

COMMENT

HEALTH-HARMING EFFECTS OF COURT FINES AND FEES: MODERN DAY DEBTORS' PRISONS AS A PUBLIC HEALTH THREAT*

I. INTRODUCTION

Twanda Marshinda Brown is a single Black mother in South Carolina who supported her children by working a low-wage job at a fast-food restaurant.¹ In 2016, a Lexington County court fined her about \$2,300 for two traffic offenses.² The judge ordered Brown to make monthly payments of \$100, despite her attempts to explain that she could only afford to pay \$50 per month while taking care of her family.³ After managing to pay \$100 for five months, her son was hospitalized and several paychecks from her employer bounced, forcing her to fall behind on payments.⁴ Brown was informed she had to pay over \$1,900 to avoid incarceration.⁵ She did not have the money, and as a result, she was incarcerated for fifty-seven days.⁶ She was not provided a court hearing on her ability to pay, informed of her right to request counsel, or appointed counsel to help defend against incarceration.⁷ While in jail, Brown was separated from her children—including her thirteen-year-old son—and lost her job.⁸ Her worst fear, she explained, was the possibility of her son being taken away by the Department of Social Services while she was in jail—all because she could not afford to pay traffic fines.⁹

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1. Nusrat Choudhury, *Single Moms Get Sucked Into the Cruellest Debtors' Prison We've Ever Seen*, ACLU (Dec. 21, 2018, 4:00 PM), <http://www.aclu.org/blog/racial-justice/race-and-criminal-justice/single-moms-get-sucked-cruellest-debtors-prison-weve> [<http://perma.cc/PD89-8A7A>].

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. *Brown v. Lexington County, et al.*, ACLU (July 22, 2017), <http://www.aclu.org/cases/brown-v-lexington-county-et-al> [<http://perma.cc/5TEB-ZZB6>].

8. *Id.*

9. Choudhury, *supra* note 1 (“For Brown, the consequences of incarceration for poverty were heartbreaking. In her own words: ‘For 57 days, I was locked away in jail, away from my family. I cried every day. I prayed that my kids and grandkids would be okay. . . . I lost my new job and the chance to get a promotion and a raise. I spent my 40th birthday in jail. But even worse was the fear I had every day that my 13-year-old

Brown's story is not unique. Across the country, millions of people are subject to onerous fines and fees stemming from minor infractions, most of which target low-income people and people of color.¹⁰ These fines and fees result in severe consequences for not only the individuals fined but also their families, communities, and other taxpayers.¹¹ For those who cannot pay immediately, fines and fees often spiral into new and additional charges, arrest warrants, and—as in Brown's case—even incarceration.¹² Contrary to constitutional protections that outlawed “debtors’ prisons,” an individual's experience with the criminal legal system still depends in large part on how much money they have.¹³ The resulting harm—escalating debt, lost employment and housing, and an enduring cycle of poverty—is long-lasting and has negative individual and societal impacts.¹⁴

The impacts of fines and fees are reflected in our health, both on an individual and societal level.¹⁵ Indirectly, fines and fees result in a cascade of negative consequences, including the inability to meet basic needs—e.g., shelter, employment, food, health care—leading to poor health.¹⁶ Directly, fines and fees cause undue stress, contributing to poor physical and mental health in individuals.¹⁷ Collectively, the policies and practices governing fines and fees across the United States are contributing to persistent health disparities among low-income communities of color. A coordinated response is necessary to address the negative health effects of fines and fees. It is imperative that state and local governments sufficiently fund their court systems, and that the judicial system adhere to the dictates set forth by the U.S. Supreme Court regarding the imposition of fines and fees.¹⁸

son would be taken away from me by the Department of Social Services. It made me feel sick to think that I could lose him while I was in jail because I could not afford to pay traffic fines.”).

10. See Michael W. Sances & Hye Young You, *Who Pays for Government? Descriptive Representation and Exploitative Revenue Sources*, 79 J. POL. 1090, 1090–94 (2017) (finding that “municipal governments with higher black populations rely more heavily on fines and fees for revenue”).

11. Michael F. Crowley, Matthew J. Menendez & Lauren-Brook Eisen, *If We Only Knew the Cost: Scratching the Surface on How Much It Costs To Assess and Collect Court Imposed Criminal Fees and Fines*, 4 UCLA CRIM. JUST. L. REV. 165, 167 (2020) (“The reliance on fees and fines comes at a cost—to indigent defendants who cannot pay, to the families of defendants who often pay the fees, and to taxpayers who bear expensive enforcement costs disproportionate to any corresponding benefit.”).

12. See Lisa Foster, *The Price of Justice: Fines, Fees and the Criminalization of Poverty in the United States*, 11 U. MIAMI RACE & SOC. JUST. L. REV. 1, 3 (2020).

13. See Crowley et al., *supra* note 11, at 167 (“While ‘debtors’ prisons’ have been declared unconstitutional, many states still incarcerate people for failure to pay criminal justice debt.”); see Olivia C. Jerijan, *The Debtor’s Prison Scheme: Yet Another Bar in the Birdcage of Mass Incarceration of Communities of Color*, 41 N.Y.U. REV. L. & SOC. CHANGE 235, 235 (2017) (“[T]he debtor’s prison scheme consists of jailing low-income individuals for not being able to pay their legal financial obligations.”).

14. See Foster, *supra* note 12, at 3 (“*Fines and fees* in the justice system hurt millions of Americans, entrenching them in poverty, exacerbating racial disparities, diminishing trust in courts and police, and trapping people in perpetual cycles of punishment.” (emphasis added)).

15. See *infra* Part III.A.

16. See *infra* notes 198–214.

17. See *infra* notes 188–197.

18. See *infra* Part II.B.

This Comment begins with an overview of the scope of the fines-and-fees problem in the United States.¹⁹ Section II describes the growth of fines and fees in the criminal justice system,²⁰ including the increased reliance on fines and fees by local governments to account for budgetary shortfalls,²¹ and the outsized impact of fines and fees on vulnerable communities.²² Section II then proceeds to show how constitutional safeguards that are meant to protect against excessive fines and fees have not lived up to their promise.²³ The Section establishes poverty and involvement with the criminal legal system, both of which are exacerbated by fines and fees, as powerful social determinants of health.²⁴ Section III demonstrates how fines and fees directly harm health, arguing that various stakeholders—including local and state governments and the judicial system—should reduce reliance on fines and fees to ultimately improve public health.²⁵

II. OVERVIEW

Fines and fees, commonly referred to as legal financial obligations or monetary sanctions, stem from minor offenses—misdemeanors, traffic citations, or ordinance violations.²⁶ While small in isolation, fines and fees can add up to hundreds and even thousands of dollars of debt.²⁷ Part II.A describes fines and fees, the history behind the overreliance on fines and fees in the criminal legal system, and the negative impacts they have on marginalized communities in the United States. Part II.B examines the constitutional protections against the imposition of fines and fees, and the failures of these protections in practice. Part II.C provides the theoretical basis for the connection between fines and fees and health.

A. *Municipal Fines and Fees and Other Economic Sanctions*

Fines and fees are the most common form of punishment imposed on criminal defendants in the United States.²⁸ Part II.A.1 describes fines and fees and the myriad reasons they are imposed on defendants, many of which are unrelated to the offense. Part

19. See *infra* Section II.

20. See *infra* Part II.A.1.

21. See *infra* Part II.A.2.

22. See *infra* Part II.A.3.

23. See *infra* Part II.B.

24. See *infra* Part II.C.

25. See *infra* Section III.

26. See Torie Atkinson, *A Fine Scheme: How Municipal Fines Become Crushing Debt in the Shadow of the New Debtors' Prisons*, 51 HARV. C.R.-C.L. L. REV. 189, 191 (2016).

27. See ARTHUR W. PEPIN, CONF. STATE CT. ADMIN., THE END OF DEBTORS' PRISONS: EFFECTIVE COURT POLICIES FOR SUCCESSFUL COMPLIANCE WITH LEGAL FINANCIAL OBLIGATIONS 1 (2016), http://cosca.ncsc.org/_data/assets/pdf_file/0014/26330/end-of-debtors-prisons-2016.pdf [<http://perma.cc/Q7HH-KXDW>] (“The imposition of [fines and fees] too often results in defendants accumulating court debt they cannot pay, landing them in jail at costs to the taxpayers much greater than the money sought to be collected.”); ALICIA BANNON, MITALI NAGRECHA & REBEKAH DILLER, BRENNAN CTR. FOR JUST., CRIMINAL JUSTICE DEBT: A BARRIER TO ENTRY 1 (2010), <http://www.brennancenter.org/sites/default/files/legacy/Fees%20and%20Fines%20FINAL.pdf> [<http://perma.cc/5H2M-K97X>].

28. Karin D. Martin, Bryan L. Sykes, Sarah Shannon, Frank Edwards & Alexes Harris, *Monetary Sanctions: Legal Financial Obligations in US Systems of Justice*, 1 ANN. REV. CRIM. 471, 472 (2017).

II.A.2 documents the rise in fines and fees over time and the overreliance on fines and fees as a source of revenue for state and local governments. Part II.A.3 demonstrates the damaging impacts of fines and fees on individuals, their families, and the larger community.

1. The Scope of Fines and Fees

Over the past several decades, there has been a well-documented increase in the fines and fees imposed on defendants in the criminal justice system.²⁹ Fines, which are imposed upon conviction, are intended to punish defendants, deter similar behavior in the future, and compensate victims for losses.³⁰ Fines generally vary with the severity of the crime.³¹ Fees, by contrast, are automatically applied and bear no relation to the offense.³² Fees contribute to courts' operational costs, in effect shifting the burden of financing the criminal justice system from taxpayers to defendants,³³ despite documented

29. See Atkinson, *supra* note 26, at 202 (“Many fines and fees assessed today are excessive both in cost, . . . and application, as evidenced by overzealous enforcement of minor ordinances.”); Katherine Beckett & Alexes Harris, *On Cash and Conviction: Monetary Sanctions as Misguided Policy*, 10 CRIMINOLOGY & PUB. POL’Y 509, 512 (2011) (“Although monetary sanctions are not new, legislatures have authorized many new fees and fines in recent years, and criminal justice agencies increasingly impose them.”); Beth A. Colgan, *Fines, Fees, and Forfeitures*, 18 CRIMINOLOGY, CRIM. JUST. L. & SOC’Y 22, 22 (2017) [hereinafter Colgan, *Fines, Fees, and Forfeitures*] (“The use of fines, fees, and forfeitures of cash and property are long-standing practices that have boomed in recent years as lawmakers have sought to fund an expanding criminal justice system without raising taxes.” (footnote and citation omitted)); U.S. COMM’N ON C.R., TARGETED FINES AND FEES AGAINST LOW-INCOME COMMUNITIES OF COLOR: CIVIL RIGHTS AND CONSTITUTIONAL IMPLICATIONS 10 (2017) [hereinafter TARGETED FINES AND FEES], http://www.usccr.gov/files/pubs/2017/Statutory_Enforcement_Report2017.pdf [<http://perma.cc/8FA6-7PMD>] (explaining a confluence of factors that led to the increase of fines and fees since the 1980s, including the increased enforcement of low-level offenses, the high costs associated with increased incarceration rates, and the 2008 economic recession); MATTHEW MENENDEZ, MICHAEL F. CROWLEY, LAUREN-BROOKE EISEN & NOAH ATCHISON, BRENNAN CTR. FOR JUST., THE STEEP COSTS OF CRIMINAL JUSTICE FINES AND FEES: A FISCAL ANALYSIS OF THREE STATES AND TEN COUNTIES 5–6 (2019), http://www.brennancenter.org/sites/default/files/2020-07/2019_10_Fees%26Fines_Final.pdf [<http://perma.cc/WF9J-657H>] (“Since 2008, almost every state has increased criminal and civil court fees or added new ones, and the categories of offenses that trigger fines have been expanded.”). Although it is generally accepted that the use of fines and fees has increased over the last several decades, it is still difficult to obtain data on fines and fees collected by municipal courts. See Alexandra Natapoff, *Criminal Municipal Courts*, 134 HARV. L. REV. 964, 982–86 (2021) (describing the limited direct data available on local collections; of the data the author was able to collect, the “full significance and even accuracy remain unclear”).

30. See MENENDEZ ET AL., *supra* note 29, at 5; COUNCIL OF ECON. ADVISORS, FINES, FEES, AND BAIL: PAYMENTS IN THE CRIMINAL JUSTICE SYSTEM THAT DISPROPORTIONATELY IMPACT THE POOR 1 (2015) [hereinafter WHITE HOUSE: FINES, FEES, AND BAIL], http://obamawhitehouse.archives.gov/sites/default/files/page/files/1215_cea_fine_fee_bail_issue_brief.pdf [<http://perma.cc/8WA7-DNZ6>]. For an explanation of why monetary sanctions fail at achieving the goals associated with penal policies—incapacitation, rehabilitation, deterrence, and retribution—see Beckett & Harris, *supra* note 29, at 519.

31. MENENDEZ ET AL., *supra* note 29, at 5.

32. *Id.* at 6; Andrea Marsh & Emily Gerrick, *Why Motive Matters: Designing Effective Policy Responses to Modern Debtors’ Prisons*, 34 YALE L. & POL’Y REV. 93, 95 (2015) (“[U]ser-fees’ . . . are legally permissible when they reimburse the government for expenses incurred in prosecuting a person.”).

33. See Louis Fisher, *Criminal Justice User Fees and the Procedural Aspect of Equal Justice*, 133 HARV. L. REV. F. 112, 116 (2020).

inefficiencies of such a system.³⁴ Some states, on the other hand, use the revenue from fees for programs that have nothing to do with the courts or legal system.³⁵ Fees are often added at every step of the criminal justice process and may even be applied for services that are constitutionally required, such as public defenders.³⁶ Across the country, the amount of fines and fees owed totals at least \$27.6 billion, although this is likely a gross underestimate due to a lack of available data.³⁷

The inability to pay fines and fees can result in severe consequences. Unpaid fines and fees lead to “poverty penalties”—interest and collections costs, probation and related fees, the loss of government licenses and benefits, and incarceration.³⁸ For example, one of the most commonly imposed penalties for unpaid fines and fees is driver’s license suspensions.³⁹ More than eleven million people nationwide have debt-related driver’s license suspensions.⁴⁰ In practice, most license suspensions have little to do with traffic

34. See, e.g., Scott Dolan, *Taxpayers Lose as Maine Counties Jail Indigents Over Unpaid Fines*, PORTLAND PRESS HERALD (May 31, 2015), <http://www.pressherald.com/2015/05/31/taxpayers-lose-as-maine-counties-jail-indigents-over-unpaid-fines> [<http://perma.cc/S3CJ-T599>] (“The total cost to taxpayers to jail 13 individuals for a combined total of 232 days was \$25,990 – to recoup \$10,489 in fines or restitution.”); Anne Kim, *When Cities Rely on Fines and Fees, Everybody Loses*, GOVERNING (Aug. 22, 2018), <http://www.governing.com/archive/gov-court-fees-fines-debt.html> [<http://perma.cc/87FB-4BQH>] (“Because the burden of these penalties falls disproportionately on people who can’t afford to pay, jurisdictions collect far less than expected and waste resources chasing down payments that won’t materialize.”).

35. Foster, *supra* note 12, at 7–8 (using the examples of New Jersey, Arizona, and California, which use revenue from fees to fund autism research, statewide elections, and eight different state programs, respectively).

36. Neil L. Sobol, *Charging the Poor: Criminal Justice Debt & Modern-Day Debtors’ Prisons*, 75 MD. L. REV. 486, 491–92 (2016) (“Monetary charges now exist at all stages of the criminal justice process, including pre-conviction, sentencing, incarceration, probation, and parole. . . . The fees even cover constitutionally required services such as public defenders.”); see also Beth A. Colgan, *The Excessive Fines Clause: Challenging the Modern Debtors’ Prison*, 65 UCLA L. REV. 2, 39 (2018) [hereinafter Colgan, *The Excessive Fines Clause*] (“[I]n some jurisdictions, the government charges indigent defendants a fee for applying to obtain representation by a public defender, whether or not a conviction is obtained.”).

37. BRIANA HAMMONS, FINES & FEES JUST. CTR., TIP OF THE ICEBERG: HOW MUCH CRIMINAL JUSTICE DEBT DOES THE U.S. REALLY HAVE? 4 (2021), http://finesandfeesjusticecenter.org/content/uploads/2021/04/Tip-of-the-Iceberg_Criminal_Justice_Debt_BH1.pdf [<http://perma.cc/22AM-PAHE>] (documenting court debt for only twenty-five states, as the other twenty-five and the District of Columbia did not provide data).

38. Colgan, *Fines, Fees, and Forfeitures*, *supra* note 29, at 23. For example, in Socorro County, New Mexico, for each missed payment of outstanding court fees, enforcement progresses from a bench warrant, to a bench warrant with a bond, to a charge of failure to comply with a three-day jail sentence.; MENENDEZ ET AL., *supra* note 29, at 6. While in jail, the defendant racks up additional court costs to his debt. *Id.*

39. EMILY DINDIAL, EMILY GREYTAK & KANA TATEISHI, ACLU, RECKLESS LAWMAKING: HOW DEBT-BASED DRIVER’S LICENSE SUSPENSION LAWS IMPOSE HARM AND WASTE RESOURCES 4 (2021), http://www.aclu.org/sites/default/files/field_document/reckless_lawmaking_aclu_final_4.19.21.pdf [<http://perma.cc/VG8K-53AW>]; see also Colgan, *Fines, Fees, and Forfeitures*, *supra* note 29, at 23 (“At the same time, existing criminal debt . . . can result in the loss of professional or driver’s licenses, the latter of which can be particularly harmful for those who live in areas without meaningful access to public transportation.”); Alana Semuels, *No Driver’s License, No Job*, ATLANTIC (June 15, 2016), <http://www.theatlantic.com/business/archive/2016/06/no-drivers-license-no-job/486653> [<http://perma.cc/7KFJ-CZUS>].

40. *Legal, Advocacy, and Business Communities Align for Campaign To End Debt-Related Driver’s License Suspensions*, FINES & FEES JUST. CTR. (Sept. 11, 2019),

safety and more to do with incentivizing drivers to pay a fine or comply with a regulation.⁴¹

States have continued to impose new and onerous fees on defendants.⁴² Since 2008, most states have increased criminal and civil court fees and expanded the categories of offenses that trigger new fines.⁴³

2. Fines and Fees as a Source of Revenue

The increasing imposition of fines and fees has tracked with the dramatic expansion of the U.S. criminal legal system over the last several decades.⁴⁴ Between 1972 and 2009, the prison population increased by nearly 700% as lawmakers at the state and federal levels mandated longer criminal sentences, placed restrictions on release, and enacted other policy changes intended to reduce crime.⁴⁵ According to the White House's Council of Economic Advisors, "in 2014, over 2.2 million people were incarcerated in local jails or in State and Federal prisons."⁴⁶

As the criminal justice system grew, jails, prisons, and courtrooms became overrun and overcrowded.⁴⁷ Correspondingly, criminal justice expenditures increased substantially.⁴⁸ Average annual state expenditures on corrections exploded from \$6.7 billion in 1985 to more than \$56 billion in 2019.⁴⁹ The growth has consumed a large

<http://finesandfeesjusticecenter.org/2019/09/11/ffjc-convenes-free-to-drive-campaign-to-end-debt-related-drivers-license-suspensions> [<http://perma.cc/Z4LQ-EZ9B>].

41. See Nina R. Joyce, Melissa R. Pfeiffer, Andrew R. Zullo, Jasjit Ahluwalia & Allison E. Curry, *Individual and Geographic Variation in Driver's License Suspensions: Evidence of Disparities by Race, Ethnicity and Income*, 19 J. TRANSP. & HEALTH 1, 1 (2020) (describing results from a cohort study of suspended drivers in New Jersey between 2004 and 2018 that found that over ninety percent of driver's license suspensions were not a result of traffic violations but rather the result of not paying a fine or failing to appear in court; the suspensions were disproportionately concentrated in low-income areas and communities of color).

42. See Emma Anderson, Alyson Hurt & Joseph Shapiro, *State-By-State Court Fees*, NPR (May 19, 2014, 4:02 PM), <http://www.npr.org/2014/05/19/312455680/state-by-state-court-fees> [<http://perma.cc/KLN4-D5WE>].

43. See MENENDEZ ET AL., *supra* note 29, at 6.

44. See Alexes Harris, Heather Evans & Katherine Beckett, *Drawing Blood from Stones: Legal Debt and Social Inequality in the Contemporary United States*, 115 AM. J. SOCIO. 1753, 1753 (2010); Joseph Shapiro, *As Court Fees Rise, the Poor Are Paying the Price*, NPR (May 19, 2014, 4:02 PM), <http://www.npr.org/2014/05/19/312158516/increasing-court-fees-punish-the-poor> [<http://perma.cc/KJ5F-U85Z>]; WHITE HOUSE: FINES, FEES, AND BAIL, *supra* note 30, at 2.

45. Nazgol Ghandnoosh, *U.S. Prison Population Trends: Massive Buildup and Modest Decline*, SENTENCING PROJECT (Sept. 17, 2019), <http://www.sentencingproject.org/publications/u-s-prison-population-trends-massive-buildup-and-modest-decline> [<http://perma.cc/2E35-ZCKC>]; PEW CHARITABLE TRS., *STATE REFORMS REVERSE DECADES OF INCARCERATION GROWTH* 1 (2017), http://www.pewtrusts.org/-/media/assets/2017/03/state_reforms_reverse_decades_of_incarceration_growth.pdf [<http://perma.cc/EQD9-82SD>]. While most states have downsized their prison populations in recent years, the pace has been slow, and it will take over seventy years to cut the prison population by fifty percent. Ghandnoosh, *supra*.

46. WHITE HOUSE: FINES, FEES, AND BAIL, *supra* note 30, at 2.

47. See *id.*; Shapiro, *supra* note 44.

48. WHITE HOUSE: FINES, FEES, AND BAIL, *supra* note 30, at 2.

49. SENTENCING PROJECT, *FACT SHEET: TRENDS IN U.S. CORRECTIONS* 2 (2021), <http://www.sentencingproject.org/wp-content/uploads/2021/07/Trends-in-US-Corrections.pdf> [<http://perma.cc/93HP-ALNQ>].

share of state budgets; criminal justice has become the third-largest category of spending in most states, after education and health care.⁵⁰

As states and local budgets have tightened, municipalities have turned to fines and fees as a way to make up for budgetary deficits,⁵¹ thereby avoiding the politically unpopular option of raising taxes.⁵² The most illustrative instance of this practice came from Ferguson, Missouri.⁵³ The investigation of the Ferguson Police Department following the fatal shooting of Michael Brown uncovered not only unconstitutional police practices but also the revenue-generating motive behind the city's municipal court operations.⁵⁴ Recovered emails showed that rather than focusing on public safety concerns, city officials and law enforcement worked together to "maximize revenue at every stage of the enforcement process, beginning with how fines and fine enforcement processes are established."⁵⁵ In 2013, the city had more outstanding warrants than any other Missouri city and harvested over \$2.6 million in municipal court fines, comprising twenty percent of the city budget.⁵⁶ The situation in Ferguson brought to light similar practices throughout the country.⁵⁷

Despite the proliferation of fines and fees in municipalities across the United States, the practice has been largely ineffective at raising revenue.⁵⁸ For example, in a fiscal

50. Michael Mitchell & Michael Leachman, *Changing Priorities: State Criminal Justice Reforms and Investments in Education*, CTR. ON BUDGET & POL'Y PRIORITIES 1 (Oct. 28, 2014), <http://www.cbpp.org/sites/default/files/atoms/files/10-28-14sfp.pdf> [<http://perma.cc/74GQ-CWF5>].

51. See Natapoff, *supra* note 29, at 1029 (explaining that courts serve as "important vehicles through which local governments respond to state fiscal crises"); Mike Maciag, *Addicted to Fines*, GOVERNING (Aug. 19, 2019), <http://www.governing.com/archive/gov-addicted-to-fines.html> [<http://perma.cc/KK3P-EWYK>].

52. Colgan, *Fines, Fees, and Forfeitures*, *supra* note 29, at 28 ("[E]vidence is mounting that jurisdictions across the country are using economic sanctions imposed against both adults and juveniles for the purpose of avoiding the need to increase taxes to fund not just criminal justice-related services, but a wide variety of governmental services such as infrastructure projects, educational services, and more."); Kim, *supra* note 34 ("Raising taxes is painful . . . [I]ncreases [in fines and fees] are often viewed as a conflict-free way to plug budget holes."). Other possible explanations for the reliance on fines and fees include public safety, fairness, and personal responsibility. See Marsh & Gerrick, *supra* note 32, at 113–20.

53. See Natapoff, *supra* note 29, at 990 ("The poster child for municipal court failure is the court in Ferguson, Missouri, whose high-profile dysfunctions put the issue of municipal court revenue collection on the political map.").

54. See U.S. DEP'T OF JUST. C.R. DIV., INVESTIGATION OF THE FERGUSON POLICE DEPARTMENT 5, 9, 15 (2015) [hereinafter DOJ FERGUSON REPORT], http://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf [<http://perma.cc/QLD8-P8LJ>].

55. *Id.* at 10.

56. Walter Johnson, *Ferguson's Fortune 500 Company*, ATLANTIC (Apr. 26, 2015), <http://www.theatlantic.com/politics/archive/2015/04/fergusons-fortune-500-company/390492> [<http://perma.cc/5CF3-TFRN>] (describing how Ferguson, home to a multinational billionaire corporation, came to rely so heavily on fines and fees to fund its city government).

57. April D. Fernandes, Michele Cadigan, Frank Edwards & Alexes Harris, *Monetary Sanctions: A Review of Revenue Generation, Legal Challenges, and Reform*, 15 ANN. REV. L. & SOC. SCI. 397, 400 (2019) ("The DOJ investigation of Ferguson, along with studies in other states, brought the monetary sanctions system to light; however, such revenue-generating systems had been working silently in the background for decades." (citations omitted)).

58. See Marsh & Gerrick, *supra* note 32, at 113 ("[M]unicipalities are losing money in their interactions with individuals who do not promptly pay fines and fees, many of whom become the people who end up in debtors' prisons."); Matt Ford, *The Problem with Funding Government Through Fines*, ATLANTIC (Apr. 2,

analysis of three states and ten counties, researchers found that the costs of fine and fee enforcement are significant.⁵⁹ Jurisdictions spent more than \$41.00 for every \$100.00 collected over the study period; in comparison, the Internal Revenue Service spends just \$0.34 for every \$100.00 in taxes collected.⁶⁰ On average, it costs jurisdictions 121 times more to collect fines and fees than it does for the Internal Revenue Service to collect taxes.⁶¹

3. The Disparate Impact—and Ruinous Consequences—of Fines and Fees

Racial disparities in the criminal legal system are well-documented and pervasive.⁶² Black men comprise about 35% of incarcerated men, despite only making up 13% of the male population.⁶³ Of Black men born today, 1 in 3 can expect to be incarcerated at some point, compared to 1 in 6 Latino men and 1 in 17 white men.⁶⁴ This disparity is true for women as well: “one in 18 [B]lack women born in 2001 is likely to be incarcerated at sometime in her life, compared to one in 111 white women.”⁶⁵

Racial disparities in the criminal legal system are not coincidental but rather “rooted in a history of oppression and discriminatory decision making.”⁶⁶ These disparities exist beyond rates of incarceration; they extend to all facets of the system, including the most mundane policing practices such as traffic stops.⁶⁷ In Ferguson,⁶⁸ for example, Black

2015),

<http://www.theatlantic.com/politics/archive/2015/04/the-problem-with-funding-government-through-fines/389387> [<http://perma.cc/JRM3-UVW8>]; Tina Rosenberg, *Paying for Their Crimes, Again*, N.Y. TIMES (June 6, 2011, 9:15 PM), <http://opinionator.blogs.nytimes.com/2011/06/06/paying-for-their-crimes-again> [<http://perma.cc/NW5Q-U2ZH>] (“State legislatures that impose fees calculate how much money they bring in, but seldom look at the costs of collecting them. It is high enough so that the fees often end up costing the state more than they produce.”).

59. MENENDEZ et al., *supra* note 29, at 9.

60. *Id.*

61. *Id.*

62. See Rebecca C. Hetey & Jennifer L. Eberhardt, *The Numbers Don't Speak for Themselves: Racial Disparities and the Persistence of Inequality in the Criminal Justice System*, 27 CURRENT DIRECTIONS PSYCH. SCI. 183, 183 (2018); Margaret Bull Kovera, *Racial Disparities in the Criminal Justice System: Prevalence, Causes, and a Search for Solutions*, 75 J. SOC. ISSUES 1139, 1139 (2019); SENTENCING PROJECT, REPORT OF THE SENTENCING PROJECT TO THE UNITED NATIONS SPECIAL RAPPORTEUR ON CONTEMPORARY FORMS OF RACISM, RACIAL DISCRIMINATION, XENOPHOBIA, AND RELATED INTOLERANCE: REGARDING RACIAL DISPARITIES IN THE UNITED STATES CRIMINAL JUSTICE SYSTEM I (2018), <http://www.sentencingproject.org/publications/un-report-on-racial-disparities> [<http://perma.cc/WE3G-JPGN>].

63. ELIZABETH HINTON, LESHAE HENDERSON & CINDY REED, VERA INST. JUST., AN UNJUST BURDEN: THE DISPARATE TREATMENT OF BLACK AMERICANS IN THE CRIMINAL JUSTICE SYSTEM I (2018), <http://www.vera.org/downloads/publications/for-the-record-unjust-burden-racial-disparities.pdf> [<http://perma.cc/LEF8-MTMG>].

64. *Id.*

65. *Id.*

66. *Id.* at 2.

67. Foster, *supra* note 12, at 11; see also Emma Pierson, Camelia Simoiu, Jan Overgoor, Sam Corbett-Davies, Daniel Jenson, Amy Shoemaker, Vignesh Ramachandran, Phoebe Barghouty, Cheryl Phillips, Ravi Shroff & Sharad Goel, *A Large-Scale Analysis of Racial Disparities in Police Stops Across the United States*, 4 NATURE HUM. BEHAV. 736, 737 (2020) (reporting results of a study of nearly one hundred million traffic stops, which found that Black drivers were, on average, stopped more often than white drivers).

68. See *supra* notes 53–56 and accompanying text.

people (who make up 67% of the population) accounted for 85% of the Police Department's traffic stops, 90% of its citations, and 96% percent of known arrests made exclusively because of an outstanding municipal warrant.⁶⁹

People involved in the criminal legal system are also disproportionately poor.⁷⁰ Legal punishments are exacerbated by policies that indirectly punish people for their lack of resources: laws in many jurisdictions penalize individuals for homelessness, failure to pay child support, and the inability to pay fines and fees.⁷¹ Fines and fees are generally imposed without meaningful consideration of defendants' ability to pay; therefore, they disproportionately impact low-income defendants compared to higher-income defendants.⁷² A fine that amounts to a few hundred dollars could take a considerable toll on a family: in 2019, 40% of Americans could not afford an unexpected \$400 expense.⁷³ The COVID-19 pandemic has drained emergency savings, further heightening the consequences of being dealt a fine or fee.⁷⁴

The effects of race and poverty compound such that "poor people of color are most likely to be assessed monetary sanctions they cannot afford."⁷⁵ In fact, evidence suggests municipalities with greater populations of color rely more heavily on fines and fees as a source of revenue.⁷⁶ In a study of over 9,000 cities, those with larger Black populations relied more heavily on fines as a source of revenue.⁷⁷ On average, collections amounted to \$8.00 per person for all cities that get at least some revenue from fines and fees, but increased to as high as \$20.00 per person in cities with the highest Black populations, even after controlling for factors such as differences in crime rate and size of city.⁷⁸

Like consumer debt, debt from fines and fees may result in "poor credit, feelings of shame and emotional distress, and an increased risk of losing transportation, housing,

69. DOJ FERGUSON REPORT, *supra* note 54, at 62–63.

70. Foster, *supra* note 12, at 13. For example, nearly half of the people who have had multiple arrests in the United States have incomes below \$10,000 per year. Alexi Jones & Wendy Sawyer, *Arrest, Release, Repeat: How Police and Jails Are Misused To Respond to Social Problems*, PRISON POL'Y INITIATIVE (Aug. 2019), <http://www.prisonpolicy.org/reports/repeatarrests.html> [<http://perma.cc/E3QZ-G5DS>].

71. See Tara O'Neill Hayes & Margaret Barnhorst, *Incarceration and Poverty in the United States*, AM. ACTION F. (June 30, 2020), <http://www.americanactionforum.org/research/incarceration-and-poverty-in-the-united-states> [<http://perma.cc/KWJ5-ERTX>].

72. See Sobol, *supra* note 36, at 518.

73. See *Report on the Economic Well-Being of U.S. Households in 2018*, BD. GOVERNORS FED. RESRV. SYS. (May 2019), <http://www.federalreserve.gov/publications/2019-economic-well-being-of-us-households-in-2018-dealing-with-unexpected-expenses.htm> [<http://perma.cc/CK89-XTTR>].

74. See Lisa Rowan, *Here's How the Pandemic Shattered the Emergency Savings Rule of Thumb*, FORBES ADVISOR (June 23, 2021, 7:00 A.M.), <http://www.forbes.com/advisor/personal-finance/emergency-fund-survey> [<http://perma.cc/DMH8-AXBC>].

75. Foster, *supra* note 12, at 13; see also TARGETED FINES AND FEES, *supra* note 29, at 3 ("Municipalities that rely heavily on revenue from fines and fees have a higher than average percentage of African American and Latino populations relative to the demographics of the median municipality.").

76. See Sances & You, *supra* note 10, at 1090.

77. See *id.*

78. *Id.* Using a smaller sample of about 3,700 cities, the researchers also found that having at least one Black person on the city council reduced the relationship between race and fines by about fifty percent. *Id.* at 1092–93.

work, and good health.”⁷⁹ Fines and fees and the debts that result have profound effects on self-worth, self-respect, and self-determination.⁸⁰ The consequence is the “reproduction, reinforcement, and perpetuation of inequality.”⁸¹

Fines and fees also impose significant, yet largely hidden, costs on families.⁸² Many individuals turn to their families and communities to help pay their debts—expanding the circle of people who suffer from the harm.⁸³ Therefore, fines and fees tend to extend punishment beyond the person culpable and onto their family members who have to bear the consequences of the inability to pay.⁸⁴ The burden placed on families and communities serves to entrench poverty in these communities, essentially perpetuating the intergenerational effects of poverty, particularly in minority communities targeted by aggressive policing practices.⁸⁵

Fines and fees critically undermine the integrity of the criminal justice system.⁸⁶ They “can erode confidence in public institutions and undermine safety” within communities.⁸⁷ Many people experience the criminal legal system at the municipal level; therefore, the measure of justice for those people who are threatened with arrest for their inability to pay fines and fees becomes plagued by distrust and fear.⁸⁸ The resulting fear of arrest can lead people to avoid seeking legal or medical help, stop going to work, and commit additional crimes in order to pay off their accumulating debt.⁸⁹

Legal scholars have suggested that even in theory, justifications for imposing fines and fees are flawed.⁹⁰ For example, one of the stated goals of the criminal justice system is equality in punishment, in which two people who are equally culpable for the same

79. Atkinson, *supra* note 26, at 217.

80. *Id.*

81. *Id.*

82. Beatrix Lockwood & Nicole Lewis, *The Hidden Cost of Incarceration*, MARSHALL PROJECT (Dec. 17, 2019, 5:00 AM), <http://www.themarshallproject.org/2019/12/17/the-hidden-cost-of-incarceration> [<http://perma.cc/B8U6-MS63>].

83. *See id.*

84. *See id.*

85. *See* Harv. Crim. Just. Pol’y Program & Hum. Rts. Watch, *Criminalization of Poverty as a Driver of Poverty in the United States*, HUMANRIGHTSWATCH.ORG (Oct. 4, 2017 12:00 AM), <http://www.hrw.org/news/2017/10/04/criminalization-poverty-driver-poverty-united-states#> [<http://perma.cc/P25J-EH8H>].

86. *See* Oren Nimni, *Fines and Fees Are Inherently Unjust*, CURRENT AFFS. (May 9, 2017), <http://www.currentaffairs.org/2017/04/fines-and-fees-are-inherently-unjust> [<http://perma.cc/994U-EVYY>].

87. *See* ANNE STUHLREHER & CHRISTA BROWN, S.F. FIN. JUST. PROJECT, *ADVANCING FINANCIAL JUSTICE IN SAN FRANCISCO: THE EXPERIENCE AND LESSONS OF THE CITY’S FINANCIAL JUSTICE PROJECT 3–4* (2020), <http://sfgov.org/financialjustice/sites/default/files/2020-05/Advancing%20Financial%20Justice.pdf> [<http://perma.cc/Q6EL-9794>].

88. *See* *Bearden v. Georgia*, 461 U.S. 660, 670–71 (1983) (revoking probation when someone is unable to pay “may have the perverse effect of inducing the probationer to use illegal means to acquire funds to pay in order to avoid revocation”).

89. Sobol, *supra* note 36, at 521–22.

90. *See* Beckett & Harris, *supra* note 29, at 519 (providing several reasons why such fines and fees should be abolished); Nimni, *supra* note 86 (arguing that such fines and fees undermine the legitimacy of the criminal justice system).

offense should, in theory, be punished equally.⁹¹ However, fines and fees share characteristics of a regressive tax, particularly when considering the financial barriers to paying up front, mounting a legal challenge, or negotiating a reduced sentence.⁹² Yet, unlike taxes, fines and fees can be exceptionally destructive.⁹³

B. Constitutional Limits on Fines and Fees

The Due Process and Equal Protection Clauses of the Fourteenth Amendment have long been interpreted to “shield poor defendants from being incarcerated merely because they are too poor to pay court-imposed monetary sanctions,”⁹⁴ yet many jurisdictions have directly violated this doctrine.⁹⁵ The Court first addressed an equal protection challenge to the use of fines and fees in two cases in the early 1970s,⁹⁶ holding that “the use of incarceration as a substitute punishment for fines and fees where the defendant had no ability to pay violated the Fourteenth Amendment because the choice to satisfy the sanctions and avoid incarceration was nonexistent for indigent defendants.”⁹⁷

A decade later, in the seminal case *Bearden v. Georgia*,⁹⁸ the Supreme Court held that a court may not revoke probation for failure to pay fines and restitution without considering whether the failure to pay was “willful” or due to an inability to pay despite bona fide efforts.⁹⁹ In October 1980, Danny Bearden was sentenced to four years of probation and ordered to pay \$750 in fines and restitution, \$200 of which was due almost immediately.¹⁰⁰ He paid in part, but subsequently lost his job and was unable to complete his payments; his probation was revoked and he was imprisoned.¹⁰¹

The Supreme Court held that the State “may not . . . imprison a person solely because he lacked the resources to pay [a fine or restitution].”¹⁰² Only when the probationer has “willfully refused to pay the fine or restitution when he has the means to pay” is the State justified in using imprisonment as a sanction to enforce collection.¹⁰³ Where the probationer has made “all reasonable efforts to pay the fine or restitution, and

91. See James Q. Whitman, *Equality in Criminal Law: The Two Divergent Western Roads*, 1 J. LEGAL ANALYSIS 119, 127 (2009) (contrasting American and Continental theories of criminal punishment).

92. MICHAEL MAKOWSKY, HAMILTON PROJECT, A PROPOSAL TO END REGRESSIVE TAXATION THROUGH LAW ENFORCEMENT 4 (2019), http://www.hamiltonproject.org/assets/files/Makowsky_PP_20190314.pdf [<http://perma.cc/5XUY-PCFS>].

93. See *id.*

94. See Atkinson, *supra* note 26, at 211.

95. See Colgan, *Fines, Fees, and Forfeitures*, *supra* note 29, at 29.

96. See *Tate v. Short*, 401 U.S. 395, 397, 399 (1971) (finding that imprisoning an individual who is too poor to pay fines for offenses punishable by fines only constitutes invidious discrimination that contravenes the Fourteenth Amendment’s Equal Protection guarantee); *Williams v. Illinois*, 399 U.S. 235, 240–41 (1970) (finding that the Fourteenth Amendment’s Equal Protection Clause requires that the statutory ceiling for any substantive offense be constant for all defendants, regardless of ability to pay fines).

97. Colgan, *Fines, Fees, and Forfeitures*, *supra* note 29, at 28.

98. 461 U.S. 660 (1983).

99. *Bearden*, 461 U.S. at 667–68, 672.

100. *Debtors’ Prisons and the Exploitation of the Poor*, HARV. C.R.-C.L. L. REV. (Oct. 2, 2015), <http://harvardcrl.org/debtors-prisons-and-the-exploitation-of-the-poor> [<http://perma.cc/FUD4-U8FB>].

101. *Id.*

102. *Bearden*, 461 U.S. at 667–68.

103. *Id.* at 668.

yet cannot do so through no fault of his own, it is fundamentally unfair to revoke probation automatically.”¹⁰⁴ Before making a determination, the Supreme Court explained, courts should consider the reasons one may be unable to pay, the propriety of reducing the fine, extending the time to make payments, or making alternative orders.¹⁰⁵ In other words, an individual should not be punished for their poverty.¹⁰⁶

However, the Supreme Court did not provide specific guidance on how lower courts should conduct an “ability to pay” determination, and instead broadly stated that the inquiry may consider “the entire background of the defendant, including his employment history and financial resources.”¹⁰⁷ Thus, the Court left the method of this determination to the discretion of lower courts.¹⁰⁸ For instance, some officials may even consider individuals who are homeless as having the “ability to pay” because they can apply for jobs, beg for money on freeways, and pick up aluminum cans.¹⁰⁹ As a result, many jurisdictions do not adhere to the holding in *Bearden*, and individuals are still incarcerated for failure to pay their court debts.¹¹⁰ The effect is “modern day debtors’ prisons” in which poor people are faced with “excessively high, unconstitutionally imposed, and often illegally collected economic sanctions.”¹¹¹

An additional shortcoming of *Bearden* is that it only provides “post-hoc protection”—that is, the rule in *Bearden* is “triggered upon the imposition of further punishment for the failure to pay.”¹¹² However, *Bearden* does not “protect against . . . the imposition of unmanageable economic sanctions in the first instance.”¹¹³ A separate constitutional provision that may specifically protect against excessive economic sanctions is the Eighth Amendment’s Excessive Fines Clause.¹¹⁴ The Eighth Amendment of the Constitution provides: “Excessive bail shall not be required, *nor*

104. *Id.* at 668–69.

105. *Id.*

106. *See id.* at 671 (“[I]ncarcerating a probationer who has demonstrated sufficient bona fide efforts to repay his debt to society, solely by lumping him together with other poor persons and thereby classifying him as dangerous[,] . . . would be little more than punishing a person for his poverty.”).

107. Theresa Zhen, *(Color)blind Reform: How Ability-To-Pay Determinations Are Inadequate To Transform A Racialized System of Penal Debt*, 43 N.Y.U. REV. L. & SOC. CHANGE 175, 183 (2019) (citing *Bearden*, 461 U.S. at 670).

108. Joseph Shapiro, *Supreme Court Ruling Not Enough To Prevent Debtors Prisons*, NPR (May 21, 2014, 5:01 AM), <http://www.npr.org/2014/05/21/313118629/supreme-court-ruling-not-enough-to-prevent-debtors-prisons> [<http://perma.cc/N83K-PZXE>]. Some tell offenders to quit smoking or give up their phone and use the money to pay court debt. *Id.* Other judges may recommend asking family members for money or using money from government benefits (Temporary Aid to Needy Family checks, Social Security disability income, etc.) to pay their court fees. *Id.* Some judges even base their determinations on how defendants present themselves in court, such as if they are wearing expensive clothes or have tattoos. *Id.*

109. Olivia C. Jerjian, *The Debtors’ Prison Scheme: Yet Another Bar in the Birdcage of Mass Incarceration of Communities of Color*, 41 N.Y.U. REV. L. & SOC. CHANGE 235, 252 (2017) (citing ALEXES HARRIS, *A POUND OF FLESH: MONETARY SANCTIONS AS PUNISHMENT FOR THE POOR* 142 (2016)).

110. *Id.* at 250–51.

111. *See Atkinson, supra* note 26, at 202.

112. Colgan, *The Excessive Fines Clause, supra* note 36, at 10.

113. *See id.* at 9.

114. *Id.* at 10; U.S. CONST. amend. VIII.

excessive fines imposed, nor cruel and unusual punishments inflicted.”¹¹⁵ In the fines-and-fees context, this provision has received less attention than the Due Process Clause.¹¹⁶ Per the Supreme Court, the Excessive Fines Clause “limits the government’s power to extract payments, whether in cash or in kind, ‘as punishment for some offense.’”¹¹⁷

The Excessive Fines Clause was ratified in 1791, but it was not meaningfully interpreted by the Supreme Court until two centuries later.¹¹⁸ With regard to what constitutes a fine, the Court has determined that both criminal and civil forfeitures are considered fines.¹¹⁹ However, the definition of an “excessive” fine has received even less attention.¹²⁰ The sole Supreme Court case to interpret what is considered excessive is *United States v. Bajakajian*.¹²¹ The Court in *Bajakajian* explained: “The touchstone of the constitutional inquiry under the Excessive Fines Clause is the principle of proportionality.”¹²² Ultimately, the Court adopted a test that requires weighing the seriousness of the offense against the severity of the punishment.¹²³ If the punishment is grossly disproportionate to the offense, it is unconstitutionally excessive.¹²⁴

It was not clear whether defendants could challenge a fine or fee as unconstitutionally excessive in state courts until *Timbs v. Indiana*,¹²⁵ in which the Supreme Court held that the Eighth Amendment’s Excessive Fines Clause is an incorporated protection applicable to the states under the Fourteenth Amendment’s Due Process Clause.¹²⁶ Defendant Timbs pleaded guilty to dealing with a controlled substance and conspiracy to commit theft,¹²⁷ the State of Indiana sought to seize his SUV—which he purchased for \$42,000—on the grounds that it had been used to transport heroin.¹²⁸ The SUV had significance to Timbs beyond its monetary value, given his economic circumstances.¹²⁹ When he was sentenced, “Timbs had no income and few other assets.”¹³⁰ He explained that without his car, he would be unable to do the very things

115. U.S. CONST. amend. VIII (emphasis added).

116. See Colgan, *The Excessive Fines Clause*, *supra* note 36, at 9–10.

117. *United States v. Bajakajian*, 524 U.S. 321, 328 (1998) (quoting *Austin v. United States*, 509 U.S. 602, 609–10 (1993)).

118. Beth A. Colgan, *Reviving the Excessive Fines Clause*, 102 CALIF. L. REV. 277, 297 (2014) (citing *Browning-Ferris Indus. of Vt., Inc. v. Kelco Disposal, Inc.*, 492 U.S. 257 (1989)).

119. Colgan, *The Excessive Fines Clause*, *supra* note 36, at 10.

120. *Id.*

121. 524 U.S. 321 (1998).

122. *Bajakajian*, 524 U.S. at 334.

123. See Colgan, *The Excessive Fines Clause*, *supra* note 36, at 11. For a comprehensive account of the Excessive Fines Clause’s original meaning, see Nicholas M. McLean, *Livelihood, Ability To Pay, and the Original Meaning of the Excessive Fines Clause*, 40 HASTINGS CONST. L. Q. 833 (2013).

124. See Colgan, *The Excessive Fines Clause*, *supra* note 36, at 10–11.

125. 139 S. Ct. 682 (2019).

126. *Timbs*, 139 S. Ct. at 686–87.

127. *Id.* at 684.

128. Beth A. Colgan & Nicholas M. McLean, *Financial Hardship and the Excessive Fines Clause: Assessing the Severity of Property Forfeitures After Timbs*, 129 YALE L.J.F. 430, 430–31 (2020).

129. *Id.* at 431.

130. *Id.*

the government was asking him to do to stay clean, such as visiting his probation officer, going to Alcoholics Anonymous meetings, and staying employed.¹³¹

The trial court denied the state's request, reasoning that the vehicle's forfeiture would be grossly disproportionate to the gravity of Timbs's offense, as the maximum monetary fine assessable against him for his drug conviction was \$10,000.¹³² The appeals court affirmed, but the Indiana Supreme Court reversed and held that the Excessive Fines Clause constrained only federal action and was inapplicable to state impositions.¹³³

In a majority opinion written by Justice Ginsburg, the Court reasoned that protection against excessive punitive economic sanctions by the Excessive Fines Clause is both "fundamental to our scheme of ordered liberty" and deeply rooted in the nation's history and tradition.¹³⁴ The Court recounted the roots of the Clause found in sources from the Magna Carta and the English Bill of Rights to state constitutions from past and present.¹³⁵ For example, the Court emphasized the Magna Carta principle that economic sanctions should "not be so large as to deprive [an offender] of his livelihood."¹³⁶ The Court explained that "acknowledgment of the right's fundamental nature remains widespread," as all fifty states have constitutionally prohibited excessive fines either directly or through a proportionality requirement.¹³⁷ The Court recognized how excessive fines can undermine other liberties and are often used not for punitive purposes but rather as a source of revenue for states.¹³⁸

Despite breathing new life into the Eighth Amendment's Excessive Fines Clause, legal scholars have pointed out that the opinion left crucial questions unanswered: "What exactly counts as a 'fine'?"¹³⁹ "How should courts determine when a fine becomes 'excessive'?"¹⁴⁰ "Should courts consider people's inability to pay fines or their effect on livelihoods?"¹⁴¹

While the Court has yet to answer most of these questions, its reliance on the Excessive Fine Clause's historical roots suggests that it supports considering the economic and noneconomic implications of fines and fees.¹⁴² As in *Timbs*, the Court has

131. *Id.*

132. *Timbs*, 139 S. Ct. at 686.

133. Colgan & McLean, *supra* note 128, at 431.

134. *Timbs*, 139 S. Ct. at 686 (2019) (quoting *McDonald v. City of Chicago*, 561 U.S. 742, 767 (2010)).

135. *See id.* at 687–88.

136. *Id.* at 688 (alteration in original) (quoting *Browning-Ferris Industries of Vt., Inc. v. Kelco Disposal, Inc.*, 492 U.S. 257, 263 (1989)).

137. *Id.* at 689.

138. *See id.* at 684–86, 689.

139. Scott Bullock & Nick Sibilla, *The Supreme Court Resuscitates the Eighth Amendment: The Justices Strike a Blow Against Policing for Profit*, ATLANTIC (Mar. 13, 2019), <http://www.theatlantic.com/ideas/archive/2019/03/unanimous-supreme-court-decision-policing-profit/584506> [<http://perma.cc/KH6W-X8NT>].

140. *Id.*

141. *Id.*

142. *See* Colgan, *Fines, Fees, and Forfeitures*, *supra* note 29, at 27 ("Both analyses of colonial and early American statutes and court records leading up to the ratification of the Eighth Amendment and the English experience with fines and the adoption of the English Bill of Rights strongly support a broad interpretation of excessiveness that would include consideration of financial effect on the defendant." (citations omitted)); *see* Colgan & McLean, *supra* note 128, at 434–35. However, some courts and commentators have expressed a

repeatedly reached back to the Clause's English law roots—at least to the Magna Carta in 1215—to suggest that the relevant inquiry includes considerations of the effects of an economic punishment as more than a dollar value.¹⁴³ This notion also finds support in the Court's borrowing from the Eighth Amendment's Cruel and Unusual Punishment Clause to develop its proportionality test.¹⁴⁴

Given the Court's reasoning, neglecting to consider whether a deprivation could lead to an unduly harsh result undermines the Court's concerns.¹⁴⁵ The lack of a proper inquiry has the potential to cut defendants off from family, and as in *Timbs*'s case, to significantly hinder one's ability to maintain their health and to prevent recidivism.¹⁴⁶

C. *Health Effects of Poverty and Criminal Justice Involvement*

Social justice is considered a matter of life and death.¹⁴⁷ Together, the social determinants of health—"the conditions in which people are born, grow, live, work, and age"—cause much of the health inequity between and within countries.¹⁴⁸ The "unequal distribution of health-damaging experiences is not . . . a natural phenomenon but is the result of a combination of poor social policies . . . , unfair economic arrangements, and bad politics."¹⁴⁹ Traditionally, efforts to improve health and disease in the United States have taken root in the health care sector.¹⁵⁰ Over time, particularly the last two decades, the social determinants of health have garnered more attention by people in power given their outsized impact on health outcomes.¹⁵¹ These conditions are "shaped by the

concern that a subjectivist account of punishment severity might open the door to valuing "mere sentimental attachment," thus leading them to reject the relevance of individualized factors. Colgan & McLean, *supra* note 128, at 434.

143. See, e.g., *Timbs v. Indiana*, 139 S. Ct. 682, 687–88 (2019); *id.* at 693 (Thomas, J., concurring); *United States v.ajakajian*, 524 U.S. 321, 335–36 (1998); *Browning-Ferris Indus. of Vt., Inc. v. Kelco Disposal, Inc.*, 492 U.S. 257, 264–76 (1989); *id.* at 286–97 (O'Connor, J., concurring in part and dissenting in part).

144. See Colgan, *Fines, Fees, and Forfeitures*, *supra* note 29, at 27 ("As with the historical vantage, assessing the use of practices related to fines, fees, and forfeitures in light of the Court's proportionality precedence also supports a conclusion that the financial effect of fines, fees, and forfeitures is relevant to the question of excessiveness." (citation omitted)); Colgan & McLean, *supra* note 128, at 435–36.

145. See Colgan & McLean, *supra* note 128, at 437.

146. See *id.* ("[L]ooking to *Timbs* for an example, a court could consider how the loss of *Timbs*'s vehicle undermines his sobriety—both a medical issue and deterrence concern. It could also consider how that loss interferes with his ability to meet his probation conditions, which are purportedly intended to aid in his rehabilitation.").

147. See Michael Marmot, Sharon Friel, Ruth Bell, Tanja A. J. Houweling & Sebastian Taylor, *Closing the Gap in a Generation: Health Equity Through Action on the Social Determinants of Health*, 372 LANCET 1661, 1661 (2008).

148. See WORLD HEALTH ORG. & COMM'N ON SOC. DETERMINANTS OF HEALTH, CLOSING THE GAP IN A GENERATION: HEALTH EQUITY THROUGH ACTION ON THE SOCIAL DETERMINANTS OF HEALTH 1 (2008), http://apps.who.int/iris/bitstream/handle/10665/43943/9789241563703_eng.pdf;jsessionid=951A595F6885A9B583FBD2D7274DC5B?sequence=1 [<http://perma.cc/HRJ2-JHG9>].

149. Marmot et al., *supra* note 147, at 1661.

150. See *id.*; SAMANTHA ARTIGA & ELIZABETH HINTON, KAISER FAM. FOUND., BEYOND HEALTH CARE: THE ROLE OF SOCIAL DETERMINANTS IN PROMOTING HEALTH AND HEALTH EQUITY 1 (2018), <http://files.kff.org/attachment/issue-brief-beyond-health-care> [<http://perma.cc/Z43T-SGD5>].

151. See Loel S. Solomon & Michael H. Kanter, *Health Care Steps Up to Social Determinants of Health: Current Context*, 22 PERMANENTE J. (2018) ("We now know that upwards of 70% of health outcomes are driven by factors beyond health care and that poverty is associated with more years of lost life than smoking

distribution of money, power and resources,”¹⁵² and include income, education, employment, housing, environmental conditions, transportation, socioeconomic status, and social connections, among others.¹⁵³ Medical care certainly influences health, but its role in determining health outcomes is more limited than commonly believed, particularly in understanding who needs medical care in the first place.¹⁵⁴

While the poorest individuals within a country may have the highest levels of illness and premature death, health inequalities prevail along each “resource” (i.e., income, education, and wealth) and in the form of a “gradient” across the socioeconomic status hierarchy.¹⁵⁵ For example, the higher one’s income, the lower the risks of morbidity and mortality.¹⁵⁶ Rather than just a threshold effect of poverty, the negative effects on health caused by unequal distribution remains throughout the range of socioeconomic statuses.¹⁵⁷

In the United States, one in ten people lives in poverty;¹⁵⁸ many of these individuals are unable to meet their health needs due to a lack of meaningful access to essential resources, such as healthy food, housing, health care, and employment that provides a stable, living wage.¹⁵⁹ Accordingly, poverty and economic stability are considered important social determinants of health that can affect a wide range of health outcomes.¹⁶⁰ Wealth, which is the total value of assets and debts held by a person or family, is particularly important in understanding health disparities that persist across

and obesity combined.” (footnote omitted)); Paula Braveman & Laura Gottlieb, *The Social Determinants of Health: It’s Time To Consider the Causes of the Causes*, 129 PUB. HEALTH REPS. 19, 19 (2014). For a discussion on key terms being used in work related to the social determinants of health, see Hugh Alderwick & Laura M. Gottlieb, *Meanings and Misunderstandings: A Social Determinants of Health Lexicon for Health Care Systems*, 97 MILBANK Q. 407 (2019).

152. Alderwick & Gottlieb, *supra* note 151, at 408. A seminal paper by Professors Link and Phelan sheds light on social conditions as “fundamental causes” of disease. Bruce G. Link & Jo Phelan, *Social Conditions as Fundamental Causes of Disease*, J. HEALTH. & SOC. BEHAV. 80 (1995). These causes are fundamental because the health effects of this sort “cannot be eliminated by addressing the mechanisms that appear to link them to disease,” such as diet or lifestyle. *Id.* at 65–86. Fundamental causes can be conceptualized as the flexible resources such as “money, knowledge, power, prestige, and the kinds of interpersonal resources embodied in the concepts of social support and social network,” which affect “access to resources that can be used to avoid risks or to minimize the consequences of disease once it occurs.” *Id.* at 87.

153. Alderwick & Gottlieb, *supra* note 151, at 408.

154. Braveman & Gottlieb, *supra* note 151, at 20.

155. Angus Deaton, *Policy Implications of the Gradient of Health and Wealth*, 21 HEALTH AFFS. 13, 13 (2002) (describing the “gradient” as a “gradual” or “proportional relationship” between health and other variables, such as income).

156. *Id.*

157. *See id.*

158. *Income, Poverty and Health Insurance Coverage in the United States: 2018*, U.S. CENSUS BUREAU (Sept. 10, 2019), <http://www.census.gov/newsroom/press-releases/2019/income-poverty.html> [<http://perma.cc/EV7L-Q4NQ>].

159. *See Economic Stability*, HEALTHY PEOPLE 2030, <http://health.gov/healthypeople/objectives-and-data/browse-objectives/economic-stability> [<http://perma.cc/5G2W-5YDJ>] (last visited May 1, 2022).

160. *See id.*

generations.¹⁶¹ The disparities in wealth are staggering: “[t]he net worth of white Americans is more than fifteen times that of [B]lack Americans and thirteen times that of Hispanic Americans.”¹⁶² Wealth enables individuals to obtain increased education, housing stability, and financial security, all of which influence health outcomes.¹⁶³

Inequalities in essential resources have ways of getting “under the skin.”¹⁶⁴ Living in unequal social settings causes individuals to routinely “compare their status, possessions and life circumstances with those of others.”¹⁶⁵ This constant comparison engenders feelings of worthlessness in the disadvantaged, as well as chronic stress that undermines health.¹⁶⁶ Under this theory, called the “psychosocial theory,” the “perception and experience of personal status in unequal societies lead to stress and poor health.”¹⁶⁷

The psychosocial theory focuses on “responses to ‘stress’ and on stressed people in need of psychosocial resources.”¹⁶⁸ The social and material conditions of daily life—our living conditions, working conditions, economic stability, family relationships, and more—act through psychosocial pathways to affect health and well-being.¹⁶⁹ The experience of repeated stressors over long periods of time—what public health practitioners refer to as allostatic load¹⁷⁰—has been “associated with high blood pressure, development of diabetes, and ischemic heart disease.”¹⁷¹ In other words, being stressed in utero onwards can make people ill.¹⁷² Although everyone experiences some level of stress, people in lower socioeconomic groups have fewer resources to mitigate that

161. Dhruv Khullar & Dave A. Chokshi, *Health, Income, & Poverty: Where We Are & What Could Help*, HEALTH AFFS. (2018), <http://www.healthaffairs.org/doi/10.1377/hpb20180817.901935/full> [<http://perma.cc/V2Y7-N2A5>].

162. *Id.*

163. *Id.*; Craig Evan Pollack, Sekai Chideya, Catherine Cubbin, Brie Williams, Mercedes Dekker & Paula Braveman, *Should Health Studies Measure Wealth? A Systematic Review*, 33 AM. J. PREVENTATIVE MED. 250, 263 (2007) (“Higher levels of wealth were consistently associated with decreased mortality, and the findings also generally—albeit not invariably—supported an association between increased wealth and better self-rated health, better functional status, and fewer chronic diseases.”).

164. Pilyoung Kim, Gary W. Evans, Edith Chen, Gregory Miller & Teresa Seeman, *How Socioeconomic Disadvantages Get Under the Skin and into the Brain To Influence Health Development Across the Lifespan*, in HANDBOOK OF LIFE COURSE HEALTH DEVELOPMENT (Neal Halfon et al. eds., 2018).

165. ORIELLE SOLAR & ALEC IRWIN, WORLD HEALTH ORG., A CONCEPTUAL FRAMEWORK FOR ACTION ON THE SOCIAL DETERMINANTS OF HEALTH: SOCIAL DETERMINANTS OF HEALTH DISCUSSION PAPER 2, at 1, 15 (2010), <http://www.who.int/publications/i/item/9789241500852> [<http://perma.cc/A23P-7WCW>].

166. *Id.*

167. *Id.* at 15, 17.

168. Nancy Krieger, *Theories for Social Epidemiology in the 21st Century: An Ecosocial Perspective*, 30 INT’L J. EPIDEMIOLOGY 668, 670 (2001).

169. For an understanding of the underlying mechanisms at play in the body, see Bruce S. McEwen & Teresa Seeman, *Protective and Damaging Effects of Mediators of Stress: Elaborating and Testing the Concepts of Allostasis and Allostatic Load*, 896 ANNALS N.Y. ACAD. SCI. 30, 34–41 (2006).

170. *See id.* at 30 (explaining that it is not just the traumatic stressful events that can take a toll on health but also the wear and tear of daily life).

171. Hazel Genn, *When Law Is Good for Your Health: Mitigating the Social Determinants of Health Through Access to Justice*, 72 CURRENT LEGAL PROBS. 159, 168 (2019).

172. *See Krieger, supra* note 168, at 670.

stress,¹⁷³ which contributes to a higher prevalence of disease and poorer health outcomes.¹⁷⁴

With respect to its effect on health, socioeconomic status does not operate in a vacuum.¹⁷⁵ Rather, there are “multiple causal pathways to numerous dimensions of disadvantage.”¹⁷⁶ For instance, interaction with the criminal justice system,¹⁷⁷ and, in particular, being incarcerated, has also been shown to adversely affect physical and mental health.¹⁷⁸ Justice-involved populations are more likely to contract infectious diseases, have higher risks of death, and are more likely to develop chronic physical or mental conditions than members of the general population.¹⁷⁹ Having a parent or a family member involved with the criminal justice system is also predictive of poor mental and physical health in child- and adulthood.¹⁸⁰

For youth who themselves are justice-involved, or whose parents are justice-involved, the effects of negative life experiences can lead to perpetuating cycles of deprivation.¹⁸¹ Individuals who have had adverse childhood or adolescent experiences are likely to have more physical and mental health problems as adults compared to those spared such experiences.¹⁸² Adverse childhood or adolescent experiences may be direct, such as psychological, physical, or sexual abuse or neglect, but can also be indirect through poor living conditions or exposure to substance abuse, violent parental conflict, or mental health difficulties.¹⁸³ Children and adolescents who grow up in chronically stressful environments can suffer harm to the development of their nervous, endocrine, and immune systems, ultimately leading to long-term damage that renders them more susceptible to illness.¹⁸⁴

173. Geoffrey R. Swain, *How Does Economic and Social Disadvantage Affect Health?*, 33 FOCUS 1, 3 (2016), <http://www.irp.wisc.edu/publications/focus/pdfs/foc331a.pdf> [<http://perma.cc/T8JK-EWFT>].

174. Genn, *supra* note 171, at 168; *see also* Andrew Baum, J.P. Garofalo & Ann Marie Yali, *Socioeconomic Status and Chronic Stress: Does Stress Account for SES Effects on Health?*, 896 ANNALS N.Y. ACAD. SCI. 131, 131 (2006).

175. *See* Lawrence O. Gostin & Madison Powers, *What Does Social Justice Require for the Public's Health? Public Health Ethics and Policy Imperatives*, 25 HEALTH AFFS. 1053, 1054 (2006).

176. *Id.*

177. *See* Juliet Bui, Minh Wendt & Alexis Bakos, *Understanding and Addressing Health Disparities and Health Needs of Justice-Involved Populations*, 134 PUB. HEALTH REPS. 3S, 3S–4S (2019) (“Numerous health disparities exist between persons involved in the justice system and the general US population.”).

178. Michael H. Esposito, Hedwig Lee, Margret T. Hicken, Lauren C. Porter & Jerald R. Herting, *The Consequences of Contact with the Criminal Justice System for Health in the Transition to Adulthood*, 8 LONGITUDINAL LIFE COURSE STUD. 57, 58–59 (2017).

179. *Id.* at 58.

180. *Id.*

181. *See id.* at 58–59; Karen Hughes, Mark A. Bellis, Katherine A. Hardcastle, Dinesh Sethi, Alexander Butchart, Christopher Mikton, Lisa Jones & Michael P. Dunne, *The Effect of Multiple Adverse Childhood Experiences on Health: A Systematic Review and Meta-Analysis*, 2 LANCET 356 (2017); *see also* Neal Halfon, Kandyce Larson, Michael Lu, Ericka Tullis & Shirley Russ, *Lifecourse Health Development: Past, Present and Future*, 18 MATERNAL CHILD HEALTH J. 344, 352 (2014) (charting the evolution of the life course health development framework and illustrating its potential to transform maternal and child health).

182. Hughes et al., *supra* note 181, at 356.

183. *Id.*

184. *Id.*

III. DISCUSSION

Fines and fees are counterproductive to justice and pose a danger to public health. Individuals unable to pay assessed fines and fees often receive additional monetary penalties, lose driving privileges, face disruptive court proceedings, and may ultimately be subject to warrants and incarceration.¹⁸⁵ This cycle of deprivation leads to poorer health on an individual level, as well as continued health disparities among low-income communities and people of color.¹⁸⁶ While courts across the country should work to improve their practices, states and municipalities should also make it a priority to adequately fund their court systems to address the systemic barriers to reducing the overreliance on fines and fees.

This Section argues that fines and fees are harmful to health and well-being and offers solutions to reform the broken system.¹⁸⁷ Part III.A outlines some of the myriad ways fines and fees negatively impact an individual's life and demonstrates their health-harming consequences. Part III.B offers ways to address the unjust and counterproductive use of fines and fees in the criminal legal system, drawing on efforts in states and municipalities across the country.

A. *Fines and Fees Harm Health and Well-Being*

Monetary sanctions have tangible, destructive effects on health and well-being. Unpaid fines and fees often result in an accumulation of debt, which easily grows to an amount beyond reach for families with limited resources.¹⁸⁸ For instance, felony convictions in Washington State include a 12% annual interest rate on costs that accrue from the moment of judgment until all fines, fees, restitution, and interest are paid off in full.¹⁸⁹ The average felony case in Washington State carries a total cost of about \$2,500.¹⁹⁰ If the defendant can afford to pay \$20 a month, he would remain further indebted to the court even after years of faithfully paying each month.¹⁹¹ At the current rate, he would be unable to pay off the interest that accrues on the debt after the first year, let alone the initial fines and fees.¹⁹²

Though not as widely studied for its impact on health outcomes as other social determinants of health, debt is an increasingly important part of the socioeconomic experience.¹⁹³ Debt is relative—it may look different for each person or family—but indebtedness is generally defined as “a lack of possible debt redemption in due time,

185. See *supra* Part II.A.3 for a discussion of the disparate impact of fines and fees.

186. See *infra* Part III.A for a discussion of how fines and fees affect health and well-being.

187. The system not only causes irreparable harms to the individuals it affects but also is an unproductive and inefficient use of resources. See *supra* Section II.

188. See Pepin, *supra* note 27, at 1.

189. *Questions and Answers about Legal Financial Obligations (LFOs)*, ACLU WASH., <http://www.aclu-wa.org/questions-and-answers-about-legal-financial-obligations-lfos> [<http://perma.cc/8KP7-JXSL>] (last visited May 1, 2022).

190. *Id.*

191. *Id.*

192. *Id.*

193. See Elizabeth Sweet, Arijit Nandi, Emma K. Adam & Thomas W. McDade, *The High Price of Debt: Household Financial Debt and Its Impact on Mental and Physical Health*, 91 SOC. SCI. & MED. 94, 94 (2013).

resulting in a remarkable cutback on a household's standard of living."¹⁹⁴ In accordance with the psychosocial theory, indebtedness may trigger stress that worsens health, or it may limit an individual's ability to seek preventive medical care and lead to unhealthy coping mechanisms.¹⁹⁵

Debt associated with fines and fees not only hinders financial security and physical health but also impacts mental health through feelings of guilt, shame, and fear from the continual threat of incarceration for nonpayment.¹⁹⁶ When law enforcement knows which routes a person takes to work or school, or where they visit for routine activities such as grocery shopping, every moment induces anxiety and additional stress from the fear of being pulled over or accosted while performing necessary tasks.¹⁹⁷

Fines and fees also interfere with efforts to obtain stable housing, the lack of which in turn negatively impacts health. Some states allow criminal justice debt to be converted into or collected in the same way as civil judgments,¹⁹⁸ which are then filed with the county clerk and become publicly available information for credit reporting agencies.¹⁹⁹ Poor credit scores can subsequently present obstacles for individuals seeking to obtain a loan or mortgage or in applications for public or rental housing.²⁰⁰ There is strong evidence of housing's relationship to health.²⁰¹ In particular, individuals who experience housing instability—moving frequently, falling behind on rent, or couch surfing—are more likely to experience poor health than their stably housed counterparts.²⁰² A lack of stable housing also reduces the effectiveness of health care, by making it difficult or nearly impossible to properly store medications, for example, among a host of other factors.²⁰³

Nonpayment of fines and fees can also significantly hinder employment prospects, which prevents individuals from not only paying off their debts but also meeting basic

194. Elina Turunen & Heikki Hiilamo, *Health Effects of Indebtedness: A Systematic Review*, 14 BMC PUB. HEALTH 1, 2 (2014).

195. See Melissa B. Jacoby, *Does Indebtedness Influence Health?: A Preliminary Inquiry*, 30 J. L. MED. & ETHICS 560, 560 (2002). A systematic review of thirty-three peer-reviewed studies found that indebtedness was associated with serious health effects, including suicidal ideation and poorer subjective health and health-related behaviors. Turunen & Hiilamo, *supra* note 194, at 1–2.

196. Atkinson, *supra* note 26, at 222.

197. *Id.*

198. See, e.g., FLA. STAT. § 938.30(6) (2013) (“If judgment has not been previously entered on any court-imposed financial obligation, the court may enter judgment thereon and issue any writ necessary to enforce the judgment in the manner allowed in civil cases.”); *id.* § 960.294(2) (“A civil restitution lien order may be enforced . . . in the same manner as a judgment in a civil action.”).

199. BANNON ET AL., *supra* note 27, at 27.

200. Jerjian, *supra* note 109, at 253–54.

201. Lauren A. Taylor, *Housing and Health: An Overview of the Literature*, HEALTH AFFS. 1 (2018), http://www.healthaffairs.org/doi/10.1377/hpb20180313.396577/full/HPB_2018_RWJF_01_W.pdf [<http://perma.cc/5YDV-X6H4>] (“Housing stability, quality, safety, and affordability all affect health outcomes, as do physical and social characteristics of neighborhoods.”).

202. *Id.* at 2; see also SCOTT BURRIS, KATIE MORAN-MCCABE, NADYA PROOD, KIM BLANKENSHIP, ANGUS CORBETT, ABRAHAM GUTMAN & BETHANY SAXON, TEMP. UNIV. CTR. FOR PUB. HEALTH L. RSCH., HEALTH EQUITY IN HOUSING: EVIDENCE AND EVIDENCE GAPS 43 (2019), http://publichealthlawresearch.org/sites/default/files/uploaded_images/HousingHealthEquityLaw-Report3-Dec-2019-FINAL.pdf [<http://perma.cc/3SQE-GZGW>].

203. Taylor, *supra* note 201, at 2.

needs that are critical to health.²⁰⁴ Many “employers look at credit scores when running a prospective employee’s background check and use it as a form of ‘character screening.’”²⁰⁵ A lack of meaningful access to employment opportunities has been associated with poorer health outcomes.²⁰⁶ Some studies have even suggested a causal relationship in which unemployment leads to poor health outcomes.²⁰⁷

Lack of employment may also result in increased reliance on public assistance, yet fines and fees often preclude individuals from accessing this support. “A probation or parole violation resulting from missed or late payments on LFOs disqualifies an individual under federal law from receiving Temporary Assistance to Needy Families (TANF), Food Stamps, low income housing and housing assistance, and Supplemental Security Income (SSI) for the elderly and disabled,”²⁰⁸ leaving individuals with scant options and few places to turn.²⁰⁹

In addition to direct consequences, the imposition of fines and fees creates ripple effects that pervade all aspects of life, particularly for individuals with the fewest resources.²¹⁰ For instance, when the inability to pay results in a driver’s license suspension, individuals face an infeasible choice: stop driving and lose the ability to safely travel to and from essential locations (work, the grocery store, healthcare facilities, childcare centers), or continue driving and risk criminal charges.²¹¹ Without a license, many individuals are unable to keep their jobs or get one in the first place.²¹² The lack of a license makes it even more difficult to pay off outstanding fines and fees, in addition to burdening health by causing increased stress and cutting off access to essential

204. For example, in Chicago, payment of fines and fees is a prerequisite of employment in any city or school district job. ANNE TEIGEN, NAT’L CONF. STATE LEGIS., ASSESSING FINES AND FEES IN THE CRIMINAL JUSTICE SYSTEM 3 (2020), http://www.ncsl.org/Portals/1/Documents/cj/Fines%20and%20Fees_v02.pdf [<http://perma.cc/8F7R-7AL7>].

205. Jerjian, *supra* note 109, at 253.

206. However, researchers caution that this does not necessarily mean the reverse is true (i.e., that employment causes improved health). LARISA ANTONISSE & RACHEL GARFIELD, KAISER FAM. FOUND., THE RELATIONSHIP BETWEEN WORK AND HEALTH: FINDINGS FROM A LITERATURE REVIEW 4 (2018), <http://files.kff.org/attachment/Issue-Brief-The-Relationship-Between-Work-and-Health-Findings-from-a-Literature%20Review> [<http://perma.cc/CM87-V4QG>]; see also Kenneth C. Hergenrather, Robert J. Zeglin, Maureen McGuire-Kuletz & Scott D. Rhodes, *Employment as a Social Determinant of Health: A Systematic Review of Longitudinal Studies Exploring the Relationship Between Employment Status and Physical Health*, 29 REHABILITATION RSCH. POL’Y & EDUC. 2, 2 (2015).

207. ANTONISSE & GARFIELD, *supra* note 206, at 4 (citing Karsten I. Paul & Klaus Moser, *Unemployment Impairs Mental Health: Meta-Analyses*, 74 J. VOCATIONAL BEHAV. 264 (2009)).

208. Pepin, *supra* note 27, at 4.

209. Jerjian, *supra* note 109, at 254–55.

210. See FISCAL POL’Y. INST., FINES AND FEES: RAISING REVENUE AT THE COMMUNITY’S EXPENSE 2 (2020), http://fiscalpolicy.org/wp-content/uploads/2020/10/Formatted-Fines-and-Fees-Brief-April-15-2020_REV01.pdf [<http://perma.cc/R7NN-A7GH>].

211. *Id.*

212. See Semuels, *supra* note 39.

resources.²¹³ More directly, driver's license suspensions can also affect access to health care, making it more difficult to reach appointments and manage chronic conditions.²¹⁴

The consequences resulting from fines and fees detailed here are just the tip of the iceberg. Fines and fees lead to the loss of access to basic necessities (e.g., food, health care, housing) and the means to maintain these necessities (e.g., employment). Each of these losses directly impacts the health of the individuals who are fined, as well as their families and future generations. Without addressing these issues directly, families and communities will continue to face the damaging consequences of fines and fees.

B. *Need for Alternatives to Fines and Fees: Reform Options*

Fines and fees exceeding what people can pay are a "lose-lose," for both the people and the government.²¹⁵ States and municipalities must make an active effort to reevaluate the current system's priorities and search for solutions that hold people accountable but do not risk individuals' financial, physical, and mental health.²¹⁶ Consequences should fit the offense, and "budgets should not be balanced on the backs of those who can least afford it."²¹⁷

Part III.B.1 discusses incremental reforms that should be implemented, such as incorporating a meaningful analysis of an individual's ability to pay before imposition of fines and fees. Part III.B.2 recommends structural reforms, examining best practices that would address systemic deficiencies in the current system.

1. Incremental Reforms

State and local governments, as well as the courts, should adopt policies that will remedy the damage that fines, fees, and related enforcement mechanisms have inflicted on low-income communities and communities of color across the country. States and municipalities should eliminate "poverty penalties" and other policies that impede the ability to pay, create mechanisms to meaningfully consider the effects of economic sanctions, develop viable alternatives to incarceration for nonpayment of legal financial obligations, and provide meaningful access to indigent defense counsel.

Poverty penalties and related mechanisms to enforce fines and fees harm health by making it "more difficult for people to obtain and maintain housing and employment and to remain connected to family"; they should be eliminated.²¹⁸ Given that the costs associated with imposition of poverty penalties often outweigh the funds collected, in most jurisdictions, eliminating such penalties will either enhance revenue or, at least,

213. *See id.*

214. *See* Nina R. Joyce, Andrew R. Zullo, Jasjit S. Ahluwalia, Melissa R. Pfeiffer & Allison E. Curry, *Driver's License Suspension Policies as a Barrier to Health Care*, 109 AM. J. PUB. HEALTH 1692, 1692 (2019); *see also* Krisda H. Chaiyachati, Rebecca A. Hubbard, Alyssa Yeager, Brian Mugo, Judy A. Shea, Roy Rosin & David Grande, *Rideshare-Based Medical Transportation for Medicaid Patients and Primary Care Show Rates: A Difference-in-Difference Analysis of a Pilot Program*, 33 J. GEN. INTERNAL MED. 863, 867 (2018) (conducting a pilot study which found that "offering a rideshare-based transportation service may increase show rates for primary care appointments among Medicaid patients").

215. STUHLREHER & BROWN, *supra* note 87, at 4.

216. *See id.*

217. *Id.*

218. Colgan, *Fines, Fees, and Forfeitures*, *supra* note 29, at 30.

have no revenue effect.²¹⁹ Not only are poverty penalties inefficient, they are also likely unconstitutional under the Excessive Fines and Due Process Clauses.²²⁰

In line with a national movement to eliminate fees and ensure fines are equitably imposed and enforced, states and municipalities have taken initial measures to eliminate poverty penalties.²²¹ For example, in 2019, Chicago announced it would end driver's license suspensions for people who cannot pay city sticker fines and parking tickets.²²² That same year, the City of Los Angeles voided "nearly 2 million minor citations and warrants that had kept people trapped in the court system."²²³ In 2020, Durham, North Carolina, implemented a program with the district attorney and the courts to waive old traffic fines and fees, while also restoring 35,000 driver's licenses that had been suspended for nonpayment.²²⁴

The judicial system must also take affirmative action to follow the call of *Bearden* and *Timbs* and establish meaningful ability-to-pay assessments. Oftentimes, the criteria used to determine ability to pay are arbitrary and result in fines that are disproportionate to the offense.²²⁵ The system should be based on objective criteria to eliminate bias and unrestrained judicial discretion.²²⁶ Drawing on pilot projects in six U.S. jurisdictions in the late 1980s and early 1990s that used day fines,²²⁷ Professor Beth Colgan has articulated specific ways that economic sanctions can "be improved through their graduation to account for a person's financial condition."²²⁸

"At a minimum, a definition of economic hardship should consider an individual's ability to pay the court-ordered fines and fees without having to forgo basic living

219. *Id.* at 30–31.

220. *Id.* at 26–29.

221. *National Effort To Reform Harmful Fines and Fees Announces Local Champions*, POLICYLINK (May 26, 2020), <http://www.policylink.org/resources-tools/media/fines-and-fees-reform> [<http://perma.cc/W9CU-5VUE>].

222. Press Release, City of Chicago, Mayor Lightfoot Announces First Set of Comprehensive Fines and Fees Reforms (July 23, 2019), http://www.chicago.gov/city/en/depts/mayor/press_room/press_releases/2019/july/FinesFeesReforms.html [<http://perma.cc/DJ9S-H98S>].

223. Mark Puente & Richard Winton, *L.A. Vows To Void 2 Million Court Citations and Warrants. Homeless People Will Benefit Most*, L.A. TIMES (Oct. 2, 2019, 5:02 PM), <http://www.latimes.com/california/story/2019-10-02/homeless-housing-erase-citation-fine-fees> [<http://perma.cc/SH2B-ED63>].

224. *National Effort To Reform Harmful Fines and Fees Announces Local Champions*, *supra* note 221.

225. See Marsh & Gerrick, *supra* note 32, at 122–23 (2015). For example, a system that allows a judge to discount negative fiscal consequences due to a belief that a person has not tried hard enough to find work would fail to account for larger structural issues such as racial or gender discrimination in employment.

226. See BETH A. COLGAN, HAMILTON PROJECT, ADDRESSING MODERN DEBTORS' PRISONS WITH GRADUATED ECONOMIC SANCTIONS THAT DEPEND ON ABILITY TO PAY 13 (2019) [hereinafter COLGAN, GRADUATED ECONOMIC SANCTIONS], http://www.hamiltonproject.org/assets/files/Colgan_PP_201903014.pdf [<http://perma.cc/E5ND-WVGU>]; *State Bans on Debtors' Prisons and Criminal Justice Debt*, Note, 129 HARV. L. REV. 1024, 1026 n.23 (2016) (explaining that leaving this inquiry open-ended could result in "too much discretion in the hands of the same legal actors responsible for the state of play").

227. Day fines are a form of structured fine in which a person's adjusted daily income is multiplied by a number signifying the seriousness of the offense to establish the amount of economic sanctions to impose. COLGAN, GRADUATED ECONOMIC SANCTIONS, *supra* note 226, at 13.

228. *Id.*

necessities such as food, shelter, clothing, medical expenses, or child support.”²²⁹ These determinations should include the application of presumptions where appropriate. For example, a court can maintain “an exhaustive list of rebuttable presumptions of inability to pay,” where an individual can assert “that their income or financial circumstances are so limited that they have no disposable income and there is no amount they would reasonably be able to pay without economic hardship.”²³⁰

Implementing meaningful ability to pay assessments would not automatically result in less revenue.²³¹ Adjusting fines to a person’s income can make it easier and more realistic for people to pay, thus resulting in more efficient court administration and revenue generation.²³² For instance, when the San Francisco Superior Court stopped the “hammer” effect of suspending driver’s licenses for failure to pay, it did not see a loss of revenue.²³³ In fact, revenue per citation increased over the following several years as the court implemented more effective collection practices.²³⁴ Similarly, a low-income payment plan created by the San Francisco Municipal Transit Agency led to increased revenue.²³⁵

After determining that an individual is able or unable to pay given their personal circumstances, courts should also implement the use of payment plans to ensure that people can meet their needs, as well as the needs of their families, while paying off court debt.²³⁶ In the case of missed payments, an individual should never be incarcerated, have their probation extended, or have their driver’s license suspended as punishment. States and municipalities should also stop the issuances of warrants and jail time for failures to pay.

Even with many of these measures in place, a subset of individuals will remain unable to pay economic sanctions of any kind.²³⁷ Rethinking the imposition of fines and fees also provides an opportunity to consider alternative forms of punishment.²³⁸ Lawmakers should make sure that these alternatives are not disproportionate to the underlying offense and are designed to avoid unintended consequences that undermine other societal interests.²³⁹ While the most common alternative to incarceration is community service, this option may have negative consequences for local labor markets or fail to adequately protect the ability of those sentenced to make a living and provide

229. FINES & FEES JUST. CTR., FIRST STEPS TOWARD MORE EQUITABLE FINES AND FEES PRACTICES: POLICY GUIDANCE ON ABILITY-TO-PAY ASSESSMENTS, PAYMENT PLANS, AND COMMUNITY SERVICE 11 (2020), http://finesandfeesjusticecenter.org/content/uploads/2020/11/FFJC_Policy_Guidance_Ability_to_Pay_Payment_Plan_Community_Service_Final_2.pdf [<http://perma.cc/82GF-P3GM>].

230. *Id.*

231. STUHLREHER & BROWN, *supra* note 87, at 4.

232. COLGAN, GRADUATED ECONOMIC SANCTIONS, *supra* note 226, at 54.

233. STUHLREHER & BROWN, *supra* note 87, at 4.

234. *Id.*

235. *Id.*

236. FINES & FEES JUST. CTR., *supra* note 229, at 6–7.

237. Colgan, *Fines, Fees, and Forfeitures*, *supra* note 29, at 31.

238. *Id.*

239. *Id.*

for their families.²⁴⁰ Although many alternatives may require additional governmental expenditures, in the long term, these expenditures would have significant financial benefits.²⁴¹

2. Structural Reforms

Beyond incremental reforms that seek to enhance consideration of an individual's ability to pay fines and fees, states and localities should also look to reform the structures in place that promote fine-and-fee systems in the first place. At the heart of municipal court reform are issues of proper funding and judicial independence.²⁴² Under the doctrine of inherent judicial power, courts can take actions necessary to fulfill their constitutional functions even without authorization by express constitutional text or legislative statute, including budgetary matters.²⁴³ However, where courts and other actors in the judicial system are not insulated from budgetary concerns, they feel pressure to generate revenue to bolster their own budgets, which “can lead to an unconstitutional breakdown that pits revenue generation against the due process right to fair proceedings.”²⁴⁴

Courts should not be expected to impose fines based on general revenue needs, yet many courts across the country do so at the expense of the health and well-being of low-income communities and communities of color. Courts are essentially local wealth redistributors, redistributing capital away from defendants by converting law enforcement decisions into financial burdens.²⁴⁵ Addressing the perverse revenue-generating incentives is especially important given the COVID-19 pandemic and its effects on local governments, many of which are in an unprecedented fiscal crisis.²⁴⁶ Facing increasing costs and declining tax revenues, local officials may be inclined to raise additional revenues through fines and forfeitures. However, it would be fiscally imprudent and unjust for cities to pass the burden of local finances onto their most disadvantaged residents.

The way states and localities raise and spend revenue has major implications for their residents' health.²⁴⁷ Economic and political institutions—and their decisions creating and perpetuating disparities in economic and social status—are fundamental

240. *Id.*

241. *Id.* at 31–32.

242. See G. Gregg Webb & Keith E. Whittington, *Judicial Independence, The Power of the Purse, and Inherent Judicial Powers*, 88 JUDICATURE 12, 14 (2004) (“[T]ough budgeting decisions increasingly invite direct confrontations between the heads of the legislative and judicial branches of state governments.”).

243. *Id.*

244. Colgan, *Fines, Fees, and Forfeitures*, *supra* note 29, at 32.

245. Natapoff, *supra* note 29, at 1029.

246. See Emily Badger & Quoc Trung Bui, *The Recession Is About To Slam Cities. Not Just the Blue-State Ones*, N.Y. TIMES (Aug. 17, 2020), <http://www.nytimes.com/2020/08/17/upshot/pandemic-recession-cities-fiscal-shortfall.html> [<http://perma.cc/4UY4-PYBM>].

247. Jennifer Sullivan, *Better State Budget, Policy Decisions Can Improve Health*, CTR. ON BUDGET & POLY PRIORITIES 1 (Feb. 21, 2019), <http://www.cbpp.org/sites/default/files/atoms/files/2-21-19sfp.pdf> [<http://perma.cc/4Q9K-LA2N>] (“[T]he ways states and localities raise revenue have implications for health outcomes, given the deep connections between poverty, inequality, and health.”).

causes of health inequalities.²⁴⁸ As such, public finance is a public health issue.²⁴⁹ What is financially protected is often a political choice, which “does not, in fact, reflect any underlying economic necessity, but rather a judgment about the relative value attached to protecting the lives and wealth of differently situated members of a society.”²⁵⁰ Accordingly, states and localities can improve their residents’ health and address racial inequities by improving state and local tax systems and making deeper and smarter investments in education, economic security, housing, and other social determinants of health.²⁵¹

State and local tax systems should be based primarily on taxpayers’ ability to pay, so governmental entities are able to raise adequate revenue for improving the social determinants of health.²⁵² Households with higher incomes should pay a larger share of their income in state and local taxes than households with lower incomes, which is the opposite of tax systems in nine out of every ten states today.²⁵³ To change this reality, states can strengthen their income taxes, better tax wealth, enact or expand tax credits for low-income families, and, at a minimum, eliminate fees that overburden low-income individuals, which trap them in cycles of debt and criminal justice involvement, and thus widen health disparities.²⁵⁴

States and localities should raise revenue to both adequately fund their court systems and make long-term investments in education, infrastructure, health, and other spending that will work to build an economy with benefits that are more widely shared.²⁵⁵ To achieve this, states should build stronger personal income tax systems, eliminate subsidies that allow corporations to avoid paying taxes on profits, and modernize state sales taxes by, for example, taxing services (such as video streaming) and online purchases.²⁵⁶

States and localities should also work to eliminate the arcane legal restrictions that hinder their ability to raise revenue in equitable ways. For instance, states should get rid of supermajority requirements for raising taxes or eliminating inefficient tax breaks, which can significantly limit a state’s capacity to properly handle its finances.²⁵⁷ States

248. Krieger, *supra* note 168, at 670.

249. Ted Schrecker, *The Political Economy of Public Health: Challenges for Ethics*, in THE OXFORD HANDBOOK OF PUBLIC HEALTH ETHICS 842 (Anna C. Mastroianni et al. eds., 2019).

250. *Id.* at 843–44.

251. Sullivan, *supra* note 247, at 1–2.

252. *Id.*

253. MICHAEL LEACHMAN, MICHAEL MITCHELL, NICHOLAS JOHNSON & ERICA WILLIAMS, CTR. ON BUDGET & POL’Y PRIORITIES, ADVANCING RACIAL EQUITY WITH STATE TAX POLICY 2 (2018), <http://www.cbpp.org/sites/default/files/atoms/files/11-15-18sfp.pdf> [<http://perma.cc/ABG3-SLCC>].

254. *Id.* at 13–18.

255. *Id.*; Sullivan, *supra* note 247, at 9 (“States and localities can promote health by investing in both health and other social and economic policies that shape health, implementing policy changes that can improve health, and taking steps to make their tax codes more equitable.”).

256. LEACHMAN ET AL., *supra* note 253, at 18–20.

257. *See id.* at 22 (“Sixteen states require a supermajority vote of both legislative houses to enact at least some tax increases. . . . Such requirements . . . can encourage wasteful fiscal decisions by handing disproportionate power to a minority of lawmakers, who can hold out for special favors to win their votes.”); MICHAEL LEACHMAN, NICHOLAS JOHNSON & DYLAN GRUNDMAN, CTR. ON BUDGET & POL’Y PRIORITIES, SIX

should also reform or repeal formulaic limits on property taxes²⁵⁸ and overturn other harmful restrictions on state budgets that weaken lawmakers' authority to manage state finances.²⁵⁹

In tandem with these efforts, state and local governments should strengthen data collection of fines and fees. The insufficient tracking of the costs to enforce fines and fees leads to inaccurate, “overly ‘rosy’ views” of the extent to which they are indeed meeting their supposed purpose of generating revenue.²⁶⁰ Data are critical to justice in public health as they “can help determine who are most vulnerable and at greatest risk, how best to reduce the risk or ameliorate the harm, and how to fairly distribute services and benefits.”²⁶¹

IV. CONCLUSION

As it currently stands, the system of fines and fees in the United States not only destroys individuals and communities but also harms public health. There is little evidence available to justify the overreliance on fines and fees given that they are ineffective at two of their primary goals: rehabilitation and revenue collection. Fines and fees entrench low-income communities in poverty and continue to widen racial disparities in health and wealth for generations to come.

Addressing the problem of fines and fees in the United States will require a tiered approach focusing on judicial reforms and larger systemic change. Ultimately, altering the funding mechanisms behind court systems is essential to addressing the perverse motivations behind economic sanctions and the dependence on fines and fees to fund criminal enforcement. Without taking a structural approach, courts and municipalities will fuel the never-ending cycle of debt, poverty, and criminal justice involvement for the most vulnerable individuals in society. By focusing on the root of the problem—the proper funding of state and local government—policymakers have an opportunity to not only pull individuals out of this cycle but also foster a healthier society.

REASONS WHY SUPERMAJORITY REQUIREMENTS TO RAISE TAXES ARE A BAD IDEA 1–2 (2012), <http://www.cbpp.org/sites/default/files/atoms/files/2-13-12sfp.pdf> [<http://perma.cc/YAL6-VUYS>].

258. See LEACHMAN ET AL., *supra* note 253, at 22–23 (describing alternatives to states to relieve property taxes for middle and low-income taxpayers, such as “circuit breakers,” which “provide a refund from state revenue to households whose property tax payments are deemed unaffordable”).

259. *Id.*

260. Crowley et al., *supra* note 11, at 172; Natapoff, *supra* note 29, at 1029 (“We lack basic, reliable information about the number of municipal courts, how many cases they process, and the amount of money they transfer from defendants to cities. We also have only a partial and fragmented picture of municipal court culture.”).

261. Gostin & Powers, *supra* note 175, at 1054.