted twenty-six days and

63. Bagenstos, *supra* note 5, at 427; A BRIEF HISTORY OF THE DISABILITY RIGHTS MOVEMENT, *supra* note 43.

64. *Id.*

65. *Id.*

66. *Id.*

67. *Id.* at 428.

68. Bagenstos, *supra* note 5, at 428.

69. *Id.*

70. *Id.* at 430.

71. Rehabilitation Act of 1973, 29 U.S.C. §§ 701–96; *see also* BRADDOCK & PARISH, *supra* note 7, at 47.

72. 29 U.S.C. § 794.

73. § 701.

74. BRADDOCK & PARISH, *supra* note 7, at 47.

75. *Id.*

remains the most prolonged sit-in at a federal building to date.⁷⁶ Disability rights activists received support from several ally groups throughout the sit-ins, including the Black Panthers, LGBTQ+ rights activists, and labor union organizers.⁷⁷ Ultimately, these acts of civil disobedience successfully resulted in the full implementation of Section 504 regulations.⁷⁸

Though the enactment of Section 504 was a significant accomplishment for the disability rights movement, activists soon set their sights on more comprehensive legislation.⁷⁹ Accordingly, throughout the 1980s, disability rights activists began pushing for a broad civil rights statute that would protect the rights of people with disabilities, much like the Civil Rights Act of 1964 had done for people of color.⁸⁰ After nearly a decade of advocating for comprehensive legislation prohibiting disability-based discrimination, in March 1990, more than 1,000 people with disabilities and allies marched from the White House to the U.S. Capitol, demanding that Congress pass the ADA.⁸¹ When they arrived, over fifty people with disabilities cast aside their wheelchairs and other mobility devices and crawled up the stairs of the Capitol.⁸² Known as the “Capitol Crawl,” this activism revealed how inaccessibility adversely affects disabled people and emphasized the need to pass the ADA.⁸³

On July 26, 1990, President George H.W. Bush signed the ADA into law, proclaiming that “[w]ith today’s signing of the landmark Americans for Disabilities Act, every man, woman, and child with a disability can now pass through once-closed doors into a bright new era of equality, independence, and freedom.”⁸⁴ President Bush went on to assert that the ADA would “ensure that people with disabilities are given the basic guarantees for which they have worked so long and so hard: independence, freedom of choice, control of their

76. *Id.*; Wendy Lu, *Overlooked No More: Kitty Cone, Trailblazer of the Disability Rights Movement*, N.Y. TIMES (Mar. 26, 2021), <https://www.nytimes.com/2021/03/26/obituaries/kitty-cone-overlooked.html>.

77. Susan Schweik, *Lomax’s Matrix: Disability, Solidarity, and the Black Power of 504*, DISABILITY STUD. Q., Feb. 4, 2011, at 1.

78. BRADDOCK & PARISH, *supra* note 7, at 47.

79. *See id.*

80. Arlene Mayerson, *The History of the Americans with Disabilities Act: A Movement Perspective*, DISABILITY RTS. EDUC. DEF. FUND (1992), <https://dredf.org/about-us/publications/the-history-of-the-ada/>; *see also* A BRIEF HISTORY OF THE DISABILITY RIGHTS MOVEMENT, ANTI-DEFAMATION LEAGUE 1 (2018), <https://www.adl.org/education/resources/backgrounders/disability-rights-movement>.

81. Becky Little, *When the ‘Capitol Crawl’ Dramatized the Need for Americans with Disabilities Act*, HISTORY (July 24, 2020), <https://www.history.com/news/americans-with-disabilities-act-1990-capitol-crawl>.

82. *Id.*

83. *Id.*

84. George H.W. Bush, President, U.S., Remarks of President George H. W. Bush at the Signing of the Americans with Disabilities Act (Jul. 26, 1990).

lives, the opportunity to blend fully and equally in to the rich mosaic of the American mainstream.”⁸⁵ He concluded his remarks by declaring: “Today’s legislation brings us closer to that day when no Americans will ever again be deprived of their basic guarantee of life, liberty, and the pursuit of happiness. . . . Let the shameful wall of exclusion finally come tumbling down.”⁸⁶

Although the ADA was enacted in 1990 with the promise of ending discrimination against disabled people across all facets of society—from employment to government services to places of public accommodation—that reality never came to fruition for many people with disabilities.⁸⁷ Instead, between 1999 and 2002, the Supreme Court issued several decisions that considerably narrowed the scope of the statute’s protections.⁸⁸ Specifically, the Court found that people with disabilities either “mitigated” their condition through medication or other measures, such as behavioral modifications or devices,⁸⁹ or did not establish that their disability “substantially limits” major life activities within the meaning of the law.⁹⁰ Following these decisions, it became increasingly arduous for people with epilepsy, diabetes, psychiatric disabilities, multiple sclerosis, muscular dystrophy, arthritis, hypertension, and other disabilities to prevail in court.⁹¹ Thus, by narrowly interpreting the definition of “disability” to include only people with severe limitations, many disabled people no longer enjoyed the antidiscrimination protections that Congress had initially intended to provide.⁹² In 2008, following considerable advocacy by people with disabilities, Congress attempted to right this wrong by passing the ADA Amendments Act of 2008 (ADAAA).⁹³ Congress’s purpose in

85. *Id.*

86. *Id.*

87. See Stephanie Pappas, *Despite the ADA, Equity Is Still Out of Reach*, AM. PSYCH. ASS’N. (Nov. 1, 2020), <https://www.apa.org/monitor/2020/11/feature-ada>.

88. *Sutton v. United Airlines, Inc.*, 527 U.S. 471, 482 (1999); *Murphy v. United Parcel Service, Inc.*, 527 U.S. 516, 521 (1999).

89. *Sutton*, 527 U.S. at 475; *Murphy*, 527 U.S. at 520; *Albertson’s, Inc. v. Kirkingburg*, 527 U.S. 555, 565–66 (1999).

90. *Toyota Motor Mfg., Ky., Inc. v. Williams*, 534 U.S. 184, 192, 196–98 (2002).

91. *Orr v. Wal-Mart Stores, Inc.*, 297 F.3d 720, 724–25 (8th Cir. 2002) (diabetes); *Todd v. Acad. Corp.*, 57 F. Supp. 2d 448, 454 (S.D. Tex. 1999) (epilepsy); *McClure v. Gen. Motors Corp.*, No. 03-10126, 2003 WL 21766539, at *2 (5th Cir. June 30, 2003) (muscular dystrophy); *Schriner v. Sysco Food Serv.*, No. Civ. ICV032122, 2005 WL 1498497, at *4, *6 (M.D. Pa. June 23, 2005) (post-traumatic stress disorder); *McMullin v. Ashcroft*, 337 F. Supp. 2d 1281, 1296 (D. Wyo. 2004) (clinical depression); *Sutton v. N.M. Dept. of Child., Youth & Families*, 922 F. Supp. 516, 517, 519 (D.N.M. 1996) (arthritis); *Sorensen v. Univ. of Utah Hosp.*, 194 F.3d 1084, 1089 (10th Cir. 1999) (multiple sclerosis).

92. *Restoring Congressional Intent and Protections Under the Americans with Disabilities Act: Hearing on H.R. 110-773 Examining the Americans With Disabilities Act (Public Law 101-336)*, 110th Cong. 72 (2007).

93. ADA Amendments Act of 2008, Pub. L. No. 110-325, 122 Stat. 3553; see also Chai R. Feldblum et al., *The ADA Amendments Act of 2008*, 13 TEX. J. ON C.L. & C.R. 187, 197–99 (2008).

enacting the ADAAA, thus, was to overturn the Supreme Court's decisions mentioned above⁹⁴ which, in Congress's opinion, incorrectly limited the "broad scope of protection intended to be afforded by the ADA, thus eliminating protection for many individuals whom Congress intended to protect."⁹⁵

B. Section 504 and the ADA

As explained, the disability rights movement successfully pushed for the enactment of several important federal laws, including Section 504⁹⁶ and the ADA.⁹⁷ The ADA extends and enhances Section 504's protections prohibiting disability-based discrimination by federally funded programs and activities.⁹⁸ Accordingly, Section 504 and the ADA are similar in most respects, and courts have relied on cases under Section 504 to interpret the ADA.⁹⁹ Together, Section 504 and the ADA established "a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities."¹⁰⁰

The ADA considers a person to have a disability if they (1) have a physical or mental impairment that substantially limits a major life activity, (2) have a record of such impairment, or (3) are regarded as having such impairment.¹⁰¹ Major life activities include, among others, caring for oneself, performing manual tasks, seeing, hearing, walking, speaking, breathing, learning, communicating, and working.¹⁰² In 2008, Congress amended the ADA to clarify that (1) "[a]n impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active"¹⁰³ and (2) a "determination . . . whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures."¹⁰⁴ Consequently, courts shall construe the definition of disability in favor of broad coverage of people to the maximum extent permitted by the ADA.¹⁰⁵

The ADA prohibits "discrimination against disabled individuals in major areas of life."¹⁰⁶ Thus, the ADA is sweeping in its scope, and its "breadth"

94. § 2, 122 Stat. at 3554.

95. § 2, 122 Stat. at 3553.

96. 29 U.S.C. § 794(a), (d).

97. 42 U.S.C. §§ 12101–213.

98. 29 U.S.C. § 701(b).

99. *See, e.g.*, *Davis v. Shah*, 821 F.3d 231, 259 (2d Cir. 2016) (citing *Henrietta D. v. Bloomberg*, 331 F.3d 261, 272 (2d Cir. 2003); *Helen L. v. DiDario*, 46 F.3d 325, 330 n.7 (3d Cir. 1995).

100. 42 U.S.C. § 12101(b)(1).

101. § 12102(1).

102. § 12102(2)(A).

103. § 12102(4)(D).

104. § 12102(4)(E)(i).

105. § 12102(4)(A).

106. *PGA Tour, Inc. v. Martin*, 532 U.S. 661, 675 (2001).

necessitates that the law applies to nearly all facets of life, including “in situations not expressly anticipated by Congress.”¹⁰⁷ The ADA includes five distinct titles: employment (Title I), public services (Title II), places of public accommodation (Title III), telecommunications (Title IV), and miscellaneous provisions (Title V).¹⁰⁸ Titles I, II, and III apply to most aspects of disabled people’s lives, and each is briefly described below.

Title I of the ADA prohibits disability-based discrimination by employers with fifteen or more employees.¹⁰⁹ Specifically, Title I applies to employers, employment agencies, and labor unions.¹¹⁰ According to Title I of the ADA, “[n]o covered entity shall discriminate against a qualified individual on the basis of disability in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.”¹¹¹ Title I of the ADA defines a “qualified individual” as “an individual who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires.”¹¹² In addition to broadly prohibiting discrimination against people with disabilities in the workplace, Title I of the ADA also requires employers to provide reasonable accommodations to disabled employees to enable them to perform the essential functions of their job unless doing so would cause the employer undue hardship.¹¹³

Titles II and III of the ADA apply to most areas of disabled people’s lives. Title II of the ADA prohibits discrimination against people with disabilities by state and local government entities.¹¹⁴ Conversely, Title III of the ADA proscribes disability-based discrimination by places of public accommodation.¹¹⁵ Places of public accommodation include, among other things, hotels, restaurants, movie theaters, stores, hospitals, and private elementary, secondary, and post-secondary schools.¹¹⁶ Titles II and III of the ADA require state and local government entities and places of public accommodation to be accessible to disabled people.¹¹⁷ Although there are some distinctions between the specific requirements of Titles II and III of the ADA,

107. Penn. Dep’t of Corr. v. Yeskey, 524 U.S. 206, 212 (1998) (quoting Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479, 499 (1985)).

108. 42 U.S.C. §§ 12111–17 (Title I); §§ 12131–34 (Title II); §§ 12181–89 (Title III); 47 U.S.C. § 225 (Title IV); 42 U.S.C. §§ 12201–13 (Title V).

109. 42 U.S.C. § 12111(5)(A).

110. *Id.* Title I does not apply to the U.S. government, Indian tribes, and private membership clubs. § 12111(5)(B).

111. § 12112(a).

112. § 12111(8).

113. § 12112(b)(5)(A).

114. §§ 12131–34, 12141–65.

115. 42 U.S.C. §§ 12181–89.

116. § 12181(7).

117. 28 C.F.R. §§ 35.150(a), 36.301(a) (2021).

generally, accessibility includes physical access to facilities, including the removal of barriers;¹¹⁸ auxiliary aids and services (e.g., sign language interpreters);¹¹⁹ and reasonable modifications of policies, practices, and procedures when needed to satisfy individual needs.¹²⁰

Entities covered by Titles II and III of the ADA are not required to provide reasonable modifications or take actions that would result in (1) a fundamental alteration of the nature of the activities, programs, or services offered;¹²¹ (2) an undue financial and administrative burden;¹²² or (3) a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures, or by the provision of auxiliary aids or services.¹²³

In sum, the disability rights movement successfully pushed for Section 504 and the ADA. These statutes are far-reaching, providing people with disabilities robust protections against discrimination in nearly all aspects of life.¹²⁴ Notwithstanding these successes, disabled people continue to experience a range of pervasive and persistent social, economic, and health inequities. Noncompliance by employers, state and local governments, and places of public accommodation, coupled with insufficient enforcement of Section 504 and the ADA, undoubtedly contributes to these inequities.¹²⁵ Moreover, the scope of the laws does not fully address specific causes of injustices routinely experienced by disabled people. For example, Section 504 and the ADA do not confront racism, classism, and other oppression commonly experienced by multiply marginalized people with disabilities.¹²⁶ The statutes also do not provide social welfare interventions, such as health insurance or financial assistance.¹²⁷ Section 504 and the ADA also cannot fully challenge the ableism that undergirds most of society. Thus, while existing disability rights laws and policies are essential, it is evident that we must move beyond this approach to finally achieve justice for all people with disabilities.

118. §§ 35.150(a), 35.150(a)(3)(b), 36.304(a).

119. §§ 35.160(b)(1), 36.104, 36.303(a), (b)(1).

120. §§ 35.130(b)(7), 36.302(a).

121. §§ 35.150(a), 35.164, 36.302(a).

122. §§ 35.150(a)(3), 35.164, 36.104, 36.303(a).

123. §§ 36.139, 36.208.

124. 29 U.S.C. §§ 701(b)(1), 794(a); 42 U.S.C. § 12101(a)(3), (b)(4).

125. Tara Lagu et al., *Ensuring Access to Health Care for Patients with Disabilities*, 175 JAMA INTERNAL MED. 157, 157 (2015).

126. SILVIA YEE ET AL., COMPOUNDED DISPARITIES: HEALTH EQUITY AT THE INTERSECTION OF DISABILITY, RACE, AND ETHNICITY 88 (2017), <https://dredf.org/wp-content/uploads/2018/01/Compounded-Disparities-Intersection-of-Disabilities-Race-and-Ethnicity.pdf>.

127. Ani B. Satz, *Disability, Vulnerability, and the Limits of Antidiscrimination*, 83 WASH. L. REV. 513, 544–45 (2008).

III. PERVASIVE AND PERSISTENT INEQUITIES: BEFORE, DURING, AND AFTER TRUMP

Notwithstanding the robust legal protections afforded to disabled people, including Section 504 and the ADA, people with disabilities continue to experience a range of pervasive and persistent social, economic, and health inequities.¹²⁸ Though these inequities have endured over time, some were heightened during Trump's presidency.¹²⁹ Although a comprehensive examination of inequities experienced by disabled people is outside the scope of this Article, this Part elucidates the limitations of existing disability rights laws and policies by highlighting five prominent areas of life where people with disabilities experience significant injustices: (1) health and health care inequities; (2) economic insecurities; (3) COVID-19 disparities; (4) threats to living freely and safely in the community; and (5) effects of natural disasters and climate change. Regrettably, the inequities described above only scratch the surface of the widespread oppression that disabled people, especially multiply marginalized disabled people, endure. Nevertheless, understanding the range of inequities that people with disabilities experience helps illustrate the urgent need to reimagine the pursuit of justice for all people with disabilities by moving beyond the prevailing disability rights approach and instead adopting disability justice

A. Health and Health Care Inequities

Disabled people experience a wide range of health and health care inequities.¹³⁰ Notably, while having a disability does not inevitably mean one is unhealthy or sick,¹³¹ many people with disabilities have significant health care

128. YEE ET AL., *supra* note 126, at 29.

129. Robyn Powell, *Despite Arrests, People with Disability Continue to Fight for Their Lives*, REWIRE NEWS GRP. (July 7, 2017, 12:24 PM), <https://rewirenewsgroup.com/article/2017/07/07/despite-arrests-people-disabilities-continue-fight-lives/>.

130. Gloria L. Krahn et al., *Persons with Disabilities as an Unrecognized Health Disparity Population*, 105 AM. J. PUB. HEALTH S198, S201, S203 (2015). Research consistently shows that people with disabilities experience barriers to accessing health care and have adverse health outcomes. *Id.* at S201 (reviewing studies).

131. See Ani B. Satz, *Overcoming Fragmentation in Disability and Health Law*, 60 EMORY L.J. 277, 300 (2010) (citing Satz, *Disability, Vulnerability, and the Limits of Antidiscrimination*, *supra* note 127, at 561–67). Satz contends that while “disability” and “illness” may overlap, they are neither mutually exclusive nor identical categories. *Id.* at 300–01. Further,

Individuals who are sick may not be disabled, and vice-versa. Further, access to adequate health care, in terms of both coverage and the range of medical services available, is a problem for individuals with and without disabilities. While disability may seem to raise some complicating factors—including a possible higher consumption of health care resources than most individuals, health care rationing schemes that disfavor those with medical impairments, and difficulty moving between public assistance programs that

needs.¹³² However, as attorney Haley Moss explains, “[f]requently, the disability itself is not what brings patients to the physician, though it could affect how a person experiences other symptoms and ailments.”¹³³ In fact, notwithstanding legal protections, including Section 504 and the ADA, people with disabilities experience “persistent inequalities” in accessing health care.¹³⁴ Specifically, disabled people confront attitudinal, communication, physical, policy, programmatic, social, and transportation barriers, which impact their ability to access appropriate and affordable health care services and information.¹³⁵

Barriers to health care for people with disabilities contribute to adverse health outcomes.¹³⁶ Consequently, “[a]s a group, people with disabilities fare far worse than their nondisabled counterparts across a broad range of health indicators and social determinants of health.”¹³⁷ For example, although disabled people access health care at higher rates than nondisabled people, they

include health care and the workforce—these are problems that individuals without disabilities face as well. *Id.*

See also Satz, *Disability, Vulnerability, and the Limits of Antidiscrimination*, *supra* note 127, at 561 (“First and foremost, disability does not equate with illness. The population of individuals who are ill or medically fragile exceeds the disability class. Illness may give rise to disability, but it does not presuppose it.”).

132. NAT’L COUNCIL ON DISABILITY, *THE CURRENT STATE OF HEALTH CARE FOR PEOPLE WITH DISABILITIES* 9–10 (2009), <https://files.eric.ed.gov/fulltext/ED507726.pdf> (explaining that “[p]eople with disabilities comprise the largest and most important health care consumer group in the United States”); see also Mary Crossley, *Becoming Visible: The ADA’s Impact on Health Care for Persons with Disabilities*, 52 ALA. L. REV. 51, 53 (2000) (noting that “because many persons with disabilities have ongoing and sometimes extensive health care needs as a result of their disabilities, legal protection against discrimination in accessing health care services can be of critical importance[.]”).

133. Haley Moss, *“I’m Tired of Waiting”: Diagnosing Accessibility Issues and Inequality Within the American Healthcare System*, 51 U. MEM. L. REV. 1011, 1013 (2021).

134. Nancy R. Mudrick & Michael A. Schwartz, *Health Care Under the ADA: A Vision or a Mirage?*, 3 DISABILITY & HEALTH J. 233, 233 (2010).

135. *Common Barriers to Participation Experienced by People with Disabilities*, CTRS. FOR DISEASE CONTROL & PREVENTION (Sept. 16, 2020), <https://www.cdc.gov/ncbddd/disabilityandhealth/disability-barriers.html> [<https://perma.cc/C9AZ-QWZP>].

136. *Id.*

137. Richard Besser, *Disability Inclusion: Shedding Light on an Urgent Health Equity Issue*, ROBERT WOOD JOHNSON FOUND.: CULTURE OF HEALTH BLOG (Dec. 2, 2019, 11:00 AM), <https://www.rwjf.org/en/blog/2019/12/disability-inclusion-shedding-light-on-an-urgent-health-equity-issue.html> (internal citation omitted); see also Mudrick & Schwartz, *supra* note 134, at 233 (observing that “[t]he national surveys used to assess the health status of the U.S. population find that people with disabilities, like other minority population groups, experience disparities in the form of higher rates of the health problems and lower rates of the preventive care procedures used as benchmark health indicators.”).

experience worse overall health, including many co-existing conditions.¹³⁸ In addition, people with disabilities are less likely to receive preventative health care services or information than people without disabilities.¹³⁹ For example, studies reveal that disabled people are less likely than disabled people to receive dental care, mammograms, and vaccinations.¹⁴⁰ In addition, research indicates that one-in-three adults with disabilities do not have a usual health care provider, and one-in-three adults with disabilities have unmet health care needs because of costs in the past year.¹⁴¹ Further, one-in-four disabled adults report not receiving a routine checkup in the past year.¹⁴²

Physical barriers impede people with disabilities' access to health care.¹⁴³ For example, people with disabilities contend with external physical access barriers, such as an absence of accessible parking spaces, steep slopes near building entrances, steps, and heavy doors without automatic door openers.¹⁴⁴ Disabled people also face internal access barriers, including a shortage of elevators, narrow hallways and doorways, crowded waiting rooms, small examination rooms, and inaccessible restrooms.¹⁴⁵ Inaccessible medical diagnostic equipment (e.g., examination tables, scales) also contributes to health inequities among people with disabilities.¹⁴⁶ Strikingly, research indicates that the inability to access basic preventive health care screenings because of inaccessible examination tables and screening equipment can lead to the delayed

138. NAT'L COUNCIL ON DISABILITY, *supra* note 132, at 23. People with disabilities access health care at high rates. *Id.* Additionally, “[a]bout half of people with complex limitations and one-third of people with basic actions difficulties assessed their health status as fair or poor, compared with the three-fourths of adults who did not have a disability who assessed their health as excellent or very good.” *Id.* at 34–35.

139. Thilo Kroll et al., *Barriers and Strategies Affecting the Utilisation of Primary Preventive Services for People with Physical Disabilities: A Qualitative Inquiry*, 14 HEALTH & SOC. CARE CMTY. 284, 285 (2006).

140. Heather F. de Vries McClintock et al., *Health Care Experiences and Perceptions Among People with and Without Disabilities*, 9 DISABILITY & HEALTH J. 74, 74–75 (2016) (reviewing studies).

141. *Disability Impacts All of Us*, CTRS. FOR DISEASE CONTROL & PREVENTION (Sept. 16, 2020), <https://www.cdc.gov/ncbddd/disabilityandhealth/infographic-disability-impacts-all.html>.

142. *Id.*

143. Lagu et al., *supra* note 125, at 157 (“Patients with disabilities face barriers when they attempt to access health care. These barriers include physical barriers to entering health care establishments, lack of accessible equipment, lack of a safe method for transferring the patient to an examination table, and the lack of policies that facilitate access.”); YEE ET AL., *supra* note 128, at 39 (“Negative attitudes toward and assumptions about disabilities have an adverse effect on the health and quality of health care for people with disabilities.”).

144. Mudrick & Schwartz, *supra* note 134, at 235.

145. *Id.*

146. Elizabeth Pendo, *Disability, Equipment Barriers, and Women's Health: Using the ADA to Provide Meaningful Access*, 2 ST. LOUIS U. J. HEALTH L. & POL'Y 15, 28 (2008); Elizabeth Pendo, *Reducing Disparities Through Health Care Reform: Disability and Accessible Medical Equipment*, 4 UTAH L. REV. 1057, 1057 (2010).

detection of serious health conditions (e.g., breast or prostate cancer).¹⁴⁷ Although no national studies have examined the prevalence of physical accessibility barriers, smaller-scale studies reveal significant issues.¹⁴⁸

Communication and programmatic barriers also thwart people with disabilities' access to health care.¹⁴⁹ For example, Deaf or hard of hearing people encounter health care providers who fail to provide sign language interpreters, often leading to health inequities.¹⁵⁰ Likewise, programmatic access barriers "involve[] the procedures used and the behavior of the health care staff."¹⁵¹ For instance, ableism plays a central role in the deleterious health outcomes that some disabled people experience.¹⁵² In addition, studies have consistently found that health care providers' attitudes about people "are as negative, if not more negative, than the general public."¹⁵³ People with disabilities also encounter health care providers who refuse to treat them because of their disabilities.¹⁵⁴

147. *Reducing Disparities Through Health Care Reform*, *supra* note 146, at 1061–65 (describing the effect of inaccessible examination tables, examination chairs, weight scales, and x-ray and other imaging equipment on access to preventative services and screenings for people with disabilities); *see also* NAT'L COUNCIL ON DISABILITY, *supra* note 132, at 49 (explaining that health care providers "frequently conduct examinations or diagnostic tests while patients are seated in their wheelchairs, which can generate inaccurate test results or conceal physician evidence required for appropriate diagnosis and treatment.").

148. *See, e.g.*, Nancy R. Mudrick et al., *Physical Accessibility in Primary Health Care Settings: Results from California On-Site Reviews*, 5 DISABILITY & HEALTH J. 159, 159, 161 (2012) (a survey of more than 2000 primary care offices in California that serve Medicaid patients found considerable health care accessibility barriers; for example, fewer than four percent of facilities had accessible weight scales, and fewer than nine percent had height-adjustable examination tables); Tara Lagu et al., *Access to Subspecialty Care for Patients with Mobility Impairment: A Survey*, 158 ANN. INTERN. MED. 441, 444 (2013) (surveyed 256 endocrinology, gynecology, orthopedic surgery, rheumatology, urology, ophthalmology, otolaryngology, and psychiatry practices in four U.S. cities and found many could not accommodate people with disabilities).

149. *See* Lisa I. Iezzoni et al., *Communicating About Health Care: Observations from Persons Who Are Deaf or Hard of Hearing*, 140 ANNALS INTERNAL MED. 356, 358–59 (2004).

150. *Id.* at 356; *see generally* Alexa Kuenburg et al., *Health Care Access Among Deaf People*, 21 J. DEAF STUD. & DEAF EDUC. 1, 1–2 (2016) (reviewing fifteen years of research concerning health care access among Deaf people).

151. Mudrick & Schwartz, *supra* note 134, at 235.

152. *See* Lagu et al., *supra* note 125, at 157; *see also* YEE ET AL., *supra* note 126, at 39.

153. *Disability, Equipment Barriers, and Women's Health*, *supra* note 146, at 43. For example, among a survey of 153 emergency care providers, only eighteen percent of physicians, nurses, and technicians expected they would be glad to be alive with a severe spinal cord injury; conversely, ninety-two percent of a comparison group of 128 persons with high-level spinal cord injuries described being happy to be alive. Carol J. Gill, *Health Professionals, Disability, and Assisted Suicide: An Examination of Relevant Empirical Evidence and Reply to Batavia*, 6 PSYCH. PUB. POL'Y & L. 526, 530 (2000).

154. Mudrick & Schwartz, *supra* note 134, at 235 (citing studies that found that some physicians have turned away patients with disabilities because the physician lacks the requisite knowledge of how to treat someone with a disability or because the office is not physically accessible by the patient).

Tellingly, health care providers usually lack training on how to treat people with disabilities.¹⁵⁵ For example, medical school curriculums generally do not include information about disabled people.¹⁵⁶ It is, therefore, unsurprising that people with disabilities report health care providers' ignorance as one of the fundamental barriers to accessing health care.¹⁵⁷ Recently, a national survey of physicians found that more than one-third of physicians reported knowing little or nothing about their legal responsibilities under the ADA, again underscoring the lack of knowledge health care providers have about disabled people.¹⁵⁸

Significantly, people of color with disabilities and LGBTQ+ people with disabilities experience increased health inequities because of ableism combined with racism, homophobia, or transphobia.¹⁵⁹ Disabled people of color contend with barriers to accessing health care, including language barriers, a lack of cultural competence among health care providers, implicit and explicit biases, and stereotyping and discrimination.¹⁶⁰ Understandably, people of color with disabilities often distrust physicians and health systems due to a history of unethical treatment and institutionalized racism.¹⁶¹ Moreover, LGBTQ+ people with disabilities report fair or poor health, have unmet health care needs, and encounter barriers to accessing health care providers who are willing to treat them.¹⁶²

155. NAT'L COUNCIL ON DISABILITY, *supra* note 132, at 13.

156. *Id.* Stating:

Disability competency is not a core curriculum requirement for (1) accreditation or receipt of Federal funding for most medical and dental schools and other professional health care training institutions; or (2) for hospitals to participate in federally funded medical student internship and residency programs. In addition, applicants who seek either a medical or other professional health care license are generally not required to demonstrate disability competency. *Id.*

157. *Id.*; *see also id.* at 49 (explaining that “health care providers hold incorrect assumptions and stereotypes about people with disabilities, which can affect every aspect of care and can result in inadequate and inappropriate care.”).

158. Lisa I. Iezzoni et al., *US Physicians' Knowledge About the Americans with Disabilities Act and Accommodation of Patients with Disability*, 41 HEALTH AFFS. 96, 101 (2022).

159. Monika Mitra et al., *Persons with Disabilities and Public Health Ethics*, in THE OXFORD HANDBOOK OF PUBLIC HEALTH ETHICS 219, 225 (Anna C. Mastroianni et al., eds., 2019) (discussing the limited research on intersectionality in public health and how these individuals experience “layers of discrimination”).

160. Jana J. Peterson-Besse et al., *Barriers to Health Care Among People with Disabilities Who Are Members of Underserved Racial/Ethnic Groups: A Scoping Review of the Literature*, 52 MED. CARE, no. 10, suppl. 3, 2014, at S51, S52 (2014).

161. *Id.*

162. Willi Horner-Johnson, *Disability, Intersectionality, and Inequity: Life at the Margins*, in PUBLIC HEALTH PERSPECTIVES ON DISABILITY: SCIENCE, SOCIAL JUSTICE, ETHICS, AND BEYOND 91, 99 (Donald J. Lollar et al., eds., 2021) (stating that when compared with non-LGBTQ+ adults, those who identify as LGBTQ+ were twice as likely to report that they had been refused treatment by a health care provider).

Throughout Trump's presidency, disabled people experienced countless threats to their health and wellbeing. For example, a cornerstone of Trump's presidency was the constant—but ultimately, unsuccessful—attempts to repeal the ACA, which would have been shattering for disabled people.¹⁶³ As Professor Jessica Roberts explains, “[a]lthough not yet widely recognized as such, the ACA constitutes one of the most significant civil rights victories for the disability community in recent history.”¹⁶⁴ Since the passage of the ACA, the number of people with disabilities who had health insurance for the whole year grew from seventy-one percent in 2010–2011 to eighty-two percent in 2017–2018.¹⁶⁵ Over that same period, the number of disabled people who were uninsured for an entire year decreased from seventeen percent to nine percent.¹⁶⁶ Notably, the number of disabled people who received Medicaid grew from thirty-one percent in 2010–2011 to thirty-seven percent in 2017–2018.¹⁶⁷ In other words, the ACA led to greater health insurance coverage for disabled people, especially because of the law's expanded Medicaid eligibility.

Nevertheless, the Trump administration demonstrated an undeniable disdain for the ACA and Medicaid by trying to curtail access to health insurance coverage offered under the ACA by implementing impediments to Medicaid enrollment, such as work requirements, increased premiums, and additional verification paperwork.¹⁶⁸ Specifically, they supported Congress's efforts to repeal the ACA's Medicaid expansion, which allowed millions of people, including disabled people, to receive Medicaid.¹⁶⁹ In addition, the administration sought to allow states to implement work requirements for Medicaid, which several states pursued.¹⁷⁰ Although the proposed work requirements excluded people eligible for Medicaid based on a disability, many disabled people are eligible for Medicaid for reasons other than their disabilities, which meant that these individuals would not be exempt from work requirement

163. Phil Galewitz, *The Trump Medicaid Record: Big Goals, Yet Few Successes*, KAISER HEALTH NEWS (Oct. 29, 2020), <https://khn.org/news/the-trump-medicaid-record-big-goals-yet-few-successes/>; Abigail Abrams, 'Our Lives Are at Stake.' How Donald Trump Inadvertently Sparked a New Disability Rights Movement, TIME (Feb. 26, 2018, 11:44 AM), <https://time.com/5168472/disability-activism-trump/>; Robyn Powell, *Despite Arrests, People with Disability Continue to Fight for Their Lives*, REWIRE NEWS GROUP (July 7, 2017, 12:24 PM), <https://rewirenewsgroup.com/article/2017/07/07/despite-arrests-people-disabilities-continue-fight-lives/>.

164. Jessica L. Roberts, *Health as Disability Rights Law*, 97 MINN. L. REV. 1963, 1964 (2013).

165. Abigail Abrams, *How Obamacare Helped Americans with Disabilities*, TIME (Aug. 2, 2021, 10:00 AM), <https://time.com/6086359/obamacare-health-insurance-people-disabilities/>.

166. *Id.*

167. *Id.*

168. Galewitz, *supra* note 163; *see also* Abrams, *supra* note 165.

169. Galewitz, *supra* note 163.

170. Alexandra Ellerbeck, *The Health 202: Trump Tried to Shrink Medicaid. Here's How Biden Will Try to Expand It*, WASH. POST (Apr. 19, 2021), <https://www.washingtonpost.com/politics/2021/04/19/health-202-trump-tried-shrink-medicaid-here-how-biden-will-try-expand-it/>.

mandates.¹⁷¹ Therefore, many people with disabilities were at risk of losing Medicaid because of these arbitrary rules.¹⁷² Ultimately, Arkansas was the only state to impose these mandates before a federal judge ruled them illegal.¹⁷³ Further, the Trump administration supported Medicaid block grants, which would have allocated states a specified annual amount, rather than the current system that provides funding based on how many people qualify for the program and health costs.¹⁷⁴ Because of these efforts, the number of disabled people with Medicaid coverage declined from forty percent in 2015-2016 to thirty-seven percent in 2017-2018.¹⁷⁵ Still, people with disabilities had to fight for their lives for four years because of the Trump administration's attacks.¹⁷⁶ Notably, President Biden revoked states' ability to impose work requirements shortly after taking office.¹⁷⁷

Moreover, the Trump administration contributed to the health inequities experienced by disabled people by not prioritizing efforts to prevent disability-based discrimination by health care providers or to ensure that health care is fully accessible to disabled people. Once President Trump took office, there was an unmistakable decrease in the U.S. Department of Justice's (DOJ) enforcement of disability rights laws, including violations by health care providers.¹⁷⁸ Additionally, in 2017, the Trump administration withdrew four Advance Notices of Proposed Rulemaking relating to Titles II and III of the ADA, including one that would have established requirements for accessible medical diagnostic equipment.¹⁷⁹ Therefore, there continue to be no enforceable guidelines concerning accessible medical diagnostic equipment.

B. *Economic Insecurities*

The connection between disability and poverty is palpable. Research has consistently demonstrated a bidirectional relationship between disability and

171. MaryBeth Musumeci et al., *How Might Medicaid Adults with Disabilities Be Affected By Work Requirements in Section 1115 Waiver Programs?*, KAISER FAM. FOUND. 1 (2018), <https://files.kff.org/attachment/Issue-Brief-How-Might-Medicaid-Adults-with-Disabilities-Be-Affected-By-Work-Requirements>.

172. *See id.*

173. Galewitz, *supra* note 163.

174. *Id.*

175. Abrams, *supra* note 165.

176. *Id.*

177. Ellerbeck, *supra* note 170.

178. *See* Samuel R. Bagenstos, *Disability Rights and the Discourse of Justice*, 73 SMU L. REV. F. 26, 29 (2020).

179. Nondiscrimination on the Basis of Disability; Notice of Withdrawal of Four Previously Announced Rulemaking Actions, 82 Fed. Reg. 60,932, 60,932-33 (proposed Dec. 26, 2017) (codified at 28 C.F.R. parts 35-36).

poverty, making disability “both a cause and consequence of poverty.”¹⁸⁰ Disability is a cause of poverty because disability “can lead to job loss and reduced earnings, barriers to education and skills development, significant additional expenses, and many other challenges that can lead to economic hardship.”¹⁸¹ Disability is also a consequence of poverty because “poverty can limit access to health care and preventive services, and increase the likelihood that a person lives and works in an environment that may adversely affect health.”¹⁸² Ultimately, many disabled people are forced to live in poverty, often through no fault of their own.¹⁸³

People with disabilities experience pervasive inequities concerning employment and economic security.¹⁸⁴ Data from the U.S. Census Bureau, for instance, reveals that people with disabilities have low rates of employment, low median annual earnings, and high rates of poverty.¹⁸⁵ Moreover, disabled people encounter barriers to education, leading to lower educational attainment and decreased economic security.¹⁸⁶ According to the U.S. Department of Labor’s (DOL) Bureau of Labor Statistics, in 2020, only eighteen percent of people with disabilities were employed, compared to sixty-two percent of people without disabilities.¹⁸⁷ The income gap between people with and without disabilities is equally staggering. For example, a recent analysis found that, in the Boston metropolitan area, people with disabilities earn sixty-three cents to the dollar compared to people without disabilities.¹⁸⁸

180. Rebecca Vallas, *Disability is a Cause and Consequence of Poverty*, TALK POVERTY (Sept. 19, 2014), <https://talkpoverty.org/2014/09/19/disability-cause-consequence-poverty/>.

181. *Id.*

182. *Id.*

183. *Id.*

184. See, e.g., Press Release, U.S. Dep’t of Lab., Persons with a Disability: Labor Force Characteristics—2021 (Feb. 24, 2022) [hereinafter Press Release], <https://www.bls.gov/news.release/pdf/disabl.pdf> (reporting that in 2021, “[a]cross all age groups, persons with disabilities were much less likely to be employed than those with no disabilities.”).

185. *Selected Economic Characteristics for the Civilian Noninstitutionalized Population by Disability Status*, U.S. CENSUS BUREAU, <https://data.census.gov/cedsci/table?t=Disability&tid=ACSS1Y2019.S1811&hidePreview=true&vintage=2018> (last visited July 11, 2021).

186. Press Release, *supra* note 184, at 2 (“Persons with a disability are less likely to have completed a bachelor’s degree or higher than those with no disability.”); see also *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 179 (1982) (internal quotation marks omitted) (quoting H.R. Rep. No. 94-332, p. 2 (1975) (H.R. Rep.)) (noting that prior to enactment of the Education for All Handicapped Children Act in 1975, most children with disabilities “were either totally excluded from schools or [were] sitting idly in regular classrooms awaiting the time when they were old enough to drop out.”).

187. Press Release, *supra* note 184, at 1.

188. MICHELLE YIN ET AL., AM. INSTS. FOR RSCH., LEADING THE WAY, OR FALLING BEHIND? WHAT THE DATA TELL US ABOUT DISABILITY PAY EQUITY AND OPPORTUNITY IN BOSTON AND OTHER TOP METROPOLITAN AREAS 1 (2020), <https://www.air.org/sites/default/files/Leading-the-Way-or-Falling-Behind-Disabilities-Ruderman-July-2020-508.pdf>.

Moreover, Section 14(c) of the Fair Labor Standards Act of 1938 authorizes employers to, in certain circumstances, pay subminimum wages—wages that are below the federal minimum wage—to people with disabilities, often those with intellectual disabilities.¹⁸⁹ Specifically, DOL provides certain employers with a Section 14(c) certificate that permits them to employ people with disabilities at a subminimum wage.¹⁹⁰ According to the U.S. Government Accountability Office (GAO), “[w]hile this statute is intended to ‘prevent curtailment of opportunities for employment,’ many individuals working under Section 14(c) certificates are employed in sheltered workshops—facilities where people with intellectual and developmental disabilities work in segregated settings and earn subminimum wages.”¹⁹¹ As of October 2021, roughly 1200 employers held or had applied for Section 14(c) certificates to pay nearly 40,000 disabled workers subminimum wages.¹⁹² Shockingly, research has found that some employers are paying disabled workers as little as twenty-two cents per hour.¹⁹³ While the goal of sheltered workshops is purportedly to train disabled people to work in integrated settings, earning typical wages, that seldom happens.¹⁹⁴ In fact, only five percent of disabled people who work in sheltered workshops actually transition to jobs in the community.¹⁹⁵

Critically, despite civil rights protections, disabled people are still unable to work. In fact, since Congress passed the ADA in 1990, the employment rate among people with disabilities has declined.¹⁹⁶ While workplace discrimination is a significant issue for disabled people, many of the barriers to employment that disabled people encounter have nothing to do with employers’ actions.¹⁹⁷

189. 29 U.S.C. § 214(c); *see also* U.S. GOV’T ACCOUNTABILITY OFF., GAO-21-260, SUBMINIMUM WAGE PROGRAM: FACTORS INFLUENCING THE TRANSITION OF INDIVIDUALS WITH DISABILITIES TO COMPETITIVE INTEGRATED EMPLOYMENT (2021), <https://www.gao.gov/assets/gao-21-260.pdf>.

190. U.S. GOV’T ACCOUNTABILITY OFF., *supra* note 189.

191. *Id.* at 1.

192. *14(c) Certificate Holders*, U.S. DEP’T OF LAB. (Jan. 1, 2022), <https://www.dol.gov/agencies/whd/workers-with-disabilities/section-14c/certificate-holders>.

193. Robyn Powell, *For People With Disabilities, Earning Pennies Per Hour Is Only Part of the Problem*, REWIRE NEWS GROUP (May 17, 2018, 11:19 AM) <https://rewirenewsgroup.com/article/2018/05/17/people-disabilities-earning-pennies-per-hour-problem/> (citing an investigation into the payment practices of a charitable organization, Goodwill Industries).

194. THE IOWA DEP’T HUM. RTS., *THE GREAT DEBATE: THE SHIFT FROM SHELTERED WORKSHOPS TO COMPETITIVE INTEGRATED EMPLOYMENT 3* (2018), <https://iowaapse.org/wp-content/uploads/2018/03/the-great-debate.pdf>.

195. Sara Luterman, *Why Businesses Can Still Get Away with Paying Pennies to Employees with Disabilities*, VOX (Mar. 16, 2020, 8:30 AM), <https://www.vox.com/identities/2020/3/16/21178197/people-with-disabilities-minimum-wage>.

196. Bagenstos, *supra* note 178, at 27 (“[T]he statute has failed significantly to improve the employment position of people with disabilities. Indeed, by virtually all reports the employment rate for Americans with disabilities has declined over the time the statute has been on the books.”).

197. *Id.* at 31.

Instead, impediments to working for many disabled people include barriers outside the scope of the ADA, such as a scarcity of personal assistant services, a lack of assistive technology, and a shortage of affordable and accessible transportation.¹⁹⁸ Moreover, the U.S. health care system structure is a significant barrier to employment.¹⁹⁹ Specifically, most private health insurance companies do not cover personal services and assistive devices, which are critical for many disabled people. In addition, social safety net programs, such as Medicaid, have stringent eligibility rules that preclude people with disabilities from working.²⁰⁰ Again, the wide range of barriers to work that many people with disabilities contend with exceeds the ADA's scope and illustrates the importance of reimagining how we achieve justice for disabled people.

Social safety net programs, such as Supplemental Security Income (SSI), Social Security Disability Insurance (SSDI), and Medicaid, contribute to economic insecurity by forcing people with disabilities to live in poverty. An SSI beneficiary receives \$841 per month,²⁰¹ and an SSDI beneficiary receives, on average, \$1560 per month.²⁰² Neither benefit amount is enough to sustain one person. Consequently, disabled people are more likely to experience food insecurity than nondisabled people.²⁰³ Moreover, people with disabilities encounter barriers to securing affordable and accessible housing, with many unable to afford housing.²⁰⁴ Strikingly, nearly one-quarter of unhoused people have a disability.²⁰⁵ However, people receiving safety net program benefits like SSI cannot work without losing necessary benefits.²⁰⁶ For example, if an SSI

198. Gabriella Garbero, Note, *Rights Not Fundamental: Disability and the Right to Marry*, 14 ST. LOUIS U. J. HEALTH L. & POL'Y 587, 588 (2021).

199. *See id.*

200. *See id.*

201. *SSI Federal Payment Amounts for 2022*, SOC. SEC. ADMIN., <https://www.ssa.gov/oact/cola/SSI.html> (last visited Mar. 24, 2022).

202. *Selected Data from Social Security's Disability Program, Graphs of Disabled Worker Data*, SOC. SEC. ADMIN., <https://www.ssa.gov/oact/STATS/dibGraphs.html#3> (last visited Apr. 30, 2022).

203. Chuck Abbott, *Food Insecurities Rise Among Disabled People, but Solutions Exist*, SUCCESSFUL FARMING (Jan. 7, 2022), <https://www.agriculture.com/news/business/food-insecurity-rises-among-disabled-people-but-solutions-exist>.

204. GINA SCHAACK ET AL., PRICED OUT: THE HOUSING CRISIS FOR PEOPLE WITH DISABILITIES 10 (2017), <https://www.tacinc.org/wp-content/uploads/2020/04/priced-out-in-2016.pdf> (describing the lack of accessible and affordable housing for people with disabilities as a "worsening crisis").

205. U.S. INTERAGENCY COUNCIL ON HOMELESSNESS, HOMELESSNESS IN AMERICA: FOCUS ON CHRONIC HOMELESSNESS AMONG PEOPLE WITH DISABILITIES 1 (2018), https://www.usich.gov/resources/uploads/asset_library/Homelessness-in-America-Focus-on-chronic.pdf.

206. *Substantial Gainful Activity*, SOC. SEC. ADMIN., <https://www.ssa.gov/oact/cola/sga.html> (last visited Mar. 24, 2022).

beneficiary has more than \$2000 worth of assets or earns more than \$1350 in a month from work, they will no longer be eligible for SSI.²⁰⁷

Further, SSI and Medicaid's draconian income and asset rules often prevent people with disabilities from marrying.²⁰⁸ Medicaid is the only health insurance that pays for services that enable people with disabilities to live in their communities, such as personal assistant services.²⁰⁹ However, Medicaid has stringent income and asset rules that consider a spouse's earnings when determining eligibility in most states.²¹⁰ SSI similarly considers a spouse's earnings to ensure that the beneficiary is within the income and asset limits.²¹¹ Interestingly, the U.S. Social Security Administration (SSA) reduces benefit amounts when two SSI beneficiaries wed.²¹² Specifically, when two SSI beneficiaries marry, their joint income and asset allowances decrease by twenty-five percent per person, meaning their collective benefits will equal 150% of their individual benefit amounts, rather than the 200% they would have if they did not get married.²¹³ For example, SSI beneficiaries currently receive \$841 per month.²¹⁴ Yet, if two SSI beneficiaries marry, they only receive \$1261 per month.²¹⁵ Moreover, the SSA restricts unmarried SSI beneficiaries from having assets that exceed \$2000 and married couples from having assets that exceed \$3000.²¹⁶ In other words, "SSI and Medicaid rules are set up to make marriage and having necessary healthcare benefits incompatible."²¹⁷

Throughout Trump's presidency, disabled people experienced even more significant economic insecurities. For example, the Trump administration proposed subjecting SSI and SSDI benefits recipients to increased eligibility reviews, further burdening an already strenuous process requiring beneficiaries to regularly prove their eligibility for benefits.²¹⁸ Experts projected that this

207. *Id.*

208. *Family Relationships: Marriage Penalties and Support Anomalies*, 22 GA. ST. U. L. REV. 561, 562 (2006); Garbero, *supra* note 198, at 594.

209. *Id.* at 588.

210. *Id.*

211. *Id.* at 593.

212. *Id.*

213. Garbero, *supra* note 198, at 593.

214. *SSI Federal Payment Amounts for 2022*, *supra* note 201.

215. *Id.*

216. *Spotlight on Resources – 2022 Edition*, SOC. SEC. ADMIN., <https://www.ssa.gov/ssi/spotlights/spot-resources.htm> (last visited Mar. 24, 2022).

217. Eryn Star, *Marriage Equality Is Still Not a Reality: Disabled People and the Right to Marry*, ADVOC. MONITOR (Nov. 14, 2019), <https://advocacymonitor.com/marriage-equality-is-still-not-a-reality-disabled-people-and-the-right-to-marry/>.

218. Jake Johnson, *Applause as Biden Withdraws 'Horrific' Trump Rule Attacking Social Security Disability Recipients*, COMMON DREAMS (Jan. 28, 2021), <https://www.commondreams.org/news/2021/01/28/applause-biden-withdraws-horrific-trump-rule-attacking-social-security-disability>.

regulation would lead to a \$2.6 billion decrease in benefits.²¹⁹ Moreover, based on the unfounded notion that there is rampant fraud among SSI and SSDI beneficiaries, the Trump administration proposed permitting the SSA to surveil beneficiaries through their social media accounts.²²⁰ Ultimately, the administration was unsuccessful.²²¹

Whereas President Trump sought to constrain SSI and SSDI benefits, President Biden has pledged to expand social safety net programs.²²² For example, President Biden withdrew the Trump-era rule that required increased eligibility reviews for SSI and SSDI beneficiaries early in his presidency.²²³ In addition, during the 2020 election, President Biden pledged to “[r]eform the SSI program so that it doesn’t limit beneficiaries’ freedom to marry, save, or live where they choose.”²²⁴ Furthermore, he promised to raise income and asset limits for SSI and SSDI beneficiaries.²²⁵

Additionally, the Trump administration sought to reduce eligibility for the Supplemental Nutrition Assistance Program (SNAP, formerly known as food stamps), which helps low-income households purchase food.²²⁶ Nearly one-in-five SNAP beneficiaries are people with disabilities, meaning that these changes would have adversely impacted disabled people, who already experience significant food insecurity.²²⁷ Nonetheless, under a proposal by the Trump administration, an estimated three million people would have lost SNAP benefits because of changes to eligibility rules and work requirements.²²⁸ In the end, the Biden administration withdrew these proposed changes to SNAP.²²⁹

Finally, the Trump and Biden administrations differ in their response to sheltered workshops. For example, the Trump administration withdrew DOJ guidance issued during the Obama-era that required states to give people with disabilities services to help them engage in competitive and integrated

219. Rules Regarding the Frequency and Notice of Continuing Disability Reviews, 84 Fed. Reg. 63,588, 63,596 (Nov. 18, 2019).

220. Robert Pear, *On Disability and on Facebook? Uncle Sam Wants to Watch What You Post*, N.Y. TIMES (Mar. 10, 2019) <https://www.nytimes.com/2019/03/10/us/politics/social-security-disability-trump-facebook.html>.

221. *Id.*

222. Johnson, *supra* note 218.

223. *Id.*

224. Biden Plan, *supra* note 35.

225. *Id.*

226. Kathleen Romig et al., *Recent Proposals Threaten Basic Needs and Independence for People with Disabilities*, CTR. BUDGET & POL’Y PRIORITIES (June 21, 2017), <https://www.cbpp.org/research/disability/recent-proposals-threaten-basic-needs-and-independence-for-people-with>.

227. *Id.*

228. Tami Luhby, *Biden Nixes Trump Proposal That Would Have Kicked 3 Million Off Food Stamps*, CNN (June 9, 2021, 5:22 PM), <https://www.cnn.com/2021/06/09/politics/food-stamps-biden-trump/index.html>.

229. *Id.*

employment, rather than sheltered workshops.²³⁰ Conversely, President Biden supports ending subminimum wages for workers with disabilities, including through legislation that would phase out sheltered workshops.²³¹

C. *Inequities During the COVID-19 Pandemic*

Unsurprisingly, the COVID-19 pandemic is increasingly amplifying the pervasive and persistent social, economic, and health inequities experienced by people with disabilities.²³² Disabled people are experiencing injustices in exposure to the virus, increased rates of contracting the virus, and barriers to accessing treatment, testing, and vaccinations.²³³ Importantly, although disability alone may not inherently make someone more vulnerable to getting COVID-19 or more susceptible to worse outcomes from the virus, some people's disabilities make them particularly vulnerable to contracting the virus and getting severely ill.²³⁴ For example, research indicates that intellectual disability is the highest risk factor for contracting COVID-19 and the most substantial risk factor other than age for COVID-19 mortality.²³⁵ Further, one study estimated that eighty-three percent of people under the age of sixty-five who died from COVID-19 had an underlying medical condition that may meet the definition of disability, including heart disease, kidney disease, diabetes, and lung disease.²³⁶ Another study found children with chronic health conditions were significantly more likely than other children to have severe COVID-19 illness.²³⁷ Thus, a sizable group of people with disabilities are more vulnerable to severe disease or mortality because of their disabilities.

230. *Withdrawal of the Statement of the Department of Justice on Application of the Integration Mandate of Title II of the Americans with Disabilities Act and Olmstead v. L.C. to State and Local Governments' Employment Service Systems for Individuals with Disabilities*, ADA.GOV (Dec. 21, 2017), https://www.ada.gov/withdrawn_olmstead.html.

231. Sarah Katz, *Biden's Disability Plan Could Close the Equal-Pay Loophole*, ATL. (Aug. 12, 2020, 6:11 PM), <https://www.theatlantic.com/politics/archive/2020/08/2020-election-subminimum-wage-disabilities/615085/>.

232. Robyn M. Powell, *Applying the Health Justice Framework to Address Health and Health Care Inequities Experienced by People with Disabilities During and After COVID-19*, 96 WASH. L. REV. 93, 95–96 (2021).

233. *Id.*; Jessica R. Gunder, *Last in Line: Vaccine Scarcity and the Americans with Disabilities Act*, 10 IND. J.L. & SOC. EQUAL. 1, 4 (2022); see also Kiara Alfonseca, *Disabled Community 'Left Behind' in Vaccine Rollout One Year Later*, ABC NEWS (Jan. 2, 2022, 12:34 PM), <https://abcnews.go.com/Health/disabled-community-left-vaccine-rollout-year/story?id=81974345>.

234. Abrams, *supra* note 165.

235. Jonathan Gleason et al., *Commentary, The Devastating Impact of Covid-19 on Individuals with Intellectual Disabilities in the United States*, NEJM CATALYST, Mar. 5, 2021, at 1, 1, 9.

236. Jonathan M. Wortham et al., *Characteristics of People Who Died with COVID-19—United States, February 12–May 18, 2020*, 69 CTRS. FOR DISEASE CONTROL & PREVENTION: MORBIDITY & MORTALITY WKLY. REP. 923, 924 (2020).

237. Lyudmyla Kompaniyet et al., *Underlying Medical Conditions Associated with Severe COVID-19 Illness Among Children*, 4 JAMA NETWORK OPEN, June 7, 2021, at 1, 11.

Notably, research indicates that disabled people are at greater risk of infection because of where they live and who supports them.²³⁸ In particular, the COVID-19 pandemic has shined a light on the risks associated with congregate and institutional settings (e.g., jails, prisons, nursing homes, psychiatric hospitals, and group homes) for people with and without disabilities.²³⁹ In fact, numerous studies have shown that disabled people living in congregate or institutional settings have experienced significantly higher rates of COVID-19 compared to the general population.²⁴⁰ Moreover, people with disabilities who live in the community and have in-home supports are also at increased risk because most caregivers do not have access to personal protective equipment.²⁴¹

238. Bruce Allen Chernof & Cindy Mann, *Building the Long-Term Care System of the Future: Will the COVID-19 Nursing Home Tragedies Lead to Real Reform?*, HEALTH AFFS. (July 31, 2020), <https://www.healthaffairs.org/doi/10.1377/hblog20200729.267815/full/> (describing how COVID-19 has disproportionately affected people with disabilities and older adults who live in nursing homes and other congregate living situations).

239. Laura I. Appleman, *Pandemic Eugenics: Discrimination, Disability, & Detention During COVID-19*, 67 LOY. L. REV. 329, 331 (2021).

240. See, e.g., Scott D. Landes et al., *COVID-19 Outcomes Among People with Intellectual and Developmental Disability Living in Residential Group Homes in New York State*, 13 DISABILITY & HEALTH J., Oct. 2020, at 1, 2, 4 (analyzing data from a coalition of organizations providing over half of the residential services for the state of New York and from the New York State Department of Health and finding deleterious outcomes); *More than 100,000 U.S. Coronavirus Deaths Are Linked to Nursing Homes*, N.Y. TIMES (June 1, 2021), <https://www.nytimes.com/interactive/2020/us/coronavirus-nursing-homes.html> (finding that forty percent of COVID-19 deaths are linked to nursing homes); Danny Hakim, *'It's Hit Our Front Door': Homes for the Disabled See a Surge of Covid-19*, N.Y. TIMES (Apr. 17, 2020), <https://www.nytimes.com/2020/04/08/nyregion/coronavirus-disabilities-group-homes.html>. This article states:

As of Monday, 1,100 of the 140,000 developmentally disabled people monitored by the state had tested positive for the virus, state officials said. One hundred five had died—a rate, far higher than in the general population, that echoes the toll in some nursing homes. Separately, a study by a large consortium of private service providers found that residents of group homes and similar facilities in New York City and surrounding areas were 5.34 times more likely than the general population to develop Covid-19 and 4.86 times more likely to die from it. What's more, nearly 10 percent of the homes' residents were displaying Covid-like symptoms but had not yet been tested, according to the consortium, New York Disability Advocates. *Id.*;

COVID-19 Case Tracker, AUTISTIC SELF ADVOC. NETWORK, <https://autisticadvocacy.org/covid19/> (last visited Apr. 10, 2022) (finding that as of Jan. 12, 2022, 1,441,856 people with disabilities living in congregate settings have been diagnosed with COVID-19, and 198,900 have died); Letter from Robert P. Casey, U.S. Senator, et al., to Mitch McConnell, U.S. Senate Majority Leader (July 29, 2020), <https://www.casey.senate.gov/download/hcbs-letter-casey-warren> (citing studies indicating that nearly 60,000 COVID-19 deaths have been residents and workers in nursing homes and other long-term care settings).

241. C.E. DRUM ET AL., AM. ASS'N ON HEALTH & DISABILITY, *COVID-19 & ADULTS WITH DISABILITIES: HEALTH AND HEALTH CARE ACCESS ONLINE SURVEY SUMMARY REPORT 7–8* (2020), https://www.aahd.us/wp-content/uploads/2020/05/COVID-19_Summary_Report.pdf; Kristi L. Kirschner et al., *The Invisible COVID Workforce: Direct Care Workers for Those with*

Throughout the COVID-19 pandemic, disabled people are encountering significant health care barriers. The rationing of life-saving treatment has been especially disturbing for people with disabilities.²⁴² Specifically, throughout the pandemic, several states implemented ventilator and ICU-bed rationing plans that either prioritized nondisabled people for treatment or categorically excluded certain disabled people from receiving life-saving treatment if resources became limited.²⁴³ For example, Alabama's rationing plan included "severe or profound mental retardation," dementia, and brain injury as potential justifications for denying a patient a ventilator during the COVID-19 pandemic.²⁴⁴ Other states' plans included similarly inequitable provisions.²⁴⁵ After considerable advocacy by disability rights activists, attorneys, and scholars, the U.S. Department of Health and Human Services (HHS) Office for Civil Rights (OCR) confirmed that health care providers who receive federal funding must adhere to federal civil rights laws, including the ADA.²⁴⁶ Specifically, the OCR proclaimed that states and health care providers cannot implement rationing policies based on "stereotypes, assessments of quality of life, or judgments about a person's relative 'worth' based on the presence or absence of disabilities or age."²⁴⁷ The OCR's guidance, combined with numerous complaints filed by disability rights

Disabilities, COMMONWEALTH FUND (May 21, 2020), <https://www.commonwealthfund.org/blog/2020/invisible-covid-workforce-direct-care-workers-those-disabilities> (describing examples of caregivers for people with disabilities unable to secure personal protective equipment).

242. NATALIE M. CHIN & JASMINE HARRIS, EXAMINING HOW CRISIS STANDARDS OF CARE MAY LEAD TO INTERSECTIONAL MEDICAL DISCRIMINATION AGAINST COVID-19 PATIENTS 1 (2021), <https://www.centerforpublicrep.org/wp-content/uploads/FINAL-Intersectional-Guide-Crisis-Care-PDF.pdf>.

243. *Id.* at 4, 6.

244. See ANNEX TO ESF 8 OF THE STATE OF ALABAMA EMERGENCY OPERATIONS PLAN: CRITERIA FOR MECHANICAL VENTILATOR TRIAGE FOLLOWING PROCLAMATION OF MASS-CASUALTY RESPIRATORY EMERGENCY 8 (2010), https://adap.ua.edu/uploads/5/7/8/9/57892141/alabamas_ventilator_rationing_plan.pdf ("[P]ersons with severe mental retardation, advanced dementia or severe traumatic brain injury may be poor candidates for ventilator support.").

245. See, e.g., LA. DEP'T OF HEALTH, ESF-8 HEALTH & MEDICAL SECTION, STATE HOSPITAL CRISIS STANDARD OF CARE GUIDELINES IN DISASTERS 35 (2018), <https://int.nyt.com/data/documenthelper/6856-louisiana-triage-guidelines/d95555bb486d68f7007c/optimized/full.pdf#page=1> (including among "exclusion criteria" for triage "[k]nown severe dementia"); TENN. ALTERED STANDARDS OF CARE WORKGROUP, GUIDANCE FOR THE ETHICAL ALLOCATION OF SCARCE RESOURCES DURING A COMMUNITY-WIDE PUBLIC HEALTH EMERGENCY AS DECLARED BY THE GOVERNOR OF TENNESSEE 8 (2016), <https://int.nyt.com/data/documenthelper/6851-tennessee-triage-guidelines/02cb4c58460e57ea9f05/optimized/full.pdf#page=1> ("[T]here are certain medical conditions or situations where maximally aggressive care will not be able to be provided to every individual . . . [Including t]hose who require such a large amount of resources that it is not feasible to accommodate their hospitalization in a prolonged mass-casualty situation.").

246. HEALTH & HUM. SERVS. OFF. FOR C.R. IN ACTION, BULLETIN: CIVIL RIGHTS, HIPAA, AND THE CORONAVIRUS DISEASE 2019 (COVID-19), at 1 (2020), <https://www.hhs.gov/sites/default/files/ocr-bulletin-3-28-20.pdf>.

247. *Id.*

advocates, resulted in many states rescinding or clarifying facially discriminatory ventilator rationing policies that previously discriminated based on specific disabilities.²⁴⁸

Disabled people are experiencing other significant inequities during the COVID-19 pandemic as well. For example, throughout the COVID-19 pandemic, people with disabilities have been prevented from accessing necessary health care.²⁴⁹ Consequently, research shows that people with disabilities are more likely than people without disabilities to have unmet health care needs during the pandemic.²⁵⁰ The COVID-19 pandemic has also impeded disabled people's access to services and support, resulting in considerable social isolation.²⁵¹ Further, throughout the COVID-19 pandemic, people with disabilities are experiencing declining employment rates,²⁵² rising barriers to

248. See, e.g., Press Release, U.S. Dep't of Health & Hum. Servs., OCR Reaches Early Case Resolution with Alabama After It Removes Discriminatory Ventilator Triage Guidelines (Apr. 8, 2020), <https://www.hhs.gov/about/news/2020/04/08/ocr-reaches-early-case-resolution-alabama-after-it-removes-discriminatory-ventilator-triaging.html> (announcing completion of compliance review of the state of Alabama after the state removed ventilator rationing guidelines in response to formal complaints filed alleging discrimination on the basis of disability or age); Press Release, U.S. Dep't of Health & Hum. Servs., OCR Resolves Civil Rights Complaint Against Pennsylvania After It Revises Its Pandemic Health Care Triage Policies to Protect Against Disability Discrimination (Apr. 16, 2020), <https://www.hhs.gov/about/news/2020/04/16/ocr-resolves-civil-rights-complaint-against-pennsylvania-after-it-revises-its-pandemic-health-care.html> (resolving compliance review after the Pennsylvania Department of Health revised existing triage guidelines, including those that "used 'preexisting conditions that are disabilities' to determine a priority score"); Press Release, U.S. Dep't of Health & Hum. Servs., OCR Resolves Complaint with Tennessee After It Revises Its Triage Plans to Protect Against Disability Discrimination (June 26, 2020), <https://www.hhs.gov/about/news/2020/06/26/ocr-resolves-complaint-tennessee-after-it-revises-its-triage-plans-protect-against-disability.html> (resolving compliance review after Tennessee revised its crisis standards of care protocols to ensure that such guidelines do not discriminate against people on the basis of age or disability); Press Release, U.S. Dep't of Health & Hum. Servs., OCR Resolves Complaint with Utah After It Revised Crisis Standards of Care to Protect Against Age and Disability Discrimination (Aug. 20, 2020), <https://www.hhs.gov/about/news/2020/08/20/ocr-resolves-complaint-with-utah-after-revised-crisis-standards-of-care-to-protect-against-age-disability-discrimination.html> (announcing that the agency reached a resolution with the state of Utah after it revised its crisis standards of care guidelines to ensure that such criteria do not discriminate against people on the basis of age or disability).

249. Abrams, *supra* note 165.

250. Assi et al., *supra* note 19.

251. Abrams, *supra* note 165.

252. Press Release, Kessler Found., nTIDE April 2020 Jobs Report: COVID Recession Hits Workers with Disabilities Harder (May 8, 2020), <https://kesslerfoundation.org/press-release/ntide-april-2020-jobs-report-covid-recession-hits-workers-disabilities-harder> (noting that the unemployment rate of people with disabilities decreased by twenty percent, compared to fourteen percent for nondisabled people); see also Allison Norlian, *Workers with Disabilities Disproportionately Impacted by Covid-19 Pandemic*, FORBES (June 22, 2020), <https://www.forbes.com/sites/allisonnorlian/2020/06/22/workers-with-disabilities-disproportionately-impacted-by-covid-19-pandemic/#1a4f9c681ad1> (describing employment inequities experienced by disabled

receiving a free appropriate public education,²⁵³ increased social isolation,²⁵⁴ and growing risks of interpersonal violence.²⁵⁵ In addition, people with disabilities are experiencing higher food insecurity rates during the pandemic than people without disabilities.²⁵⁶

It is well established that President Trump's handling of the COVID-19 pandemic was dangerous and inadequate.²⁵⁷ For disabled people, his ineptness was especially detrimental. For example, as part of his commitment to deregulation, the Trump administration rescinded regulations on safety in nursing homes, including infection control.²⁵⁸ Some experts and activists blame the Trump administration's deregulation of nursing homes for the staggeringly high rate of COVID-19 deaths among people who lived in nursing homes.²⁵⁹ Moreover, the Trump administration placed people most at risk of COVID-19, such as disabled people, in danger by not treating the pandemic seriously and not encouraging masks to keep all people safe.²⁶⁰ Further, their messaging

people during COVID-19); Glob. Disability Inclusion, *Global Disability Inclusion Survey Reports People with Disabilities Are More Negatively Affected by the Economic Impact of COVID-19*, CISION PR NEWSWIRE (May 5, 2020), <https://www.prnewswire.com/news-releases/global-disability-inclusion-survey-reports-people-with-disabilities-are-more-negatively-affected-by-the-economic-impact-of-covid-19-301052873.html> (reporting on a study that found that fifty-one percent of people with disabilities have either lost their jobs, been laid off or furloughed, or believe they will lose their job in the next ninety days compared to twenty-eight percent of nondisabled people).

253. Frailty of Disability Rights, *supra* note 32, at 38–45 (explaining that because of remote learning, disabled students are not receiving free appropriate public educations as mandated by the Individuals with Disabilities Education Act).

254. *How COVID-19 Impacts People with Disabilities*, AM. PSYCH. ASS'N (May 6, 2020), <https://www.apa.org/topics/covid-19/research-disabilities> (“There are unique stressors and challenges that could worsen mental health for people with disabilities during the COVID-19 crisis . . . Some people with disabilities report higher levels of social isolation than their nondisabled counterparts. They may experience intensified feelings of loneliness in response to physical distancing measures.” (citations omitted)).

255. Emily M. Lund, *Interpersonal Violence Against People with Disabilities: Additional Concerns and Considerations in the COVID-19 Pandemic*, 65 REHAB. PSYCH. 199, 199 (2020) (“The COVID-19 pandemic and its consequences enhance the already increased risk for abuse among people with disabilities.”).

256. Lama Assi et al., *Access to Food and Health Care During the COVID-19 Pandemic by Disability Status in the United States*, DISABILITY & HEALTH J., Jan. 19, 2022, at 1, 3.

257. See, e.g., Cameron Peters, *A Detailed Timeline of All the Ways Trump Failed to Respond to the Coronavirus*, VOX (June 8, 2020, 6:00 AM), <https://www.vox.com/2020/6/8/21242003/trump-failed-coronavirus-response>.

258. Rebecca Cokley & Valerie Novack, *The Trump Administration's Deregulation of Nursing Homes Leaves Seniors and Disabled at Higher Risk for COVID-19*, CTR. AM. PROGRESS (Apr. 21, 2020), <https://www.americanprogress.org/article/trump-administrations-deregulation-nursing-homes-leaves-seniors-disabled-higher-risk-covid-19/>.

259. *Id.*

260. See Robyn Powell, *The Coronavirus Pandemic Has Brought Out Society's Alarming Disregard for People with Disabilities*, APPEAL (Mar. 25, 2020), <https://theappeal.org/coronavirus-disabilities/>.

concerning the COVID-19 pandemic was inaccessible to many with disabilities.²⁶¹ For example, the National Association of the Deaf successfully sued the White House for not having sign language interpreters present during press briefings regarding the pandemic.²⁶²

In contrast, the Biden administration has made people with disabilities a priority throughout their COVID-19 pandemic efforts. For example, the American Rescue Plan, a nearly two-million-dollar economic stimulus bill, included funding for home and community-based services, which disability rights advocates have asked for since the pandemic began.²⁶³ The relief package also included additional funding for special education services and social safety programs like SNAP.²⁶⁴ Moreover, the administration has issued guidance indicating that Section 504 and the ADA may protect people with long-term COVID-19 symptoms (often called “long-haulers”) from disability-based discrimination.²⁶⁵ The Biden administration has also established the Disability Information and Access Line, which assists people with disabilities access COVID-19 vaccinations and testing.²⁶⁶ Finally, unlike the Trump administration, the Biden administration has sign language interpreters present during all press briefings.²⁶⁷

Still, the Biden administration has much further to go to adequately support people with disabilities throughout the COVID-19 pandemic. For example, in January 2022, Dr. Rochelle Walensky, director of the Centers for Disease Control and Prevention, made headlines after describing a recent study that found over seventy-five percent of COVID-19 deaths involved people with four or more comorbidities as “encouraging.”²⁶⁸ Disabled people perceived Dr. Walensky’s comments as demonstrative of what they see as public health’s

261. *Id.*

262. *Nat’l Ass’n of the Deaf v. Trump*, 486 F. Supp. 3d 45, 61 (D.D.C. 2020).

263. Abigail Abrams, *One Year into the Pandemic, the White House Aims to Prioritize People with Disabilities*, TIME (Mar. 11, 2021), <https://time.com/5946183/white-house-disability-policy-director/>.

264. *Id.*

265. Off. for C.R. & U.S. Dep’t of Just. Hum. Servs. C.R. Div., *Guidance on “Long COVID” as a Disability Under the ADA, Section 504, and Section 1557*, U.S. DEP’T HEALTH & HUM. SERVS. (July 26, 2021), <https://www.hhs.gov/civil-rights/for-providers/civil-rights-covid19/guidance-long-covid-disability/index.html>.

266. *Disability Information and Access Line*, ADMIN. FOR CMTY. LIVING, <https://acl.gov/DIAL> (last updated Mar. 16, 2022).

267. Alana Wise, *White House Enlists ASL Interpreters for Daily Press Briefings*, NAT’L PUB. RADIO (Jan. 25, 2021, 3:14 PM), <https://www.npr.org/sections/president-biden-takes-office/2021/01/25/960416060/white-house-enlists-asl-interpreters-for-daily-press-briefings>.

268. Tim Dickinson, *‘Abhorrent’: Disability Advocates Slam CDC Director for Comments on ‘Encouraging’ Covid Deaths*, ROLLING STONE (Jan. 10, 2022, 3:37 PM), <https://www.rollingstone.com/politics/politics-news/cdc-disability-rochelle-walensky-encouraging-death-1282179/>.

overarching disregard for the lives of disabled people.²⁶⁹ Therefore, the needs and experiences of people with disabilities must be considered and prioritized during all Biden administration COVID-19 efforts.

D. Threats to Living Freely and Safely in the Community

Since its inception, community living has been critical to the disability rights movement.²⁷⁰ In fact, within the findings of the ADA, Congress explicitly notes, “historically, society has tended to isolate and segregate individuals with disabilities and . . . discrimination against individuals with disabilities continue[s] to be a serious and pervasive social problem. . . .”²⁷¹ Moreover, Congress states that “discrimination against individuals with disabilities persists in such critical areas as . . . institutionalization. . . .”²⁷² However, despite the recognition that people with disabilities should be able to live and participate in their communities, community living remains out of reach for far too many disabled people.²⁷³ In addition, disabled people, especially disabled people of color, currently experience significant threats to their ability to live freely and safely in their communities because of policing and the prison industrial complex.²⁷⁴

As previously noted, the COVID-19 pandemic is exposing the substantial risks associated with congregate and institutional settings. For example, numerous studies have shown that disabled people living in congregate or institutional settings have experienced significantly higher COVID-19 infection and mortality rates than the general population.²⁷⁵ While calls for

269. *Id.*

270. Bridget Hayman, *Independent Living History*, ACCESS LIVING (May 31, 2019), <https://www.accessliving.org/newsroom/blog/independent-living-history/>.

271. 42 U.S.C. § 12101(a)(2).

272. § 12101(a)(3).

273. Mary O’Byrne & Stephen W. Dale, *Tough Choices: People with Disabilities Face Housing Crisis*, SPECIAL NEEDS ALL., <https://www.specialneedsalliance.org/blog/tough-choices-people-with-disabilities-face-housing-crisis/> (last visited Mar. 21, 2022).

274. Elliot Oberholtzer, *Police, Courts, Jails, and Prisons All Fail Disabled People*, PRISON POL’Y INITIATIVE (Aug. 23, 2017), <https://www.prisonpolicy.org/blog/2017/08/23/disability/>.

275. See, e.g., Scott D. Landes et al., *COVID-19 Outcomes Among People with Intellectual and Developmental Disability Living in Residential Group Homes in New York State*, DISABILITY & HEALTH J., Oct. 2020, at 1, 2 (Article No. 100969) (analyzing data from a coalition of organizations providing over half of the residential services for the state of New York and from the New York State Department of Health and finding deleterious outcomes); *Nearly One-Third of U.S. Coronavirus Deaths Are Linked to Nursing Homes*, N.Y. TIMES (June 1, 2021), <https://www.nytimes.com/interactive/2020/us/coronavirus-nursing-homes.html> (finding that thirty-one percent of COVID-19 deaths are linked to nursing homes); Hakim, *supra* note 240; *COVID-19 Case Tracker*, *supra* note 240; Letter from Robert P. Casey et al., *supra* note 240; see also Suzan Mizner, *COVID-19 Deaths in Nursing Homes are Not Unavoidable—They Are the Result of Deadly Discrimination*, AM. C.L. UNION (June 23, 2020), <https://www.aclu.org/news/disability-rights/covid-19-deaths-in-nursing-homes-are-not-unavoidable-they-are-the-result-of-deadly-discrimination/>.

deinstitutionalization have existed for decades, scholars have focused on how unnecessary segregation in congregate and institutional settings prevents people with disabilities from living fulfilling and independent lives.²⁷⁶ Although public health risks have always been present in congregate and institutional settings, it was not until the COVID-19 pandemic that many recognized that these placements are dangerous.²⁷⁷

Of course, this tragedy was entirely preventable. The infection and mortality rates would be considerably lower among disabled people if they were not forced to live in congregate and institutional settings.²⁷⁸ The 1999 United States Supreme Court decision, *Olmstead v. L.C. ex rel. Zimring*, mandates states to eliminate the unnecessary segregation of people with disabilities and requires that people with disabilities obtain services in the most integrated setting appropriate to their individual needs when possible.²⁷⁹ Still, far too many disabled people remain institutionalized, mainly because, notwithstanding *Olmstead*, states are still permitted to restrict the number of people who receive home and community-based services.²⁸⁰

At the same time, Medicaid's policies have consistently favored institutions over home- and community-based services.²⁸¹ For example, although Medicaid coverage of nursing homes is federally mandated, comparable home and community-based services—such as personal assistant services, skilled nursing, and specialized therapies—are deemed optional.²⁸² Consequently, an “institutional bias” persists, whereby states must cover the costs of placements in institutional settings, but home and community-based services are discretionary.²⁸³ In addition, because home and community-based services are considered optional, states often have lengthy waitlists.²⁸⁴ As of 2020, over

276. Larisa Antonisse, Note, *Strengthening the Right to Medicaid Home and Community-Based Services in the Post-COVID Era*, 121 COLUM. L. REV. 1801, 1806 (2021).

277. *Id.* at 1806–07.

278. Mizner, *supra* note 275.

279. *Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581, 607 (1999) (“For the reasons stated, we conclude that, under Title II of the ADA, States are required to provide community-based treatment for persons with mental disabilities when the State’s treatment professionals determine that such placement is appropriate, the affected persons do not oppose such treatment, and the placement can be reasonably accommodated, taking into account the resources available to the State and the needs of others with mental disabilities.”).

280. Antonisse, *supra* note 276, at 1832–36.

281. NGA T. THACH & JOSHUA M. WIENER, OFF. DISABILITY, AGING & LONG-TERM CARE POL’Y, U.S. DEP’T OF HEALTH & HUM. SERVS., AN OVERVIEW OF LONG-TERM SERVICES AND SUPPORTS AND MEDICAID: FINAL REPORT 1 (2018).

282. *Id.* at 5; *The Institutional Bias: What It Is, Why It Is Bad, and the Laws, Programs, and Policies Which Would Change It*, AUTISTIC SELF ADVOC. NETWORK, <https://autisticadvocacy.org/actioncenter/issues/community/bias/> (last visited Mar. 26, 2022).

283. *Why It Is Bad, and the Laws, Programs, and Policies Which Would Change It*, *supra* note 282.

284. *Id.*

665,000 people across the United States were on Medicaid home and community-based services waitlists, and in 2017, the average wait time for those services was thirty months.²⁸⁵ Thus, with significant unmet needs and no available home and community-based services, institutions are often the only option for many disabled people.²⁸⁶ Notably, research indicates that people of color have decreased access to home and community-based services compared to their white counterparts.²⁸⁷ Finally, most disabled people prefer to live in their communities with home and community-based services, and it is usually more cost-effective for states.²⁸⁸

In addition to being denied services that enable people with disabilities to live in their communities, disabled people, especially disabled people of color, who live in the community, contend with threats to their safety and wellbeing because of policing and the prison industrial complex.²⁸⁹ For example, a study found that people with disabilities have a cumulative probability of arrest of nearly forty-three percent compared to a thirty percent probability of arrest among people without disabilities.²⁹⁰ Moreover, people with disabilities, particularly disabled people of color, are often the victims of police violence.²⁹¹ In fact, between 2013 and 2015, nearly half of the people killed by police had disabilities.²⁹² Likewise, disabled people, especially disabled people of color,

285. *Medicaid HCBS Waiver Waiting List Enrollment, by Target Population*, KAISER FAM. FOUND., <https://www.kff.org/health-reform/state-indicator/waiting-lists-for-hcbs-waivers> (last visited Mar. 26, 2022) (showing waitlist data for 2020); MaryBeth Musumeci et al., *Key Questions About Medicaid Home and Community-Based Services Waiver Waiting Lists*, KAISER FAM. FOUND. (Apr. 4, 2019), <https://www.kff.org/medicaid/issue-brief/key-questions-about-medicaid-home-and-community-based-services-waiver-waiting-lists/>.

286. Antonisse, *supra* note 276, at 1805.

287. Tetyana Pylypiv Shippee et al., *Evidence for Action: Addressing Systemic Racism Across Long-Term Services and Supports*, 23 J. AM. MED. DIRS. ASS'N 214, 215 (2022).

288. Antonisse, *supra* note 276, at 1819–20.

289. Oberholtzer, *supra* note 274.

290. Erin J. McCauley, *The Cumulative Probability of Arrest by Age 28 Years in the United States by Disability Status, Race/Ethnicity, and Gender*, 107 AM. J. PUB. HEALTH 1977, 1978 (2017).

291. *See, e.g.*, Rick Cohen, *Excessive Police Force Toward Persons with Disabilities Needs National Discussion*, NONPROFIT Q. (May 26, 2015), <http://nonprofitquarterly.org/2015/05/26/excessive-police-force-toward-persons-with-disabilities-needs-national-discussion/> (“Recent cases of alleged police brutality toward blacks intersect with the presence of disabilities . . . in some striking ways. Ruderman and Simons note, for example, that Freddie Gray may have had an intellectual disability due to the effects of lead poisoning. In Boston, there was the case of 41-year-old Wilfred Justiniano, suffering from schizophrenia, who despite being ‘armed’ only with a writing pen was killed in 2013 by a police officer.”).

292. Marti Hause & Ari Melber, *Half of People Killed by Police Have a Disability: Report*, NBC NEWS (Mar. 14, 2016, 8:13 PM), <https://www.nbcnews.com/news/us-news/half-people-killed-police-suffer-mental-disability-report-n538371>; *see also* Brief for the Am. C.L. Union et al. as Amici Curiae supporting Respondent at 17, *City & County of San Francisco v. Sheehan*, 135 S.

are disproportionately harmed by the prison industrial complex.²⁹³ Nearly four in ten state prisoners and three in ten federal prisoners are disabled.²⁹⁴ Further, between twenty-five and forty percent of people with psychiatric disabilities will be incarcerated at some point in their life.²⁹⁵

Trump's presidency put community living further in peril for people with disabilities. For example, the Trump administration's proposed cuts to Medicaid funding would have resulted in even fewer monies for home and community-based services,²⁹⁶ and would have "push[ed] millions with disabilities into institutions."²⁹⁷ President Trump also supported institutionalizing disabled people. In fact, following the shootings in El Paso, Texas, and Dayton, Ohio, President Trump called for the rebuilding of institutions for people with psychiatric disabilities, stating, "I think we have to start building institutions again because you know, if you look at the '60s and the '70s, so many of these institutions were closed, and the people were just allowed to go onto the streets. . . . A lot of our conversation has to do with the fact that we have to open up institutions. We can't let these people be on the streets."²⁹⁸ Moreover, while *Olmstead* enforcement by the DOJ was a priority during the Obama-era,²⁹⁹ there was a striking decline in such investigations and enforcement activities by the

Ct. 1765 (2015) (No. 13-1412), 2015 WL 721233 (reviewing literature and concluding that "half of fatal police encounters involve persons with psychiatric disabilities.").

293. SINS INVALID, SKIN, TOOTH, AND BONE: THE BASIS OF MOVEMENT IS OUR PEOPLE 50, 52–53 (2d ed. 2019).

294. LAURA M. MARUSCHAK & JENNIFER BRONSON, U.S. DEP'T JUST., SURVEY OF PRISON INMATES, 2016: DISABILITIES REPORTED BY PRISONERS 1 (2021), <https://bjs.ojp.gov/content/pub/pdf/drpspi16st.pdf>.

295. Matt Ford, *America's Largest Mental Hospital is a Jail*, ATL. (June 8, 2015), <https://www.theatlantic.com/politics/archive/2015/06/americas-largest-mental-hospital-is-a-jail/395012/>.

296. See discussion *supra* Section III.A.

297. Rebecca Vallas et al., *5 Ways President Trump's Agenda Is a Disaster for People with Disabilities*, CTR. AM. PROGRESS (Mar. 8, 2017), <https://www.americanprogress.org/article/5-ways-president-trumps-agenda-disaster-people-disabilities/>.

298. Maegan Vazquez, *Trump Suggests Opening More Mental Institutions to Deal with Mass Shootings*, CNN POLS. (Aug. 15, 2019, 6:22 PM), <https://www.cnn.com/2019/08/15/politics/trump-guns-mental-institutions/index.html>.

299. *Head of the Civil Rights Division Vanita Gupta Delivers Remarks at the National Disability Rights Network's Annual Conference*, U.S. DEP'T JUST. (June 16, 2016), <https://www.justice.gov/opa/speech/head-civil-rights-division-vanita-gupta-delivers-remarks-national-disability-rights> ("For the last eight years, the Obama Administration, in partnership with you, has led vigorous *Olmstead* enforcement efforts that breathed new meaning and real life into the Supreme Court's community integration mandate. Since 2009, we've taken action and filed briefs in 50 *Olmstead* integration matters in 25 states.").

Trump administration.³⁰⁰ In sum, the Trump administration demonstrated an overwhelming disregard for community living for people with disabilities.

The Trump administration failed to address inequity issues relating to policing and the prison industrial complex. For example, during Trump's presidency, the DOJ dramatically curtailed the ability of the DOJ to use consent decrees to address civil rights violations by police departments.³⁰¹ However, such consent decrees have proven critical for confronting police violence against people with disabilities.³⁰² In addition, President Trump made several inflammatory comments concerning the protests following the police killing of George Floyd and countless other people of color.³⁰³ His offensive rhetoric concerning George Floyd was notably pertinent to disabled people because George Floyd had disabilities.³⁰⁴ Ultimately, equity issues relating to policing and the prison industrial complex were mainly disregarded throughout Trump's presidency, and amplified in the few instances he took action.

In contrast, President Biden has expressed strong support for ensuring that all people with disabilities can live in their communities safely and freely.³⁰⁵ For example, during the 2020 election, President Biden said that his administration "will ensure every agency aggressively enforces *Olmstead's* integration mandate, including in housing, education, health care, employment, and transportation."³⁰⁶ He also pledged to "work with Congress to ensure that people with disabilities no longer have to wait for decades to access community-based services."³⁰⁷ Further, President Biden vowed to "end the institutional bias in the Medicaid program" and expand access to home and community-based services.³⁰⁸ Notably, the Build Back Better Act, supported by President Biden

300. See *Olmstead Enforcement – Cases by Issue*, ADA.GOV, https://www.ada.gov/olmstead/olmstead_cases_by_issue.htm (last visited Mar. 16, 2022) (reviewing the DOJ's *Olmstead* enforcement and showing few cases during Trump's presidency).

301. Jeremy Venook, *Trump's Record on Police Brutality and Peaceful Protests: Making the Problem Worse*, CTR. AM. PROGRESS ACTION (June 15, 2020), <https://www.americanprogressaction.org/issues/security/news/2020/06/15/177851/trumps-record-police-brutality-peaceful-protests-making-problem-worse/>.

302. See Nissa Rhee, *For People with Disabilities, Chicago Police Consent Decree Takes First Steps Toward Reform*, CHI. REP. (Jan. 15, 2019), <https://www.chicagoreporter.com/for-people-with-disabilities-chicago-police-consent-decree-is-just-a-first-step-toward-reform/>.

303. Venook, *supra* note 301.

304. Dominic Bradley & Sarah Katz, *Sandra Bland, Eric Garner, Freddie Gray: The Toll of Police Violence on Disabled Americans*, GUARDIAN (June 9, 2020, 6:30 AM), <https://www.theguardian.com/commentisfree/2020/jun/09/sandra-bland-eric-garner-freddie-gray-the-toll-of-police-violence-on-disabled-americans>.

305. Biden Plan, *supra* note 35.

306. *Id.*

307. *Id.*

308. *Id.*

but not yet passed through Congress, includes a considerable increase in home- and community-based services funding.³⁰⁹

Furthermore, during the 2020 election, President Biden expressed a commitment to “[e]nsur[ing] our criminal justice system treats people with disabilities fairly.”³¹⁰ For example, he committed to increasing funding to facilitate partnerships between police and mental health and disability providers.³¹¹ President Biden also vowed that the DOJ would actively enforce violations of disability rights laws by the criminal legal system.³¹² Nonetheless, activists have recently voiced concerns about President Biden’s failure to reform the criminal legal system thus far.³¹³

E. *Effects of Natural Disasters and Climate Change*

While the devastating effects of climate change are harming everyone, its impact is deeply felt by disabled people.³¹⁴ At the same time, according to Human Rights Watch, “[d]ue to discrimination, marginalization, and certain social and economic factors, people with disabilities may experience the effects of climate change differently and more intensely than others.”³¹⁵ Moreover, as the United States experiences a rapidly increasing number of natural disasters—because of climate change—we are reminded that “emergencies do not impact all populations equally.”³¹⁶ Still, time and time again, disabled people have been disproportionately impacted, often fatally, by these emergencies.³¹⁷

309. *Fact Sheet: How the Build Back Better Framework Will Support the Sandwich Generation*, WHITE HOUSE (Sept. 21, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/09/21/fact-sheet-how-the-build-back-better-framework-will-support-the-sandwich-generation/>.

310. Biden Plan, *supra* note 35.

311. *Id.*

312. *Id.*

313. Carrie Johnson, *Activists Wanted Biden to Revamp the Justice System. Many Say They’re Still Waiting*, Nat’l Pub. Radio (Dec. 12, 2021, 5:00 AM), <https://www.npr.org/2021/12/12/1062485458/biden-criminal-justice-system-clemency>.

314. Melissa Denchak & Jeff Turrentine, *Global Climate Change: What You Need to Know*, NAT. RES. DEFENSE COUNCIL (Sept. 1, 2021), <https://www.nrdc.org/stories/global-climate-change-what-you-need-know#effects>.

315. Cara Schulte, *People with Disabilities Needed in Fight Against Climate Change: UN Releases First Report on Disability Rights in the Context of Climate Action*, HUM. RTS. WATCH (May 28, 2020, 2:29 PM), <https://www.hrw.org/news/2020/05/28/people-disabilities-needed-fight-against-climate-change>.

316. Adrien A. Weibgen, *The Right to Be Rescued: Disability Justice in an Age of Disaster*, 124 YALE L.J. 2406, 2410 (2015) (“As this nation’s experiences during Hurricane Katrina, Hurricane Sandy, and other disasters have made clear, extreme weather events and other emergencies do not impact all populations equally[.]”).

317. Frailty of Disability Rights, *supra* note 32, at 42–43, 63 (2020) (“While the current pandemic is unprecedented *in scope*, the United States has experienced natural disasters and other national emergencies that previously raised questions about the requirements and capacity to serve

Disabled people face disproportionate risks stemming from climate change, which is intensifying floods, hurricanes, and extreme weather events.³¹⁸ The structural barriers that disabled people encounter every day—inaccessible infrastructure, inadequate public transportation, and widespread poverty, among others—become a matter of life or death during a disaster.³¹⁹ Further, climate change and enduring natural disasters affect people with disabilities uniquely. For example, extreme heat can harm people with spinal cord injuries who cannot sweat.³²⁰ Emergency alerts concerning evacuations are often inaccessible to Deaf or hard-of-hearing people.³²¹ Shelters are not equipped to support people with disabilities, especially those with complex medical support needs, such as ventilators.³²² In addition, power outages, which are becoming increasingly common, can be particularly difficult for people with disabilities, especially those who rely on power to change their wheelchairs or those who need power for their ventilators.³²³

Including people with disabilities in emergency management planning is critical but often not done.³²⁴ Examples abound of how people with disabilities

students with disabilities . . . From gun control to immigration and natural disasters such as wildfires and hurricanes, disability rights matter to our national security risk assessment, planning, and responses.”); Rabia Belt & Sharon Driscoll, *After the Hurricane: Rabia Belt on Challenges Facing People with Disabilities in Disasters*, STAN. L. BLOG (Sept. 7, 2017), <https://law.stanford.edu/2017/09/07/after-the-hurricane-rabia-belt-on-challenges-facing-disabled-in-disasters/> (“Natural disasters are difficult for everyone, but they are a particular challenge for people with disabilities. Emergency preparedness plans may not address the problems that people with disabilities face.”); Jessica L. Roberts, *An Area of Refuge: Due Process Analysis and Emergency Evacuation for People with Disabilities*, 13 VA. J. SOC. POL’Y & L. 127, 128 (2005) (“In discussing emergencies, everyone knows the phrase ‘Women and children first.’ While this notion seems antiquated, there is still a hierarchy of rescue that has nothing to do with age or gender. This platitude might read, ‘People with disabilities last.’”).

318. Julia Watts Belser, *Disabled People Cannot Be “Expected Losses” in the Climate Crisis*, TEEN VOGUE (Sept. 23, 2019), <https://www.teenvogue.com/story/disabled-people-vulnerable-climate-crisis>; Denchak & Turrentine, *supra* note 314.

319. Marlena Chertock, *The Future is Disabled: Planning for Climate Change Must Include People with Disabilities*, 350.ORG (Dec. 3, 2020), <https://350.org/international-day-of-disabled-persons/>.

320. Marsha Saxton & Alex Ghenis, *Commentary: Disability and Climate Change—Impact on Health and Survival*, ENV’T HEALTH NEWS (May 17, 2018), <https://www.ehn.org/climate-change-and-disability-2569643231.html>.

321. *Id.*

322. *Id.*

323. Charlotte Huff, *Growing Power Outages Pose Grave Threat to People Who Need Medical Equipment to Live*, NAT’L PUB. RADIO (May 15, 2021, 7:01 AM), <https://www.npr.org/sections/health-shots/2021/05/15/996872685/growing-power-outages-pose-grave-threat-to-people-who-need-medical-equipment-to->.

324. See NAT’L COUNCIL ON DISABILITY, *THE IMPACT OF HURRICANES KATRINA AND RITA ON PEOPLE WITH DISABILITIES: A LOOK BACK AND REMAINING CHALLENGES 2* (2006) (noting

are detrimentally—and often, fatally—affected by excluding their needs in emergency management planning.³²⁵ For instance, during Hurricanes Katrina and Rita, “a disproportionate number of the fatalities were people with disabilities” because federal, state, and local governments failed to include disabled people in emergency management planning.³²⁶ Nearly a decade later, during Hurricane Sandy in 2012, disabled people found themselves stranded in high-rise apartments in New York City for weeks without adequate resources or support.³²⁷ Five years later, in 2017, nursing home residents in Florida died from extreme heat after their institution failed to evacuate them in advance of Hurricane Irma.³²⁸ Two years later, in 2019, massive wildfires in California led to countless disabled people being without electricity for an extended period, including people who needed electricity for ventilators and other critical equipment.³²⁹ Most recently, in 2021, a winter storm in Texas led to extended power outages, again disproportionately affecting disabled people, who were stranded without electricity while contending with freezing temperatures.³³⁰ In each of these instances, and many others, the explicit exclusion of people with disabilities from emergency management planning resulted in countless disabled people unnecessarily suffering and dying.³³¹

The stakes of climate change are exceptionally high for multiply marginalized disabled people.³³² As Patty Berne, a disability justice activist, explains: “From homeless encampments to local jail cells, the social, political, and economic disparities among disabled queer and trans people of color put our

“emergency plans must acknowledge and address the difficulties experienced by people with disabilities”).

325. *See id.* at 3 (providing an example of how disabled people were displaced after Hurricane Katrina).

326. *Id.*

327. Weibgen, *supra* note 316, at 2437–38.

328. Michael Nedelman, *Husband and Wife Among 14 Dead After Florida Nursing Home Lost A/C*, CNN HEALTH (Oct. 9, 2017, 3:47 PM), <https://www.cnn.com/2017/10/09/health/florida-irma-nursing-home-deaths-wife/index.html>.

329. Colleen Shalby, *Power Outages Leave Those with Disabilities Especially Vulnerable. Help Remains a Work in Progress*, L.A. TIMES (Oct. 25, 2019, 12:33 PM), <https://www.latimes.com/california/story/2019-10-25/problems-disabled-help-power-outages>.

330. Katie Reilly, *Texas Republican Leadership Failed Disabled People During Winter Storm Disaster*, TEEN VOGUE (Feb. 25, 2021), <https://www.teenvogue.com/story/texas-republican-leadership-failed-disabled-people>; Amal Ahmed, *Texans with Disabilities Were Left to Fend for Themselves During Winter Storm Uri*, TEX. OBSERVER (Apr. 15, 2021, 10:17 AM), <https://www.texasobserver.org/texans-with-disabilities-were-left-to-fend-for-themselves-during-winter-storm-uri/>.

331. Julia Cusick, *Statement: Disabled People Are Completely Excluded from FEMA's 2019 Disaster Preparedness Report*, CTR. AM. PROGRESS (Dec. 5, 2019), <https://www.americanprogress.org/press/statement-disabled-people-completely-excluded-femas-2019-disaster-preparedness-report/>.

332. Belsler, *supra* note 318.

communities at the frontlines of ecological disaster.”³³³ Consequently, research indicates that people of color and people with disabilities are among the most negatively affected by climate change.³³⁴

Of course, the adverse effects of climate change on people with disabilities extend beyond natural disasters. For example, bans on single-use plastic goods are contentious among people with disabilities and environmental justice activists.³³⁵ Specifically, many people with disabilities rely on single-use plastic goods, such as plastic straws, to survive.³³⁶ As states and local governments increasingly impose rules banning plastic straws and other single-use plastic goods, disabled people are disproportionately harmed.³³⁷ Moreover, state and local governments often implement these restrictions without considering people with disabilities.³³⁸

Regrettably, the Trump administration accelerated the harmful effects of climate change, further exacerbating the risk to disabled people.³³⁹ For example, it rolled back many Obama-era regulations concerning climate change, including withdrawing the United States from the Paris Climate Agreement.³⁴⁰ Moreover, President Trump’s responses to natural disasters were often politicized, demonstrating the needs of conservative states over liberal states.³⁴¹ Strikingly, the Trump administration even removed climate change from the U.S. Federal Emergency Management Administration’s (FEMA) strategic plan.³⁴² Disabled people have been significantly harmed by the Trump

333. *Id.*

334. *See* Chertock, *supra* note 319 (noting disabled people and people of color are at higher risk of being affected, or disproportionately affected, by climate change); Saxton & Ghenis, *supra* note 320 (noting that “people with disabilities are uniquely affected by climate change.”).

335. *See* Robyn Powell, *I Need Plastic Straws to Drink. I Also Want to Save the Environment.*, HUFFPOST (June 12, 2018, 5:45 AM), https://www.huffpost.com/entry/opinion-powell-straw-ban_n_5b1e76ade4b0bbb7a0df9303 (discussing the growing incompatibility between disability rights and environmental justice).

336. *Id.*

337. *Id.*

338. *See id.* (noting such efforts “must include the disability community”).

339. Coral Davenport, *What Will Trump’s Most Profound Legacy Be? Possibly Climate Damage*, N.Y. TIMES (Nov. 9, 2020, 7:05 PM), <https://www.nytimes.com/2020/11/09/climate/trump-legacy-climate-change.html>; Belser, *supra* note 318.

340. *Trump Administration’s Track Record on the Environment?*, BROOKINGS INST. (Aug. 4, 2020), <https://www.brookings.edu/policy2020/votervital/what-is-the-trump-administrations-track-record-on-the-environment/>.

341. Matt Viser & Seung Min Kim, *For Trump, Even Disaster Response is Colored in Red and Blue*, WASH. POST (Nov. 13, 2018), https://www.washingtonpost.com/politics/president-trump-again-blames-california-for-a-natural-disaster-adding-to-his-public-denunciations-of-the-strongly-democratic-state/2018/11/12/811626de-e6ab-11e8-bbdb-72fdbf9d4fed_story.html.

342. Ella Nilsen, *First On CNN: New FEMA Plan Puts Climate Crisis Front And Center After Trump Administration Erased It*, CNN (Dec. 9, 2021, 6:02 AM), <https://www.cnn.com/2021/12/09/politics/fema-strategic-plan-climate/index.html>.

administration's inadequate and dangerous handling of natural disasters and climate change more broadly.³⁴³ For example, during the Trump-era, FEMA's resources for assisting people with disabilities during emergencies were dramatically decreased.³⁴⁴ FEMA also discontinued training for local governments and community groups on incorporating the needs of disabled people in emergency management planning.³⁴⁵

Conversely, the Biden administration is deeply concerned about climate change and has vowed to implement policies to confront its effects, including those experienced by disabled people.³⁴⁶ So far, President Biden has rolled back President Trump's destructive policies relating to the environment and rejoined the United States to the Paris Climate Agreement.³⁴⁷ The Biden administration has also prioritized climate change in FEMA's strategic plan.³⁴⁸ During the 2020 election, President Biden vowed to promote an inclusive approach to emergency management planning that explicitly includes disabled people.³⁴⁹ He also promised that disabled people would "have a strong voice in the planning for disasters and that shelters and recovery services are accessible to all[.]"³⁵⁰ Notably, shortly after taking office, President Biden issued an Executive Order on "Tackling the Climate Crisis at Home and Abroad," where he called on the Secretary of HHS to form an interagency working group to decrease the risk of climate change to people with disabilities and other historically marginalized groups.³⁵¹

Undeniably, disabled people are among the groups most negatively affected by climate change. They are similarly more likely to be harmed during natural disasters.³⁵² Nevertheless, policymakers routinely exclude them from these

343. See Michaela Ross, *Trump's FEMA Blamed for Elderly, Disabled Struggling in Storms*, BLOOMBERG GOV'T (Oct. 2, 2019), <https://about.bgov.com/news/trumps-fema-blamed-for-elderly-disabled-struggling-in-storms/>.

344. *Id.*

345. *Id.*

346. Oliver Milman & Alvin Chang, *How Biden is Reversing Trump's Assault on the Environment*, GUARDIAN (Feb. 2, 2021, 11:00), <https://www.theguardian.com/us-news/2021/feb/02/biden-trump-environment-climate-crisis>.

347. *Id.*; Maegan Vazquez, *Biden Apologizes to World Leaders for Trump's Exit from Paris Accords*, CNN POLS. (Nov. 1, 2021, 12:25 PM), <https://www.cnn.com/2021/11/01/politics/us-president-cop26-climate-opening-remarks/index.html>.

348. Nilsen, *supra* note 342.

349. Biden Plan, *supra* note 35.

350. *Id.*

351. Brian Mateo, *Climate Change Solutions Must Include People with Disabilities*, JUST SEC. (Apr. 27, 2021), <https://www.justsecurity.org/75862/climate-change-solutions-must-include-people-with-disabilities/>.

352. *Id.*

critical conversations—often with deadly consequences.³⁵³ Throughout Trump’s presidency, these inequities were amplified.

IV. FROM DISABILITY RIGHTS TO DISABILITY JUSTICE

Despite decades of activism and the enactment of expansive federal disability rights laws, people with disabilities, especially those who live at the intersection of disability and other historically marginalized identities, continue to experience pervasive and persistent social, economic, and health inequities.³⁵⁴ Simply put, business as usual is not working. Accordingly, we must move beyond a disability rights approach to one that embraces disability justice. This Part first examines the tenets of disability justice. Thereafter, it makes a case for using disability justice to dismantle the profoundly entrenched oppression experienced by people with disabilities through normative and transformative legal and policy responses.

A. Overview of Disability Justice

Disability justice is an intersectional social movement, theory, and praxis that was initially conceived in 2005 by a group of queer, trans, gender non-conforming, and racialized disabled people, including Patty Berne, Mia Mingus, Stacey Milbern, Leroy Moore, Eli Clare, and Sebastian Margaret.³⁵⁵ Disability justice includes ten fundamental principles that are necessary for achieving a truly inclusive and just society: intersectionality, the leadership of those most impacted, anti-capitalist politics, cross-movement solidarity, recognition of wholeness, sustainability, cross-disability solidarity, interdependences, and collective liberation.³⁵⁶ Further, disability justice celebrates the understanding that “all bodies are unique and essential” and that “all bodies are confined by ability, race, gender, sexuality, class, nation state, religion, and more, and we cannot separate them.”³⁵⁷

Coined by some as the “second wave” of the disability rights movement,³⁵⁸ disability justice was created in response to the disability rights movement.³⁵⁹ According to Sins Invalid, a disability justice performance project, although the

353. See, e.g., Ross, *supra* note 343.

354. See discussion *supra* Part III.

355. See LEAH LAKSHMI PIEPZNA-SAMARASINHA, CARE WORK: DREAMING DISABILITY JUSTICE 10, 52 (2018).

356. SINS INVALID, *supra* note 293, at 22–26.

357. *Id.* at 19.

358. Doron Dorfman, *Afterword: The ADA’s Imagined Future*, 71 SYRACUSE L. REV. 933, 935 (2021); see also Patty Berne, *Disability Justice—A Working Draft by Patty Berne*, SINS INVALID (Jun. 10, 2015), <https://www.sinsinvalid.org/blog/disability-justice-a-working-draft-by-patty-berne> (explaining that disabled activists of color coalesced to consider a “second wave” of disability rights and ultimately created disability justice).

359. *Id.*

disability rights movement “had many successes in advancing a philosophy of independent living and opening possibilities for people with disabilities[,]” it has also left us with “cliff-hangers” that remain to be solved.³⁶⁰ Disability justice activists and scholars have specifically identified three shortcomings of the disability rights movement that have yet to be sufficiently addressed.³⁶¹ First, by focusing exclusively on disability, the disability rights movement has failed to recognize people with disabilities living at the intersection of multiple historically marginalized identities.³⁶² Second, the disability rights movement has “historically centered white experiences” and has not recognized the ways white disabled people can still wield privilege.³⁶³ Third, by focusing almost exclusively on the needs and experiences of people with physical disabilities, the disability rights movement has largely ignored people with other disabilities.³⁶⁴

To that end, crucial to disability justice is the understanding that individualist approaches to inequities are unavoidably limited and insufficient. Consequently, disability justice activists and scholars posit that there are limitations to using the law to achieve equality for people with disabilities.³⁶⁵ According to attorney and organizer Talila A. Lewis, “[l]itigation can’t save us. The systems that abuse us can’t save us.”³⁶⁶ Instead, disability justice activists and scholars assert that “[t]he root of disability oppression is ableism and we must work to understand it, combat it, and create alternative practices rooted in justice.”³⁶⁷ As Professor Chin explains, by centering ableism as the root of disability oppression, disability justice recognizes “the layers of an intricate and purposeful system fueled by a centuries-long history rooted in white supremacy that sanctioned the enslavement, institutionalization, criminalization, and sterilization of Black people for profit, dominance, and control.”³⁶⁸ Ultimately, while “[t]he disability rights movement has been crucial to the liberation of people with disabilities,”³⁶⁹ disability justice activists and scholars understand the importance of thinking beyond “gaining access to the current system[,]”³⁷⁰

360. *Id.* at 13.

361. *See id.*

362. SINS INVALID, *supra* note 293, at 13.

363. *Id.*

364. *Id.*

365. Marcy Karin et al., *Disability Rights: Past, Present, and Future: A Roadmap for Disability Rights*, 23 U. D.C. L. REV. 1, 11 (2020) (quoting Talila A. Lewis).

366. *Id.*

367. SINS INVALID, *supra* note 293, at 15.

368. Chin, *supra* note 25, at 696–97.

369. Nomy Lamm, *This is Disability Justice*, THE BODY IS NOT AN APOLOGY (Sept. 2, 2015), <https://thebodyisnotanapology.com/magazine/this-is-disability-justice/>.

370. Mia Mingus, *Access Intimacy, Interdependence and Disability Justice*, LEAVING EVIDENCE (Apr. 12, 2017, 3:00 AM), <https://leavingevidence.wordpress.com/2017/04/12/access-intimacy-interdependence-and-disability-justice/>.

and the need to dismantle structural oppression and address the needs of multiply marginalized people with disabilities.³⁷¹ Accordingly, “[w]here disability rights seeks to change social conditions for some disabled people via law and policy, disability justice moves beyond law and policy: It seeks to radically transform social conditions and norms in order to affirm and support all people’s inherent right to live and thrive.”³⁷² In sum, disability justice necessitates the dismantling of systems that oppress people with disabilities, with specific attention to the needs and experiences of people who live at the intersection of disability and other historically marginalized identities.³⁷³

B. *The Importance of Disability Justice*

Disability justice supports the paradigm shift urgently needed for reimagining the fight for justice for people with disabilities that finally confronts the widespread oppression experienced by all disabled people. Furthermore, disability justice is essential to challenging the shortcomings of the disability rights movement. In particular, as described herein, disability justice can guide us in disrupting intersecting oppressions, responding to the cross-disability community, engaging in cross-movement organizing, confronting the arbitrariness of independence, challenging capitalist politics, and developing new strategies for advocacy beyond the courtroom.

First, the disability rights movement has rightly been criticized for prioritizing white people with disabilities, who often reinforce the racism and oppression that disabled people of color experience.³⁷⁴ Specifically, “[a]ffluent white men and women (mostly men) with social and political access largely drove the disability rights framework from the 1970s through the passage of the ADA in 1990.”³⁷⁵ Hence, by focusing on leveling the playing field so that disabled people have the same opportunities as nondisabled people, disability rights laws and policies, such as the ADA, have failed to account for the impact of racism, sexism, and other types of oppression experienced by some people with disabilities.³⁷⁶ In other words, because the ADA only intended to prohibit disability-based discrimination, it does not protect against intersecting oppressions.³⁷⁷ Notably, activists and scholars have long decried the limitations of the rights-based model in civil rights strategies, such as that of the ADA, as

371. *Id.*

372. Talila “TL” Lewis, *Disability Justice is an Essential Part of Abolishing Police and Prisons*, LEVEL (Oct. 7, 2020), <https://level.medium.com/disability-justice-is-an-essential-part-of-abolishing-police-and-prisons-2b4a019b5730>.

373. *See id.*

374. *See* LIAT BEN-MOSHE, *DECARCERATING DISABILITY: DEINSTITUTIONALIZATION AND PRISON ABOLITION* 29 (2020); Berne, *supra* note 358.

375. Chin, *supra* note 25, at 707.

376. *Id.* at 711–12.

377. *See id.* at 712.

failing to adequately confront the inequities “facing intersectionally targeted populations” adequately and sometimes worsening the systems of “violence and control” that they aim to address.³⁷⁸ Unsurprisingly, then, “the ADA has less impact for disabled people who live at the intersection of multiple marginalized identities.”³⁷⁹

In response, disability justice was developed as a “movement-building framework that would center the lives, needs, and organizing strategies of disabled queer and trans and/or Black and brown people marginalized from mainstream disability rights organizing’s white-dominated, single-issue focus.”³⁸⁰ Disability justice, accordingly, confronts the interconnectedness of “heteropatriarchy, white supremacy, colonialism, and capitalism” and its relation to ableism.³⁸¹ Importantly, disability justice “provides a tool to examine more critically who is and is not most benefitting” from the disability rights paradigm.³⁸² Ultimately, disability justice’s commitment to intersectionality necessitates identifying how systems of oppression, such as ableism, racism, sexism, xenophobia, classism, homophobia, and transphobia, often work together and empower one another.

Second, though the disability rights movement originated primarily based on the purported need to unite a “disability rights movement that spanned a splintered universe[.]”³⁸³ it centered mainly on people with physical disabilities.³⁸⁴ Led principally by white people with physical disabilities, the movement focused on issues of importance to people with physical disabilities, including “promoting the removal of architectural barriers, increased employment for people with disabilities, and independent living[.]” and largely overlooked the needs of people with other disabilities, such as people with intellectual disabilities who were often institutionalized and segregated from society.³⁸⁵ Conversely, disability justice challenges the disability rights movement’s emphasis on people with physical disabilities, which came at the expense of people with other types of disabilities, by centering the experiences of people with intellectual disabilities, psychiatric disabilities, chronic illnesses,

378. Dean Spade, *Intersectional Resistance and Law Reform*, 38 J. WOMEN CULTURE & SOC’Y 1031, 1032, (2013); see also Alan David Freeman, *Legitimizing Discrimination Through Antidiscrimination Law: A Critical Review of Supreme Court Doctrine*, 62 MINN. L. REV. 1049, 1054 (1978) (opining that “[a]nti-discrimination law has thus been ultimately indifferent to the condition of the victim; its demands are satisfied if it can be said that the ‘violation’ has been remedied.”).

379. Chin, *supra* note 25, at 692.

380. PIEPZNA-SAMARASINHA, *supra* note 355, at 10.

381. SINS INVALID, *supra* note 293, at 18.

382. Chin, *supra* note 25, at 697.

383. JOSEPH P. SHAPIRO, NO PITY: PEOPLE WITH DISABILITIES FORGING A NEW CIVIL RIGHTS MOVEMENT 126 (1994).

384. SINS INVALID, *supra* note 293, at 13.

385. Berne, *supra* note 358.

and other disability groups that the disability rights movement has largely excluded.³⁸⁶

Third, the ideals of independence and self-sufficiency—which undergird the disability rights movement³⁸⁷—often contradict the reality that many disabled people need assistance.³⁸⁸ While some people with disabilities can live and work with little to no support and are “independent,” many disabled people still need help, including social safety net programs.³⁸⁹ Tellingly, some activists within the disability rights movement asserted that social welfare programs were paternalistic and propagated dependency.³⁹⁰ For example, Professors Jacobus tenBroek and Floyd Matson believed that social welfare programs for disabled people “perpetuate[d] dependency and discourage[d] initiative.”³⁹¹ Similarly, several leading disability rights activists contended that people with disabilities would no longer need social welfare programs if provided civil rights protections.³⁹² Ultimately, the disability rights movement adopted the belief that disability law and policy needed to include a shift from “good will to civil rights.”³⁹³

In contrast, disability justice promotes interdependence.³⁹⁴ According to Mia Mingus, disability justice seeks to “move away from the ‘myth of independence,’ that everyone can and should be able to do everything on their own.”³⁹⁵ Instead, disability justice is “fighting for an interdependence that embraces need and tells the truth: no one does it on their own and the myth of

386. SINS INVALID, *supra* note 293, at 13.

387. See JACQUELINE V. SWITZER, *DISABLED RIGHTS: AMERICAN DISABILITY POLICY AND THE FIGHT FOR EQUALITY* 55–56 (2003).

388. Janice McLaughlin, *Valuing Care and Support in an Era of Celebrating Independence: Disabled Young People’s Reflections on Their Meaning and Role in Their Lives*, 54 SOCIO. 397, 408 (2020).

389. BAGENSTOS, *supra* note 27, at 46.

390. Samuel R. Bagenstos, *The Americans with Disabilities Act as Welfare Reform*, 44 WM. & MARY L. REV. 921, 929–30, 966 (2003).

391. Jacobus tenBroek & Floyd W. Matson, *The Disabled and the Law of Welfare*, 54 CALIF. L. REV. 809, 831 (1966). At the same time, Professors tenBroek and Matson believed that programs could be restructured in a way that would alleviate these concerns. *Id.* at 839.

392. Edward V. Roberts, *A History of the Independent Living Movement: A Founder’s Perspective*, in *PSYCHOSOCIAL INTERVENTIONS WITH PHYSICALLY DISABLED PERSONS* 231, 239 (Bruce W. Heller et al. eds., 1989); PEG NOSEK ET AL., *INDEP. LIVING RSCH. UTILIZATION PROJECT, A PHILOSOPHICAL FOUNDATION FOR THE INDEPENDENT LIVING AND DISABILITY RIGHTS MOVEMENTS* (1982).

393. RICHARD K. SCOTCH, *FROM GOOD WILL TO CIVIL RIGHTS: TRANSFORMING FEDERAL DISABILITY POLICY* 15 (2d ed. 2001).

394. SINS INVALID, *supra* note 293, at 25.

395. Mia Mingus, *Changing the Framework: Disability Justice*, LEAVING EVIDENCE (Feb. 12, 2011, 1:56 PM), <https://leavingevidence.wordpress.com/2011/02/12/changing-the-framework-disability-justice/>.

independence is just that, a myth.”³⁹⁶ Hence, disability justice “focuses on moving away from a disability rights framework of assimilation and independence to that of interdependence—and embracing a broader concept of access.”³⁹⁷

Fourth, to secure bipartisan support for the ADA, the disability rights movement ostensibly embraced capitalism without fully appreciating the ramifications of doing so.³⁹⁸ According to Samuel Bagenstos, “[a] long-standing aim of disability rights activists has been to assert that people with disabilities are full citizens, for whom work opportunities should be a matter of civil rights rather than charity.”³⁹⁹ In fact, disability rights activists relied heavily on the notion that the passage of the ADA would save society money.⁴⁰⁰ Specifically, supporters contended that the ADA would lead to less reliance on social safety net programs and increased numbers of disabled people in the workforce, thereby creating new taxpayers and lessening government spending associated with benefits.⁴⁰¹ Conversely, disability justice supports anti-capitalist politics, contending that a disabled person’s worth should not be measured by their perceived productivity.⁴⁰² Disability justice understands that “[t]he nature of our disabled bodyminds means that we resist conforming to ‘normative’ levels of productivity in a capitalist culture, and our labor is often invisible to a system that defines labor by able-bodied, white supremacist, gender normative standards. Our worth is not dependent on what and how much we can produce.”⁴⁰³

Finally, like other rights-based movements, the disability rights movement largely centered on legislation and litigation.⁴⁰⁴ Although very successful in many respects, including the passage of important laws like the ADA, this approach cannot wholly confront the range of oppressions experienced by disabled people. As Professor Chin explains,

By focusing litigation and advocacy on single issues, we may solve for one inequity while others abound. This strategy, as a consequence, creates a revolving door of inequities for Black people with disabilities and other multiply marginalized disabled people. Challenging the single-issue approach to

396. *Id.*

397. Chin, *supra* note 25, at 716.

398. Marta Russell & Ravi Malhotra, *Capitalism and Disability*, 38 *SOCIALIST REG.* 211, 214, 220 (2002).

399. BAGENSTOS, *supra* note 27, at 138.

400. *Id.* at 39.

401. *Id.*

402. SINS INVALID, *supra* note 293, at 23–24.

403. *Id.* at 24.

404. *See* BAGENSTOS, *supra* note 27, at 13, 16–17.

litigation and engaging in a broader advocacy perspective or strategy is required in moving toward a racism/ableism disability framework.⁴⁰⁵

Disability justice similarly stresses that the disability rights movement has benefited only those who “can achieve status, power and access through a legal or rights-based framework,” which is not possible for all disabled people or appropriate for every circumstance.⁴⁰⁶ Leah Lakshmi Piepzna-Samarasinha expounds on that critique, noting that a “disability rights framework says that the ADA and other pieces of civil rights legislation give disabled ‘citizens’ our rights: we simply state the law and get our needs met. Disability justice says: What if you’re disabled and undocumented? . . . What if you don’t have money to sue an inaccessible business?”⁴⁰⁷ Hence, disability justice requires “a move from individualized to collective justice—an approach that requires a critical examination of the systemic issues and structural inequalities that uphold oppressive systems.”⁴⁰⁸

In brief, despite the disability rights movement’s significant successes, many disabled people, especially those who live at the intersection of disability and other historically marginalized identities, continue to experience pervasive and persistent social, economic, and health inequities.⁴⁰⁹ In many respects, the exclusion of certain people with disabilities by the disability rights movement is by design.⁴¹⁰ In particular, a rights-based, single-issue approach cannot adequately confront the various types of oppression that many people with disabilities encounter. Accordingly, future fights for justice for disabled people necessitate analysis and advocacy that centers disability justice. Indeed, to transform our society into one that respects and supports justice for people with disabilities, systems that propagate inequities must be wholly dismantled, and we must create a society where all people are afforded opportunities to thrive. In the end, a disability justice approach is crucial to finally achieving equity for all people with disabilities.

V. A WAY FORWARD: BEYOND DISABILITY RIGHTS

The social, economic, and health inequities that people with disabilities have experienced for far too long—and which were further exacerbated throughout Trump’s presidency—require bold, robust, and transformative legal and policy responses. In particular, to finally confront the widespread oppression

405. Chin, *supra* note 25, at 688.

406. SINS INVALID, *supra* note 293, at 15.

407. PIEPZNA-SAMARASINHA, *supra* note 355, at 32.

408. Chin, *supra* note 25, at 716.

409. AZZA ALTIRAIFI, CTR. FOR AM. PROGRESS, ADVANCING ECONOMIC SECURITY FOR PEOPLE WITH DISABILITIES 1, 6, 8, 10 (2019).

410. See Shalene Gupta, *What It’s Like to be Black and Disabled in America*, ATL. (Sept. 21, 2021), <https://www.theatlantic.com/ideas/archive/2021/09/what-its-like-to-be-black-and-disabled-in-america/620070/>.

experienced by disabled people—especially multiply marginalized disabled people—activists, legal professionals, scholars, and policymakers must move beyond the dominant disability rights approach to one guided by disability justice. Applying the tenets of disability justice, this Part proposes normative and transformative legal and policy solutions for challenging the persistent subjugation of disabled people. To demonstrate the application of disability justice and its values, this Part describes how law and policy should respond to the ongoing oppression of people with disabilities. Although a comprehensive legal and policy agenda is beyond the scope of this Article, this Part describes general principles that activists, legal professionals, scholars, and policymakers must recognize and offers several critical solutions that are worthy of consideration. Disrupting the longstanding systems that oppress people with disabilities will undeniably require a multifaceted approach. However, the need for such action could not be more timely or clear.

A. *Dismantle Intersecting Oppressions*

Audre Lorde prominently once said, “There is no such thing as a single-issue struggle because we do not live single-issue lives.”⁴¹¹ People with disabilities are amazingly diverse in race, ethnicity, religion, gender identity, sexual orientation, and other identities.⁴¹² Indeed, although the disability community has historically been viewed as monolithic with white cisgender people front and center, the community is far more diverse than is acknowledged.⁴¹³ Consequently, disabled people often experience multiple oppressions simultaneously, and justice can only be realized for all disabled people once we confront how these multiple oppressions impact one another.

As described in Part III, although all people with disabilities experience pervasive and persistent social, economic, and health inequities, these injustices are amplified for people who live at the intersection of disability and other historically marginalized identities.⁴¹⁴ For example, research shows that people of color with disabilities and LGBTQ+ people with disabilities face considerable health care barriers, often resulting in deleterious health outcomes.⁴¹⁵ Multiply marginalized disabled people also experience staggering economic insecurities, including higher unemployment rates and material hardships, than other

411. AUDRE LORDE, *SISTER OUTSIDER: ESSAYS AND SPEECHES* 130 (1984).

412. Horner-Johnson, *supra* note 162, at 96–99.

413. Carrie Elizabeth Mulderink, *The Emergence, Importance of #DisabilityTooWhite Hashtag*, 40 *DISABILITY STUD. Q.*, no. 2, 2002; *see also* Sarah Blahovec, *Confronting the Whitewashing of Disability: Interview with #DisabilityTooWhite Creator Vilissa Thompson*, *HUFFPOST* (Dec. 6, 2017), https://www.huffpost.com/entry/confronting-the-whitewash_b_105749 94.

414. ALTIRAIFI, *supra* note 409, at 1; Berne, *supra* note 358.

415. *See* discussion *supra* Section III.A.

disabled people.⁴¹⁶ Moreover, the COVID-19 pandemic is disproportionately harming multiply marginalized people with disabilities, such as striking numbers of infections, severe illness, and deaths, because of institutionalized ableism, racism, and other oppression.⁴¹⁷ In addition, people of color and LGBTQ+ people with disabilities experience substantial threats to living freely and safely in the community due to inadequate home and community-based services, as well as discriminatory practices by police and the prison industrial complex.⁴¹⁸ Finally, multiply marginalized people with disabilities are disproportionately impacted by natural disasters and climate change.⁴¹⁹

Accordingly, and based on the tenets of disability justice, activists, scholars, legal professionals, and policymakers must ensure future legal and policy efforts relating to justice for disabled people directly aim to dismantle the intersecting oppressions experienced by people who live at the intersection of disability and other historically marginalized identities. As explained above, a wide range of issues necessitate swift legal and policy responses. For example, attention must be given to dismantling the carceral state, broadly defined as “overlapping interests of government and industry that use surveillance, policing, and imprisonment as solutions to economic, social, and political problems.”⁴²⁰ Specifically, the carceral state should be understood as all government-sanctioned punitive systems, such as the policing and the prison industrial complex,⁴²¹ immigration system,⁴²² and child welfare system, more accurately termed the “family policing system.”⁴²³ Given the over-incarceration of disabled people of color, “[d]isability justice is a requisite for abolition because carceral systems medicalize, pathologize, criminalize, and commodify survival, divergence, and resistance. The past and present connections between disability

416. See discussion *supra* Section III.B.

417. See discussion *supra* Section III.C.

418. See discussion *supra* Section III.D.

419. See discussion *supra* Section III.E.

420. *What is the PIC? What Is Abolition?*, CRITICAL RESISTANCE, <http://criticalresistance.org/about/not-so-common-language/> (last visited Mar. 19, 2022).

421. Dorothy E. Roberts, *Foreword: Abolition Constitutionalism*, 133 HARV. L. REV. 1, 4 (2019); Amna A. Akbar, *Toward a Radical Imagination of Law*, 93 N.Y.U. L. REV. 405, 410 (2018); Monica C. Bell, *Anti-Segregation Policing*, 95 N.Y.U. L. REV. 650, 755, 761 (2020); Amna A. Akbar, *An Abolitionist Horizon for (Police) Reform*, 108 CALIF. L. REV. 1781, 1841 (2020).

422. Shiu-Ming Cheer, *Moving Toward Transformation: Abolitionist Reforms and the Immigrants' Rights Movement*, 68 U.C.L.A. L. REV. 68, 75 (2020); César Cuauhtémoc García Hernández, *Abolishing Immigration Prisons*, 97 B.U. L. REV. 245, 280 (2017); Matthew Boaz, *Practical Abolition: Universal Representation as an Alternative to Immigration Detention*, 98 TENN. L. REV. (forthcoming 2021) (manuscript at 18–19), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3801782.

423. *Achieving Justice*, *supra* note 40, at 60; Dorothy Roberts, *Abolish Family Policing, Too*, DISSENT MAG., Summer 2021, <https://www.dissentmagazine.org/article/abolish-family-policing-too>.

and all forms of carceral violence are overt and overwhelming.”⁴²⁴ In other words, abolition of the carceral state is a significant aspect of disability justice. To that end, activist and attorney Talila A. Lewis explains that “[a]bolitionist movements must contend with how disability and ableism interact with carceral systems, and be committed to abolishing all spaces to which marginalized people are disappeared.”⁴²⁵ Again, abolition of the carceral state is only one of many areas that need to be addressed to dismantle intersecting oppressions.

Importantly, dismantling intersecting oppressions will require intentionally centering the needs and voices of people who live at the intersection of disability and other historically marginalized identities.⁴²⁶ As Sins Invalid explains, “[b]y centering the leadership of those most impacted, we keep ourselves grounded in real-world problems and find creative strategies for resistance.”⁴²⁷ In other words, when we confront the injustices experienced by historically excluded groups, all people benefit. For that reason, multiply marginalized people with disabilities must be purposefully provided opportunities to identify areas for attention and develop and implement legal and policy responses.

B. *Embrace Cross-Disability and Cross-Movement Solidarity*

The disability community is incredibly diverse with respect to disability types, identities, and experiences.⁴²⁸ Nonetheless, as previously explained, the disability rights movement has never truly been cross-disability and has always been single-issue-focused.⁴²⁹ Unfortunately, this approach has led to several groups of people with disabilities’ needs and experiences being excluded from efforts to promote justice for disabled people.⁴³⁰

Responding to the pervasive and persistent injustice experienced by people with disabilities requires a cross-disability approach. Accordingly, unlike the disability rights movement, disability justice intentionally centers the experiences of people with intellectual disabilities, psychiatric disabilities, chronic illnesses, and other disability groups that the disability rights movement has largely ignored.⁴³¹ Yet, genuinely pursuing a cross-disability approach—including ensuring that people with all types of disabilities can identify areas for

424. Lewis, *supra* note 372.

425. *Id.*

426. Robyn Powell, *Achieving Economic Security for Disabled People During COVID-19 and Beyond*, HARV. L. BILL HEALTH (Mar. 15, 2022), <https://blog.petrieflom.law.harvard.edu/2022/03/15/disability-justice-covid-economic-security/>.

427. SINS INVALID, *supra* note 293, at 23.

428. Andrew Pulrang, *4 Ways To Understand The Diversity of The Disability Community*, FORBES (Jan. 3, 2020, 12:24 PM), <https://www.forbes.com/sites/andrewpulrang/2020/01/03/4-ways-to-understand-the-diversity-of-the-disability-community/?sh=405a67303d3e>.

429. See discussion *supra* Section IV.B.

430. Pappas, *supra* note 87.

431. SINS INVALID, *supra* note 293, at 25.

attention and develop and implement legal and policy responses—is necessary for achieving justice for disabled people.

Moreover, given the broad inequities experienced by disabled people, people with disabilities must coalesce with other social justice movements. To that end, disability justice emphasizes building and sustaining cross-movement solidarity as a crucial tool for confronting oppressive systems through “the politics of alliance.”⁴³² Sins Invalid explains that “[d]isability justice can only grow into its potential as a movement by aligning itself with racial justice, reproductive justice, queer and trans liberation, prison abolition, environmental justice, anti-police terror, Deaf activism, fat liberation, and other movements working for justice and liberation.”⁴³³ Specifically, committing to joining forces with other social justice movements, “means challenging white disability communities around racism and challenging other movements to confront ableism.”⁴³⁴ In particular, cross-movement solidarity will generate progress towards policy goals and increase and enhance the dignity of people who can appreciate one another’s shared humanity. Practically, this means that social justice movements must purposefully include disabled people in their advocacy and elevate them to leadership positions within organizations and movements. Likewise, disability rights organizations must actively engage with other social justice movements.

Significantly, when cross-movement organizing does not occur, people with disabilities are often overlooked.⁴³⁵ For example, as environmental justice activists promoted state and local policies banning single-use plastic goods like straws, they did not consider how they would affect disabled people who often rely on single-use plastic goods to survive.⁴³⁶ As author s.e. smith writes, “[w]e can save the environment and still be inclusive toward the disabled community.”⁴³⁷ Accordingly, environmental justice activists must work alongside disability justice activists to develop policies that protect the environment without adversely affecting disabled people. In the end, “[t]hrough cross-movement solidarity, we create a united front.”⁴³⁸

432. *10 Principles of Disability Justice*, SINS INVALID (Sept. 17, 2015), <https://www.sinsinvalid.org/blog/10-principles-of-disability-justice>.

433. SINS INVALID, *supra* note 293, at 24.

434. *Id.*

435. Hailey Hudson, *Moving from Disability Rights to Disability Justice*, WORLD INST. ON DISABILITY, (Sept. 8, 2021), <https://wid.org/moving-from-disability-rights-to-disability-justice/>.

436. *See* discussion *supra* Section III.E.

437. s.e. smith, *Banning Straws Might Be a Win for Environmentalists. But It Ignores Us Disabled People.*, VOX (July 19, 2018, 8:50 AM), <https://www.vox.com/first-person/2018/7/19/17587676/straws-plastic-ban-disability>.

438. SINS INVALID, *supra* note 293, at 24.

C. Confront Economic Insecurities

As previously explained, the connection between disability and poverty is palpable.⁴³⁹ For example, social safety net programs' draconian rules, combined with widespread discrimination against disabled people and decreased educational and employment opportunities, have forced most people with disabilities into poverty.⁴⁴⁰ Moreover, the disability rights movements' embracing capitalist politics—whereby disabled people who need income assistance are condemned, and people's worth is measured by perceived productivity—has further subjugated and marginalized people.⁴⁴¹ The economic insecurities experienced by disabled people detrimentally affect all areas of their lives and must urgently be addressed.⁴⁴²

Specifically, consistent with disability justice, legal and policy responses must stop blaming people for poverty and finally confront its societal roots. One such approach would be to provide a universal basic income for all people. The concept of universal basic income has gained recognition over the past few years, as people increasingly see it as a feasible policy response to the nation's "chronic economic insecurity."⁴⁴³ Central to universal basic income is providing financial assistance to everyone "that can be used to meet their needs, with no strings attached."⁴⁴⁴ Unquestionably, "[t]his approach represents a radically different and more controversial approach than traditional means-tested programs to promoting the welfare of citizens."⁴⁴⁵ At the same time, other countries, such as Canada, Finland, and India, have experimented with universal basic income programs with success.⁴⁴⁶ More importantly, trying a new and more equitable approach to confront poverty in this country is long overdue. In fact, experts assert that providing a universal basic income instead of the existing social safety net programs would facilitate people receiving the assistance they need without having to navigate many levels of bureaucracy.⁴⁴⁷ Further, replacing existing social safety net programs with a universal basic income would simplify the administration of social safety net programs and shrink

439. *Highlighting Disability/Poverty Connection, NCD Urges Congress to Alter Federal Policies that Disadvantage People with Disabilities*, NAT'L COUNCIL ON DISABILITY (Oct. 26, 2017), <https://ncd.gov/newsroom/2017/disability-poverty-connection-2017-progress-report-release#:~:text=People>.

440. See discussion *supra* Section II.B.

441. See discussion *supra* Section III.B.

442. See Powell, *supra* note 232, at 130–32 (explaining the effects of economic insecurity on people with disabilities).

443. Anupama Jacob & Reiko Boyd, *Addressing Economic Vulnerability Among Low-Income Families in America: Is the Basic Income Approach a Viable Policy Option?*, 26 J. CHILD. & POV. 85, 86 (2020).

444. *Id.*

445. *Id.*

446. *Id.* at 88.

447. *Id.*

government spending.⁴⁴⁸ Though universal basic income has traditionally been perceived as impossible, the rapid disbursement of COVID-19 relief payments reveals the feasibility of establishing these types of support when there is political will.⁴⁴⁹

Furthermore, the economic insecurities experienced by people with disabilities could be reduced by expanding existing social safety net programs, such as SSI. Increasing benefit amounts and repealing antiquated program rules that inflict stringent asset and income limitations could improve the economic wellbeing of disabled people and improve their overall wellbeing. While universal basic income would remove the need for such programs, implementing it could take time, and changes to social safety net program rules would help address disabled people's needs in the short term. In addition, legal and policy responses must ensure that people with disabilities receive livable wages, increased employment and education opportunities, accessible and affordable housing, and universal health insurance. Ultimately, economic security for people with disabilities must be a central part of future efforts to achieve justice for disabled people.

D. *Reject the "Myth of Independence"*

The disability rights movement was based mainly on the "myth of independence," which has propagated the notion that everyone can and should be able to do everything on their own.⁴⁵⁰ As Samuel Bagenstos explains, "the presentation of disability rights law as a means of achieving independence resonated strongly with the ascendant conservative ethics of individualism, self-reliance, and fiscal restraint."⁴⁵¹ However, as disability justice activists recognize and embrace, no person is truly independent; we are all interdependent.⁴⁵² Everyone needs help at times, and that is not a bad thing. Consequently, a person's value should not be determined by their level of independence.

Consistent with disability justice, activists, legal professionals, scholars, and policymakers must finally reject the "myth of independence" and embrace interdependence. To that end, efforts must be made to ensure that people with disabilities receive all necessary services and support. Moreover, it is crucial to ensure that services and supports for disabled people are responsive to their needs and allow them to live the lives they choose. In particular, a key focus

448. Jacob & Boyd, *supra* note 443, at 8.

449. *See generally* Andrew F. Johnson & Katherine J. Roberto, *The COVID-19 Pandemic: Time for a Universal Basic Income?*, 40 PUB. ADMIN. DEVELOP. 232, 234 (2020), <https://online.library.wiley.com/doi/epdf/10.1002/pad.1891> (arguing that COVID-19 relief payments reinforce the importance of universal basic income).

450. *See* discussion, *supra* Section IV.B.

451. BAGENSTOS, *supra* note 27, at 29.

452. SINS INVALID, *supra* note 293, at 25.

should be ensuring that substantial funding is invested in community-based organizations and programs led by and for people with disabilities, such as centers for independent living.⁴⁵³ Investing in community-based organizations and programs led by and for people with disabilities is aligned with disability justice's emphasis on working "to meet each other's needs as we build toward liberation, without always reaching for state solutions which inevitably extend state control further into our lives."⁴⁵⁴ Efforts should be made to fund community-based organizations and programs led by and for multiply marginalized people with disabilities. In the end, ensuring justice necessitates embracing interdependence, not independence.

E. Increase Enforcement of Existing Legal Protections

Finally, although disability justice necessitates reimagining ways to achieve justice for people with disabilities, enforcing existing legal protections is also essential. Importantly, however, disability rights attorneys must engage in litigation that challenges ableism as well as other types of oppression like racism.⁴⁵⁵ For example, advocacy groups have collectively brought lawsuits in response to police violence, alleging both ableism and racism.⁴⁵⁶ Similarly, advocacy groups have worked together to sue the Trump administration over its unjust treatment of immigrants with disabilities.⁴⁵⁷ Disability rights attorneys, along with racial justice and immigrant rights attorneys, must continue to work together to bring intersectional litigation.

Furthermore, the Biden administration, vis-à-vis the DOJ and other agencies, must drastically increase the federal government's enforcement of civil rights laws like the ADA. Significantly, after little activity by the Trump administration,⁴⁵⁸ the DOJ has boosted its ADA enforcement efforts

453. *About Independent Living*, NAT'L COUNCIL ON INDEP. LIVING, <https://ncil.org/about/aboutil/> (last visited Jan. 26, 2022) ("Centers for Independent Living are community-based, cross-disability, non-profit organizations that are designed and operated by people with disabilities. CILs are unique in that they operate according to a strict philosophy of consumer control, wherein people with all types of disabilities directly govern and staff the organization."). There are over 400 CILs across the United States. *Id.*

454. SINS INVALID, *supra* note 293, at 25.

455. Chin, *supra* note 25, at 688.

456. See, e.g., *ACLU, Community Groups File Lawsuit to Ensure Court Oversight of Reform for the Chicago Police Department*, AM. C.L. UNION (Oct. 4, 2017), <https://www.aclu.org/press-releases/aclu-community-groups-file-lawsuit-ensure-court-oversight-reform-chicago-police>.

457. See, e.g., *Fraihat v. ICE and DHS*, C. R. EDUC. & ENF'T CTR., <https://creeclaw.org/case/fraihat-v-immigration-and-customs-enforcement/> (last visited Apr. 11, 2022).

458. Kristen Clarke, *What Trump Has Done to the Justice Department's Civil Rights Division is a Disgrace*, CNN (Sept. 11, 2020, 3:23 PM), <https://www.cnn.com/2020/09/11/opinions/trump-barr-undercutting-doj-civil-rights-division-clarke/index.html> (describing the DOJ's decreased civil rights enforcement during Trump's presidency).

considerably since President Biden took office.⁴⁵⁹ Likewise, the Biden administration must move forward with promulgating new ADA regulations. As two labor and employment attorneys stated, “the Trump administration put the kibosh on every ADA Title III rulemaking that was pending.”⁴⁶⁰ Hence, it is imperative that the DOJ swiftly issue the four Advance Notices of Proposed Rulemaking relating to Titles II and III of the ADA that the Trump administration withdrew.⁴⁶¹

VI. CONCLUSION

Notwithstanding the disability rights movement’s many achievements, pervasive and persistent social, economic, and health inequities endure for people with disabilities, especially those who live at the intersection of disability and other historically marginalized identities.⁴⁶² Consequently, elucidating the root causes of these widespread inequities is essential to finally confronting them. In response, this Article critically examines the panoply of injustices experienced by people with disabilities and demonstrates why the prevailing approach to disability rights is insufficient for challenging the long-lasting and deeply entrenched subjugation of people with disabilities. Then, drawing from the tenets of disability justice, this Article suggests normative and transformative legal and policy solutions necessary for achieving and delivering justice for all people with disabilities. Considering the 2020 election and President Biden’s professed commitment to people with disabilities, this Article offers essential and timely insights for reimagining the fight for justice for all people with disabilities by moving beyond the prevailing approach to disability rights and instead adopting disability justice.

459. Minh N. Vu, *Biden Department of Justice Steps up ADA Title III Enforcement*, SEYFARTH (Oct. 11, 2021), <https://www.adatitleiii.com/2021/10/biden-department-of-justice-steps-up-ada-title-iii-enforcement/>.

460. Minh N. Vu & Kristina M. Launey, *How Will DOJ Enforce Title III of the ADA in a Biden Administration?*, SEYFARTH (Nov. 17, 2020), <https://www.adatitleiii.com/2020/11/how-will-doj-enforce-title-iii-of-the-ada-in-a-biden-administration/>.

461. Nondiscrimination on the Basis of Disability; Notice of Withdrawal of Four Previously Announced Rulemaking Actions, 82 Fed. Reg. 60,932, 60,932 (Dec. 26, 2017).

462. See Berne, *supra* note 358.